

<b>Meeting Date:</b>  <b>April 27, 2023</b>	<b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b>  <b>BOARD MEETING MINUTES</b>	<b>Page 1 of 13</b>
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**Board Members Present**

Karen Tynan, President, Public Member  
Jennifer Ferrera Schmid, Vice President, Public Member  
Joanne Hayes-White, Public Member  
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  
Charles Louie, Administrative Assistant II

**Identified Public Present (in person and by phone)**

Captain James Barton; Captain Nicholas Sabbath (by phone); Kevin Baldwin, attorney representing SFBP; Robert Weaver, Attorney representing Ron Greger.

**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. Administrative Assistant Louie called the roll and confirmed a quorum.

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

President Tynan announced a reordering of the agenda items, advancing agenda items 18 and 16 to follow agenda item 11.

Captain Barton addressed the Board concerning distribution of his letter of February 22, 2023 and his concerns for his privacy. He also presented the Board with a Public Records Act (PRA) request. Kevin Baldwin responded to Captain Barton, informing him that SFBP obtained a copy of his letter and his contact information from a member of the press.

<p><b>Meeting Date:</b>  <b>April 27, 2023</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 2 of 13</b></p>
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Captain Sabbath (by phone) requested that his appeal letter be taken off the BOPC website, citing personal privacy.

Attorney Robert Weaver requested clarification on Agenda Item 18 for which Board Counsel Eagan explained that recommendations will be discussed.

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

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

Board members were presented with the draft board meeting minutes from March 23, 2023. There was no discussion.

**MOTION:** Commissioner Hayes-White moved to approve the draft minutes of the meeting held on March 23, 2023. Vice-resident Schmid 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)**

Nothing to report.

**5. Board Member Announcements and Activities (Board Members)**

None to report.

**6. Directors' Report (Executive Director Garfinkle)**

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

- On March 28, 2023, Board staff received a copy of the Pacific Merchant Shipping Association (PMSA) *West Coast Trade Report* for March 2023.
- On April 3, 2023, Board staff received a copy of the San Francisco Bar Pilots Section 237(d) report for the period January 1, 2022 through December 31, 2022.
- On April 5, 2023, Board staff received an email from CDR Hale Allegretti, Chief of Prevention, Sector San Francisco, expressing concern about allegations made based on a recording of a closed meeting of the San Francisco Bar Pilot Association that was provided to him. CDR Allegretti noted that while the Coast Guard does not have jurisdiction in this matter, he encouraged the Board to look into these allegations.

<p><b>Meeting Date:</b></p> <p><b>April 27, 2023</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 3 of 13</b></p>
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Executive Director Garfinkle reported that he responded to Commander Allegretti and assured him that the Board takes these allegations very seriously and informed him of the investigation of the matter by the California Department of Justice.

- On April 6, 2023, Kevin Baldwin, attorney for the San Francisco Bar Pilots requested a recording of the March 23, 2023, Board meeting and was informed that we do not record live meetings.
- On April 11, 2023, he attended a Joint Pilot Boat Advisory Committee and Finance Committee meeting.
- Also, on April 11, 2023, he received a copy of a letter signed jointly by Puget Sound, Colombia River, and San Francisco pilots, forwarded by Anne McIntyre, expressing concern about bridge visibility issues on ships with deck stows of wind turbine cargo. She also forwarded a *GCaptain* article on the subject, and a USCG Marine Safety Information Bulletin (MSIB) 04-23 titled *Reduced Visibility from the Navigation Bridge*.
- On April 12, 2023, he received four emails from Captain Greger expressing concern that the Port Agent was not dispatching him even though he was found fit for duty by a Board-Appointed Physician.
- On April 14, 2023, Board staff received a copy of letter addressed to Kevin Baldwin, attorney for SFBP, from Robert Weaver, attorney for Captain Greger, demanding that Captain Greger be immediately reinstated to active duty as a pilot, be dispatched for vessel assignments, and have his distributions and compensation restored as of the date of Captain Carlier's receipt of his Fitness for Duty.
- On April 16, 2023, he sent a letter to the Port Agent requesting Captain Greger's name to be placed on the SFBP dispatch Board so that he receives piloting assignments in the ordinary course. He added the matter would be placed on the Board agenda if requested.
- On April 17, 2023, he received an email from the Port Agent stating that he will not be dispatching Captain Greger at this time, citing the Port Agent's statutory responsibility for the general supervision and management of matters related to the business of pilots.
- On April 19, 2023, he attended the public session of the Pilot Evaluation Committee meeting.
- On April 24, 2023, Board staff received a copy of the PMSA *West Coast Trade Report* for April 2023.
- On April 26, 2023, Board staff received a copy of a letter to the Board President from Kevin Baldwin, attorney for the Bar Pilots, citing the Port Agent's rationale for not dispatching Captain Greger.
- Also, on April 26, 2023, Board staff submitted the Annual Report to the Legislature to the Secretary of the Senate, the Chief Clerk of the Assembly, and to the Office of the Legislative Counsel.

<b>Meeting Date:</b>  <b>April 27, 2023</b>	<b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b>  <b>BOARD MEETING MINUTES</b>	<b>Page 4 of 13</b>
---	--	---------------------

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

Executive Director Garfinkle reported that since the March Board meeting, the Board renewed the licenses of Captains Pyne Mercier, Aune, Bridgman, Corbett, and Billingsley.

**C) Report on Board surcharges.**

Board surcharges collected for the Month of March 2023, totaled \$799,195.90 comprised of the following surcharge amounts:

- Operations Surcharge \$186,076.01
- Pilot Training Surcharge \$ 36,356.86
- Trainee Surcharge \$ 61,781.10
- Pilot Boat Surcharge \$514,981.93

**D) Report of Pension Fiduciary.**

Executive Director Garfinkle reported that as of April 1, 2023, there were 86 beneficiaries in the San Francisco Pilot Pension Plan (Pension Plan). He reported the following for the April 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	23,295,557
Surcharge Billing Total	\$1,355,568.46
Administrative Costs for the Month	\$2,201.35
Amount Distributed to Pension Beneficiaries	\$1,353,367.19
Total Monthly Target Rates	\$1,166,753.33
Amount Over/(Under) Target	(\$188,815.22)

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.

<p><b>Meeting Date:</b>  <b>April 27, 2023</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 5 of 13</b></p>
--	---	----------------------------

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

Nothing 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:

- **Artelia—Manned Model Ship-handling Training**

**Contract Expiration: June 30, 2027**

The contract was approved by the Department of General Services on April 12, 2023. BOPC staff notified the San Francisco Bar Pilots that training will take place during two separate training weeks in June.

- **Caltrans—General IT Support**

**Contract Expiration: January 31, 2023; new contract to expire on January 31, 2026**

California Highway Patrol contract staff sent the new contract documents to Caltrans for approval and signature on April 7, 2023.

- **San Jose State University Research Foundation—Pilot Fatigue Study**

**Contract Expiration: June 30, 2023**

Documents were submitted to the California Highway Patrol contracts staff on April 12, 2023, to extend the term of the contract to June 30, 2026, add a new researcher, to change budget line item amounts for Phase 4 of the study, and make other minor changes to contract contacts. The total contract amount is not changing. The researchers will conduct a post fatigue prevention regulation evaluation in Phase 4 of the study. Dr. Hobbs indicated the Phase 4 evaluation would take place approximately one year after the regulations are in place. BOPC staff requested and received approval from CHP management for CHP contracts staff to expedite this contract amendment.

- **SFBP—Trainee and Pilot Continuing Education Program Support, and Surcharge Audit Support**

**Contract Expiration: June 30, 2023; New contract to expire on June 3, 2028**

Contract documents for a new five-year non-competitively bid contract with the San Francisco Bar Pilots was submitted to the California Highway Patrol staff on April 20, 2023. BOPC staff requested and received approval from CHP management its staff to expedite this contract amendment, but which will not expedite the Department of General

<p><b>Meeting Date:</b>  <b>April 27, 2023</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 6 of 13</b></p>
--	---	----------------------------

Services processing timeline. There are no guarantees that this contract will be in place by July 1, 2023. The Board will consider this proposed contract later under agenda item 15.

- **California State University Maritime Academy – Trainee Selection Exam Services**

**Contract Expiration: TBD**

Board staff have put on hold a new contract with California State University Maritime (CMA) for Trainee Selection Exam services since the University and Board staff have not identified staffing for creating the next simulator exam test component. CMA also provides the site for the Trainee Selection Exam written component.

- **State Controller’s Office – Pilot Boat Program Audit**

**Contract Expiration: TBD**

Board staff will need to enter into a new contract for a program audit of the Pilot Boat Program as required by statutes. The State Controller’s Office has yet to assign a project manager for this audit.

Pending approval of the Governor’s May budget revision Board approval, she mentioned that the following contracts will be moving forward:

- **Caltrans – IT Modernization Project Support**

**Contract Expiration Date: June 30, 2025**

Contract documents were submitted to CHP on March 28, 2023, for Caltrans staffing support of the Board’s IT Modernization Project.

- **Request for Offer – IT Modernization Project Manager**

**Contract Expiration Date: TBD**

Board staff submitted documents to California Highway Patrol staff to obtain requests for offer for the IT Modernization from State certified IT contractors. The selected contractor will be responsible for the overall management of the IT Modernization Project.

**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; FFD 4/3/2023
- Captain Aune – March 27, 2023

<p><b>Meeting Date:</b>  <b>April 27, 2023</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 7 of 13</b></p>
--	---	----------------------------

**B) Monthly report on SFBP ship piloting business activity.**

For the month of April 2023, Port Agent Carlier reported that all boats were 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 April 19, 2023.**

The Pilot Evaluation Committee met on April 19, 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 12 months to 30 months. All trainees have First Class Pilotage endorsements for unlimited tonnage upon San Francisco Bay, issued by the Coast Guard, on their federal licenses. All trainees are handling in all areas. Trainee Burns and Pascucci have been moved to the evaluation stage of training. Trainee Sappington is in the evaluation stage of training.

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

The next PEC meeting is scheduled for May 17, 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.***

No Action.

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

<p><b>Meeting Date:</b>  April 27, 2023</p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 8 of 13</b></p>
---	---	----------------------------

*whether to award a Certificate of Completion to a trainee who has completed the Pilot Trainee Training Program.*

Captain Robinson presented the details of trainee Sappington’s completion of the Pilot Trainee Training Program. He informed the Board that the PEC unanimously recommended the Board to issue a Certificate of Completion to Trainee Sappington for successfully completing the Pilot Trainee Training Program.

Executive Director Garfinkle verified that all requirements of Section 214 of the California Code of Regulations have been met and recommended a Certificate of Completion be issued to Trainee Sappington.

**MOTION:** Commissioner Nyborg moved to issue a Certificate of Completion to trainee Sappington for successfully completing the Pilot Trainee Training Program as of today, April 27, 2023. Commissioner Hayes-White seconded the motion.

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

**ACTION:** The motion was approved.

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

President Tynan inquired of Executive Director Garfinkle if he had received an application for licensing from Captain Sappington. Mr. Garfinkle replied that he had, and that Captain Sappington had met all the requirements for licensure. He recommended that Captain Sappington be granted a state pilot license.

**MOTION:** Commissioner Carr moved to issue a state pilot license to trainee Sappington as of today, April 27, 2023. Commissioner Hayes-White seconded the motion.

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

**ACTION:** The motion was approved.

President Tynan administered the oath of office for the State of California to Captain Sappington.



<p><b>Meeting Date:</b>  <b>April 27, 2023</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 9 of 13</b></p>
--	---	----------------------------

**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.)**

Commissioner Carr inquired as to when the last incident occurred requiring an investigation. Commissioner Hayes-White stated that the last incident occurred in October of 2021. Commissioners acknowledged that the time since the last incident is worth mentioning and this stretch of safe operation is commendable.

**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.**

There was no safety standard violations nor losses of propulsion to report.

**President Tynan moved on to advanced agenda item 18.**

**18. Closed session to consider Port Agent’s refusal to make assignments to pilots determined to be fit for duty by the Board-appointed physicians. (Executive Director Garfinkle and Board Counsel Eagan) A closed session is authorized under the Open Meeting Act, Government Code section 11126, subdivision (e).**

Board Counsel Eagan clarified that the facts surrounding agenda item 18 will be laid out prior to going into closed session. He added that he will present a staff recommendation, which will be followed by public comment.

The Commissioners and Board Counsel discussed the process by which agenda item 18 will be addressed, with multiple Commissioners expressing discomfort with both the wording of the agenda item, including the open session, public comment, and a possibility of Board action. Board Counsel Eagan stated that allowing public comment prior to the closed session would fully inform the Board members and that any action would be taken in open session.

Board Counsel Eagan then presented the staff recommendation.

<p><b>Meeting Date:</b></p> <p><b>April 27, 2023</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun</b>  <b>660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 10 of 13</b></p>
--	---	-----------------------------

Acting Assistant Director Cristia-Plant commented that the Board makes a significant investment in licensees. She stated that it should be of no concern of the Board how SFBP compensates their members. She added that there have been no grounds for misconduct filed by the Port Agent, and that the Board has worked with the pilots to address pilot fitness through regulations – a recent example is the 120-day rule. She also pointed out that the Board determines the number of pilots for safety on the bay, not the Port Agent.

Robert Weaver, attorney for Captain Greger, stated that Captain Greger wants to go back to work. He noted that the Board has authority over who is fit for duty. He opined that the SFBP rationale for not assigning Captain Greger is based on flawed policy. He added that his interpretation of the SFBP by-laws is that they only allow for a penalty after a two-thirds vote of the membership and that penalty is limited to ten thousand dollars.

Kevin Baldwin, attorney for the SFBP, commented that BOPC regulation section 218 doesn't mandate that the Port Agent dispatch every pilot who is fit for duty. He stated that it calls for the Port Agent to manage the affairs and business of pilots. He offered that just because a licensee has a fit for duty from a Board-appointed physician, it doesn't entitle them to be dispatched. He stated that the Port Agent is acting in the interests of all the pilots, and at issue is the ability of SFBP to govern themselves. He added that there is a gap in the coverage of the statutes and regulations that do not address this type of misconduct. He argued that there are private and operational concerns, and that to conduct business, SFBP must make pilots accountable.

Mr. Baldwin went on to note that if the Board accepts what staff is recommending, the result would be that the Port Agent has no authority to manage the business. He addressed the misconduct issue by noting that the BOPC has shown a reluctance to take up actions that comprise misconduct that may occur when the pilot is not on the bridge of a ship, and added that what is at stake is SFBP's ability to govern themselves.

When learning that SFBP was taking action to disassociate Captain Greger, Board Counsel Eagan inquired of Mr. Baldwin why this would not be an adequate remedy? Mr. Baldwin noted that it would, but that action will be delayed by adequate process.

Mr. Jacob commented that the Board should consider what regulations and authority they are proceeding under, noting that when PMSA sued the Board over dispatch records, the Board responded that they are not in the business of piloting. At that time, the response from the Board was that it trains, licenses, and disciplines only. He noted that position is inconsistent with what staff is recommending today.

**11:18 Recess**

**11:25 Closed session begins for Agenda Item 18.**

**12:10 Closed session ended, open session resumed.**

<p><b>Meeting Date:</b></p> <p><b>April 27, 2023</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun</b>  <b>660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 11 of 13</b></p>
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President Tynan announced that Agenda Item 18 will be on the agenda for next month. There was no action.

**12. Joint Pilot Boat and Finance Committee (Commissioner Captain Carr)**

**Report on the Joint Pilot Boat and Finance Committee meeting held on April 11, 2023, that included discussions on (1) the status of the shipyard building of the P/V GOLDEN GATE, (2) Pilot Boat Program projected timeline and costs for new pilot boats, and, (3) the implementation of Harbors and Navigation Code Section 1159.1 and 1194 and the identification and documentation of allowable costs, surcharge disbursement conditions, record keeping and auditing requirements that may be suitable for rulemaking actions.**

Commissioner Carr recapped the topics discussed at the April 11, 2023 meeting. The committee discussed the changes made by AB2056 and how the surcharge now authorized by section 1159.1 is expected to be managed. The discussion is incomplete, and the committee set a date to meet again on May 9, 2023. Stakeholders will jointly present proposed language for the committee to review at that meeting. He noted the committee discussed and concluded that the processes in place would allow work to continue without immediate regulatory change.

**13. 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 stated that the regulations have already been submitted to the Office of Administrative Law and we are now in the 45-day comment period, which will end on May 31, 2023.

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

Captain McIntyre had nothing new to report. Mr. Jacob reported that cargo volumes are still depressed and will be like that for a while due to diversions to the Gulf Coast, East Coast, and Mexico while the International Longshore and Warehouse Union (ILWU) contract negotiations continue. He added that the Oakland Athletics' waterfront ballpark situation remains unsettled, even though the agreement with the Port of Oakland sunsets on May 15, 2023. If the contract is not renewed, then Howard Terminal will remain available for maritime use.

<p><b>Meeting Date:</b>  April 27, 2023</p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p>	<p><b>Page 12 of 13</b></p>
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- 15. Review and possible approval of a non-competitive bid contract with the SFBP in an amount that that exceeds the Board delegated contracting authority to the Executive Director. Possible Board action to approve a non-competitive bid contract with the SFBP, authorize the Executive Director to make minor, non-substantive changes to the contract terms, and to execute the contract. (Executive Director Garfinkle/Board staff)**

Executive Director Garfinkle stated that a contract with SFBP has been prepared for renewal. The amount of this contract exceeds the contracting authority of the Executive Director. It covers a variety of support services that SFBP provides for the Board, including support services for trainees who rely on the cooperation of SFBP for the training. SFBP Business Director McIntyre stated that she supports this action and encourages the Board members to familiarize themselves with the terms of the contract.

**MOTION:** Commissioner Hayes-White moved that the Board approve a non-competitive bid contract with the SFBP, authorize the Executive Director to make minor, non-substantive changes to the contract terms, and to execute the contract. Vice President Schmid seconded the motion.

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

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

- 16. 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).**

President Tynan announced that Agenda Item 16 will be on the agenda for next month.

- 17. 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 this item be carried over to the May Board meeting, pending the outcome of the Department of Justice investigation of the 2022 Pilot Trainee Training Program selection exam.

<b>Meeting Date:</b>  <b>April 27, 2023</b>	<b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b>  <b>BOARD MEETING MINUTES</b>	<b>Page 13 of 13</b>
---	--	----------------------

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

There were no public comments.

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

Commissioner Carr suggested that the Board meetings be fully in-person, with no telephone participation. Board Counsel Eagan noted that he would research the matter. Commissioner Nyborg suggested that Board meeting agenda items 16 and 17 be carried over to the May meeting.

Commissioner Hayes-White reiterated her concern that there is no industry representation on the Board.

**21. Adjournment.**

**MOTION:** Commissioner Nyborg moved to adjourn the meeting. Commissioner Carr seconded the motion.

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

**ACTION:** The motion was approved.

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

Submitted by:



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Allen Garfinkle  
Executive Director