

**BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF  
SAN FRANCISCO, SAN PABLO, AND SUISUN**

**INITIAL STATEMENT OF REASONS**

**TITLE 7. HARBORS AND NAVIGATION  
DIVISION 2. STATE BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF  
SAN FRANCISCO, SAN PABLO AND SUISUN**

**PROBLEM STATEMENT**

The Board of Pilot Commissioners (Board) is the oversight body that licenses and regulates up to sixty (60) maritime pilots who make up the San Francisco Bar Pilots Association (SFBP), the independent entity that administers the business affairs of Board-licensed pilots. In addition to its licensing and regulatory activities, the Board is authorized by current law to collect surcharges and reimburse the SFBP for costs related to pilot boat acquisition, life-extension, and modification, including design and engineering work. The SFBP is obligated to maintain a minimum of two pilot boats to maintain its services. In practice, the SFBP operates a fleet of five pilot boats.

**CARB Regulations and SFBP Pilot Boat Replacement Costs**

In 2008, the California Clean Air Resources Board (CARB) adopted Commercial Harbor Craft (CHC) emission regulations. These regulations, which also apply to pilot boats, became effective in December 2022, and are designed to reduce air pollutants, including diesel particulate matter (DPM). To meet CARB's new emission standards, the four non-compliant pilot boats currently in the SFBP fleet will need to be replaced within the compliance period. In June 2022, replacement costs for the four pilot boats (three large "station boats" and one smaller "run boat") in SFBP's station boats were estimated to be between \$45 and \$50 million. As of May 2024, the cost to replace non-compliant station boats had risen to an estimated \$67.5 million, approximately \$22.5 million per boat. The cost for the run boat, which will need to be replaced when it becomes non-compliant with CARB's new emission standards in 2028, is estimated to be an additional \$3 million.

Limited shipyard capacity, increased demand for new vessels from other operators, and long lead times for CARB-compliant engines are the primary factors driving the cost increases.

Additionally, the funding model that the Board currently uses disburses funds to the SFBP in arrears, at the completion of the construction process. This means that the SFBP, acting as the guarantor, must finance the capital required for pilot boat design, engineering, modification (of existing pilot boats, where applicable), and construction up front. This reimbursement model is expected to add an additional \$20 million in interest to the total cost of replacing the four non-compliant pilot boats. **This would bring the total replacement cost for the four non-compliant pilot boats to \$80 million or more, net of already-collected surcharge funds.**

These costs would be borne by the Board's stakeholders in the shipping industry and the

Californians who rely on the goods shipped using the waterways of the Bays of San Francisco, San Pablo and Suisun.

### **Legislative and Regulatory Actions to Address Costs**

Recognizing the impact that the pilot boat replacement costs could have on its stakeholders and Californians, the Board began a series of strategic discussions about how to economically comply with the CARB regulations. One outcome of these discussions was the amendment of the Harbors and Navigation Code (HNC) (Harb. & Nav. Code Sections 1159.1, 1194, 1194.1). These amendments were adopted in September 2022.

Following the adoption of the HNC amendments, the Board formed a Joint Pilot Boat Advisory and Finance Committee in April 2023 to develop regulations that would implement the new statutes in a manner consistent with the Board's overall responsibilities while balancing economic and environmental concerns. The Committee members included two Commissioners, representatives from the SFBP, a representative of the maritime industry, and a marine engineering professional. The final draft of the regulations prepared by the Joint Pilot Boat Advisory and Finance Committee were approved by the Board of Pilot Commissioners at its June 2023 meeting.

### **Milestone-based Reimbursement Model**

The proposed regulations would operationalize the HNC amendments and provide clarity and specificity to implement the law. Most significantly, the new regulations expand the Board's authority to approve the use of pilot boat surcharge funds throughout the different stages of the pilot boat development process, from design to engineering to modification (of existing pilot boats, where applicable) to construction. This shifts the Board's reimbursement model from a post-completion payment system (arrears based) to a milestone-based payment system (progress payments). Importantly, this change addresses the problem of costs. Aligning the necessity determination, authorization and disbursement processes with the complex, multi-stage pilot boat development process will save time and streamline the overall process. Authorizing the Board to make milestone-based (progress) payments at the various stages of pilot boat development process will reduce the financing burden on the SFBP, lowering interest costs. The benefit of these lower costs will extend to the Board's stakeholders and millions of Californians.

These changes will also have the added benefit of providing the Board's stakeholders with clarity and stability regarding future costs. By implementing these regulations, stakeholders will be able to anticipate and plan for future financial obligations. This will benefit stakeholders and foster transparency and confidence in the Board's financial management practices.

For each proposed update, clarification, and change in the Board's regulations, the specific purpose, problem addressed, and rationale for the determination that these amendments are reasonably necessary are set forth below.

## **BENEFITS ANTICIPATED FROM REGULATORY ACTION**

The proposed regulations provide significant benefits to the Board, its stakeholders, the SFBP, 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.** Pilot boats equipped with the latest marine engine technology will significantly reduce the impact of DPM emissions, benefiting 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 SFBP 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.

## **SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION**

### **Section 236.1 Regulation Title**

The **Title** of Section 236.1 is amended to better reflect the purpose and intent of this regulation. In the revised title, the word “Boats” is pluralized to indicate that multiple independent pilot boat projects may be underway at the same time. The word “Surcharge” is deleted. Removing the word “Surcharge” clarifies the meaning of this section, emphasizing that the financial activities discussed herein pertain to the disbursement of funds related to the design, engineering, and construction of pilot boats, not the determination of the surcharge rate.

### **Subsection (a) of Section 236.1**

**Subsection (a)** clarifies the Board’s statutory authority for collecting the Pilot Boat Surcharge, replacing Section 1190, subsection (a)(1) of the Harbors and Navigation Code with Section 1194 of the Harbors and Navigation Code.

**Subsection (a)** is revised to designate the “Pilot Boat Surcharge Account,” a California State Treasury account, as the deposit account for the funds collected by this surcharge. This change incorporates the statutory requirements found in Harbors and Navigation Code Section 1159.1,

subsection (a) and Section 1194.1, subsection (a)(1). This change is significant. Previously, the SFBP was the account holder.

**Subsection (a)** is also revised to add “for the pilots” to clarify that the pilots are authorized to use the collected funds. This complies with the requirements set forth in Harbors and Navigation Code Section 1194, subsection (a).

#### **Subsection (d)(3) of Section 236.1**

**Changes without regulatory effect.** The word “boats” is changed to the singular, from the plural.

**Subsection (d)(3)** is also revised to delete “The Board or its advisory committee may request additional documentation or conduct its own investigation prior to making a necessity determination hereunder.” The purpose and intent of this sentence is moved to subsection (d)(4). Deleting this sentence narrows the scope of the existing subsection and avoids confusion. The revised subsection only pertains to the documentation that parties requesting determinations must submit to the Board, not to actions that the Board may choose to take.

#### **Subsection (d)(4) of Section 236.1**

**Deletion of existing subsection (d)(4).** This subsection is deleted. The purpose and intent is moved to subsection (d)(5).

**Subsection (d)(4)** incorporates the purpose and intent of the content moved from existing subsection (d)(3). This subsection preserves the Board’s authority to request additional information and conduct an independent review prior to making a necessity determination. The word “investigate” in the original sentence is replaced with “review” to describe the Board’s actions more accurately.

#### **Subsection (d)(5) of Section 236.1**

**Subsection (d)(5)** incorporates the purpose and intent of the existing subsection (d)(4). This revised subsection removes the “one year” limitation on the validity period granted by the Board. Removing this limitation better aligns the necessity determination validity period with the complex, multi-stage design, engineering, procurement, and construction processes required for pilot boat development, which can last up to two years or more. This subsection also preserves the Board’s authority to set validity periods.

### **Subsection (e)(1) of Section 236.1**

**Subsection (e)(1)** adds the words “and the cost of” and deletes the word “for.” These changes clarify the different types of work that may be considered at the preliminary authorization stage. The current version of this regulation authorized the Board to consider authorizing: 1) funding for new pilot boats and 2) funding for design and engineering work to extend the life of existing pilot boats. The revised language clarifies that design and engineering work, regardless of its purpose, may be funded separately from other work. These changes implement and clarify the intent and purpose of Harbors and Navigation Code Section 1194(a), which describes the type of work that can be funded by the surcharge, including “preliminary design and engineering, and of funding design and engineering modifications for the purposes of extending the service life of existing pilot boats.” Designating design and engineering work as a separate category of work better aligns the preliminary authorization process with the complex, multi-stage nature of pilot boat development.

### **Subsection (e)(2) of Section 236.1**

**Changes without regulatory effect.** Existing subsection (e)(2) has been renumbered to (e)(4).

**Subsection (e)(2)** has been revised to clarify that a preliminary authorization request may be submitted, considered, and approved by the Board at different project stages. Adding this subsection, particularly the language “project stages,” better aligns the preliminary authorization process with the complex, multi-stage procurement processes required for the modification and construction of pilot boats. Additionally, authorizing the Board to consider and approve preliminary authorizations at different project stages may reduce pilot boat costs by decreasing the financing expenses for the SFBP.

### **Subsection (e)(3) of Section 236.1**

**Changes without regulatory effect.** Existing subsection (e)(3) has been renumbered to (e)(5).

**Subsection (e)(3)** has been revised to clarify that a preliminary authorization request may be submitted, considered, and approved by the Board at the same time as a necessity determination. The option to combine the necessity determination with the preliminary authorization shortens the overall approval process and provides the Board with a flexible approval process better aligned with the complex, multi-stage procurement processes required for the modification and/or construction of pilot boats. Additionally, authorizing the Board to consider and approve combined necessity determinations and preliminary authorizations may lower pilot boat costs by decreasing the financing expenses for the SFBP.

#### **Subsection (e)(4) of Section 236.1**

**Changes without regulatory effect.** The renumbered section (e)(4) was previously subsection (e)(2).

#### **Subsection (e)(5) of Section 236.1**

**Changes without regulatory effect.** Existing subsection (e)(3) has been renumbered to (e)(5).

**Subsection (e)(5)** is revised to delete “The Board or its advisory committee may request additional documentation or conduct its own investigation prior to making a necessity determination hereunder,” has been deleted and moved in part to subsection (d)(6). Deleting this sentence narrows the scope of this subsection so that it only pertains to the documentation that parties requesting determinations must submit to the Board, not to actions that the Board may take.

#### **Subsection (e)(6) of Section 236.1**

**Subsection (e)(6)** incorporates the purpose and intent of the language deleted from subsection (e)(5). This subsection preserves the Board’s authority to request additional information and conduct an independent review prior to issuing a preliminary authorization.

#### **Subsection (e)(7) of Section 236.1**

**Changes without regulatory effect.** The renumbered section (e)(7) was previously subsection (e)(4).

**Subsection (e)(7)** is revised to delete “Preliminary authorizations may be issued in stages as circumstances dictate.” This sentence has been deleted because the purpose and intent of this content has been moved to subsection (e)(2). This move is intended to make clear that preliminary authorizations may be granted by the Board at any stage of the pilot boat development process.

#### **Subsection (e)(8) of Section 236.1**

**Changes without regulatory effect.** The renumbered section (e)(8) was previously subsection (e)(5).

**Subsection (e)(8)** is revised to delete “or to set a Pilot Boat Surcharge rate.” This revision clarifies that the financial activities discussed herein pertain to the design, engineering, and construction of pilot boats, not the determination of the surcharge rate.

**Subsection (f)(1) of Section 236.1**

**Subsection (f)(1)** is revised to add “may have been.” The addition of this language clarifies that the Board is not required to set a deadline for submitting final authorization requests during the preliminary authorization review. The purpose and intent of this change is to provide the Board flexibility so that it can align its processes with the various stages of the pilot boat development process. The reference citation to subsection (e)(5) is renumbered to (e)(8) without regulatory effect to reflect renumbered subsections.

**Subsection (f)(2) of Section 236.1**

**Changes without regulatory effect.** Existing subsection (f)(2) has been renumbered to (f)(3).

**Subsection (f)(2)** has been revised to clarify that final authorization requests may be submitted, considered, and approved by the Board at different stages of the pilot boat development process. The option to submit, consider and approve final authorization requests at different project stages provides the Board with a flexible approval process aligned with the complex, multi-stage procurement processes required for the modification and/or construction of pilot boats. This shortens the overall approval process and provides the Board with a flexible approval process better aligned with the complex, multi-stage procurement processes required for the modification and/or construction of pilot boats. Additionally, authorizing the Board to consider and approve combined necessity determinations and preliminary authorization may lower pilot boat costs by decreasing the financing expenses for the SFBP.

**Subsection (f)(3) of Section 236.1**

**Changes without regulatory effect.** Existing subsection (f)(2) has been renumbered to (f)(3).

**Subsection (f)(4) of Section 236.1**

**Deletion of existing subsection (f)(4).** This subsection is deleted.

**Changes without regulatory effect.** Existing subsection (f)(3) has been renumbered to (f)(4).

**Subsection (f)(5) of Section 236.1**

**Subsection (f)(5)** is also revised to add “or conduct its own review.” This change clarifies the Board’s responsibility as set forth in Harbors and Navigation Code Section 1194, subsection (3).

### **Subsection (f)(6) of Section 236.1**

**Subsection (e)(6)** has been revised to delete “setting” and “the initial surcharge rate and the date it is to go into effect.” This subsection has been revised to add “that shall set.” The revised subsection (f)(6) has been designated as sub-subsection (f)(6)(A) and now reads “The Board may issue a final authorization that shall set forth the costs to be recovered by the pilots under this section, and the reasons therefor.” The purpose and intent of the revised content is to indicate that the regulations addressing the pilot boat surcharge rate setting process are handled in another section of the code.

**Subsection (e)(6)** is further revised to add sub-subsection (f)(6)(B) which reads “Boat repair and maintenance costs cannot be included in a final authorization.” This meets the statutory requirement set forth in Harbors and Navigation Code Section 1194, subsection (a).

### **Subsection (f)(7) of Section 236.1**

**Deletion of existing subsection (f)(7).** This subsection is deleted. By eliminating the future data collection related to operational savings and adjustments to the pilot boat surcharge rate, this deletion clarifies that the financial activities discussed in this subsection are related to pilot boat modification and construction, not the determination of the pilot boat surcharge rate.

**Changes without regulatory effect.** Existing subsection (f)(8) has been renumbered to (f)(7).

### **Subsection (f)(8) of Section 236.1**

**Changes without regulatory effect.** The renumbered section (f)(7) was previously subsection (f)(8). The definite article “the” has been replaced with the indefinite “a.”

**Subsection (f)(7)** has been revised to delete “with the.” This change clarifies the meaning of this sentence, ensuring that costs related to new pilot boat construction and modifications may be treated separately. This subsection has also been revised to delete “The Board may adjust the Pilot Boat Surcharge rate or reduce the costs to be recovered thereby to ensure compliance with the debt reduction provision of the Harbors and Navigation Code Section 1190(a)(1)(B).” This subsection of the Harbors and Navigation Code was deleted in September 2022.

**Subsection (f)(7)** has been revised to add “or pay the outstanding cost.” This change enables the Board to apply the proceeds from the sale or other disposal of pilot boats to the cost of modifying pilot boats or the construction of new ones. This subsection has also been revised to add “For the purposes of this section, ‘sale of existing pilot boats’ shall include donation or other disposition of an existing pilot boat, and ‘net proceeds’ from such a sale include the tax benefit realized from such donation less the cost associated with the donation.” This content reflects the intent and purpose of Harbors and Navigation Code Section 1194(c) and was moved from subsection (i) below.



### **Subsection (g) of Section 236.1**

**Changes without regulatory effect.** The word “Vessel” has been replaced with the word “Boat.” This change makes the language used throughout the regulation consistent. The reference citations herein have been amended to reflect the renumbered subsections.

### **Subsection (h) of Section 236.1**

**Subsection (h)** has been revised to delete “maintain a commercially reasonable reserve to.” The word “sufficient” expresses the intent and purpose of the deleted language and is already present in the subsection.

**Subsection (h)** has been further revised to incorporate “The rate should also be sufficient to cover the administrative costs of the Board with respect to administration of the Pilot Boat Surcharge Account, including any audits of the usage of the Pilot Boat Surcharge Account fund, not to exceed five (5) percent of all moneys collected.” This change limits the amount of funds that may be expended on administrative costs.

### **Subsection (i) of Section 236.1**

**Deletion of existing subsection (i).** Subsection (i) has been deleted in its entirety. The purpose and intent of this subsection has been incorporated into subsection (f)(7), where the proceeds from the sale of pilot boats or disposition are discussed.

### **Note to Section 236.1**

**Note** has been revised to clarify the Board’s statutory authority. Harbors and Navigation Code Section 1190(a)(1)(B) has been deleted. References to Harbors and Navigation Code Sections 1159.1, 1194 and 1194.1 have been incorporated.

### **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The Board has concluded that the proposed regulations will not facilitate the creation or elimination of jobs within California, nor will they affect the creation or elimination of businesses within California or the expansion of businesses currently doing business within California.

However, the proposed regulations will have a positive impact on shipping costs for the Bays of San Francisco, San Pablo and Suisun. By reducing the SFBP’s pilot boat financing costs, currently estimated at approximately \$22.5 million per boat, these costs will not be passed on to the shipping industry or to millions of Californians who rely on these supply chains. Using 2022’s Gross Registered Tonnage amounts as a baseline and assuming a ten-year loan repayment

period, the financing costs for the new pilot boats would result in a surcharge increase of 38%, raising the mill rate from \$0.0200 to \$0.0275. This represents a substantial rise in the Pilot Boat Surcharge from current levels. Additionally, at this mill rate level, 27.5% of the funds collected over the ten-year period would be allocated to repaying the interest on the financed capital. Spending such a significant portion on interest highlights the importance of finding ways to reduce the impact pilot boat construction would have on industry and on Californians.

**Table 1.0: Pilot Boat Surcharge Calculations**

Gross Registered Tonnage (GRT), 2022 Actuals	Mill Rate (Increase Req'd to Address Interest Costs)	Surcharge Funds Collected, Annually	Total Surcharge Funds Collected (Over 10 Years)
265,733,379	\$0.0076	\$2,019,574	\$20,195,737

Existing Pilot Boat Surcharge Mill Rate (June 2024)	Revised Pilot Boat Surcharge Mill Rate (Increase Req'd to Address Interest Costs)	Increase, \$	Increase, %
\$0.0200	\$0.0276	\$0.0076	38.0%

Surcharge Funds Collected Annually at \$0.0200 Mill Rate	Surcharge Funds Collected Annually at \$0.0275 Mill Rate	Variance Between Surcharge Rates, \$	Percentage of Funds Collected Allocated to Interest Costs
\$5,314,668	\$7,334,241	\$2,019,574	27.5%

**EVIDENCE SUPPORTING ECONOMIC IMPACT ASSESSMENT AND FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC EFFECT ON BUSINESS**

The proposed changes to these regulations will authorize the Board to reimburse pilot boat construction costs throughout the different phases of the pilot boat development process, from design to engineering to modification (of existing pilot boats, where applicable) to construction. This change will substantially lower the financing costs for building new pilot boats, leading to significant savings for the shipping industry and, ultimately, benefiting downstream consumers by reducing costs.

**DESCRIPTION OF REASONABLE ALTERNATIVES**

The Board has concluded that there are no reasonable alternatives to the proposed regulations.