

**SUNSET EVALUATION REPORT**  
**PILOTAGE**  
**Chapter 462A, Hawaii Revised Statutes**

**A Report to the Governor and the Legislature of the State of Hawaii**

**Submitted by the**  
**Legislative Auditor of the State of Hawaii**

**Report No. 85-9**  
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## FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of port pilots under Chapter 462A, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate port pilots to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

We acknowledge the cooperation and assistance extended to our staff by the Board of Pilot Commissioners, the Department of Commerce and Consumer Affairs, and other officials contacted during the course of our examination.

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## **Chapter 1**

### **INTRODUCTION**

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 state licensing boards and commissions over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if he determines that the program should not be reenacted.

#### **Objective of the Evaluation**

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 462A, Hawaii Revised Statutes.

#### **Scope of the Evaluation**

This report examines the history of the statute on the regulation of port pilots and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

#### **Organization of the Report**

This report consists of three chapters: Chapter 1, this introduction and the framework developed for evaluating the licensing program; Chapter 2, background information on the regulated industry and the enabling legislation; and Chapter 3, our evaluation and recommendations.

## Framework for Evaluation

Hawaii's Regulatory Licensing Reform Act of 1977, or Sunset Law, reflects rising public antipathy toward what is seen as unwarranted government interference in citizens' lives. The Sunset Law sets up a timetable terminating various occupational licensing boards. Unless reestablished, the boards disappear or "sunset" at a prescribed moment in time.

In the Sunset Law, the Legislature established policies on the regulation of professions and vocations. The law requires that each occupational licensing program be assessed against these policies in determining whether the program should be reestablished or permitted to expire as scheduled. These policies, as amended in 1980, are:

1. The regulation and licensing of professions and vocations by the State shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation.
2. Where regulation of professions and vocations is reasonably necessary to protect consumers, government regulation in the form of full licensure or other restrictions on the professions or vocations should be retained or adopted.
3. Professional and vocational regulation shall be imposed where necessary to protect consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the services.
4. Evidence of abuses by providers of the services shall be accorded great weight in determining whether government regulation is desirable.
5. Professional and vocational regulation which artificially increases the costs of goods and services to the consumer should be avoided.
6. Professional and vocational regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers.
7. Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons.

We translated these policy statements into the following framework for evaluating the continuing need for the various occupational licensing statutes.

Licensing of an occupation or profession is warranted if:

1. There exists an identifiable potential danger to public health, safety, or welfare arising from the operation or conduct of the occupation or profession.
2. The public that is likely to be harmed is the consuming public.
3. The potential harm is not one against which the public can reasonably be expected to protect itself.
4. There is a reasonable relationship between licensing and protection of the public from potential harm.
5. Licensing is superior to other optional ways of restricting the profession or vocation to protect the public from the potential harm.
6. The benefits of licensing outweigh its costs.

**The potential harm.** For each regulatory program under review, the initial task is to identify the purpose of regulation and the dangers from which the public is intended to be protected.

Not all potential dangers warrant the exercise of the State's licensing powers. The exercise of such powers is justified only when the potential harm is to public health, safety, or welfare. "Health" and "safety" are fairly well understood. "Welfare" means well-being in any respect and includes physical, social, and economic well-being.

This policy that the potential danger be to the public health, safety, or welfare is a restatement of general case law. As a general rule, a state may exercise its police power and impose occupational licensing requirements only if such requirements tend to promote the public health, safety, or welfare. Under particular fact situations and statutory enactments, courts have held that licensing requirements for paperhangers, housepainters, operators of public dancing schools, florists, and private land surveyors could not be justified.<sup>1</sup> In Hawaii, the State Supreme Court in 1935 ruled that legislation requiring photographers to be licensed bore no reasonable relationship to public health, safety, or welfare and constituted an unconstitutional

1. See discussion in 51 *American Jurisprudence*, 2d., "Licenses and Permits," Sec. 14.

encroachment on the right of individuals to pursue an innocent profession.<sup>2</sup> The court held that mere interest in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

**The public.** The Sunset Law states that for the exercise of the State's licensing powers to be justified, not only must there be some potential harm to public health, safety, or welfare, but also the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of the services rendered by the regulated occupation or profession. The law makes it clear that the focus of protection should be the consuming public and not the regulated occupation or profession itself.

Consumers are all those who may be affected by the services rendered by the regulated occupation or profession. Consumers are not restricted to those who purchase the services directly. The provider of services may have a direct contractual relationship with a third party and not with the consumer, but the criterion set forth here may be met if the provider's services ultimately flow to and adversely affect the consumer. For example, the services of an automobile mechanic working for a garage or for a U-drive establishment flow directly to the employer, but the mechanic's workmanship ultimately affects the consumer who brings a car in for repairs or who rents a car from the employer. If all other criteria set forth in the framework are met, the potential danger of poor workmanship to the consuming public *may* qualify an auto mechanic licensing statute for reenactment or continuance.

**Consumer disadvantage.** The consuming public does not require the protection afforded by the exercise of the State's licensing powers if the potential harm is one from which the consumers can reasonably be expected to adequately protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the provider of services.

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of a consumer characteristic which may cause the consumer to be at a disadvantage. The highly technical and complex

2. *Terr. v. Fritz Kraft*, 33 Haw. 397.

nature of the occupation is an illustration of occupational character that may result in the consumer being at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to enable them to make judgments about the relative competencies of doctors and lawyers and about the quality of services provided them by the doctors and lawyers of their choice.

However, unless otherwise indicated, consumers are generally assumed to be knowledgeable and able to make rational choices and to assess the quality of services being provided them.

**Relationship between licensing and protection.** Occupational licensing cannot be justified unless it reasonably protects the consumers from the identified potential harm. If the potential harm to the consumer is physical injury arising from possible lack of competence on the part of the provider of service, the licensing requirement must ensure the competence of the provider. If, on the other hand, the potential harm is the likelihood of fraud, the licensing requirements must be such as to minimize the opportunities for fraud.

**Alternatives.** Depending on the harm to be protected against, licensing may not be the most suitable form of protection for the consumers. Rather than licensing, the prohibition of certain business practices, governmental inspection, or the inclusion of the occupation within some other existing business regulatory statute may be preferable, appropriate, or more effective in providing protection to the consumers. Increasing the powers, duties, or role of the consumer protector is another possibility. For some programs, a nonregulatory approach may be appropriate, such as consumer education.

**Benefit-costs.** Even when all other criteria set forth in this framework are met, the exercise of the State's licensing powers may not be justified if the costs of doing so outweigh the benefits to be gained from such exercise of power. The term, "costs," in this regard means more than direct money outlays or expenditure for a licensing program. "Costs" includes opportunity costs or all real resources used up by the licensing program; it includes indirect, spillover, and secondary costs. Thus, the Sunset Law asserts that regulation which artificially increases the costs of goods and services to the consumer should be avoided; and regulation should not unreasonably restrict entry into professions and vocations by all qualified persons.



## Chapter 2

### BACKGROUND

Chapter 462A, Hawaii Revised Statutes, makes it unlawful for any person to pilot a vessel, other than an exempt vessel, in Hawaii pilotage waters without a state license. This chapter provides background information on the characteristics of the occupation, the history and nature of regulation in Hawaii, and other regulations which affect the occupation.

#### Occupational Characteristics

Pilotage, as used in the context of this report, involves the directing of a vessel's movement in channels, harbors, restricted waters, or other areas in which navigation is deemed difficult or dangerous.<sup>1</sup>

The pilot is either a member of the ship's complement or an individual brought aboard the ship specifically for pilotage. In either case, the objective of a pilot is to enhance safety by providing the shipmaster with up-to-date knowledge of local coastal, estuarial, river, and port areas combined with shiphandling skills; knowledge of the port's navigational requirements and regulations; and unusual local weather conditions.<sup>2</sup>

Although only a small portion of a ship's voyage is spent in pilotage waters, most ship casualties occur in such waters. It is in these waters that the ship will encounter high traffic density and pass close to natural hazards at reduced water depths.

1. Hawaii Pilots Association, *Information Relating to Hawaii Port Pilots*, prepared for the Honorable Jack Suwa, Chairman, House Finance Committee, no date.

2. American Institute of Merchant Shipping, Position paper on Marine Pilotage, received from J.C. Kitchener, AIMS West Coast Pilotage Committee, no date.

A pilot normally takes navigational control and direction of the ship outside of designated pilotage waters. The pilot then directs the vessel into the pilotage waters, avoiding potential hazards, both man-made and natural, and adapting to changing conditions such as currents, weather, and depth, in order to bring it to a safe berth. The length of time needed to pilot a vessel to and from a berth varies from port to port. In some instances, a pilot may have to navigate a vessel for up to seven hours, while in other ports, it may be as short as 45 minutes.<sup>3</sup>

Departure from a harbor presents similar problems and hazards to the vessel and normally requires the skills of a pilot for safe passage.

**History of pilotage in the United States.** Although pilotage can be traced to ancient times, its beginnings in the United States can be traced to the colonial governments. By 1789, several states had already passed legislation establishing pilotage systems. At that time, Congress delegated, "until further provision is made," the responsibility of pilotage regulation to the individual states.<sup>4</sup>

During the 19th century, after a number of accidents involving vessels, the federal government slowly increased its role in pilotage. By 1871, most of the federal laws now governing pilotage had been enacted, and a number of federal laws defined the role of the state and federal governments in regulating pilotage. More importantly, by 1871, the federal government clearly had control of pilotage involving vessels engaged in coastal trade and those vessels navigating the Great Lakes. Regulation of pilotage of foreign vessels and ships dealing in foreign trade was left to the states.

**Classes of vessels and regulations.** The practice of pilotage in the United States is similar to that in other parts of the world. However, the jurisdictional control of pilotage in the United States by the federal and state governments is unique. Both the federal and state governments exercise control over local pilotage waters. Whether a federal license or a state license is required depends on the classification given to a vessel.

3. *Ibid.*

4. Hawaii Pilots Association, *Information Relating to Hawaii Port Pilots*.

Vessels are classified into five categories; numbered, public, registered, coastwise, and foreign.

Numbered vessels, or motorboats, are usually pleasure boats and other miscellaneous motor powered vessels. Pilots are not required for these boats.

Public vessels, such as warships, fire boats, and police boats, are owned by local, state, or federal governments. These are excluded from all pilotage laws. The vessels may utilize the services of either a federal or state pilot.

United States registered vessels are those granted permission by the U.S. Customs to engage in foreign trade. Registered vessels plying waters within the jurisdiction of a particular state are required to take on a state licensed pilot when they enter that state's designated pilotage waters.<sup>5</sup>

Coastwise (formerly called enrolled and licensed) vessels are engaged in coastal or home trade. By law, vessels that are conducting exclusively home or "coastwise" trade (i.e., trade between one port in the United States or its possessions and another port in the United States or its possessions) are under the control of the federal government. They must have a federally licensed pilot who is endorsed for the pilotage waters which the vessel plans to enter.<sup>6</sup>

Foreign vessels are those that sail under the flag of a country other than the United States. They must be piloted by a state licensed pilot.

Table 2.1 summarizes the various classes of vessels and whether a federal or state license is required.

**Federal regulation.** Federal laws governing pilotage are implemented by the U.S. Coast Guard which enforces licensure and examination standards for pilotage involving coastwise vessels. Federal regulation also provides for the denial, supervision, or revocation of federal licenses for cause.

5. Alex L. Parks, *Law of Tug, Tow and Pilotage*, Cambridge, Md., Cornell Maritime Press, 1971, p. 476.

6. Title 46, U.S. Code, Sections 8501, 8501(a), 8501(b), 8501(c), 7101, 8502.

Table 2.1  
Classes of Vessels and Pilot Requirements

<i>Vessel Type</i>	<i>Description</i>	<i>Federal Pilot Required</i>	<i>State Pilot Required</i>
Numbered Vessels or Motorboats*	Miscellaneous motor vessels (i.e., pleasure boats)	No	No
Public*	Owned by local, state, or federal governments (i.e., warships, fire boats, police boats)	No	No
Registered	Commercial vessels involved in foreign trade	No	Yes
Coastwise	Commercial vessels involved in trade between U.S. ports	Yes	No
Foreign Flag	Foreign vessels arriving at U.S. ports	No	Yes

\*These types of vessels are not required to take a pilot upon entering pilotage waters, but may do so at their discretion.

To qualify for a federal pilot's license an applicant must be a U.S. citizen, at least 21 years of age, of sound health and with no physical limitations that would affect the performance of pilot duties, agree to a thorough physical examination annually, demonstrate proficiency in using electronic navigational aids, maintain adequate knowledge of the navigational waters and regulations, and demonstrate sufficient experience in handling vessels.

Applicants must pass a written examination for licensure and for subsequent renewals at five-year intervals. A master or mate already licensed by the U.S. Coast Guard, who meets the qualifications of a pilot, does not receive a second license but has the existing master's or mate's license endorsed.

The U.S. Coast Guard estimates that there are about 7,400 individuals licensed to pilot coastwise vessels in the United States.<sup>7</sup> It is not known how many have endorsements for Hawaii pilotage waters.

7. Letter from Captain R. A. Sutherland, Chief, Merchant Vessel Personnel Division, Department of Transportation. U.S. Coast Guard to the Office of the Legislative Auditor, August 23, 1984.

Some of the more important aspects of federal pilot regulations include the following:

- . Title 46, U.S. Code, Section 8501(a) allows states to regulate all aspects of pilotage except for those specifically addressed by federal regulations.
- . Title 46, U.S. Code, Section 8501(b) gives the master of the ship the authority to employ any pilot licensed in either state to settle jurisdictional disputes over pilotage waters that are a boundary between neighboring states.
- . Title 46, U.S. Code, Section 8501(c) prohibits states from discriminating in rate fixing. The purpose is to prevent a state from granting preference in piloting charges to vessels operating within the ports of a state as opposed to those involved in interstate trading.
- . Title 46, U.S. Code, Sections 7101-7114, 7701-7705, and 8501(g) empower the U.S. Coast Guard to grant an applicant a license to pilot steam vessels for a five-year term, provided the applicant possesses the required knowledge, skills, and other qualifications mandated by law. These sections also make it unlawful for a person to hire or to serve as a pilot on any coastwise steamer without a U.S. Coast Guard license.
- . Title 46, U.S. Code, Sections 8501(d), 8502(c), and 8502(d) prohibit the states from imposing regulations, licensure, and charges on pilotage above and beyond what has been established by the federal government in regulating coastwise vessels and trade.
- . Title 46, U.S. Code, Sections 7101, 8501, and 8502 establish a milestone in the federal government's involvement in the regulation of pilotage by limiting federal control to coastwise seagoing vessels and those vessels navigating the Great Lakes. Specifically excluded were ships sailing under registry. Excluded by exception were foreign vessels visiting U.S. ports.

**State pilotage.** Twenty-four states regulate pilotage. There are approximately 1,050 state regulated pilots (excluding approximately 45 registered pilots of the Great Lakes pilotage program) operating within these 24 states.<sup>8</sup>

8. Letter from Captain Pat J. Neely, Jr., President, American Pilot's Association to Milton Migita, Office of the Legislative Auditor, August 7, 1984.

Most of the states regulate and license state pilots through a board of pilot commissioners. The pilots usually organize into individual state associations. Currently, there are 57 pilot associations within the 24 states that regulate pilotage, excluding the Great Lakes pilotage program.<sup>9</sup>

These associations are guild type organizations and, in effect, are essentially closed corporations. They often function as autonomous organizations within each state or program and have the status of individual business entities that control their own business enterprises and provide pilotage at established rates.<sup>10</sup>

All state pilot associations are members of the American Pilots' Association. This national association was established in 1884 to promote the welfare and common business of licensed state pilots and associations, to assist state pilots in their efforts to maintain certain standards in the state pilot system, to promote public safety and protect life on inland and coastal waterways, to conduct liaison with various pilotage interest groups, to gather and disseminate information pertaining to or of interest to state pilots and their associations, and to develop and maintain a positive relation with the general public.

### **Pilotage in Hawaii**

Records show that pilot services in Hawaii were provided by persons known as the "Kings Men." Prior to 1817, such duties were provided without charge to vessels visiting the islands.

In 1817, pilot fees were instituted by King Kamehameha I following the practices of other ports in the world.

Following annexation in 1900, the pilots of Hawaii were placed under the jurisdiction of the newly formed Territorial Board of Harbor Commissioners. They became territorial employees.

9. American Pilots' Association, *State Pilotage in America: Historical Outline with European Background*, Washington, D.C., Sauls Lithograph Co., 1979, pp. 99-100.

10. *Ibid.*

The pilots remained under the Territorial Board of Harbor Commissioners until statehood in 1959 when the pilots were transferred into the state civil service system. At this time, the Department of Transportation assumed responsibility for pilots within the State.

Subsequent to statehood, the pilots became very dissatisfied with the administration of pilotage operations by the Department of Transportation. They strongly supported the idea of pilots as private contractors. The pilots pointed out that the contract system had been adopted by other states and had proven to be both effective and successful.

In 1978, the Legislature enacted Act 231 which established the Board of Pilot Commissioners to license pilots and made the licensed pilots independent contractors. The purpose of the legislation was "to provide for a system of state pilotage in order (1) to provide maximum safety for vessels navigating in state waters; and (2) to maintain a state pilotage system of the highest standard of efficiency; and (3) to insure an adequate supply of qualified pilots for the discharge of their duties in aid of commerce and navigation."<sup>11</sup>

Since then, there have been only minor changes to the law. Of relevance to this report is the amendment made in 1980 to eliminate the requirement for the pilots association to maintain liability insurance to protect the State against liability arising out of or caused by acts or omissions of an association pilot.

Today in Hawaii, as limited by law, there are nine licensed state port pilots. Of the nine pilots, six are former civil service employees that made the transition to independent contractors. The remaining three pilots obtained their licenses through the board's selection process.

Eight of the licensed pilots are members of Hawaii Pilots, a state professional association affiliated with the American Pilots' Association. The ninth port pilot was a member of the pilot association up to 1984 but then broke away and is now operating as an independent contractor.

11. Conference Committee Report 15-78 on Senate Bill No. 893, Regular Session of 1978.

The eight pilots are also shareholders and directors in a corporation called the Hawaii Pilot Boats Service (HPBS), which was established to provide boat and dispatch services to the state association members and to handle administrative support services relating to pilotage. HPBS arranges for the dispatching of association pilots on a rotation system according to who is on call.

The eight pilots employ an agent who collects the fees for pilotage services performed and disburses funds for various expenses incurred as a result of pilotage operations, including the agent's fee, and HPBS. After expenses are covered, the balance is distributed to the pilots according to their workload.

**The board.** The Board of Pilot Commissioners consists of five members who are appointed by the Governor and confirmed by the Senate. The board is composed of two state licensed port pilots, two representatives of commercial marine interests, and a public representative not connected with port pilots, commercial marine interests, or public employment. The members serve without pay but are reimbursed for expenses incurred in performing their duties. Four members constitute a quorum for transaction of board business.

The board is empowered through Chapter 462A to adopt, revise, or amend rules as it deems necessary. The rules are binding upon all state licensed pilots and their employers. The board is responsible to establish examination and qualification standards for licensure and rules governing the issuance, suspension, or revocation of a state issued pilot's license.

It is also the board's responsibility to hear written complaints against state licensed pilots that it deems worthy of investigation in any area of misbehavior, neglect, or breach of rules. The board is empowered to administer oaths and compel witnesses to appear before them. The board may deny, suspend, or revoke the license of any state pilot if there is satisfactory proof that the individual violated the provisions of the chapter.

The Board of Pilot Commissioners is unique among state licensing boards in that it has the exclusive power to determine the rates charged for pilotage and the power to limit the number of state licensed pilots. The number of pilots is limited to nine.

Finally, as a general responsibility, the board has been empowered to:

“Do all things reasonable, necessary, and expedient to insure proper and safe pilotage and to facilitate the efficient administration of this chapter.”<sup>12</sup>

**Licensing requirements.** The board issues licenses for two categories: deputy port pilots and port pilots.

Deputy port pilots are authorized to pilot vessels under 500 feet in length and with a draft of 30 feet or less. To qualify for licensure as a deputy port pilot, an individual must be at least 18 years old, hold a current U.S. Coast Guard license as a master of steam and motor vessel, be endorsed by the U.S. Coast Guard as a first class pilot for Hawaii pilotage waters, submit proof of a medical examination conducted within the past 30 days, and pass the board's examination.

Applicants must also meet certain experience requirements, such as four years of ocean or coastwise service as a licensed deck officer. The experience must include at least one year as chief officer on vessels of 1,000 or more gross tons, plus experience in docking and undocking vessels of 5,000 or more gross tons. In addition, applicants must have a minimum of 50 roundtrips in and out of Honolulu Harbor to and from various piers as an observer. The board permits the substitution of certain kinds of equivalent experience.

To be eligible for a port pilot license, an applicant must serve a minimum of six months as a state licensed deputy port pilot and must file an application for a port pilot license at least 60 days prior to the date of a scheduled examination. Port pilots are not restricted on the size or tonnage of vessels that they can pilot.

In a meeting held in June 1984, the board recommended that licensure of deputy port pilots be divided into three licensing subcategories: Deputy Port Pilot I, II, and III. Progression through each subcategory requires the successful completion of the previous subcategory. The proposal establishes further restrictions on the length and draft of vessels deputy port pilots are allowed to handle as well as extends the minimum time required as a deputy port pilot from 6 months to 2 1/2 years. This proposed change is awaiting public hearing.

12. Chapter 462A-3, HRS.

**Selection of port pilots and deputy port pilots.** All applicants must pass a written examination. The written examination is made up of two parts: Part I on rules of the road, including international, inland, and pilot rules; and Part II on seamanship and shiphandling, aids to navigation, chart work, state pilotage law and rules of the board, duties and responsibilities of a state licensed pilot, rules and regulations of the Department of Transportation, Harbors Division, and rules and regulations of other appropriate agencies.

Passing score for the categories in Part I is 90 percent or better. On Part II, the passing score is 70 percent or better. An individual failing any part of the examination must retake the part or category failed. An applicant who fails to obtain a passing score on the reexamination must retake the entire examination.

Examination scores of applicants are maintained for two years if they are not selected to fill an existing or anticipated licensure vacancy.

All applicants who pass the examination must be interviewed by board members. The interviews cover the applicant's background, including his education and seagoing and shiphandling experience.

The final selection of an applicant to fill an existing or anticipated vacancy is made by the board. Their collective decision is based on each board member's evaluation of the candidate's experience, background, written examination, and personal interviews.

**Limitation on issuance of licenses.** As mentioned earlier, the board is empowered to limit the number of state licensed pilots in Hawaii. The law limited the number of licensed pilots to nine between July 1978 and December 1978. After 1978, the board is allowed to set the number of licenses to be issued after a public hearing in accordance with Chapter 91, HRS. In making any change, the board is to give primary consideration to the "public interest in assuring that there is an adequate supply of qualified pilots to safely and economically meet the requirements of commerce."<sup>13</sup> The board has not made any change to the number of licensees since the enactment of Chapter 462A.

13. Chapter 462A-5, HRS.

**Licensing renewals.** All licenses must be renewed by June 30 of even-numbered years. Renewals must be made if licensees continue to have the qualifications for licensure and remain on active service as pilots in the State. Although a current federal license is required for state licensure, it is not a condition for renewal of state licenses.

**Denial, suspension, or revocation of licenses.** Licenses may be denied, revoked, or suspended upon satisfactory proof that one or more of the following acts has been committed:

- (1) Willful disobedience of Chapter 462A or any rule adopted by the board;
- (2) Negligent loss or damage of any vessel which the individual piloted;
- (3) Physical or mental incapacity to perform the duties of a pilot;
- (4) Inactivity as a pilot in the State; and
- (5) Material violation of Department of Transportation, Harbors Division rules and U.S. Coast Guard rules.

Before punitive action can be taken, the board is required to conduct a hearing in accordance with Chapter 91.

**Vessels required to take a state licensed pilot.** Every vessel involved in trade or commerce is required to take on a state licensed pilot if they are entering or departing designated pilotage waters. Vessels exempt from this requirement are:

- . any vessel required by law to be under the direction and control of a federally licensed pilot;
- . public vessels;
- . motor boats;
- . fishing vessels issued a fishery license or appropriately endorsed registry.

**Reporting of incidents and accidents.** The board's rules require any incident of significance such as collision, oil spillage, or harbor pollution involving a vessel under the direction of a state licensed pilot to be reported to the board as soon as practicable. In addition, the pilot is required to file a written report to the board within seven working days if the incident or collision involves injury, death, extensive damage, or grounding.

**Pilotage rates.** The board is empowered by Chapter 462A to regulate pilotage rates, but it must conduct a public hearing whenever pilotage rates are increased, decreased, or altered. In setting the rates, the board is required to fix such amounts as will be a fair charge for the services rendered with due regard to operating expenses, maintenance, depreciation, return on investment for property used in the business of pilotage, and rates of pilotage in comparable ports in the United States.

The board's current pilotage rates are shown in Table 2.2. There is a basic charge per movement which varies according to the overall length of the vessel piloted. A movement is the piloting of a vessel within, into, or out of any port in Hawaii. On top of the basic charge, there may be various additional charges for dead tows or anchorage charges or detention charges. These additional charges are shown in Table 2.3.

Table 2.2  
Basic Pilotage Rates  
(As of September 1984)

<i>Overall Length of Vessel in Feet</i>		<i>Dollars Per Movement</i>
<i>Over</i>	<i>But Not Over</i>	
0	200	\$102
200	350	127
350	400	161
400	450	200
450	500	263
500	550	327
550	600	404
600	650	493
650	700	574
700	750	625
750	800	663
800	850	710
850	900	748
900	—	790

**Table 2.3**  
**Other Pilotage Rates**  
**(As of September 1984)**

<i>Type of Charge</i>	<i>Method of Determining Charges</i>
Barges	(Length plus width of barge) plus (length of towing vessel) equals pilotage charge for barges with towing vessels.  Length plus width of barge equals pilotage charge for barges shifted within a harbor without their towing vessels.
Dead Tows	(Vessels with inoperable engines)  (Basic pilotage rate) plus (50 percent of basic rate) equals pilotage charge.
Anchorage Charge	Charged for movement of vessels to and from an anchorage area.  <div style="margin-left: 40px;"> Vessels under 500 feet in length      \$100  Vessels 500 feet in length and over      200 </div>
Detention Charges	(Charged to vessels that do not depart or arrive on time. This charge also covers detainment of a pilot on a ship when not actually piloting the vessel.)  Basic pilotage rate plus \$90 per hour equals pilotage charge.
Cancellation Charge	Additional charge of \$180.
Daily Charges	(Charged to vessels requiring a pilot to accompany it between ports or requiring a pilot to stand by for it in a port that does not have a resident pilot.)  Basic pilotage rate plus \$90 per hour equals pilotage charge.  This is subject to a six hour minimum charge of \$540.

Sources: Chapter 462A-11, Hawaii Revised Statutes; and State of Hawaii, Title 16, Department of Commerce and Consumer Affairs, Chapter 96, Rules Relating to Port Pilots, Chapter 462A, Hawaii Revised Statutes, Effective July 30, 1981, Sections 16-96-3 through 16-96-6.

In April 1984, Hawaii Pilots submitted the following rate adjustments to the board:

- . 17.6 percent increase in rates for vessels less than 200 feet in length.
- . 5 percent increase in all other categories.
- . 100 percent increase in anchorage fees.
- . An additional \$5 per movement to cover overhaul and maintenance costs of pilot boats.
- . The charge of a travel fee for vessels that require the services of a pilot at a port that does not have a resident pilot. This charge will include air fare, ground transportation, food and lodging, and incidental costs.

The board approved the rate increase as submitted by the association, and the proposal was awaiting public hearing at the time of the writing of this report.

**Lien for pilotage fees.** Every licensed pilot has a lien for pilotage fees upon any vessel that is liable to the pilot.

**Accounting of pilotage fees and payment to the board.** Each quarter, Hawaii Pilots is required to submit to the board a report of vessels that have been piloted by its individual members and all moneys received by the pilots as fees. The board may impose a 0.5 percent charge on the moneys collected by the pilots for the operations of the board.

The law allows the pilots to form a nonprofit association to make arrangements for efficient dispatching and pilotage services. This function is performed by Hawaii Pilots.

## Chapter 3

### EVALUATION OF THE REGULATION OF PILOTAGE

This chapter contains our evaluation of the regulation of pilotage under Chapter 462A, Hawaii Revised Statutes. It includes our assessment of the need for regulation, the scope of regulation, and the effectiveness and efficiency of operations under the Board of Pilot Commissioners.

#### Summary of Findings

1. There is a need for regulation of pilotage. However, regulation by the Board of Pilot Commissioners has not met the purposes intended by the Legislature.

2. Chapter 462A, HRS, creates a monopoly by empowering the board to set pilotage rates and to limit the number of licenses to nine. The board has abused these powers by acting in the interests of the pilots and not in the interests of the people of this State.

3. The board is not an appropriate body for regulating pilotage rates. Its rate setting operations have placed pilot board members in serious conflict of interest situations.

4. The board's licensing program is deficient in several respects. The board's examination largely duplicates that given by the U.S. Coast Guard for federal licensure. Other board requirements are vague, subjective, subject to charges of discrimination, and restrictive.

5. The board has not acted to protect the interests of the public in cases of discipline and enforcement. Thus, there is no assurance that all currently licensed pilots are sufficiently competent.

#### The Need for Regulation

The practice of pilotage presents significant potential dangers to life, property, and the economic well being of a community dependent on maritime commerce.

Serious harm can result from improper pilotage. Some of the consequences of improper pilotage are vessel groundings and collisions with other vessels or objects in or around pilotage waters. A vessel grounded or sunk in the wrong place can block a harbor and prevent the free transit of commerce in and out of a community. Such accidents could result in significant economic impact in Hawaii since some of the islands have only a single port facility for commercial maritime traffic.

An incompetent pilot can place the lives of both crew and passengers in jeopardy. In addition to losses or damages to ships, cargo aboard can be lost or damaged as well. Improper pilotage can also result in damage to major structures such as piers, wharfs, bridges, and navigational aids.

Another significant hazard is the possible spillage of contaminating products such as oil. Such spillage could have grave environmental and economic impact on the State.

Accidents are not uncommon. Table 3.1 presents data on the extent nationally of accidents due to pilotage error. The data show that there is substantial danger even with licensing. In 1980, the majority, or 66 percent, of pilots at fault were state licensed pilots.

**Table 3.1**  
**Accidents Due to Personal Fault of Pilot\***  
**United States**

<i>Year</i>	<i>State Licensed Pilots</i>	<i>Federal Licensed Pilots</i>	<i>Total</i>
1978	116 (71%)	48 (29%)	164 (100%)
1979	139 (67%)	69 (33%)	208 (100%)
1980	78 (66%)	40 (34%)	118 (100%)

\*Criteria for recording an accident by the U.S. Coast Guard is (1) death; (2) injury if the individual is incapacitated for 72 hours or longer; and (3) damage that is \$25,000 or greater.

Source: U.S. Coast Guard, Merchant Marine Investigations, Statistics Section, Washington, D.C.

In 1980, the U.S. Coast Guard changed its reporting format for accidents. It discontinued the determination of fault and presented data on total number of accidents per year in waters under state jurisdiction or under federal jurisdiction. Table 3.2 presents this data.

Table 3.2

## All Accidents with Port Pilots Aboard

<i>Year</i>	<i>State Licensed Pilots</i>	<i>Federal Licensed Pilots</i>	<i>Total</i>
1981	213 (39%)	332 (61%)	545 (100%)
1982	128 (25%)	390 (75%)	518 (100%)
1983	65 (12%)	460 (88%)	525 (100%)

Source: U.S. Coast Guard, Merchant Marine Investigations, Statistics Section, Washington, D.C.

If data from Tables 3.1 and 3.2 are extrapolated and compared, it can be seen that vessels with federal pilots were involved in more accidents. This is probably because, in total numbers, there are more federally piloted vessels. However, it seems clear that where blame can be pinpointed, the rate of accidents is higher for state licensed pilots.

U.S. Coast Guard officials report that Hawaii pilots have been found negligent in one accident in the past four years.<sup>1</sup> Sources outside of the U.S. Coast Guard report at least one other major accident. Because of the many dangers posed by the practice of pilotage, it should continue to be regulated. However, the Board of Pilot Commissioners is not the appropriate agency in which to vest responsibility for ensuring public protection against improper pilotage.

As will be shown in this report, regulation by the board has not accomplished the objectives intended by the Legislature of providing for the maximum safety of vessels navigating in state waters, or maintaining a highly efficient state pilotage system, or insuring an adequate supply of qualified pilots. On the contrary, board operations have contravened the attainment of these objectives by inadequate review and follow up of accidents and violations of board rules, by failing to conduct critical and objective analysis of requests for increases in pilotage rates, and by restricting the number of pilots in the State.

1. Interview with Lt. Jonathan Surubbi, Chief of Investigations Section, Marine Safety Division, U.S. Coast Guard, 14th U.S. Coast Guard District, Honolulu, October 18, 1984.

## Scope of Regulation

Although regulation is clearly warranted, there are several serious problems with the current regulation of pilotage. Of particular concern is the extent of the board's power over pilotage and its abuse of this power.

**State authorized monopoly.** Chapter 462A sanctions a state monopoly in pilotage. The Board of Pilot Commissioners is the only state professional and occupational licensing board that is empowered to limit the number of licenses to a specific number, which currently is nine, and to set rates for the occupation. Without Chapter 462A, the board's exclusive control over the practice of pilotage would be in clear violation of both federal and state antitrust laws.

The restriction on the number of licensees has kept the number of pilots in the State at an artificially low level. Rate setting by the board has resulted in government maintained price levels instead of pilotage charges based on market forces. The net effect is to guarantee a higher level of income to pilots in the State while increasing costs to the public. There is little evidence that pilots warrant this special treatment which is granted to no other profession or occupation in Hawaii.

Board members and pilots defend this state authorized monopoly by saying that it is necessary to attract and retain qualified pilots. They say that Hawaii must keep pay levels comparable to that paid to pilots in other states. A second argument extended is that most states have similar provisions in their laws and that opening up licensure would result in chaos in state pilotage.

There is little evidence to support either of these arguments. It does not appear that qualified pilots are in short supply or that regulation by the board has resulted in attracting and retaining qualified pilots. Moreover, this is a misperception of the proper role of a licensing board, which is to license for competency and not to set pay incentives for licensees.

It should be noted that Alaska has no restrictions on the number of pilots it licenses. This has not resulted in the chaos predicted by some, and to date, it does not appear to have had any impact on Alaska's ability to attract qualified pilots.<sup>2</sup>

2. Interview with Gerald Wilkerson, Division of Legislative Audit, Juneau, Alaska, November 16, 1984.

The concentration of monopolistic power in the hands of a board of five commissioners has not made the board more conscious of its responsibilities to the general public. The board is strongly influenced by the two pilot board members and by Hawaii Pilots (HP), the professional association that represents eight of the nine licensed pilots in the State. Most of the board's decisions further the protective and financial interests of the pilots.

*Abuses in rate setting.* Chapter 462A gives the board the authority to increase, lower, or alter pilotage rates after a public hearing and due notice to specified individuals in the maritime industry. The board is required to set the rate at a "fair charge" for services rendered. In establishing the fair charge, the board is supposed to consider necessary operating expenses, maintenance, depreciation, and return on investment of property used, and comparable charges at other U.S. ports.

In carrying out its rate setting responsibilities, the board may conduct its own investigation or use state auditors or private certified public accountants. The board is further authorized to conduct audits of the financial records of port pilots and the pilot association. Rate increases may be requested by any individual, association, or company.

Since the board was established in 1978, all requests for rate increases have been proposed and supported by HP. Table 3.3 outlines the proposals made by HP and the board's actions. HP first proposed an increase in June 1981. This proposal was modified by the board in July 1981 and approved for public hearing. A compromise proposal was finally adopted in October of that year. HP submitted a second request for a rate increase in April 1984. This proposal was approved by the board and is now awaiting public hearing.

In submitting the 1981 request, HP stated that pilots had not received an adjustment since 1977 and that the rates were inadequate. The adjustment was said to be needed for the following reasons:

- . To accommodate increased expenses due to increased workload and inflation as the pilots could no longer support their operating expenses and to achieve an adequate return on investment.
- . To bring each pilot's gross income closer to the accepted industry standard. Pilots in comparable mainland ports were said to be earning \$20,000 to \$30,000 more than Hawaii licensed pilots. HP said that each pilot earned \$63,000 after expenses in 1979 and \$78,000 in 1980.

**Table 3.3**  
**Requests for Rate Increase for Pilotage**  
**1981-1984**

<i>Length of Vessel</i>	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>	<i>G</i>	<i>H</i>	<i>I</i>
	<i>Base Rate 1977</i>	<i>Pilots Original Proposal 06/26/81</i>	<i>Percent Increase Over 1977 Base</i>	<i>Board Revised Proposal 07/06/81</i>	<i>Percent Increase Over 1977 Base</i>	<i>Compromise Approved 10/30/81</i>	<i>Percent Increase Over 1977 Proposal</i>	<i>HP Current Proposal 04/19/84</i>	<i>Percent Increase Over 1981 Base</i>
0-200	80	120	50	110	38	102	28	120	18
200-350	100	150	50	140	40	127	27	133	5
350-400	125	190	52	180	44	161	29	169	5
400-450	155	235	52	225	45	200	29	210	5
450-500	205	310	51	300	46	263	28	276	5
500-550	255	385	51	375	47	327	28	343	5
550-600	315	475	51	465	48	404	28	424	5
600-650	385	580	51	570	48	493	28	518	5
650-700	450	675	50	665	48	574	28	603	5
700-750	490	735	50	725	48	625	28	656	5
750-800	520	780	50	770	48	663	28	696	5
800-850	555	835	50	825	49	710	28	745	5
850-900	585	880	50	870	49	748	28	785	5
900-over	620	930	50	920	48	790	27	830	5
<b>Separate Charges</b>									
<b>Anchorage</b>									
Under 500'	90	100	11	100	11	100	11	200	100
Over 500'	90	200	122	200	122	200	122	400	100
Travel Fee	-	variable				-		variable	
Boat Fee	-	-		-		-		5	100

The two pilot board members had been instrumental in developing the rate proposal. They were part of a three member Rate Adjustment Committee established by HP to devise the proposal. The HP committee was assisted in this task by a mainland consultant who had succeeded in getting a rate increase for the Alaska pilots.

The proposed increases in pilotage charges are shown in column B of Table 3.3. HP stated that although the request represented a 50 to 60 percent increase in rates, it still fell short of rates assessed at comparable ports.

Although the executive secretary of the Department of Commerce and Consumer Affairs (DCCA) informed the board that it could retain any state auditors or private accountants to assist it in reviewing the rate adjustment request, it chose not to do so. Instead, the board decided to rely on HP. The board said that HP had provided sufficient factual and relevant data for the board to conduct a fair and thorough investigation.

The board allowed HP to be its sole source of information on what constitutes a fair charge and its relation to operating expenses, maintenance, depreciation, and return on investment. HP's own minutes made note of the fact that the board would "not be soliciting information from other associations or commissions regarding rates. They will instead await the presentation from us (the pilots) and do any investigation based on that information."<sup>3</sup>

Consequently, no independent assessment was made of the accuracy and adequacy of the information presented by HP, and no audit was performed of the financial records of HP or of any of the pilots. As a result, even as some of the board members approved the rate proposal as a "fair charge," they had no idea of how much the pilots were actually earning. This information should have played a basic part in determining what was a fair charge.

In July 1981, the board met and discussed the rate proposal introduced in June (See Table 3.3, Columns B and C). The board made a few adjustments to the original proposal but these were deletions that represented only 1.3 percent of the total proposed revenue requirements submitted by the HP or a \$10 reduction in each rate

3. Minutes of the Hawaii Pilots Association, May 14, 1981, p. 2.

category (See Table 3.3, Columns D and E). After some discussion, the board decided to approve the rate proposal and schedule it for public hearing.

The State Consumer Advocate testified in a public hearing that the methodology used by HP in justifying the increase was deficient in several ways. It did not project growth or include any projected revenues from delays and cancellations. He stated that although HP's proposal said the increase would allow each pilot to earn \$90,000 annually in 1981, he determined that the actual amount each pilot would earn would be \$135,700 per year.

The Consumer Advocate recommended that: (1) the proposed rates be suspended until a full analysis is completed; (2) the board engage the services of an *independent* certified public accounting firm to conduct a financial and managerial audit of Hawaii Pilot Boat Service Inc., HP, and each port pilot's corporation; and (3) the pilots initiate a cost-of-service study to determine the proper basis for formulating each component of its costs so that the commission can develop cost-based rates.

In closing his testimony, the Consumer Advocate told the board, ". . . your decision whether to approve, suspend, dismiss or revise the proposed rates must be made on the basis that the pilots and their association have persuasively presented their justifications, and that they have carried their burden of proving their rates to be just and reasonable. Consumer Advocate is of the opinion they have not done so."<sup>4</sup>

In retrospect, the findings of the Consumer Advocate are confirmed in the following respects:

- . HP's proposal did not consider any growth in operations. Actual data for 1981 indicates that workload increased by 3.1 percent over 1980.
- . HP's proposal did not take into consideration revenues from delays and cancellations thereby underestimating income to the pilots.
- . Actual support operations costs have been approximately \$380,000 to \$390,000 annually since 1980, substantiating the estimate of \$380,000 by the Consumer Advocate. HP had estimated support operations costs at \$520,520 annually, an overestimation by 33.5 percent.

4. Testimony of the Consumer Advocate before the State of Hawaii Board of Pilot Commissioners, September 4, 1981, p. 8.

HP stated that pilots needed a 50 percent increase to bring up their annual incomes to a "reasonable" level of \$90,000. However, the rate increase of 28 percent which was eventually approved by the board gave each pilot an annual gross income of \$88,500. An increase of 50 percent would have resulted in an annual income close to the Consumer Advocate's estimate of \$135,000.

Although the Consumer Advocate raised these issues, the board failed to address them at subsequent meetings. The board's rate setting process has not improved since 1981. It still relies on HP for information. On April 19, 1984, the board approved and scheduled for public hearing a request for rate increase from HP. The proposal was approved even though HP submitted no documentation to support the rate increase proposal. A maritime industry board member noted his concern on the absence of supporting information.

The pilot board members indicated that the increase was minimal. However, this is not quite correct. The proposed increase is shown in columns H and I of Table 3.3. It would mean a 5 percent increase in most of the categories. However, there would be a 17.5 percent increase for vessels under 200 feet and a significant increase in separate charges. Anchorage fees would increase 100 percent for vessels under 500 feet in length as well as a 100 percent increase for vessels over 500 feet. New charges for pilot travel expenses and a separate boat fee would be instituted.

Based on actual expenditures for 1983, the separate charges would conservatively increase anchorage revenues by \$11,400 and free approximately \$41,000 formerly earmarked to cover the annual expenses of travel and boat costs.

Since support operations costs have been relatively stable, the estimated \$53,000 annual savings could be distributed as additional income to the individual pilots.

It is clear that the proposal to increase rate is intended to benefit the pilots and not the general public. The primary purpose of the rate proposal from HP is to bring the pilots' income to what they consider to be an adequate level. This purpose is clearly revealed in HP's minutes of September 20, 1982, which said:

"A discussion followed of the best strategy to follow when approaching the Board for an increase in pilotage compensation. . . . The consensus was that pilot income must be the first consideration in setting the rate tariff. Support services expense must be covered, but those expenses should not be allowed to dictate the pilot's incomes."<sup>5</sup>

**Possible antitrust violations.** In reviewing pilotage rates, it came to our attention that the pilots may be in violation of federal antitrust laws relating to price fixing. The pilots' logs show that they charge the same rate for exempt vessels or vessels requiring a federal license as they do for those vessels requiring a state license.

The pilots, who are independent contractors, agreed to charge the same rate to all vessels of the same length regardless of whether they are under state or federal jurisdiction. In doing so, they may be in violation of Title 15, U.S. Code, Section 1, relating to restraint of trade and resale price maintenance.

Unlike vessels subject to Chapter 462A, a pilot operating under a federal license is not required to charge according to a specified rate. The only apparent restriction the federal government has on pilotage charges is that the charge cannot be more than the customary or legally established rate charged in the state that the pilotage is performed. While state pilotage rate setting is immune from antitrust activities, there is a question that this immunity extends to vessels under federally licensed pilotage.

The staff of the Federal Trade Commission has indicated that there is an appearance of an antitrust violation and that additional study may be warranted.

### **Inappropriate Assignment of Regulatory Responsibilities**

It is apparent that the board is not the proper body for reviewing and setting rates. The board's composition prevents it from analyzing such rates objectively. With two pilot board members, two industry representatives, and one public member, the board is a partisan battlefield. In the matter of rate increases and

5. Minutes of the Hawaii Pilots, September 20, 1982.

other items affecting the interests of pilots, the two pilot board members vote together. The issue is often deadlocked as the two industry members usually vote together, and the public member is sometimes absent.

During deliberations on proposed increases in 1981, the two port pilot members submitted written comments to the board supporting the position of HP and criticizing the comments made by the Consumer Advocate. They questioned the need for involvement by the Consumer Advocate. The industry member also submitted written comments to the board on his reasons for voting against the rate increases. He noted, "I believe the crux of the matter is this. In direct testimony before this commission the attorney for the Pilots Association stated that originally the Pilots wanted to increase the pilotage rates so as to render each Pilot an annual income of \$100,000. This amount was apparently felt to be excessive so their proposal was scaled down so as to render only \$90,000 per year for each Pilot. I feel that this approach to rate settling (sic) is improper."<sup>6</sup>

The rate that was finally approved was based on a compromise proposed by the remaining industry member and approved by the two port pilots. The public member was absent.

The balance of power is on the side of the pilots. Pilot board members are usually joined at meetings by the business agent for HP and sometimes the attorney for HP. Other port pilots usually attend the meetings as well. At one meeting on rate increases, all nine of the licensed pilots were in attendance. During the period when a pilot board member was chairman of the board, these observers would be given the opportunity to participate in board discussions on rate increases.

The position statement submitted by the pilot board members; their participation and interest in HP, the organization submitting rate requests; and their advocacy of the pilots' position raise questions as to their objectivity in reviewing rates.

The marine industry members may have the knowledge and background necessary for reviewing the rates, but their commitment to the public might also be questioned. Additional costs due to pilotage rate increases would merely be passed

6. Written testimony by K.H. Bowman, Commissioner to the Board of Pilot Commissioners, October 30, 1981.

on to the public. The public member has little or no experience in reviewing rate proposals, and there is no requirement that he be knowledgeable in this area.

In addition, the time needed for a proper review of rates would conflict and be burdensome for board members with other full-time occupations. Staff for such a task is also inadequate. The board's executive secretary is its only staff. The executive secretary also serves as staff to other boards in DCCA. Moreover, the executive secretary has neither the time nor the expertise needed for a thorough review of rate proposals.

There is doubt whether rates should be set at all. There is no issue here of consumers who are not able to protect themselves or who are at a disadvantage in dealing with providers of the service. In this case, the direct consumers are the shipping lines and their agents. They would be quite able to negotiate with pilots on rates without state intervention.

**Conflicts of interest.** The State Code of Ethics for public officers and employees prohibits employees or members of boards and commissions from taking official actions affecting directly any business or undertaking in which the employee or board member has a substantial financial interest or to secure any unwarranted privileges for themselves.

Because of the small number of pilots in the State, the requirement that two of the five board members be licensed port pilots and the extent of the board's powers, conflicts of interest have been inevitable.

The two pilot board members are members of HP as well as shareholders and directors of HPBS, a corporation consisting of eight of the nine licensed pilots in the State. One pilot board member was also an officer of HPBS while on the board. The majority of operating costs incurred by pilots go to HPBS which owns and maintains pilot vessels and other items needed for pilotage. After HPBS expenses are covered, the pilots' agent distributes funds to pilots according to a schedule.

Corporate documents show that each pilot owns 2,000 shares in HPBS. The buy-in cost for a new pilot is estimated to be \$30,000.

Clearly, any two pilot board members selected from HP would be voting on issues with direct impact on their financial interests. However, to achieve a quorum of four required by the board, the pilot board members must participate in discussions and vote on issues that have a direct financial impact on HPBS. In the past, the two pilot board members have participated in the following activities:

- . In 1984, the pilots on the board voted on rule changes that would create new fees for travel and pilot boat operations as well as increasing pilotage and anchorage fees. The additional fees would have a direct impact on HPBS operating costs.
- . In 1981 and 1982, pilots on the board participated in discussions and decisions on rate adjustments submitted by HP. At the same time, the two pilot board members were assigned by the president of HP to a Rate Adjustment Committee. This committee met with the business agent of the Alaska pilots for assistance in developing and presenting the association's proposed rates to the Board of Pilot Commissioners.
- . The pilot board members who were actively involved in developing the written examination also conducted oral interviews of applicants in 1980 and 1984 and selected applicants to fill deputy pilot vacancies. The newly licensed pilots then become members of both HP and HPBS.

### **The Licensing Program**

The board's licensing practices are seriously deficient. The board lacks objective and valid licensing standards; its written examination is of questionable value; its selection practices are subjective, based on irrelevant criteria, and without any documentation.

These problems are compounded by allowing the board to set a limit of nine licensees. Since the statute was enacted in 1978, only three applicants have been licensed as a result of vacancies in the number of available slots. Although the board has the power to increase the number of licensees, it has chosen not to do so. This means that the board is denying licenses to applicants who may be just as competent or more competent than those who are already licensed.

Because there are a number of applicants, all equally qualified, the board makes its decisions on the basis of irrelevant or arbitrary factors. The board's selection decisions have no bearing on an applicant's ability to pilot a vessel, and they are not in the interests of the general public.

**The written examination.** All applicants must first pass a state written examination. The examination consists of two parts, one part on rules of the road and the second on seamanship and shiphandling. The written examination adds little to the protection already provided by the U.S. Coast Guard's federal licensure program for pilots.

As a prerequisite for state licensure, applicants must possess a current U.S. Coast Guard master's license for a steam or motor vessel or any gross tonnage. The applicant must also have U.S. Coast Guard endorsements as a first class pilot for all deep draft harbors in which the State provides pilotage services. To acquire a U.S. Coast Guard master's license, applicants must pass a federal examination.

An applicant for state licensure, therefore, must pass two sets of examinations: first, to obtain a master's license and federal pilot's endorsement; and secondly, the state pilots examination.

The U.S. Coast Guard reviewed the written state pilots examination, comparing it against the U.S. Coast Guard examinations. The U.S. Coast Guard found that the examinations were substantially the same in many areas. The section on the rules of the road in the federal examination is somewhat more difficult than the state examination. The state examination does cover state pilotage laws which are not included in the federal examination, and it contains some practical or situational local knowledge questions. However, some of the questions are out of date.

The U.S. Coast Guard recommended that redundant portions of the state examination be eliminated since the U.S. Coast Guard pilot's license is a prerequisite for state licensure and that the local knowledge portion of the examination be expanded.<sup>7</sup>

7. Letter from the U.S. Department of Transportation, U.S. Coast Guard, Marine Safety Office, Honolulu, to the Office of the Legislative Auditor, dated September 12, 1984.

**Arbitrary selection practices.** Applicants who pass the written examination are placed on an eligibility list until there is a vacancy. They remain eligible for two years from the date of the examination. After that, they must reapply and start all over again.

Should there be a vacancy, applicants must undergo an interview by board members. Although the interviews play a large part in the decision, the board has no criteria or standardized questions or procedures for the oral interview. As a result, the final selection is based largely on subjective factors that have little to do with the applicant's ability as a port pilot.

In June 1984, the board conducted oral interviews to select a deputy pilot to fill a vacancy. The board was supposed to use an evaluation form to reduce some of the subjectivity in the oral interviews. However, the forms served only as a guide, and board members asked questions which were not on the form. The questions asked by the board have no basis in either the statutes or the rules, and they have no relevance to competence as a pilot. Among these were questions about the applicant's willingness to work at reduced wages, the applicant's commitment to staying in the islands, and the applicant's age. Interviews with board members and tapes of the board's oral interviews of applicants reveal the following:

- . Board members reported that they were concerned about an applicant's willingness to work at reduced wages. The applicant was questioned and informed that he would be receiving reduced wages for most of three years. The required time as a deputy before promotion to full pilot is six months, although the board is considering changing this to two and one-half years. Payment of reduced wages to deputy pilots is a policy of HP, not of the board.
- . An applicant was questioned on whether he lived in Hawaii and his length of residence here. Some board members reported that they were concerned about the applicant's commitment to staying in the islands. The applicant was finally eliminated from consideration, because the board felt that he did not have the "commitment" to piloting if things did not go well for pilots in Hawaii.

- . The age of another applicant appeared to play a significant role in his rejection by the board. The board was aware that the use of age as a basis for rejection is discriminatory and invalid. One board member asked the executive secretary about the role of age in the selection process and was informed that it had no role at all. The applicant's physical condition was then considered as a basis for denial. However, there was no suggestion that the applicant's physical condition be assessed to determine the applicant's capability for piloting. There is no evidence of incapacity as the applicant is currently a pilot in the San Francisco Bay area. During the discussion, one of the board members admitted that if selection was to be based on experience, then it was clear that this particular pilot was the most qualified. He added, however, that if the concern is how the association operates and how long the pilot will pilot in Hawaii then another selection may be necessary.
- . Finally, the board solicited from HP its choice on who should receive licensure. The candidate finally selected was one of two recommended by HP.

In June 1984, the board selected one of four applicants to fill the deputy port pilot position. Although the pilot evaluation forms were supposedly used in making this decision, these were not retained.

**Rules inadequate for ensuring competency.** Although the rules are restrictive, they do not restrict on the basis of competency. This is readily apparent from reviewing the board's rules on deputy port pilots.

The rules require all applicants to serve as deputy port pilots for six months prior to promotion to full pilot. Other than time spent as a deputy port pilot, there is no difference between the requirements for deputy port pilots and port pilots. There are no standards of performance as a deputy port pilot before promotion to full pilot.

There is no recognition of the skills necessary for the pilotage of longer, deeper draft, and heavier vessels. And, there are no requirements for deputy port pilots to report on the different types of vessels piloted or conditions that may have been encountered. Thus, the board does not have the information necessary for evaluating a pilot's training and progression in the occupation, and it has no indicators for determining if promotion to full pilot is warranted. Consequently, there is no assurance that all licensed pilots are fully qualified.

To make matters worse, the board has deferred to HP in its promotion decisions. It has allowed HP to determine qualifications for promotions. The board accepted unstandardized and unverified evaluations of deputy pilots submitted in the past by the pilot organization. No documents verifying performance were submitted to the board except for the pilot's logs. In June 1981, the board considered the promotion of two deputy pilots to full pilot status. Although the board had stated that there would be an examination evaluating their performance, the board had no criteria and the examination was actually an oral interview of the two deputy pilots.

HP presented an oral statement attesting to satisfactory performance, but no documentation was submitted. Three months later, one of the two pilots promoted ran a vessel aground at a port in Kauai.

In June, the board adopted proposed changes to the regulations. One major change proposed is to restructure the deputy pilot classification by establishing three deputy pilot categories. This would limit the length, draft, and type of vessel each deputy category is allowed to pilot and extend the total time required as a deputy pilot from six months to two and one-half years. Table 3.4 provides a breakdown of the restrictions and minimum time proposed for each of the three categories.

Table 3.4  
Proposed Deputy Port Pilot Classification  
(As Adopted by the Board of Pilot Commissioners on June 12, 1984)

<i>Deputy Port Pilot</i>	<i>Current</i>	<i>Proposed</i>		
		<i>I</i>	<i>II</i>	<i>III</i>
Allowed to Pilot:				
Vessels authorized length	Under 500'	Under 500'	Under 600'	Any length
Vessels authorized draft	Under 30'	Under 30'-6"	Under 30'-6"	Any draft
Vessels exempted		Tanker and passenger	Tanker and passenger	Tanker and passenger
Minimum Time in Each Category	6 months	6 months	12 months	12 months
Total Time Required	6 months			2 1/2 years

The proposed rule is significantly more restrictive as it extends the total time as a deputy port pilot from six months to two and one-half years. However, it provides no greater assurance of competency since there are still no performance standards or requirements for experience on different types of vessels under varying conditions at different ports.

The pilots defend the proposed rule saying that a prolonged orientation period of two and one-half years is needed to insure that an individual is thoroughly familiar with Hawaii pilotage. However, without more specific performance criteria or identification of specific skills needed, the almost two years of additional time as a deputy at reduced pay serves primarily as a restrictive device and as a disincentive.

The proposed rule would place Hawaii in a distinctively disadvantageous position in attracting qualified pilots as there are no provisions for reciprocity, or waivers, or for credit due to experience. All applicants must begin as deputy port pilots with restrictions for two and one-half years. There is no provision for individuals who are already knowledgeable or who have demonstrated an ability to pilot in Hawaii waters. Even experienced pilots must begin as apprentices.

This presents an obstacle to any experienced pilot coming to Hawaii since it requires that the pilot begin again as an apprentice for an extended period of time. This is contrary to the intent of the original legislation, which was to insure an adequate supply of qualified pilots in Hawaii. Instead, it stifles the movement of experienced pilots to Hawaii and attracts primarily those newly entering the pilot profession. Some board members have stated that if they find an individual who is particularly skilled or experienced, the board may make an exception to the rule. However, the current and proposed regulations are explicit on the minimum time required as a deputy port pilot, and there are no provisions for the board to make an exception.

The absurdity and restrictiveness of the current and proposed rule is demonstrated by the following example. A retired pilot who piloted in Hawaii for 20 years and also served as a chief pilot of the State for a number of years would still have to reapply, wait for a vacancy, and if selected, would have to serve as a deputy for six months before becoming a full pilot again. Under the proposed rule, he would have to serve a two and one-half year apprenticeship.

The extension of time to two and one-half years would benefit primarily those pilots already licensed. Since pilotage rates are set regardless of whether the vessel is piloted by a deputy or full pilot, an extended time at reduced wages would mean more income to the full pilots since all income is shared.

### **Deficiencies in Discipline and Enforcement**

The major purpose of state licensure is to "provide maximum safety for vessels navigating in state waters."<sup>8</sup> This purpose is largely contravened by the board's failure to take timely and appropriate disciplinary actions against pilots who are incompetent, its selective enforcement of the law and the rules, and its failure to develop adequate rules for disciplinary actions.

The following case illustrates the problems in discipline and enforcement.

In September 1981, a pilot licensed both by the U.S. Coast Guard and the State ran a coastwise vessel aground at Kauai. Since the pilot was piloting the vessel under his federal license, the U.S. Coast Guard immediately opened an investigation into the accident. In November 1981, the U.S. Coast Guard determined that the pilot was negligent and suspended his federal license for two months.

No complaint was filed by the injured party or any of the board members. A complaint was initiated by staff of DCCA. One of the pilot board members was highly critical of the independent action taken by the staff.

A representative of the shipowner of the grounded vessel approached the board voicing concern about the pilot continuing to work on his ships. The pilot board members did not respond as impartial board members but as pilots by saying that the shipowner did not have a choice in pilots because "the pilots work on a pool or rotation system so that their income can be shared equally. Therefore, *the pilots* may not be able to grant Mr. \_\_\_\_\_ the privilege of selecting a pilot under their rules."<sup>9</sup> [Emphasis added.]

The board decided to allow HP to work out the issue. It said that if the shipowner was not satisfied, he could make a formal request for "review and determination."

8. Conference Committee Report 15-78 on S.B. No. 893, Senate Journal, 1978, p. 754.

9. Minutes of the Board of Pilot Commissioners, October 30, 1981, p. 3.

In January 1982, the representative informed the board that the company would no longer accept the pilot in question for pilotage aboard its vessels. Instead of taking action, the board again decided to close the matter.

In discussing this problem, an industry board member expressed concern that the pilot could continue to pilot under his state license even though his federal license had been suspended.

In March 1982, the board again discussed the complaint filed against the pilot. The industry board members again expressed concern about the "loophole" enabling a pilot to continue to operate when his federal license was suspended. They suggested that legislation should be introduced to prevent this from occurring. The pilot board members opposed such legislation and supported the concept of maintaining the separation between the federal and state licensure. The board then decided to dismiss the complaint, subject to a written opinion from the State Attorney General on whether the board had jurisdiction in the complaint.

A year later, in March 1983, the board was notified that the Attorney General's office had determined that they had jurisdiction to revoke or suspend the license of the pilot involved in the grounding of the vessel at Kauai in 1981, even though he was piloting under his federal license. The board decided to defer action until the board could review the case.

At its meeting on November 22, 1983, the board decided to dismiss the case against the pilot. The board was informed that the pilot in question had resigned from HP on October 20, 1983. On this basis, the board assumed that the pilot would no longer be actively piloting and the board gave the individual until January 20, 1984, to decide what he was going to do. The individual decided to continue to pilot as an independent contractor.

On March 15, 1984, HP filed a complaint with DCCA questioning the competency of the independent pilot. The organization enclosed two letters from shipowners pointing to the pilot's substandard performance. Both letters were dated prior to the pilot's resignation from HP in October 1983. The board finally initiated an investigation in April 1984.

The board's failure to conduct an unbiased, comprehensive, and timely review of a serious incident is irresponsible.

*First*, although board members knew about the accident (some on the same day it had occurred) no action was initiated by the board.

*Second*, the board ignored its own rule requiring accidents of significance to be reported in writing to the board within seven working days.

*Third*, the pilot board members acted in the interests of the profession rather than the public by failing to take positive action when they were notified of the accident, by opposing the initiation of the complaint by DCCA staff, by advocating HP's position when the cruise company expressed concern about the pilot's competence, and by opposing the closing of the "loophole" in the dual licensure program.

*Fourth*, even after the cruise company expressed concern about the competency of the pilot, the board failed to take action, deciding instead to refer the company to HP to "work things out." As before, the board relinquished its authority to HP.

*Fifth*, the one year delay for a legal opinion is unconscionable. All parties share equal blame for the delay. It took over three weeks for the letter requesting a written opinion to be forwarded to the Attorney General's office. The Attorney General's office took eight months to reply. Finally, it took another three months for the Attorney General's reply to be submitted to the board. This placed the board in an awkward position since they had already sent the pilot a letter almost a year earlier informing him that the case had been tentatively dismissed.

*Sixth*, some board members based their decision to dismiss the complaint on the pilot's resignation from HP, thinking that the pilot would no longer continue piloting once he resigned from the professional association. While this reveals their view of the importance of HP, it has little to do with assessing the pilot's responsibility for the accident.

It is important to note that interest and concern by the board and HP developed only after the pilot in question began to operate and succeed on his own. HP questioned the pilot's competency only after the pilot resigned from the organization even though letters of complaint from shipowners were submitted to the organization before the pilot's resignation. It should also be noted that the board dismissed the concerns of the cruise company when it was presented to them in January 1982 but accepted it when HP presented it in March 1984.

Meanwhile, the case continues. At its meeting in October 1984, the board initiated a complaint requesting DCCA to investigate whether the pilot in question is actively piloting as required by Chapter 462A. If the pilot is not in active service, it would be grounds for revocation of the pilot's state license.

Ironically, the board has never defined what constitutes active service as a pilot. When an applicant for a deputy pilot position once asked the board what constituted active service as a pilot, the board told him that it was pretty loose and that there was nothing in writing. The chairman of the board stated that it was basically left to the discretion of the board. The board has never established any standards to define active service and it appears to be selective and subjective in applying it to the pilot in question.

While the board and HP continue to pursue the independent pilot, it has ignored violations by two HP pilots who have damaged piers and also failed to report these accidents. This is in violation of Section 16-96-46 which requires the pilot to "file a written report to the board within seven working days if the incident or collision involved injury, death, extensive damage or running aground."

The board has not investigated or noted either of the following incidents:

- . An HP pilot and a board member collided with a pier twice at Nawiliwili Harbor on Kauai. Repair to the dock was \$175,000 not including consultant fees. This accident was never reported to the board nor the U.S. Coast Guard which has a \$1,000 fine for failure to report major accidents. The damage, according to harbor officials, was quite extensive and readily apparent.
- . On July 25, 1984, an HP pilot collided with a dock at Honolulu Harbor. The U.S. Coast Guard estimated \$15,000 damage to the ship and about \$500,000 to the dock. This accident was never reported to the board by either the pilot or the deputy pilot who was accompanying him.

The board has paid little attention to monitoring accidents, even those that are extremely serious and of substantial magnitude. It is unlikely that the pilot board members and HP could be unaware of these accidents as there are only nine pilots in the State. Since these accidents are costly to the State, they should be investigated to determine if the pilots were at fault and whether disciplinary action should be taken.

As it is, the State and shipowners have no recourse against damages incurred by pilots. In 1980, the law was amended to delete the requirement for the pilot association to maintain liability insurance to protect the State. Thus, even should the pilot be determined to be negligent, it could be difficult for the injured party to collect as pilots do not have to carry liability insurance to cover the cost of damages incurred.

This was the case in at least two accidents involving pilots. Accidents in 1981 and in 1983 resulted in costly damage. However, the complainants were not able to or decided not to pursue recovery from pilots because of their insufficient resources.

**Problems of dual licensure.** The case of the pilot operating with a suspended federal license points to a loophole in the law that should be closed to ensure the safety of vessels. Although the board has discussed this on occasion, it has taken no positive action. As noted earlier, licensure of pilots is shared by both the federal and state governments. The federal government licenses pilots for pilotage on vessels involved in interstate and intrastate trade. The states have jurisdiction for the licensure of pilots piloting foreign vessels or American vessels involved in foreign trade.

As a result of this distinction, the U.S. Coast Guard cannot act on an individual's federal license if the violation occurred while the pilot was operating under the pilot's state license. However, the U.S. Coast Guard may investigate accidents involving pilots operating under their state license but may only seek civil penalties.

Conversely, it is not clear if the State can take action against a pilot operating under the pilot's federal license, although as we noted earlier, the Attorney General believed that the State does have such authority. The lack of clarity is because Chapter 462A has no provision for the board to revoke or suspend a state license based on action taken by the U.S. Coast Guard against a federal license. The statutes should be changed to require a current federal license in good standing as a condition for continued state licensure.

**Inadequate rules.** The board has failed to develop adequate rules for taking effective disciplinary action. The current regulatory basis for disciplinary actions can only be described as weak, considering the potential for loss of life and property.

Chapter 462A-11, HRS, states that the board may deny, suspend, or revoke a license upon *satisfactory proof* that the pilot or applicant:

- “(1) Has *wilfully* disobeyed the chapter or any rules of the board;
- “(2) Has negligently lost or damaged any vessel which *he was piloting*;
- “(3) Is *habitually intoxicated* rendering him unfit to be entrusted with a vessel;
- “(4) Is physically or mentally incapable of performing as a pilot; or
- “(5) Is no longer actively serving as a pilot. [Emphasis added.]”

As mentioned previously, the board has not defined in its rules what constitutes active service as a pilot. The board has also failed to define *any* of the statutory provisions for disciplinary actions. For example, the board has never defined what constitutes “satisfactory proof” that a violation has occurred or what constitutes “wilful” disobedience or “unfit to be entrusted with the charge of a vessel.” As in the case of the question of active pilotage, the failure to define these provisions can lead to subjective and selective enforcement of the law.

Some of the statutory provisions need to be strengthened. For example, the statutes require “wilful” disobedience of the chapter or regulations before a license can be denied, revoked or suspended. This would require a determination of intent which might be difficult.

In another example, the statutes provide for denial, suspension, or revocation of a license if the pilot caused the negligent loss or damage of a vessel that he was piloting. The statutes are silent on death, or injury, or any damage that the pilot may cause to other vessels or structures. Theoretically, if a pilot in control of a large container vessel rams and sinks a pleasure boat, the pilot would be subject to no disciplinary action if there is no damage to the container vessel.

It should be noted that the pilots had considerable input into the development of the statutes and regulation. Yet, the rules are vague and do not reflect professional knowledge of the dangers of pilotage and fail to adequately address disciplinary provisions for unsafe or incompetent practices.

## Summary

We recognize the considerable skill of the state licensed pilots and the dedication and the sense of responsibility they bring to their chosen profession. We also recognize the hazards of pilotage and the potential loss of life, property, and economic well-being that require the need to insure that pilots are competent at all times.

It is evident, however, that the board is not the appropriate body for ensuring the competency of pilots or for assuring the public that charges for pilotage services are fair.

In almost all areas reviewed, there was evidence of the influence of the pilot association on the board's decisionmaking processes. In many cases, board actions furthered the financial interests of licensed pilots and not those of the State.

Many of the problems are also due to the excessive power delegated to the board. The concentration of monopolistic power in the hands of a five-member board, which in turn is heavily influenced by nine licensed pilots, leaves the State in a vulnerable position.

Because of these concerns, we strongly believe that pilots should continue to be regulated, not by the board, but by the Department of Commerce and Consumer Affairs. In regulating pilots, the department should establish clear standards which are related specifically to minimum performance skills. All those who meet these standards should be permitted to become licensed. The restriction on the number of licenses serves no purpose and should be lifted.

Since the purchasers of pilotage services are generally shipping companies or agents who are knowledgeable about the business, they should be allowed to negotiate pilotage rates with the pilots without state intervention. However, should the Legislature decide that the State should continue to set a pilotage rate, this authority should be assigned to DCCA with assistance from the Public Utilities Division.

## *Recommendations*

*We recommend as follows:*

1. *Chapter 462A, Hawaii Revised Statutes, be reenacted but amended in the following ways:*

- . to delete the board and assign regulatory responsibility to the Department of Commerce and Consumer Affairs;*
- . rescind the limit on the members of licensees;*
- . rescind provisions relating to establishing rates of pilotage;*
- . establish clear, valid, and reasonable standards for licensure as deputy port pilots and full pilots;*
- . require a current federal license in good standing for continued state licensure.*

2. *The Department of Commerce and Consumer Affairs adopt methods to improve the disciplinary and enforcement program against violations of Chapter 462A.*

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APPENDIX

RESPONSES OF AFFECTED AGENCIES

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## COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on December 12, 1984, to the Board of Pilot Commissioners and to the Department of Commerce and Consumer Affairs for their review and comments. A copy of the transmittal letter to the board is included as Attachment 1 of this Appendix. A similar letter was sent to the department.

On January 11, 1985, we received from David B. K. Lyman, chairman of the board, a response in the form of comments from three of the five pilot commissioners (Attachment 2). The commissioners state that the initial delays in confirming and appointing members of the board and the lack of consistency in staffing have been among the operational problems encountered by the board since its establishment.

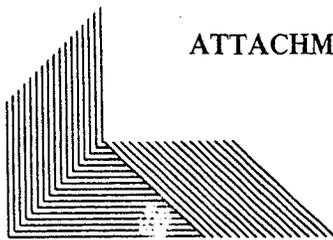
As to the recommendations in the report, the commissioners disagree with our basic recommendation to delete the board and assign responsibility for pilotage to the Department of Commerce and Consumer Affairs. The commissioners state if the concern is that the pilot members have too much influence in board matters, the board could be expanded to seven members, with the addition of one industry member and one public member.

The commissioners also disagree with our recommendation to rescind the limit on licensees and the provisions relating to establishing rates of pilotage. The commissioners state they do recognize the need to establish clear, valid, and reasonable standards for licensure and that they are currently being worked upon. The commissioners also support the idea of concurrent revocations, suspensions and probationary periods when the federal license is affected.

In its response, included here as Attachment 3, the Department of Commerce and Consumer Affairs states that it is in general agreement with our observation and evaluation of the Board of Pilot Commissioners.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR  
STATE OF HAWAII  
465 S. KING STREET, RM. 500  
HONOLULU, HAWAII 96813



CLINTON T. TANIMURA  
AUDITOR

December 12, 1984

*COPY*

Mr. David D. K. Lyman, III, Chairperson  
Board of Pilot Commissioners  
Department of Commerce and Consumer Affairs  
State of Hawaii  
Honolulu, Hawaii 96813

Dear Mr. Lyman:

Enclosed are six preliminary copies, numbered 4 through 9, of our *Sunset Evaluation Report, Pilotage, Chapter 462A, Hawaii Revised Statutes*. These copies are for review by you, other members of the board, and your executive secretary. This preliminary report has also been transmitted to Russel Nagata, Director, Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of pilotage. If you have any comments on our recommendations, we would appreciate receiving them by January 11, 1985. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

Sincerely,

Clinton T. Tanimura  
Legislative Auditor

Enclosures

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STATE OF HAWAII

Comments from David B. K. Lyman, III; Kent H. Bowman and Kenneth A. Bohlin, members of the Board of Pilot Commissioners, regarding the "Preliminary Sunset Evaluation Report-- Pilotage," from the Legislative Auditor of the State of Hawaii.

Results of a meeting held 27 December 1984, between the above three Board members.

Before addressing the specific recommendations made on pages 3-27 of the report, we would like to point out several operational difficulties that the Board has encountered since its inception in 1979.

1. The 1979 Legislature failed to confirm two of the appointees, Thomas McCabe and Rip Riddle, to the Board. A lengthy delay in appointing Kent Bowman and Seven Louis to the Board resulted in the initially-appointed lay member resigning in frustration. Through no fault of their own, the newly-licensed seven State Pilots operated for at least six months with no regulatory Board to oversee their activities.
2. The Board has been assigned at least seven (7) different Executive Secretaries since its actual "operation" in the latter half of 1979. We have found this to be extremely frustrating, as the high degree of specialization of harbor piloting results in the need for a completely new education process for each new executive secretary every time such a change is effected. We have also found that the work load of the individual secretaries seems to be of such a volume that each incoming one finds it difficult to make the time to be oriented to the intricacies of this business.

It must be realized that, in criticizing the Board for past inadequacies, there really has been no history of a State Pilotage law here in Hawaii upon which to base our actions. This was a brand new group and we required extensive guidance. (It may be worthy of serious consideration to add more Executive Secretaries to the staff of the Department of Commerce and Consumer Affairs so individuals are able to devote more time and energy to their respective Boards.)

The Executive Secretaries that have been assigned to the Board have been extremely helpful to us.

Much needed guidance and help was constantly proffered at our meetings but, in reviewing the Evaluation Report, we feel that the lack of consistency in our staff has been detrimental towards our goal of properly carrying out our mandate of regulating State Pilotage.

Overall, we find the report to be a very valuable document, representing excellent constructive criticism of our operation. Several glaring errors and subjective detrimental remarks are included, but we find that they do not really dilute the report's positive intent.

Rather than going through the whole report on a line-by-line basis, we would like to offer our comments on the specific recommendations made at the conclusion (page 3-27).

1. "to delete the board...."

This goes against the entire intent of Chapter 462A, HRS, in that the composition of pilots, industry and lay members has, in other jurisdictions, proven to be the most efficient way to "Do all things reasonable, necessary and expedient to insure proper and safe pilotage and to facilitate the efficient administration of this chapter."

There is a constant concern voiced in the Report of the Pilot members having too much influence in Board matters. While this is only natural, as the two pilot members are the only ones who can offer expertise in Hawaii pilotage matters to the other members, we feel that an expansion of the Board to seven (7) members, with the addition of one industry member and one lay member, would tend to alleviate this appearance of the pilots' being "too influential."

Further, it is quite apparent that most Legislators feel rather strongly against increasing the Bureaucratic infrastructure. It should be noted that Board members serve without pay and generate little or no expense to the State Government. In fact, revenue is generated by the quarterly payments made by the Port Pilots, based on a percentage of their gross revenues.

2. "rescind the limit..."

Page 3-4 of the Report states that "The restriction on the number of licensees has kept the number of pilots in the State at an artificially low level."

The Board has never received a complaint from either the pilots or those who use pilotage services of an inadequate number of pilots to handle the work load. With few exceptions, State pilotage laws in other jurisdictions also limit the number of State licenses. This has withstood the "test of time" as the so-called monopolistic practice has been challenged many times in other States, but it has always been upheld as one of the

primary ways of maintaining a safe and complete pilotage service. The far-reaching, detrimental ramifications of the State having no control over the numbers of licenses have not been fully explored in the preparation of the Report.

3. "rescind provisions relating...."

Page 3-12 states, "There is doubt whether rates should be set at all. There is no issue here of consumers who are not able to protect themselves or who are at a disadvantage in dealing with providers of the service. In this case, the direct consumers are the shipping lines and their agents. They would be quite able to negotiate with pilots on rates without State intervention."

The prospect of having to negotiate rates yearly with the Pilots Association does not hold much appeal for the consumers, steamship companies and agents. This suggestion would involve setting up an employer's group to do the bargaining. Then, what would be the alternative? Commerce would be in a position, where agreement needed to be reached by all consumers, as to what rates were acceptable. If the Pilots Association disagreed, what would be the alternative? A strike? Imperfect as the present system is, it is still considerably less cumbersome than a whole new bargaining process.

4. "establish clear, valid and reasonable standards..."

The need for improved standards has been recognized by the Board and is currently being worked upon. We anticipate new Federal regulations relating to pilotage to be forthcoming in the near future that will result in subsequent parallel changes in the State's standards.

5. "require a current Federal..."

The Board supports the idea of concurrent revocations, suspensions and probationary periods of the State license when the Federal License is to affected.

There is so much more that deserves to be addressed in the Report. We look forward to the opportunity to present additional material in Legislative hearings.

ATTACHMENT 3



GEORGE R. ARIYOSHI  
GOVERNOR

RUSSEL S. NAGATA  
Director

COMMISSIONER OF SECURITIES

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
1010 RICHARDS STREET  
P. O. BOX 541  
HONOLULU, HAWAII 96809

ROBERT A. ALM  
DEPUTY DIRECTOR

January 9, 1985

Mr. Clinton T. Tanimura  
Legislative Auditor  
Office of the Auditor  
State of Hawaii  
465 South King Street, Room 500  
Honolulu, HI 96813

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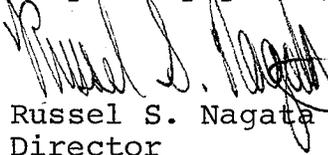
OFC. OF THE AUDITOR  
STATE OF HAWAII

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your sunset evaluation report on pilotage.

The Department of Commerce and Consumer Affairs is in general agreement with the observation and evaluation you have made of the Board of Pilot Commissioners. We wish to commend your staff for the thoroughness of the report.

Very truly yours,

  
Russel S. Nagata  
Director