

affect a rate change on the basis of such economic factors has the burden of persuading the Board that the evidence supports that party's argument.

(8) Volume of Shipping Traffic. The Board may rely on data of vessels piloted as submitted monthly by the pilots. That data is available as a public record of the Board.

(9) Number of Pilots Available. In preparing its recommendation on pilotage rates, the Board will consider the number of pilots actually licensed at the time of the rate hearing. Any issues regarding the adequacy of that number should be addressed in a duly noticed hearing held pursuant to Harbors and Navigation Code Sections 1170.1 and 1170.2.

(10) Risk to Pilots. The Board recognizes the inherent risk to the personal safety of the pilots in providing pilotage services, including those risks posed by the physical characteristics of the pilotage grounds within the Board's jurisdiction. A party seeking to affect a rate change on the grounds that there have been material changes in those risks has the burden of proving such changes.

(11) Changes in Navigational and Safety Equipment/Pilot Support Activities. The Board recognizes that, in recent years, there have been substantial changes in training requirements placed on pilots, in regulations which pilots must implement, and in the complexity and size of vessels which increases the professional demands on pilots. The Board also recognizes that pilots have provided services beyond the navigation of vessels. Such services are referred to as "pilot support activities." Changes in those pilot support activities that are necessary to providing pilot service may be considered in determining the appropriate pilotage rate. To the extent such changes have increased the costs to the pilots of providing pilot services, these costs should be addressed under subsection (f)(1) above. To the extent such changes have resulted in increased time demands, such demands should be addressed at a duly noticed hearing to determine the number of pilots under Harbors and Navigation Code Sections 1170.1 and 1170.2.

(12) The weight to be given to each of the factors enumerated in this subsection may vary depending on prevailing circumstances and shall be left to the sound discretion of the Board.

(g) At least seven (7) days prior to the hearing, or at such time as the President may direct, the representatives and/or counsel for the parties supporting and responding to the petition for a rate change shall meet with the President or his/her designee at the time and place directed by the President, to determine if the issues raised by the petition can be narrowed or resolved by stipulation, and to address the order of and anticipated length of the presentation of evidence; the number and identity of witnesses and the subject matter and scope of their testimony; identification and possible resolution of any evidentiary issues; and any other matter which promotes efficiency in conducting the rate hearing.

(h) The President, or his/her designee, may issue a pre-hearing order setting forth any stipulations or limitations on the scope of the hearing or the issues to be presented as agreed to by all parties attending the pre-hearing conference. Participation by the President or any other Board member in the pre-hearing conference shall not disqualify him or her from participation in the rate hearing.

(i) The rate hearing shall be conducted at the time and place set forth in the Notice or in any amendment thereto and shall be conducted in accordance with the Bagley-Keene Open Meeting Act (Government Code Sections 11120, et seq.). A full record shall be kept of all evidence offered at the hearing, including a verbatim transcript of all testimony, which shall be given under oath.

(j) Following the presentation of evidence in support of and in response to the petition for a rate hearing, any additional evidence requested by the Board, any evidence submitted in rebuttal, and the closing arguments of the parties, if any, the Board shall proceed with deliberation, including a review and evaluation of all the evidence received at the hearing and a determination of what pilotage rate change, if any, is warranted by the evidence. The Board's deliberation shall be conducted at a duly noticed meeting open to the public and shall be transcribed electronically or by a certified shorthand reporter, as the Board may direct.

(k) Upon completion of its deliberation and within 120 days from the filing of the petition, the Board shall submit its findings and recommendations, supported by a transcript of the proceedings, to the Secretary of the Senate and the Chief Clerk of the Assembly.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code; Reference: Sections 1190, 1191, 1200, 1201, 1201.5, 1202 and 1203, Harbors and Navigation Code.

HISTORY

1. New article 7 (section 236) and section filed 12-11-2001; operative 1-10-2002 (Register 2001, No. 50).

§ 236.1. Pilot Boat Surcharge.

(a) A separate surcharge on pilotage fees called a Pilot Boat Surcharge is authorized by Section 1190(a)(1)(B) of the Harbors and Navigation Code to recover those of the pilots' costs of obtaining new pilot boats and of funding design and engineering modifications for extending the service life of existing pilot boats that are authorized by law. The surcharge is in the form of additional mills per high gross registered ton. This section sets forth the procedures for obtaining the Board's authorization to recover such costs and to set and periodically adjust the Pilot Boat Surcharge.

(b) For purposes of this section, the term "new pilot boat" shall include an existing vessel acquired from another owner.

(c) Requests made pursuant to this section shall be submitted to the Board in writing and shall be supported by the data and documentation required by this section. The requesting party must establish to the satisfaction of the Board that the expenditures for a new pilot boat or for life extension modifications to an existing pilot boat are — or, if those costs have already been incurred, were — reasonable and necessary. The process requires a necessity determination, a preliminary authorization and a final authorization, which are described in subsections (d), (e) and (f) respectively.

(d) Necessity Determination

(1) A request for a Board determination that expenditures for a new pilot boat or for life extension modifications to an existing pilot boat are or were necessary may be made prior to or at the same time as a request for preliminary authorization to recover such costs.

(2) The Board may consider a request for a necessity determination at a duly noticed regular or special Board meeting held after the request and all documentation in support of the request have been deposited with the Board and made available for public inspection. Notice shall be given to all parties directly affected by pilotage rates or to a trade organization representing such parties and to all other parties who have requested such notification.

(3) Documentation in support of a necessity determination shall be sufficient to allow the Board to assess the remaining service life of the existing pilot boats, both with the proposed life extension modifications, if any, and without such modifications. The Board or its advisory committee may request additional documentation or conduct its own investigation prior to making a necessity determination hereunder.

(4) A necessity determination made under this section shall be valid for one year unless directed otherwise by the Board.

(4) Preliminary Authorization

(1) A request for the Board's preliminary authorization to recover the pilots' costs of obtaining new pilot boats or funding design and engineering modifications for extending the service life of existing pilot boats shall precede a request for a final authorization and shall include a request for a necessity determination unless a necessity determination is pending or has been issued by the Board and remains valid.

(2) The Board may consider a request for preliminary authorization at a duly noticed regular or special meeting held after the request and all documentation in support of the request have been deposited with the Board and made available for public inspection. Notice shall be given to all parties directly affected by pilotage rates or to a trade organization representing such parties and to all other parties who have requested such notification.

(3) Documentation in support of a request for preliminary authorization shall be sufficient for the Board to assess the reasonableness of the request in light of its necessity determination and shall include basic design and performance specifications, cost estimates, proposed timeline of major milestones for design and construction of a new pilot boat or for acquisition and modification of an existing vessel, or installation of life extension modifications on an existing pilot boat, and plans for long term financing. The Board or its advisory committee may request additional documentation from the requesting party prior to issuing a preliminary authorization hereunder.

(4) The purpose of a preliminary authorization is to provide an opportunity for meaningful and early communication among affected parties and the Board on issues relevant to the costs of obtaining new pilot boats or of funding design and engineering modifications of existing pilot boats. Preliminary authorizations may be issued in stages as circumstances dictate.

(5) The Board may issue a preliminary authorization on such terms as it may deem appropriate to provide guidance to the parties on such matters as have been addressed and to set the conditions and timing for a final authorization determination. The authority to recover costs under this section or to set a Pilot Boat Surcharge rate shall only be issued after a final authorization.

(f) Final Authorization

(1) A request for final authorization to recover the pilots' costs of obtaining new pilot boats or of funding design and engineering modifications intended to extend the service life of existing pilot boats may be submitted to the Board at such time as directed in the Board's preliminary authorization issued pursuant to subsection (e)(5).

(2) The Board may consider a request for final authorization at a duly noticed regular or special Board meeting held after the request and all documentation in support of the request have been deposited with the Board and made available for public inspection. Notice shall be given to all parties directly affected by pilotage rates or to a trade organization representing such parties and to all other parties who have requested such notification.

(3) Documentation in support of a request for final authorization shall be sufficient for the Board to assess the reasonableness of the request in light of its necessity determination and shall include such information and data as determined in the preliminary authorization.

(4) In the case of service life extension modifications, the documentation shall also include sufficient data to determine and quantify the associated operational savings, including reduced repair and maintenance expenses that are reasonably expected to result from the service life extension modifications, and shall set forth the proposed basis for periodic review to determine actual savings over the life of the pilot boat.

(5) The Board or its advisory committee may request additional documentation from the requesting party prior to issuing a final authorization hereunder.

(6) The Board may issue a final authorization setting forth the costs to be recovered by the pilots under this section, the reasons therefor, the initial surcharge rate and the date it is to go into effect.

(7) The Board may, as a condition of issuing a final authorization relative to proposed service life extension modifications to existing pilot boats, require periodic data from the requesting party to identify any associated operational savings, including reduced repair and maintenance expenses, resulting from such modifications and adjust the Pilot Boat Surcharge rate from time to time to reflect such savings.

(8) The Port Agent shall provide timely information to the Board of the sale or other disposition of any pilot boats, of the net proceeds from such sale or disposition, and of the manner in which the net proceeds are to be used to reduce the debt associated with the new pilot boat or with the modifications to existing pilot boats hereunder. 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 Harbors and Navigation Code Section 1190(a)(1)(B).

(g) A Pilot Vessel Advisory Committee may be appointed pursuant to Section 208 to review and assess the documentation relative to the requests pursuant to subsections (d)(3), (e)(3) and (f)(3) of this section, to conduct independent investigation of the issues and request additional documentation as it may deem appropriate, and to develop recommendations to the Board relevant to such requests or as otherwise directed by the Board. Actions on the requests shall only be taken at duly noticed meetings of the Board.

(h) The Finance Committee of the Board shall periodically, or at such times as the Board may direct, review the costs authorized for recovery and the current and projected income from the Pilot Boat Surcharge and shall prepare recommendations to the Board for periodic adjustments to the surcharge rate to ensure that the surcharge rate is sufficient to recover all costs — and only those costs — authorized by the Board for recovery. The rate should be sufficient to maintain a commercially reasonable reserve to allow for ordinary or anticipated fluctuations in surcharge income until all costs authorized have been recovered. Any rate adjustment shall be made by Board action at a duly noticed meeting and shall take effect at such dates as the Board may direct.

(i) For 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 sale includes the tax benefit realized from such donation less the costs associated with the donation.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 1190(a)(1)(B), Harbors and Navigation Code.

HISTORY

1. New section filed 6-10-2008; operative 7-10-2008 (Register 2008, No. 24).

Article 8. Number of Pilots

§ 237. Hearing Procedures to Determine Number of Licensed Pilots.

(a) The Board shall determine the number of pilot licenses to be issued and shall appoint and license the number of pilots sufficient to carry out the purposes of Division 5 of the Harbors and Navigation Code. In determining the number of pilot licenses issued by the Board to qualified applicants, the Board shall take into consideration all of the following:

(1) The findings and declarations in Harbors and Navigation Code Sections 1100 and 1101;

(2) The results of an audit made pursuant to subsection 236(e) of these regulations.

(3) The factors specified in Harbors and Navigation Code Section 1203(a) through (g); and

(4) The maritime industry's current economic trends, fluctuations in the number of vessel calls, the size of vessels, and whether the need for pilotage is increasing or decreasing.

The objective of the Board's determination of the number of pilot licenses to be issued to qualified applicants is to ensure the availability of an adequate number of qualified, rested pilots to provide timely pilotage services. Before changing the number of pilot licenses issued, the Board shall conduct hearings in accordance with this article.

(b) The Board will conduct hearings as frequently as is necessary to provide meaningful and timely guidance in determining the appropriate number of pilot licenses to be issued and the number of pilot trainees to be selected pursuant to Sections 216 and 213, respectively, of these regulations.

(c) The Board will consider whether a hearing under this section is necessary by reviewing the current number of pilot licenses issued, the results of the most recent hearing, and the data collected pursuant to subsection (d) of this section at the following times:

(1) Prior to the selection of additional pilot trainees;

(2) Prior to issuing additional original pilot licenses;

(3) Upon the request of any party directly affected by pilotage;

(4) Annually;

(5) At such additional times as the Board may direct.

(d) The San Francisco Bar Pilots shall provide the following data to the Board annually and at such other times as the Board may direct. The data shall cover the previous 12-month period, or such other period as the Board may direct, and shall be available for public inspection during normal Board hours:

- (1) Total number of vessel moves;
- (2) Total number of pilots assigned to move vessels;
- (3) Number of pilots assigned to move vessels each day;
- (4) Number of bar crossings;
- (5) Number of bay moves;
- (6) Number of river moves;
- (7) Average draft of piloted vessels;
- (8) Average gross registered tonnage of piloted vessels;
- (9) Number of pilots reported sick or injured and number of days each was unable to perform piloting duties;
- (10) Number of times a pilot resumed duties with less than 12 hours off duty, the contributing circumstances, and the actual hours off duty between assignments;
- (11) Number of pilot days during which pilots were engaged in Board-mandated training; and
- (12) Number of pilot days during which pilots were engaged in administrative duties authorized by the Port Agent, with a description of those duties.

(e) Upon determining that a hearing will be conducted, the Board will notice a public hearing to be held not less than thirty (30) days from the date of the notice, or at such later time as the Board may direct. The notice shall comply with the applicable provisions of the Bagley-Keene Open Meeting Act, Government Code Sections 11120, et seq. The purpose of the hearing is to obtain information and data relevant to determining the number of licensed pilots in accordance with this section.

(f) At least fifteen (15) days before the hearing, the Executive Director shall assemble and make available for public inspection during normal Board hours the following data:

- (1) All data collected pursuant to subsection (d) of this section since the last hearing, including a summary of such data in the form used as input for the 1986 manpower study computer model pursuant to Harbors and Navigation Code Section 1190(d);
- (2) Data considered by the Board at the most recent rate hearing relative to the factors listed in Harbors and Navigation Code Section 1203 and such changes or updated data as is readily available;
- (3) The results of any audits made pursuant to Harbors and Navigation Code Section 1203 since the last hearing to determine the number of licensed pilots;

(4) Data establishing the maritime industry's current economic trends;

(5) A summary showing changes since the last hearing to determine the number of licensed pilots in the following:

- (i) the number of vessel calls;
- (ii) the average draft of piloted vessels;
- (iii) the average gross registered tonnage of piloted vessels.

(6) Data establishing whether the need for pilotage is increasing or decreasing;

- (7) Ages of pilots currently licensed and anticipated retirements; and
- (8) Such other data as the Board may direct.

(g) The Board president shall appoint a committee chaired by a commissioner and made up of one or more representatives each from industry, pilots and the public, to review and analyze the information and data assembled pursuant to subsection (f) of this section, to review any additional data, input and comments from the San Francisco Bar Pilots, members and representatives of the maritime industry and members of the public, and to prepare recommendations to the Board regarding the factors which the Board should consider in determining the number of pilots to be licensed. Minutes of the Committee's meetings shall be made available for public inspection not less than ten (10) days before the hearing conducted pursuant to subsection (h) of this section.

(h) A hearing shall be conducted at the time and place set forth in the notice provided pursuant to subsection (e) of this section and shall be conducted in accordance with the Bagley-Keene Open Meeting Act (Government Code Sections 11120, et seq.). A full record shall be kept of all evidence offered at the hearing, including a verbatim transcript of all testimony.

(i) Following the presentation by the committee appointed pursuant to subsection (g) of this section, any additional presentations on behalf of the San Francisco Bar Pilots, the maritime industry and the general public, the Board shall close the record and proceed with deliberations, including a review and evaluation of all the evidence received at the hearing and a determination of the number of pilot licenses to be issued. The Board's deliberation shall be conducted at a duly noticed meeting open to the public and may be transcribed. At the conclusion of its deliberations, the Board shall issue written conclusions with regard to the number of pilot licenses to be issued, and the manner in which any change to reach that number will be implemented.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1170, 1170.1, 1170.2 and 1190(d), Harbors and Navigation Code.

HISTORY

1. New article 8 (section 237) and section filed 4-4-2002; operative 5-4-2002 (Register 2002, No. 14).

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