

<p>Meeting Date:</p> <p>March 23, 2023</p>	<p>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</p> <p>BOARD MEETING MINUTES</p>	<p>Page 1 of 13</p>
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Board Members Present

Karen Tynan, President, Public Member
Jennifer Ferrera Schmid, Vice President, Public Member
Joanne Hayes-White, Public Member (by phone)
Captain Robert Carr, Pilot Member
Captain Einar Nyborg, Pilot Member
Stephanie Dougherty, Designee of the Secretary of the California State Transportation Agency (CalSTA)

Board Members Absent

Vacant, Wet Cargo Industry Member
Vacant, Dry Cargo Industry Member

Board Staff Present (in person and by phone)

Allen Garfinkle, Executive Director
Roma Cristia-Plant, Acting Assistant Director (by phone)
Dennis Eagan, Board Counsel
Alethea Wong, Licensing and Training Programs Manager

Identified Public Present (in person and by phone)

Captain John Carlier, San Francisco Bar Pilots (SFBP) President and Port Agent; Captain Anne McIntyre, SFBP Business Director; Captain Eric Robinson, SFBP; Kevin Baldwin, Bullivant Houser Bailey PC; Christopher Carroll, Department of General Services (DGS); and Captain Charles Davis, 2022 Pilot Trainee Training Examination candidate (by phone).

OPEN MEETING AGENDA

OPEN MEETING

1. Call to Order and Roll Call (President Tynan)

President Tynan called the meeting to order at 9:30 a.m. Licensing and Training Programs Manager Wong called the roll and confirmed a quorum.

2. Public comment on matters on the agenda or not on the agenda.

Mr. Baldwin introduced himself as the attorney representing the San Francisco Bar Pilots. He commented that if the scope of the investigation by the California Attorney General’s Employment and Administrative Mandate Section, based on the illegal recording at the SFBP office, is widened based on allegations contained in a letter from an outside source, this may give rise to potential conflicts of interest, or the appearance of conflicts of interest with Board

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members, Board staff, and Board Counsel, insofar as they are the subject of, or are implicated by the allegations from the outside source.

Captain Davis commented (by phone) that the U.S. Coast Guard was made aware of the allegations and concerns regarding the 2022 Pilot Trainee Training Examination. According to Captain Davis, the U.S. Coast Guard started their own investigation, based on allegations that there may be unqualified pilot trainee candidates. Captain Davis reported that he had received correspondence from Mr. Baldwin, and commented that Mr. Baldwin’s attempt at suppressing public discourse on the issue seems unprofessional.

3. Review and approval of Board meeting minutes (President Tynan)

Board action to approve the minutes from the Board meeting held on February 23, 2023.

Board members were presented with the draft meeting minutes from February 23, 2023. Commissioner Carr requested non-substantive edits to the minutes. There was no further discussion.

MOTION: Vice President Schmid moved to approve the draft minutes of the meeting held on February 23, 2023, as amended. Commissioner Nyborg seconded the motion.

VOTE: YES: Tynan, Schmid, Carr, Hayes-White, and Nyborg.

NO: None.

ABSTAIN: None.

ACTION: The motion was approved.

4. President Announcements and Activities (President Tynan)

President Tynan announced that the Board has a canine visitor, Sally O’Cally. Sally is training to be a detection dog and is working on her socialization skills. Sally will continue with her training at the SFBP office after the Board meeting.

5. Board Member Announcements and Activities (Board Members)

There were no announcements.

6. Directors’ Report (Executive Director Garfinkle)

A) Correspondence and activities since the Board meeting held on February 23, 2023.

Executive Director Garfinkle reported on the following:

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- On February 28, 2023, Board staff received a copy of the PMSA *West Coast Trade Report* for February 2023.
- Also on February 28, 2023, Board staff received a proclamation from Governor Newsom terminating the COVID-19 State of Emergency as of 11:59 p.m. on February 28, 2023.
- Also on February 28, 2023, he attended a meeting of the Finance Committee of the Board.
- During the month of March, Board staff completed and he signed a Management Representation Letter required by the State of California, which is submitted to the Department of Finance.
- On March 9, 2023, he attended a meeting of the Harbor Safety Committee held in Oakland.
- On March 15, 2023, he attended the public session portion of the Pilot Evaluation Committee meeting.
- On March 21, 2023, Board staff received confirmation that the California Department of Technology approved Board staff’s Stage One Business Analysis for the modernization of the Board’s information technology.
- On March 22, 2023, he received a letter from Captain James Barton, a candidate from the 2022 Pilot Trainee Training Selection Examination, concerning matters under investigation by the Office of the Attorney General.

B) Report on pilot licensing matters since the Board meeting held on February 23, 2023.

Executive Director Garfinkle reported that since the February Board meeting, the Board renewed the license of Captains Stultz and Rubino.

C) Report on Board surcharges.

Executive Director Garfinkle reported that the SFBP wired to the Board the surcharges collected in February 2023 in the amount of \$681,834.71, as itemized as follows:

- Board Operations Surcharge: \$172,280.13
- Continuing Education Surcharge: \$ 33,482.82
- Pilot Trainee Surcharge: \$ 64,536.72
- Pilot Boat Program Surcharge: \$411,535.04

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D) Report of Pension Fiduciary.

Executive Director Garfinkle reported that as of February 1, 2023, there were 86 beneficiaries in the San Francisco Pilot Pension Plan (Pension Plan). He reported the following for the February 2023 monthly pension allocation:

Surcharge Rate for the Quarter	\$0.05819/gross registered ton
Rolling Look Back Period	October 2021 through September 2022
Monthly Tonnage	19,976,251
Surcharge Billing Total	\$1,162,418.07
Administrative Costs for the Month	\$2,793.40
Amount Distributed to Pension Beneficiaries	\$1,159,624.67
Total Monthly Target Rates	\$1,166,753.33
Amount Over/(Under) Target	(\$4,335.25)

He reported the last cost of living adjustment (COLA) increase to Pension Plan benefits was April 1, 2020, and that Harbors and Navigation Code section 1167 mandates that the Board review the pension benefits the earlier of every three years or whenever there is a 12% increase in the Consumer Price Index (CPI). At the February Board meeting, the Board approved a 5.76% increase to the target monthly pension benefits received by retired pilots and other recipients of pension benefits from the San Francisco Bar Pilot Pension Plan, to be effective April 1, 2023.

E) Report on outstanding requirements of Board actions in response to Board determination and direction on Incident Review Committee reports.

Executive Director Garfinkle reported that there were no outstanding items to report.

F) Report on legislative activities and contractual matters.

Licensing and Training Programs Manager Wong stated that there was nothing to report on legislative activities.

Licensing and Training Program Manager Wong reported the following on contractual matters:

- Caltrans – California Highway Patrol (CHP) staff is still reviewing the Caltrans contract renewal paperwork.
- CitiBank – DGS had approved and the contract had been executed.

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- Artelia – Because the contract delegation authority exceeds \$600,000.00, which is the amount the Executive Director Garfinkle was authorized to approve, the contract is available under agenda item 13 for the Board’s review and approval.
- SFBP – Board staff is waiting on SFBP to provide supporting documents to renew the contract.
- San Jose State University Research Foundation – Board staff is waiting for Dr. Hobbs to review the budget and determine if the contract needs to be updated. The contract expires on June 30, 2023.

7. Port Agent’s Report (Port Agent Carlier)

A) Monthly report on San Francisco Bar Pilots (SFBP) pilot availability and absences.

Port Agent Carlier reported that the following pilots have been absent for medical reasons (AFMR) and their initial absence date:

- Captain Kasper – December 7, 2022
- Captain Greger – January 9, 2023

B) Monthly report on SFBP ship piloting business activity.

For the month of February 2023, Port Agent Carlier reported the following on the pilot vessels:

- P/V CALIFORNIA returned to station on February 17, 2023.
- All other boats operating normally.

C) Monthly confidential written report of SFBP pilots who have been absent for medical reasons (AFMR). The Board may go into closed session to discuss contents of the Port Agent’s confidential report as authorized by Harbors and Navigation Code § 1157.1.

8. Pilot Evaluation Committee (Captain Robinson)

A) Report on the Pilot Evaluation Committee (PEC) meeting held on March 15, 2023.

The Pilot Evaluation Committee met on March 15, 2023. The members present were Captains Aune, Ruff, Slack, Wehr, and Robinson. Captain Garfinkle joined the meeting during the open session.

The five active trainees include Burns, Meyer, Olmstead, Pascucci, and Sappington. The trainees’ range of time in the program span from 11 months to 24 months. Olmsted and

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Sappington have First Class Pilotage endorsements for unlimited tonnage upon San Francisco Bay, issued by the Coast Guard, on their federal licenses. Olmsted and Sappington are handling in all areas. Trainee Sappington is in the evaluation stage of training.

Burns, Meyer, and Pascucci are acquiring route trips and handling or part-handling vessels in all areas. Trainee Olmsted has been removed from probationary status and will continue with his training.

In closed session, all trainees were individually interviewed and counseled on their progress in the training program. All of the trainees are progressing at their own rates.

The next PEC meeting is scheduled for April 19, 2023, at 07:30 a.m. at the Board offices.

B) Possible PEC recommendation to place one or more Pilot Trainee Training Program trainees on probation, or dismiss one or more trainees from the program. Possible Board action to place one or more Pilot Trainee Training Program trainees on or off probation, or dismiss one or more trainees from the program.

The PEC recommended to remove Trainee Olmsted from probation as of today, March 23, 2023. PEC Chair Robinson answered affirmatively when Commissioner Nyborg asked if he feels the goals of probation were met.

MOTION: Commissioner Carr moved to remove Trainee Olmsted from probation as of today, March 23, 2023. Commissioner Schmid seconded the motion.

VOTE: YES: Hayes-White, Schmid, Nyborg, Carr, and Tynan.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

C) Possible PEC recommendation as to whether a trainee has or trainees have successfully completed the Pilot Trainee Training Program. Possible Board action whether to award a Certificate of Completion to a trainee who has completed the Pilot Trainee Training Program.

No recommendation

D) Possible recommendation from the Executive Director for the Board to issue a state pilot license to a trainee who holds a Certificate of Completion from the Pilot Trainee Training Program. Possible Board action to accept a recommendation from

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the Executive Director that a trainee holding a Certificate of Completion from the Pilot Trainee Training Program be licensed as a state-licensed pilot.

No recommendation

- 9. Reported Safety Standard Violations (Executive Director Garfinkle)
(Reported safety standard violations occurring up to the start of the meeting will be reported on.)**

Nothing to report.

- 10. Incident Review Committee—Reportable Piloting Events (Executive Director Garfinkle)
(Reportable piloting events occurring up to the start of the meeting will be reported on.)**

Nothing to report.

- 11. Significant Port Safety and Security Cases Report (Executive Director Garfinkle)**

Report on marine casualties, navigational safety, and significant incident management cases relevant to the Board as reported by the U.S. Coast Guard in its Prevention / Response – San Francisco Harbor Safety Statistics report.

Executive Director Garfinkle noted that he limits his reporting of marine casualties to those incidents where a Board licensee would be employed. There were no such incidents in the reporting period, which was the month of February.

- 12. Finance Committee (Commissioner Nyborg)**

- A) Report on the Finance Committee meeting held on February 28, 2023.**

Committee Chair Captain Nyborg reported that the Committee met on February 28, 2023, to review the fund condition, revenue and expenditure projections, and financial information on surcharges set by the Board.

- B) Finance Committee recommendations to the Board on the following Board surcharges:**

- 1) To adjust or not adjust the Board Operations Surcharge rate (currently at 6.0% of all pilotage fees), and the revenues, expenditures, and reserve balance.
Possible Board action to adjust the Board Operations Surcharge rate.**

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Committee Chair Captain Nyborg reported that the Committee recommends to the Board that maintain the Board Operations Surcharge rate at 6.0% of all pilotage fees.

- 2) To adjust or not adjust the Pilot Continuing Education Surcharge rate (currently at \$60 per move). Possible Board action to adjust the Pilot Continuing Education Surcharge rate.**

Committee Chair Captain Nyborg reported that the budget is currently marginally overfunded at 1.3 times the budget. The Committee recommended that the Pilot Continuing Education Surcharge remain the same at \$60 per move.

- 3) To adjust or not adjust the Pilot Trainee Training Surcharge rate (currently \$20/trainee/move). Possible Board action to adjust the Pilot Trainee Training Surcharge rate.**

Committee Chair Captain Nyborg reported due to a reduced number of vessel moves, fewer pilot trainees in the Pilot Trainee Training Program, the Committee recommended that the Pilot Trainee Training Surcharge rate remain the same at \$20/trainee/move.

- 4) To adjust or not adjust the Pilot Boat Surcharge rate (currently at \$0.0255 per gross registered ton). Possible Board action to adjust the Pilot Boat Surcharge.**

Committee Chair Captain Nyborg reported that SFBP is still collecting monies for the Pilot Boat Surcharges and the Committee recommended that the Pilot Boat Surcharge rate remain the same at \$0.0255 per gross registered ton.

- C) Finance Committee report to the Board on the Pilot Boat Maintenance Surcharge, billings and collections, which surcharge ended of its own accord in December 2022.**

Committee Chair Captain Nyborg reported that the Pilot Boat Maintenance Surcharge has been fully collected to the statutory limit, and the agenda item will close once an audit has been completed.

- D) Finance Committee report to the Board about a discussion and consideration of the Pilot Boat Program to finance the purchase and/or upgrades to pilot boats to comply with harbor craft air emissions requirements, including funding timeline and expectations, need for interim financing, and audit requirements.**

Committee Chair Nyborg noted that there will be a committee level review in the near future to discuss policy considerations.

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Committee Chair Nyborg reported that the next Committee meeting is scheduled to be on May 23, 2023, at 11 a.m.

SFBP Business Director Captain McIntyre answered for President Tynan that SFBP is still completing the final reconciliation and is reviewing the audit, which was completed earlier in the week.

Commissioner Carr reported that SFBP will be providing design samples for the station boats.

MOTION: Commissioner Carr moved that the Board accept the Finance Committee’s recommendation that the Board Operations Surcharge rate remain the same at 6.0% of all pilotage fees, the Pilot Continuing Education Surcharge remain the same at \$60 per move, the Pilot Trainee Training Surcharge rate remain the same at \$20/trainee/move, and that the Pilot Boat Surcharge rate remain the same at \$0.0255 per gross registered ton. Commissioner Nyborg seconded the motion.

VOTE: YES: Tynan, Schmid, Carr, Hayes-White, and Nyborg.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

13. Board review and discussion, and possible approval of manned model training contract for Board-licensees and Pilot Trainee Training Program trainees with Artelia, including contract insurance requirements. Possible Board action to approve manned model training contract and contract insurance requirements with Artelia. (Executive Director Garfinkle/Licensing and Training Programs Manager Wong)

Executive Director Garfinkle thanked Acting Assistant Director Cristia-Plant for her efforts with the Artelia contract.

Acting Assistant Director Cristia-Plant reported on the following issues with the Artelia contract:

- Watercraft policy that Artelia provided contains some restrictions: the vessel does not exceed 20 meters or carry more than 15 people total.
- Artelia hires a private vehicle to pick up the licensees from the airport in Lyon to the hotel near the training facility. Artelia doesn’t have the insurance information until the private vehicle is hired. Board staff just received the insurance information in French earlier that morning.

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Acting Assistant Director Cristia-Plant reported that Board staff has been working closely with DGS’s Insurance Risk and Management team. Artelia had changed their insurance, which resulted in two outstanding items. One of these is an issue with the watercraft tonnage and passenger limitations. She requests that the two Pilot Commissioners review and confirm the watercraft concerns.

Acting Assistant Director Cristia-Plant reported that insurance endorsements are required and must be attached to the contract package. She reported that the coverage is extended to the State of California, which is the language the State typically sees. However, the language was not listed in the certificate. She also reported that automobile liability coverage doesn’t specify that the insurance shall cover liability including owned, hired and non-owned motor vehicles, and this language is not evident on the certificate. She also reported that Artelia hires a private transportation service to pick up the pilots in Lyon and transport them to the training facility hotel. Board staff received two additional certificates on the private transportation issue earlier in the morning, albeit in French. She does not expect Artelia to be able to provide the certificates until it’s closer to when the manned model training class starts. She announced that Mr. Carroll from DGS Insurance and Risk Management team is also on the phone, if Board members have additional questions.

Executive Director Garfinkle responded to Commissioner Carr that state contracting rules are difficult to follow, but that BOPC must exercise due diligence in attempting to comply with the state contracting rules. He recommended that the Board accept the Artelia contract with Artelia’s proffers of insurance, and to provide authority to the Executive Director to authorize the contract. He added that staff chose to use a non-competitive bidding form of contract to forgo having multiple, non-viable, training providers bid. He added that Board staff and various subject matter experts (via committee meetings), had made a solid case that Artelia was the only manned model training provider that could meet the criteria.

Commissioner Nyborg thanked Board staff for their efforts with the contract. He added that the manned model training at Artelia is very beneficial to pilots. Every training session that he has completed he has learned something new, and the provider is very receptive to feedback.

MOTION: Commissioner Carr moved that the Board accept the Artelia contract with the criteria, accept Artelia’s proffers of insurance, and to authorize Executive Director Garfinkle to sign the contract. Commissioner Nyborg seconded the motion.

VOTE: YES: Tynan, Schmid, Carr, Hayes-White, and Nyborg.
NO: None.

ABSTAIN: None.

ACTION: The motion was approved.

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Commissioner Hayes-White announced that she is still on the call and will be leaving at 10:34 a.m.

14. Board review of the status of the pilot fatigue prevention regulation rulemaking process with the Office of Administrative Law. (Executive Director Garfinkle/Board Counsel Eagan)

Executive Director Garfinkle reported that the drafts of the pilot fatigue prevention regulation rulemaking paperwork are available for the Board members to review. He added that the public comment period is expected to begin at the end of March, will end on May 31, 2023, at 5:00 p.m. He added that the Office of Administrative Law is still reviewing the paperwork, and if all requirements are met, the soonest routine effective date is available quarterly, and will be on September 1, 2023. He added that the Board does not need to take any action on this item.

Board Counsel Eagan commented that, although the pilot trainees are not bound by these regulations, the trainees should be guided by them, and are not to accept assignments when fatigued. He added that the next opportunity to make substantive changes is during the public comment period, but prior to the notice being distributed, Board staff can make minor changes.

Vice President Schmid wanted to remind the Board that trainees are not pilots, and the trainees must be aware and guide themselves accordingly.

15. Report on shipping activity regionally and within the Board’s jurisdiction (Captain McIntyre, SFBP/Mike Jacob, Pacific Merchant Shipping Association)

SFBP Business Director Captain McIntyre reported that there is no change with shipping activities. There have been some media reports about the International Longshore and Warehouse Union (ILWU) contract negotiations. Port Agent Carlier attended a meeting at the Port of San Francisco recently, where it was noted that the Port expects to have a significant amount (approximately 120) of cruise-ship calls this year. The City Counsel of Monterey evaluated if Monterey would continue to provide landing services to cruise-ship passengers. She and Captain LeSieur provided public testimony and how SFBP was an additional layer to promote safety. Monterey decided to cancel the landing services for the rest of this year. She reported that the decision addressed concerns of waste discharges from cruise ships.

16. Board discussion on setting priorities for 2023. With several pending regulation proposals and issues before the Board, an opportunity to discuss, plan and prioritize these items for completion in 2023. (Executive Director Garfinkle)

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Executive Director Garfinkle reported that this agenda item was carried over from the last Board meeting. He added that no action is needed and the agenda item provides a guideline for Board staff to utilize.

Commissioner Carr suggested removing this agenda item from the agenda since the Board has set the priorities.

Executive Director Garfinkle reported that Board staff will work closely with CalSTA so that the Board remains on track and is achieving its goals.

20. Public comment on matters not on the agenda. (President Tynan)

There were no public comments.

21. Proposals for the next Board meeting agenda. (President Tynan)

There were no proposals for the next Board meeting.

President Tynan called for a short recess.

RECESS: 10:56 a.m.
END RECESS: 11:07 a.m.
CLOSED SESSION BEGAN: 11:07 a.m.

17. Closed session to consider issues raised concerning the 2022 Pilot Trainee Training Program examination and, in addition, various anonymous allegations concerning alleged irregularities in the conduct of the Board’s affairs involving pilots and Board personnel. (Board Counsel Eagan)

A closed session is authorized under the Open Meeting Act, Government Code section 11126, subdivisions (c)(1) and (e).

19. Performance Evaluation of the Executive Director (President Tynan)

Annual Performance Evaluation of Executive Director. The Board may go into closed session pursuant to 11126(a)(1) of the Bagley-Keene Open Meeting Act to discuss the evaluation.

OPEN SESSION RESUMED: 12:24 p.m.

President Tynan reported that the Board members completed the Annual Performance Evaluation of Executive Director Garfinkle during closed session, and that the Board remains

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engaged with the ongoing investigation of the 2022 Pilot Trainee Training Program examination.

18. Pilot Trainee Training Program Selection Examination (Executive Director Garfinkle)

Presentation of the 2022 ranked candidate eligibility list of those candidates who were successful in passing the 2022 Pilot Trainee Training Program selection examination. Board action to accept the 2022 ranked candidate eligibility list of those candidates who were successful in passing the 2022 Pilot Trainee Training Program selection examination.

Executive Director Garfinkle recommended that the Board defer this agenda item to the April Board meeting.

Commissioner Carr is in favor of deferring the agenda item to the next Board meeting, but he added that the Pilot Power Committee is aware that the Pilot Trainee Training Program has openings and has recommended that two new trainees from the 2022 Pilot Trainee Training Examination candidate list be contracted once the list is accepted.

Commissioner Nyborg commented that when the investigation concludes the Board can consider the 2022 Pilot Trainee Training Examination candidate list.

MOTION: Commissioner Nyborg moved to defer accepting the 2022 Pilot Trainee Training Program Selection Examination ranked eligibility list to the April Board meeting. Vice President Schmid seconded the motion.

VOTE: YES: Tynan, Schmid, Carr, and Nyborg.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved.

22. Adjournment.

President Tynan adjourned the meeting at 12:28 p.m.

Submitted by:



Allen Garfinkle
Executive Director