

**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) Board licensed maritime pilots who make up the San Francisco Bar Pilots Association (SFBP), the independent entity that administers the business affairs of Board-licensed pilots. By current law, the Board is authorized to “adopt, and cause to be published, a pilotage tariff that establishes fair, just, reasonable, and sufficient rates for the provision of a safe, competent, reliable, and efficient pilotage service.”¹ On a day-to-day basis, rates set by the Board fund the operations of the SFBP and the Board, and the Board’s various programs, including new pilot training, pilot continuing education, and pilot vessel construction and maintenance.

In 2021, with the financial challenges to the SFBP and the Board caused by the COVID-19, the Board formed the Ad Hoc Committee to Review the Pilotage Rate Setting Process (Committee) to determine if “changes to the current pilotage rate setting process would be beneficial to the State, Board-licensees[,] and the shipping industry.”² The committee, was comprised of Board members representing the SFBP, the public and the shipping industry and meetings were attended by the Board’s various stakeholders, including representatives from the shipping industry, the SFBP, and the public. The Committee undertook examining the Board’s statutory rate setting process utilized at the time, the Board’s historical processes going back five decades, and the pilot rate setting processes in other jurisdictions including Washington, Oregon and Hawaii.

This review led to recommendations from the Committee to the Board regarding making changes to the rate setting process, which the Board accepted at its February 24, 2022, Board meeting. The recommended changes were codified in legislation including new statutes governing the rate setting process (Chapter 6 of Division 5 of the Harbors and Navigation Code (HNC), commencing with Section 1250, effective September 29, 2022). These statutes represent significant changes to the rate setting process, including the authority for determining and setting pilotage rates shifting from the Legislature to the Board. Under the previous statute, which had been in place since the 1970s, “rates for bar pilotage services [were] determined by [the] legislature by passing specific statutes rather than by the rule-making authority of the Board of

¹ Harbors and Navigation Code, § 1250.

² Board of Pilot Commissioners, *Historical Review of the Rate Setting Process*, Staff Report, April 7, 2021, 1.

Pilot Commissioners.”³ The updated statutes have effectively transformed pilotage rate setting from a statutory process dependent on legislative action into a regulatory process overseen by an administrative law judge.

In 2025, the Committee to develop regulations that would implement the statutes Chaptered in 2022 in a manner consistent with the Board’s new responsibilities was formed. The Committee members included three Board Commissioners, representing Board licensees, the shipping industry, and the public. Representatives of SFBP and the shipping industry attended Committee meetings and provided input toward the drafting of new regulations. The draft regulations were recommended to the Board and approved unanimously by the Board at its regular August 2025 meeting.

With the transfer of responsibility away from the Legislature in the 2022 statutes, the new proposed regulations are designed to clarify and specify the roles and duties of the various parties involved in the rate setting process. This includes the role and duty of the Board, the Board Executive Director and staff, and stakeholders. For example, proposed sections 236 and 236.5 define the Board’s authority to modify, adopt, and publish rates and surcharges as well as the qualitative framework under which these changes should be made. Section 236.6 provides a comprehensive list of the Executive Director’s ministerial duties, while section 236.7 governs the Board and Board staff with respect to *ex parte* communications. Section 236.8 identifies which parties have standing and establishes criteria for determining it. Finally, section 236.9 confirms that the Board retains the authority to initiate a rate setting proceeding on its own.

In addition to implementing the 2022 statutes, these proposed regulations will clarify the rate setting process by removing the steps currently listed in regulations that previously required legislative action on a rate adjustment petition. This change benefits stakeholders by clarify the rate setting process under the 2022 statutes, potentially reducing delays and uncertainty caused by conflicting language currently in the statutes and regulation.

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 broad objective of this proposed regulatory action is to implement the pilotage rate setting statutes enacted in 2022, which transferred responsibility from the legislature to the Board. If approved, these regulations will assist the Board with the implementation of this responsibility.

Anticipated benefits of this proposed regulation include:

- **Stakeholder Benefits.** These regulations will establish a chronologically comprehensive list of the Executive Director’s ministerial responsibilities during rate setting process. In support of an efficient rate setting process the proposed regulation also distinguish the

³ Board of Pilot Commissioners, *Historical Review of the Rate Setting Process*, 2.

Executive Director's duties from the duties of other participants, such as the Board or the administrative law judge.

- **Efficiency and Effectiveness Benefits.** The proposed regulations will enhance effectiveness and efficiency by, among other things, establishing a framework for determining standing.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

Section 236

Delete existing Section 236. The existing section has been deleted in its entirety. The existing section 236 reflects the previous statutory scheme, which due to the statutory changes noted above is no longer in effect.

Adopt Section 236. This section sets forth the Board's statutory authority for setting pilotage rates and surcharges. Pilotage surcharges and rates are established under Chapter 5 of Division 5 of the Harbors and Navigation Code, beginning with Section 1190, and may be modified either by the Board (for surcharges) or through the adoption and publication of a pilotage tariff (for rates) pursuant to Chapter 6, commencing with Section 1250.

Section 236.5

Adopt Section 236.5. This section sets forth the qualitative framework that the Board must operate under during the rate setting process: rates must be *fair* and *sufficient* to create a *safe* and *reliable* pilotage service. The governing statute is Chapter 6 of Division 5 of the Harbors and Navigation Code.

Section 236.6

Adopt Section 236.6. The purpose and intent of this section is to clarify the Executive Director's ministerial responsibilities during the rate setting process. The proposed regulations also distinguish the Executive Director's ministerial role and duties from those of other participants, such as the Board or the administrative law judge. By clearly defining what duties belong to the Executive Director, this section aims to ensure an efficient rate setting process by clarifying responsibilities and avoiding misunderstandings among the parties.

Section 236.7

Adopt Section 236.7. The purpose and intent of this section is to clarify that Board members and staff are prohibited from engaging in *ex parte* communications about the pilotage tariff, rates, or related petitions with anyone outside official proceedings from the time an administrative law judge is requested until the possibility of a related Board hearing has ended, except for the

Executive Director's limited permitted responses. This section aims to ensure a well-ordered rate setting process by clarifying responsibilities and avoiding misunderstandings among the parties.

Section 236.8

Adopt Section 236.8. The purpose and intent of this section is to clarify 1) how objections to standing are resolved and 2) how standing is determined. Objections to a party's standing in a pilotage tariff proceeding are decided by the administrative law judge at the initial petition management conference. Standing is based on having a direct or indirect financial interest in pilotage rates (e.g., vessel owners, operators, active pilots, or other organizations) with a rebuttable presumption that those without such interests are not stakeholders. This section is designed to promote clarity in the rate setting process by establishing that all parties involved have stakeholder status.

Section 236.9

Adopt Section 236.9. The purpose and intent of this section is to clarify that the Board may initiate a hearing to adopt or modify the pilotage tariff on its own motion. In this situation, the Board is deemed both the "petitioner" and a "party," while the Executive Director and Board members remain bound by their usual procedural and *ex parte* communication obligations.

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.

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

Proposed Regulations are Administrative. The proposed regulations governing the rate setting process are administrative in nature and do not impose new costs or regulatory burdens on California businesses. For example, the proposed regulations clarify the Executive Director's role in the rate setting process; explain that *ex parte* communications by Board staff are prohibited, except for the Executive Director's limited permitted responses; and establish a framework for determining standing at rate setting hearings.

Proposed New Regulations do not Authorize Rate Increases. Most importantly, while the proposed regulations clarify the processes by which rates are set, they do not, in themselves, authorize or require any specific rate increases.

No Change to Board's Authority. Furthermore, because the proposed regulations do not change the scope of Board's authority with respect to pilotage or alter the underlying statutory framework that governs the Board's rate setting authority, they do not expand the Board's

powers or its ability to introduce new costs for California businesses. Instead, they operationalize existing law, clarifying and formalizing procedures that were authorized by statute in 2022.

Future Rates will still be Determined Transparently Based on Economic Analysis. Future rate adjustments, if any, will continue to be determined through the statutorily defined public rate setting process, which includes, but is not limited to, economic analysis, public notice of an intent to petition for a rate change, stakeholder involvement, and opportunity for a public hearing as well as public comment. These various measures ensure that any future rate changes are based on a sound rationale, open to public debate, and supported by transparent, data-driven justifications.

Based on its analysis, the Board finds that the proposed regulations will not have a significant adverse economic impact on California businesses.

DESCRIPTION OF REASONABLE ALTERNATIVES

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