

February 26, 2020

Dave Connolly, President
Board of Pilot Commissioners
660 Davis St.
San Francisco, CA 94111

RE: Proposed §1167 Adjustment to Pilot Pensions
(BOPC Agenda Item #13(C), February 27, 2020)

Dear President Connolly:

The Pacific Merchant Shipping Association (PMSA) respectfully requests that the Board refrain from taking any action to increase current target pension amounts under Harbors and Navigation Code §1167 for lack of cause and evidence. In addition, PMSA renews its ongoing concern with Board actions taken under this section and other pension benefit calculations with respect to the Pension system in the absence of regulatory guidance.

While a review of benefits is mandatory under §1167, action is discretionary. While the statute creates a limitation on any such action not to exceed 50% of CPI, nothing in this statute compels an action by the Board to increase Pension benefits. Thus, without specific evidence, findings, or basis, the recommended Board action to simply increase benefits to their statutory maximum or any other level, is arbitrary and should be avoided.

Upon an actual “review of benefits,” as mandated by the statute, total pension obligations have already increased substantially since 2013. The “Pilot Pension Plan Statistics” provided to the Pension Committee meeting on February 25th demonstrate that Total Monthly Target Rate Payments to pilots increased by 51.5% over the past six years - from \$604,509 per month (Q4 2013) to \$916,094 per month (Q4 2019). While over this same time period of time only 7 new participants were added (+10%) and the CPI increases granted only totaled +8.8%. In short, pension payouts are already growing faster than new participant and CPI additions by 2.8x from 2013-2019.

Thus, the review of benefits does not provide any basis for an across-the-board increase at this point in time. The 51.5% of natural growth in total pension obligations since 2013 is well in excess of any CPI methodology the Board chooses to utilize for this adjustment and demonstrates that there is no generalized basis for the increase proposed.

The Pension Committee made no findings and no findings were proposed in the staff report. There were no conclusions made with respect to current pension obligation conditions, or comparisons to expected obligations, and the review of existing pension benefits did not provide the basis for any logical policy to be extrapolated from current liabilities. Without any evidence of a substantive or objective justification for an increase, and overall benefit review presenting the opposite conclusions that overall increases to pension obligations are justifiable, any action by the Board to increase pension benefit payments is arbitrary.

In addition, PMSA objects to BOPC action under §1167(b) without the enactment of pension benefit calculation regulations. Since this sub-paragraph is a wholly-enabling statute, PMSA has consistently alerted the Board that this type of statute cannot be legally enforced without a regulation to direct the fee-setting, yet the Board has consistently taken action in the absence of formal rulemaking to effectuate any pension benefit calculation regulations under §1163 and §1167. We incorporate by reference our hefty record of previous correspondence on these issues, specifically, including our opposition to prior CPI increases without regulatory enacting language as expressed in 2008, 2011, 2014, and 2017, as well as our Petition to the Office of Administrative Law regarding §1167 interpretation in 2012.

The recent Pension Committee meeting reflects one example of how PMSA's concerns in this area persist, and why the Board should avoid action on this item without first conducting further rulemaking. In particular, the Committee found it necessary to once again discuss how it would interpret the definition of the consumer price index and how it could be applied, and was presented with multiple interpretation options by staff, and chose an option in part in reliance on previous interpretations. This continues to be an ad hoc interpretation of statute, not addressed in a rulemaking procedure under the APA.

Without a concrete regulatory methodology, and without a solid review of the current benefits and evidence upon which to rely, any Board action now will be necessarily arbitrary and temporal. This is true no matter how earnestly and well-intentioned the Boardmembers and staff act in good faith in these cases.

PMSA respectfully asks that the Board defer taking action on any pension increases until appropriate regulations are adopted for the implementation of §§ 1163 and 1167 and to avoid the imposition of any and all rate changes on an arbitrary basis.

Sincerely,



Mike Jacob
Vice President and General Counsel

cc: Members, Board of Pilot Commissioners
Capt. Allen Garfinkle, Executive Director