

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun

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NOTICE OF PROPOSED RULEMAKING July 27, 2023

Notice is hereby given that the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

The Board proposes to amend the following sections of the California Code of Regulations, Title 7, Harbors and Navigation, Division 2, State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun:

- § 236.1. Pilot Boat Surcharge.

PUBLIC HEARING

The Board has will hold a public hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, not later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (415) 397-9463 or by e-mail to bopc@bopc.ca.gov.

The written comment period closes at **5:00 p.m. on Friday, September 13, 2024**. The Board will consider only comments received at the Board office by that time. Submit comments to:

Allen Garfinkle, Executive Director
Board of Pilot Commissioners for the Bays of
San Francisco, San Pablo, and Suisun
660 Davis Street
San Francisco, California 94111

AUTHORITY AND REFERENCE

Authority: Harbors and Navigation Code (HNC) §§ 1144, 1154, and 1196.5 authorize the Board to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific HNC §§ 1159.1, 1194, 1194.1.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Law and Effect of Proposed Amendments

The proposed regulations operationalize HNC §§ 1159.1, 1194, 1194.1. These statutes, which were adopted in September 2022, require the Board to update the process for reviewing and approving reimbursement requests for costs related to pilot boat acquisition, life-extension, and modification, including design and engineering work.

The proposed regulations expand the Board's authority to approve the use of pilot boat surcharge funds at various stages of the pilot boat development process, including design, engineering, and construction. In effect, the proposed regulations allow for multiple disbursements tied to project milestones, rather than a single disbursement at the end of the project.

The proposed regulations shift the Board's reimbursement model from an arrears-based payment system to a progress-based payment system. Importantly, the proposed regulations address the problem of costs. Aligning the Board's review and approval processes with the complex, phased nature of the pilot boat development process will save time and streamline the overall process. Authorizing the Board to make progress-based payments at the various stages of pilot boat development process will reduce the financing burden on the San Francisco Bay Pilots Association, the guarantor of the pilot boat loan, lowering interest costs. The benefit of these lower costs will extend to the Board's stakeholders and the millions of Californians who rely on goods shipped through the Bays of San Francisco, San Pablo and Suisun.

The key elements of the proposed regulations are:

- **Elimination of One-Year Validity Period.** The proposed regulations eliminate the current one-year limitation on the validity of the necessity determination. This change better aligns the necessity determination period with the pilot boat development process, which can last two years or more.
- **Design and Engineering as Separate Category of Work.** The proposed regulations implement and clarify the intent and purpose of HNC §1194(a), specifying that the pilot boat surcharge can fund various types of work, including "preliminary design and engineering" activities. This change designates design and engineering work as a separate category, better aligning the Board's reimbursement processes with the complex, multi-stage nature of pilot boat development.
- **Preliminary and Final Authorizations at Project Stages.** The proposed regulations permit preliminary *and* final authorizations to be submitted to, considered, and approved by the Board at the different stages of the pilot boat development process. These updates, particularly the inclusion of the phrase "project stages," better align the Board's processes with the phased nature of pilot boat development.

In addition to enabling authorizations at various project stages, the proposed regulations streamline the process by allowing the Board to consider both preliminary and final authorizations simultaneously.

Anticipated Benefits of the Proposed Regulations

The proposed regulations provide significant benefits to the Board, its stakeholders, the San Francisco Bar Pilots Association, and all Californians. The benefits of this regulatory action include:

- **Environmental Benefits.** Enabling the Board to make progress payments at various stages of pilot boat development (e.g., design, engineering, and construction) will enhance efficiency. A streamlined approval process may expedite construction times, allowing non-compliant pilot boats to be replaced with environmentally friendly vessels more quickly than under the current regulations.
- **Equity Benefits.** The new pilot boats constructed under these regulations will be equipped with the latest marine engine technology, which will significantly reduce the impact of diesel particulate matter (DPM) emissions. These reduced DPM emissions will benefit Californians living near the waterways traditionally utilized by commercial harbor craft. This is particularly beneficial for communities that have been historically disadvantaged by pollution.
- **Economic Benefits.** By reducing the capital that the San Francisco Bar Pilots Association must borrow for new pilot boat development, these regulations will lower (or eliminate) interest charges on financed capital. These lower costs will be passed on to Board stakeholders and the millions of Californians who rely on goods shipped through the Bays of San Francisco, San Pablo, and Suisun.

Determination of Inconsistency/Incompatibility with Existing State Regulations

The Board has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations or statutes. After conducting a review for any state regulations that would relate to or affect the sections proposed to be added and amended, the Board has concluded that these are the only state regulations related to pilot boat construction and funding under the jurisdiction of the Board.

DISCLOSURES AND DECLARATIONS REGARDING THE PROPOSED ACTION

The Board has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district: None.

- Cost or savings in federal funding to the state: None.
- The amendments will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Housing costs: None.
- Effect on small business: None. The regulations will have a positive economic impact on the San Francisco Bar Pilots Association, which is not a small business. It is engaged in providing services in transportation. Its annual gross receipts exceed two million dollars (\$2,000,000). It is therefore excluded from the definition of “small business” contained in Government Code section 11342.610, subdivisions (c)(6) and (c)(7).

Results of the Economic Impact Analysis/Assessment

The Board has concluded that the proposed regulations will not facilitate the creation or elimination of jobs within California. The proposed regulations will not affect the creation or elimination of businesses within California or the expansion of businesses currently doing business within California.

Benefits of the Proposed Action: The proposed regulations will benefit the health and welfare of California residents, communities disadvantaged by pollution, and the state’s environment. Additionally, the proposed regulations will reduce the cost of capital to the San Francisco Bar Pilots Association. Lower capital costs will reduce the need for future rate increases and provide the Board’s stakeholders with the ability to plan for future financial obligations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code §11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons, and equally effective in implementing the statutory policy or other provisions of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing, if one is held, or during the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory actions to the Board. **Written comments will be accepted by the Board until 5:00 p.m. on September 13, 2024.** Submit comments to:

Allen Garfinkle, Executive Director
Board of Pilot Commissioners for the Bays of San Francisco,
San Pablo, and Suisun
660 Davis Street,
San Francisco, California 94111
bopc@bopc.ca.gov

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Name: Alethea Wong
Email: bopc@bopc.ca.gov
Phone: (415) 397-2253

The backup contact person for these inquiries is:

Name: Allen Garfinkle
Email: bopc@bopc.ca.gov
Phone: (415) 397-2253

Please direct requests for copies of the proposed text (Express Terms) of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Alethea Wong at the above address.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Board has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the above address during normal business hours (9:00 a.m. to 5:00 p.m.). Please contact Althea Wong at the above email address to arrange a date and time to inspect the files. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the regulations. Copies of these items are available upon request from the Board Contact Person designated in this Notice.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the 48-day public comment period, the Board may adopt the proposed regulations. As a result of public comments, either oral or written, that are received by the Board

regarding this proposal, the Board may determine that changes to the proposed regulations are appropriate. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. The Board will provide notification of any such modifications to all persons whose comments were received during the public comment period, all persons whose comments (written or oral) were received at the public hearing (if one is held), and all persons who requested notice of such modifications. Otherwise, please send requests for copies of any modified regulations to the attention of Ms. Wong at the above email address. The Board will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The Board is required to prepare a Final Statement of Reasons. Once the Board has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Board Contact Person identified in this Notice.

BOARD INTERNET WEBSITE

The Board maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Rulemaking, the Initial Statement of reasons, and the text of the regulations in underline and strikeout can be accessed through the Board's website at www.bopc.ca.gov.