

---

# Sunset Evaluation Update: Pilotage

---

A Report to the  
Governor  
and the  
Legislature of  
the State of  
Hawai'i

Report No. 90-15  
December 1990



**THE AUDITOR**  
STATE OF HAWAII

---

## The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds and existing funds meet legislative criteria.
7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.
8. *Fiscal accountability reports* analyze expenditures by the state Department of Education in various areas.
9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawaii's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



## THE AUDITOR STATE OF HAWAII

Kekuanao'a Building  
465 South King Street, Room 500  
Honolulu, Hawaii 96813

# OVERVIEW

THE AUDITOR  
STATE OF HAWAII

---

## Sunset Evaluation Update: Pilotage

---

### Summary

We evaluated the regulation of pilotage under Chapter 462A, *Hawaii Revised Statutes*, and conclude that the public interest is best served by reenactment of the statute.

The State should continue to regulate pilotage. The practice has significant potential to harm life and property and compromise the economic well-being of the state. It involves directing a vessel through channels, harbors, and other areas where navigation is difficult. Improper pilotage can result in oil spills, vessel groundings and collisions, and damage to ships, piers, and cargo.

Since assuming regulatory responsibility in 1985, the Department of Commerce and Consumer Affairs has improved the regulation of pilotage. Our review, however, found weaknesses in the examination program and in the regulations. The examination for deputy port pilots does not meet some of the standards of a good testing program, particularly in the way the exam was documented and scored. Scorers and test takers belonged to the same professional association, and in one case, examination security may have been breached.

The regulations do not include specific physical standards for pilots. They also leave to pilot discretion those accidents serious enough to warrant reporting. Because the regulations are not specific, the department could not be certain that all serious incidents came to its attention.

---

### Recommendations and Response

The department should document the development of the port pilot examination and take steps to ensure its validity and security. To be fair, representatives from both pilot associations should score the exam. The department should develop physical standards for the licensure of port pilots, specify these standards on the certificate of medical examination, and consider following guidelines from other jurisdictions on drug or alcohol testing programs.

Finally, the department should toughen the regulations by requiring pilots to report *all* incidents and accidents to the director within seven days. To verify serious accidents, the department should arrange to receive ship captain's reports from the Department of Transportation and investigative reports from the U.S. Coast Guard.

The department agrees that the statute should be reenacted and concurs with most of our recommendations. It notes, however, that all pilots licensed in Hawaii are already required to participate in a federal drug testing program.

---

## Background

Twenty-four states regulate pilotage. In Hawaii, virtually every vessel involved in trade or commerce that enters or departs pilotage waters must employ a state-licensed pilot. From 1986 through 1989, an average of 4,164 vessel "movements" per year required port pilots. Over 90 percent of these movements occurred in Honolulu Harbor.

In 1985 the Legislature followed the recommendations of our sunset evaluation, abolishing the Board of Pilot Commissioners and vesting responsibility for the program in the director of the Department of Commerce and Consumer Affairs. The department now regulates the nine state-licensed pilots.

The State licenses pilot applicants first as deputy port pilots then as port pilots. All applicants must hold a U.S. Coast Guard license as master of steam and motor vessels and also be endorsed as first-class pilots for deep-draft harbors in the state. In addition, applicants must meet experience requirements, submit a certificate of physical examination, and pass a written examination.

---

### Office of the Auditor

#### State of Hawaii

465 South King Street, Suite 500

Honolulu, Hawaii 96813

(808) 548-2450

FAX (808) 548-2693

---

# Sunset Evaluation Update: Pilotage

---

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

Submitted by

**THE AUDITOR**  
STATE OF HAWAII

Report No. 90-15  
December 1990



---

## Foreword

Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules regulatory programs for termination on a periodic cycle. Unless specifically reestablished by the Legislature, the programs are repealed. The auditor is responsible for evaluating each program for the Legislature prior to the date of repeal.

This report updates our evaluation of the pilotage program under Chapter 462A, *Hawaii Revised Statutes*. It presents our findings as to whether the program complies with policies in the Sunset Law and whether there is a reasonable need to regulate pilotage to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Act 136, SLH 1986, the report incorporates in Appendix B the draft legislation intended to improve the regulatory program.

We acknowledge the cooperation and assistance of the Department of Commerce and Consumer Affairs, the Hawaii Pilots Association, the Port Pilots of Hawaii, and other officials contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Newton Sue  
Acting Auditor  
State of Hawaii

December 1990



---

# Table of Contents

## Chapter 1 Introduction

Background on Pilotage .....	1
Pilotage in Hawaii .....	2
Objectives of the Evaluation .....	4
Scope and Methodology .....	4

## Chapter 2 Findings and Recommendations

Findings .....	5
State Should Continue to Regulate Pilotage .....	5
Examination Program Should Conform to National Standards .....	6
Regulations Should Include Physical Standards for Pilots .....	8
Reporting of Incidents and Accidents Should Follow Clear Procedures .....	9
Recommendations .....	10

<b>Notes</b> .....	13
--------------------	----

<b>Appendix A: Response of the Affected Agency</b> .....	15
<b>Appendix B: Proposed Legislation</b> .....	21

---

# Chapter 1

## Introduction

---

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, repeals occupational licensing statutes according to a specified timetable. The law directs the auditor to evaluate each occupational licensing statute prior to its repeal to determine if the public interest is best served by reenactment, modification, or repeal of the statute.

This report evaluates the regulation of pilotage under Chapter 462A, *Hawaii Revised Statutes*, to determine compliance with policies for occupational regulation in the Sunset Law.

---

### Background on Pilotage

Pilotage is the work of directing a vessel's movement in channels, harbors, restricted waters, or other areas where navigation is deemed difficult or dangerous.<sup>1</sup> Although only a small portion of a ship's voyage is spent in these areas, most ship casualties occur there. Ships are likely to encounter increased traffic and pass closer to natural hazards in shallow waters.

A pilot is either a member of a ship's crew or an individual brought aboard the ship specifically to direct it through pilotage waters. A pilot normally takes navigational control and direction of a ship outside designated pilotage waters. The pilot then directs the vessel to a safe berth, avoiding potential hazards and adapting to such changing conditions as currents, depths, and weather. The pilot provides shiphandling skills combined with up-to-date knowledge of the local geography and weather and the port's navigational requirements and regulations. The time needed to pilot a vessel to and from a berth varies from port to port.<sup>2</sup>

### Federal and state regulation

The federal government has jurisdiction over vessels engaged in domestic trade between ports in the United States or its possessions. These "coastwise" vessels require a federally licensed pilot who is endorsed for the pilotage waters that the ship plans to enter. The U.S. Coast Guard enforces the federal laws and issues federal licenses to pilots who meet its requirements. The Coast Guard is also empowered to suspend, revoke, or deny licensure if a pilot is negligent,

unskillful, inattentive to pilotage duties, or willfully violates any maritime law or regulation. It investigates incidents involving pilots operating under federal licenses.

The 24 states that regulate pilotage have jurisdiction over vessels granted permission by the United States Customs Service to engage in foreign trade. These "registered" vessels must take on a state-licensed pilot when entering that state's designated pilotage waters.<sup>3</sup> Vessels that sail under the flag of a foreign country must also be piloted by a state-licensed pilot.

Public vessels, such as fireboats, police boats, and warships owned by municipalities, state, or federal governments are exempt from state and federal pilotage laws. They may, at their option, use the services of a federal or state pilot. Pleasure boats or other miscellaneous motor powered vessels do not require a port pilot.

---

## **Pilotage in Hawaii**

With certain exceptions,<sup>4</sup> every vessel involved in trade or commerce that enters or departs any port designated as pilotage waters must employ a state-licensed pilot. Pilotage waters include those around Port Allen, Nawiliwili, Honolulu, Kahului, Hilo, Kawaihae, and Barbers Point.<sup>5</sup>

From 1986 through 1989, an average of 4,164 vessel movements per year required port pilots.<sup>6</sup> Over 90 percent of these movements occurred in Honolulu Harbor and ranged from movements of foreign fishing boats of less than 200 feet, to automobile container vessels of 900 feet or more.

### **1985 sunset evaluation**

Our 1985 sunset evaluation report found a need to regulate pilotage. However, the Board of Pilot Commissioners had not met the purposes intended by the Legislature, nor had the board acted in the interests of the State. The report recommended that Chapter 462A be amended to delete the board and assign regulatory responsibility to the Department of Commerce and Consumer Affairs (DCCA).<sup>7</sup>

In 1985, the Legislature abolished the Board of Pilot Commissioners and vested in the director of the DCCA all the responsibilities once held by the board. The director now has full responsibility for the program.

## **Current regulation**

The nine state-licensed port pilots are private contractors regulated by the director of the DCCA. Chapter 462A, HRS, allows them to organize into nonprofit associations to provide pilotage services. Six of the nine pilots belong to the Hawaii Pilots Association and three to the Port Pilots of Hawaii. Shipping agents and companies that need port pilots contact the associations, which then assign pilots to vessels according to each association's own rules.

Applicants are licensed first as deputy port pilots and then as port pilots. Applicants for deputy port pilots must be at least 18 years of age. They must have a current U.S. Coast Guard license as master of steam and motor vessels of any gross tonnage and also possess a U.S. Coast Guard endorsement as a first-class pilot for all deep draft harbors where pilot services are provided in the state. In addition, applicants are required to have specified years of experience on vessels of a minimum tonnage. Applicants must submit a certificate of physical examination and pass a written examination.

Applicants for port pilots must meet all the above requirements and serve a minimum of 18 months as a deputy port pilot directing vessels of a certain size. They must provide a summary of all pilotage work and evaluation forms completed by ship captains and licensed port pilots who have accompanied the deputy pilots. Applicants must hold a current Hawaii license for deputy port pilots and must submit a certificate of physical examination. The director of the DCCA may waive all or part of the 18 months service requirements if applicants present proof that they have met all of the experience requirements.

## **New rules**

The department recently adopted new rules, effective August 20, 1990, to enable the director to carry out responsibilities more effectively. The new rules make some significant changes. The two private pilot associations will no longer make pilotage assignments. Instead, a new central scheduling office, to be created by the director, will handle the requests for services and make the necessary assignments. The director will also establish a program to train deputy port pilots. A fee on vessel movements will offset the cost of the program. All pilots will be required to accept training assignments.

---

## Objectives of the Evaluation

This evaluation sought to determine whether the regulation of pilotage complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate pilotage to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations relating to the above.

---

## Scope and Methodology

To accomplish these objectives, we reviewed the literature on pilotage and its regulation. We examined current developments in federal regulation and regulation in other states, and we also examined statutes and rules on pilotage in Hawaii and the changes that have taken place in these since 1985.

To determine the appropriateness of current regulatory provisions and the effectiveness of regulatory operations, we interviewed state-licensed port pilots, shipping agents, and personnel of the U.S. Coast Guard, the Department of Commerce and Consumer Affairs, and the Department of Transportation. At the Department of Commerce and Consumer Affairs, we reviewed correspondence and other files relating to the regulation of pilotage.

Fieldwork on the project, including research, interviews, and the review of files, was performed between February 1990 and July 1990.

---

# Chapter 2

## Findings and Recommendations

---

The Department of Commerce and Consumer Affairs (DCCA) has improved the regulation of the pilotage program after assuming regulatory responsibility in 1985. A few improvements are still needed in certain areas.

---

### Findings

1. Chapter 462A should be reenacted to continue the regulation of pilotage.
2. The examination program for deputy port pilots, including test development, test administration, and scoring, does not yet conform with national standards for occupational and licensing examinations.
3. The regulations do not specify physical standards for port pilots. As a result, the biennial physical exams do not ensure that all pilots are physically able to carry out their duties.
4. The regulation on the reporting of pilotage incidents and accidents in the harbors of the state should be clarified and include reports from ship captains and the U.S. Coast Guard.

---

### State Should Continue to Regulate Pilotage

The State should reenact Chapter 462A and continue to regulate pilotage. The practice has a significant potential for harm to life, property, and the economic well-being of Hawaii. Accidents due to pilot error have occurred in the past. Oil spills, vessel groundings and collisions, damage to ships, piers, and cargo--these are some of the hazards posed by improper pilotage. Because 95 percent of the goods for Hawaii arrive by ship, blockage of Honolulu Harbor could jeopardize the economy of the state. Oil spills pose grave environmental consequences. For these reasons, regulation should be continued.

## Examination Program Should Conform to National Standards

The department has substantially improved its examination program by shifting responsibility for examination development from its boards to neutral professional testing authorities. Examinations are now more valid and defensible. Some areas, however, need improvement.

The department should ensure that the examination program for pilots complies with national standards for occupational licensing tests issued jointly by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.<sup>1</sup> The basic standards of a good testing program should include the following:

- The examination should reflect a detailed plan that specifies the qualities (knowledges, skills, abilities) to be tested, the relative importance of these, and the format and other characteristics of the examination.
- The qualities to be tested should be clearly necessary for the functions assumed by licensees.
- Examination questions should be consistent with the nature of the regulated practice and should be carefully constructed and reviewed to ensure fairness to candidates.
- The passing score should distinguish between those who have a minimally acceptable level of skill and those who do not.
- Examinations should be administered under standardized and uniform procedures.
- Scoring should be objective, free from error, and reliable.
- Security must be guaranteed through adherence to appropriate confidentiality procedures in examination development, administration, scoring, and storage of the examination.<sup>2</sup>

The department's written examination for deputy port pilots does not meet all of these standards. We found no evidence that the deputy port pilot test was developed according to a detailed plan or resulted from a technically sound analysis of pilotage practices. There was no information on the basis for

the passing score or how it was established. Finally, the security of the test could have been breached.

### **Documentation on examination development**

The department did not adequately document the development of the port pilot examination or the activities of the contractor hired to develop the exam. In October 1985, the department contracted with American Community Services, Inc., now known as the National Assessment Institute (NAI), a professional testing organization, to develop and revise licensing examinations for deputy port pilots and several other occupations. That same year, an examination was developed for deputy port pilots but was never used. The department has no documentation on how the examination was developed--we found no test development plan or evidence of a job analysis.

In December 1988, the DCCA licensing administrator asked NAI for information on the validity of the 1985 examination. Although the NAI noted that the examination appeared to have both face and content validity and that the test developer had consulted with port pilots, it offered no supporting evidence.

The department has little documentation about NAI's activities under contract. Even though the examinations are the property of the department, DCCA has no copy of either the original exam developed in 1985 or the revised 1989 version.

### **Security**

More consideration should be given to the security of the examination. In January 1989, NAI held a "task analysis/content outline workshop" for an upcoming 1989 deputy port pilot examination. The purpose of the workshop was to discuss tasks performed by pilots and the knowledge, skills, and abilities needed to perform the tasks. The workshop included a representative of NAI, two port pilots, a representative of the Department of Transportation, a shipping agent, and representatives of the DCCA. According to the NAI representative who conducted the workshop, the DCCA made arrangements for the participants.

A deputy port pilot, who subsequently took the 1989 examination, was present for part of this meeting. The pilot was excused when it was discovered that he was to take the test. However, he may have been exposed to certain aspects of the exam.

## Scoring

The scoring of the 1989 examination for deputy port pilots raises questions of bias because applicants and scorers belonged to the same association. The examination included job simulations and questions on the laws and rules of pilotage and the physical features and conditions of Hawaii ports. The NAI paid two licensed port pilots to score the examination, that is, assign points to answers. One pilot belonged to the Hawaii Pilots Association and the other was a former member of that association. The two applicants taking the examination were associated with and are now members of the same organization.

The two port pilot associations, Hawaii Pilots Association and Port Pilots of Hawaii, are competitors and not on good terms. The director has attempted to mediate their differences in the past. While it is a common practice to have persons scoring exams who are knowledgeable in the subject, the choice of scorers should avoid any appearance of bias. The use of pilots to score applicants who are members of their own association raises questions of bias, particularly since the department lacks an answer key or documentation on how the passing score was established.

In the future, the department should have representatives from *both* pilot associations scoring the examination. In addition, the point values should be based on clear criteria for each answer and for the passing score.

---

## Regulations Should Include Physical Standards for Pilots

The work of port pilots requires a high degree of skill, proficiency, and technical training. Pilots must be able to adapt to changing conditions and be prepared to act appropriately. The regulations should help ensure that pilots are in good physical condition.

Physical examinations for port pilots are required every two years when the license fees are due. All nine port pilots, ranging in age from 43 to 69, were relicensed after submitting certificates of medical examination signed by their physicians. The medical examination certificates, however, do not require pilots to meet any physical standards. They contain no basis for judging the applicant's fitness for the position, nor do they require the physician to certify the person's ability to carry out the job. Without physical standards and the physician's statement of a candidate's fitness for the job, the purpose of the examination is not clear.

It should be noted that the U.S. Coast Guard requires an annual physical examination for a pilot to maintain the federal license. All of the state-licensed pilots currently hold federal licenses and take the annual physical examination. Although the standards are general, the physician is required to certify in the Coast Guard's medical examination report whether, in the physician's opinion, the applicant is physically competent to perform duties on a U.S. merchant vessel.

The department should specify the physical standards for performance of pilot duties. The physician can then use these standards to determine whether pilots are qualified to perform their duties.

### **Drug and alcohol use**

Section 462A-8, HRS, provides that the license of a port pilot may be denied, suspended or revoked for "habitual use of any substance rendering a pilot unfit to be entrusted with the charge of a vessel." The department has not developed regulations relating to drug and alcohol use. The department should consider following guidelines from other jurisdictions on drug or alcohol testing programs.

The U.S. Coast Guard has specific guidelines and requirements for carrying out its alcohol and drug testing programs. Currently, marine employers with more than 150 crew members may not employ any individual as a crew member unless that individual passes a chemical test for dangerous drugs. By December 21, 1990, this will be required of all marine employers with 10 or fewer employees.

Federal regulations say that crew members must pass a pre-employment test or a periodic chemical test for dangerous drugs within the previous six months, or they must have been subject to a random testing program during the previous 12 months. They must not have failed a chemical test for dangerous drugs or have refused to take a required test.

---

### **Reporting of Incidents and Accidents Should Follow Clear Procedures**

The department's regulation requires pilots to notify the director in writing of serious incidents and accidents but does not provide the means for verifying that pilots do so. The regulation says that pilots are to notify the director "as soon as practicable" of any "incident of significance" in the harbors of the state and to file a written report to the director within seven working days if the incident involves injury, death, extensive damage, or running aground. However, such key terms as "injury" and "extensive damage" are not defined,

allowing a pilot to be the sole judge of whether a written report is needed. As a result, there is no way of verifying that all serious incidents and accidents come to the department's attention.

Instead of relying solely on reports from the pilot, the department should arrange to receive damage reports from ship captains to the state Department of Transportation and reports from the U.S. Coast Guard on its investigations of incidents and accidents.

The Commercial Harbors and Tariff regulations of the Department of Transportation require a ship's captain to file a prompt and full written report to the harbor master of any damage to state property or facilities. The report includes the date and hour of the incident, the names, addresses, and descriptions of the witnesses and other persons, vessels, or instrumentalities involved in the damage, and other pertinent information and facts. The DCCA should arrange to receive copies of ship captains' damage reports from the Department of Transportation.

The Coast Guard is authorized to investigate any incident, accident, or act involving the loss, destruction, or damage to any structure that affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States. The Coast Guard investigates incidents and accidents, such as oil spills and oil fires, that cause environmental damage and involve all types of commercial vessels. The department should arrange to receive copies of these reports from the Coast Guard.

The regulation should be changed to require pilots to report *all* incidents and damage to the director within 7 days of occurrence. The report should also include an estimate of the damage and/or injury. This would provide information and guidance to the executive secretary about the severity of the accident and whether further investigation is warranted.

---

## Recommendations

1. Chapter 462A should be reenacted to continue the licensing of port pilots.
2. The Department of Commerce and Consumer Affairs should have documentation on the development of the port pilot examination and its validity. The department should also have a copy of the examination, the answer

key, and relevant instructions for administering the examination. Further, the department should ensure that the examination is secure and that the testing situation is without bias. The scoring of the examination should be done by representatives of both pilot associations.

3. The Department of Commerce and Consumer Affairs should develop physical standards for the licensure of port pilots. It should include the standards on the certification of medical examination forms. The department should amend its regulations to require physical examinations based on these standards and certification from a physician that the pilot is physically able to perform the job based on the established standards. The department should develop regulations on drug and alcohol use by port pilots.
4. The Department of Commerce and Consumer Affairs should change its regulation to require state licensed pilots to report *all* incidents to the director within 7 days of occurrence with an estimate of the cost of the damage and/or injury. The department should also arrange with the Department of Transportation to receive ship captains' reports of incidents of damage to state property and facilities.
5. The Department of Commerce and Consumer Affairs should arrange with the U.S. Coast Guard to receive its investigative reports on accidents affecting the safety of Hawaii pilotage waters or the environment.



---

## Notes

### Chapter 1

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.
3. Alex L. Parks, *Law of Tug, Tow and Pilotage*, Cambridge, Md., Cornell Maritime Press, 1971, p. 476.
4. Exempt vessels are (1) vessels required by law to be under the direction and control of a federally licensed pilot, (2) public vessels of the United States of America, (3) motor boats (repealed in 1988, Act 131 SLH), and (4) fishing vessels issued a fishery license or appropriately endorsed registry under the Laws of the United States of America, as amended, in Act 111, SLH 1984.
5. Section 462A-17, HRS.
6. Data compiled from reports from the Hawaii Pilots Association and Port Pilots of Hawaii.
7. Hawaii, Legislative Auditor, *Sunset Evaluation Report, Pilotage*, Report No. 85-9, Honolulu, January 1985.

### Chapter 2

1. See American Educational Research Association, American Psychological Association, National Council on Measurement in Education, *Standards for Educational and Psychological Testing*, Washington, D.C., 1985.
2. Werner, Eric, "Achieving Better Licensing Examinations: What Policy Makers Should Know," NCEI, Volume VII, Number 3, December 1989, p. 25.



## Response of the Affected Agency

### Comments on Agency Response

We transmitted a draft of this Sunset Evaluation Update to the Department of Commerce and Consumer Affairs on October 5, 1990. A copy of the transmittal letter to the department is included as Attachment 1 of this Appendix. The response from the department is included as Attachment 2.

The department agrees that the statute should be reenacted. It will discuss with its national testing agency the recommendations on documentation, security, and scoring for the examination and will reexamine its rules and procedures for possible strengthening of standards for medical examination of pilots for licensure. The department notes that all pilots licensed in Hawaii are required to participate in a federal drug testing program. With respect to the reporting of accidents, the department will confirm its understanding with the Department of Transportation about getting reports of all accidents and also will work to obtain access to investigation reports from the U. S. Coast Guard.

# ATTACHMENT 1

STATE OF HAWAII  
OFFICE OF THE AUDITOR  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813



(808) 548-2450  
FAX: (808) 548-2693

C O P Y

October 5, 1990

The Honorable Robert A. Alm, Director  
Department of Commerce and Consumer Affairs  
1010 Richards Street  
Honolulu, Hawaii 96813

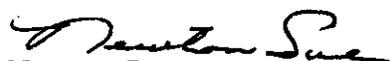
Dear Mr. Alm:

Enclosed are three copies, numbers 6 to 8 of our draft report, *Sunset Evaluation Update: Pilotage*. We ask that you telephone us by October 10, 1990, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than November 5, 1990.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

  
Newton Sue  
Acting Legislative Auditor

Enclosures

JOHN WAIHEE  
GOVERNOR



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  
DIRECTOR  
COMMISSIONER OF SECURITIES

SUSAN DOYLE  
DEPUTY DIRECTOR

November 5, 1990

RECEIVED

Nov 5 2 48 PM '90

OFC. OF THE AUDITOR  
STATE OF HAWAII

Mr. Newton Sue  
Acting Legislative Auditor  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813

Dear Mr. Sue:

Thank you for the opportunity to comment on your draft report entitled "Sunset Evaluation Update: Pilotage."

We especially appreciate your conclusion that the Department of Commerce and Consumer Affairs has improved the regulation of the pilotage program since assuming direct regulatory responsibility for the program in 1985. These have been among the most difficult and complex undertakings in recent memory and your basic support for our program is therefore most welcome.

We offer the following comments on the five recommendations that are made in your report.

1. Chapter 462A should be reenacted to continue the licensing of port pilots.

We agree that Chapter 462A, Hawaii Revised Statutes, should be reenacted.

2. The Department of Commerce and Consumer Affairs should have documentation on the development of the port pilot examination and its validity. The Department should also have a copy of the examination, the answer key, and relevant instructions for administering the examination. Further, the department should ensure that the examination is secure and that the testing situation is without bias. The scoring of the examination should be done by representatives of both pilot associations.

Mr. Newton Sue  
November 5, 1990  
Page 2

As you know, our pilotage testing program has been handled by a national testing agency. We believe that the use of such an agency is the best assurance of proper test development and implementation. We will discuss your recommendations with the National Assessment Institute (NAI), the testing agency involved.

On the breach of security issue, we do agree that the mere presence of the individual involved could have created an appearance of unfairness. We do also, however, believe that special care was taken in that particular instance to ensure that the individual gave his input to the committee at the beginning of its meeting and that he was asked to leave immediately thereafter to preserve the integrity of the examination.

3. The Department of Commerce and Consumer Affairs should develop physical standards for the licensure of port pilots. It should include the standards on the certification of medical examination form. The department should amend its regulations to require physical examinations based on these standards and certification from a physician that the pilot is physically able to perform the job based upon the established standards. The department should develop regulations on drug and alcohol use by port pilots.

We agree that there should be a strong set of physical standards for the licensure of port pilots and deputy port pilots and we will reexamine our rules and our procedures for possible strengthening.

Our current requirements are not insubstantial and are contained on the Certificate of Medical Examination under the "job description" that a physician must certify the applicant can perform. And as provided in such provisions as Rules §16-96-41 and Section 462A-8(4), HRS, standards continue to be in effect after licensure.

Finally as to drug and alcohol use by pilots, we would note that all Hawaii licensed pilots are required to participate in a federal drug testing program which requires certification every six months that the pilot has been tested and found to be drug free.

Mr. Newton Sue  
November 5, 1990  
Page 3

4. The Department of Commerce and Consumer Affairs should change its regulations to require state licensed pilots to report all incidents to the director within 7 days of occurrence with an estimate of the cost of the damage and/or injury. The department should also arrange with the Department of Transportation to receive ship captains reports of incidents of damage to state property and facilities.

The Department will review current rules with the view to requiring the reporting of all incidents or to narrowing the areas of discretion in reporting.

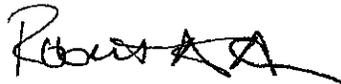
And while we believe that the Department of Transportation has been reporting incidents to us since an agreement to do so in September 1986, we will confirm our understanding.

5. The Department of Commerce and Consumer Affairs should arrange with the U.S. Coast Guard to receive its investigative reports on accidents affecting the safety of Hawaii pilotage waters or the environment.

The Department most certainly would want access to the investigation reports from the U.S. Coast Guards involving State licensed pilots and will work to obtain them. At this time it does not appear possible to obtain the reports while the matter is pending, but it is our intent to get them as quickly as possible.

Again we appreciate the overall positive view the report takes of our pilotage regulatory program, and will continue to work on the items raised in your report.

Very truly yours,



ROBERT A. ALM  
Director

RAA: JT: fk

---

---

## A BILL FOR AN ACT

RELATING TO PILOTAGE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Section 26H-4, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3       "(b) The following chapters are hereby repealed effective  
4 December 31, 1991:

5       (1) Chapter 458 (Board of Dispensing Opticians)

6       (2) Chapter 460J (Pest Control Board)

7       [(3) Chapter 462A (Pilotage)

8       (4)] (3) Chapter 468K (Travel Agencies)"

9       SECTION 2. Section 26H-4, Hawaii Revised Statutes, is  
10 amended to by amending subsection (h) read as follows:

11       "(h) The following chapters are hereby repealed effective  
12 December 31, 1997:

13       (1) Chapter 438 (Board of Barbers)

14       (2) Chapter 448 (Board of Dental Examiners)

15       (3) Chapter 455 (Board of Examiners in Naturopathy)

16       (4) Chapter 459 (Board of Examiners in Optometry)

17       (5) Chapter 471 (Board of Veterinary Examiners)

18       (6) Chapter 462A (Pilotage)"

19       SECTION 3. Statutory material to be repealed is bracketed.

S.B. NO.

1 New statutory material is underscored.

2 SECTION 4. This Act shall take effect upon its approval.

3

4

INTRODUCED BY: \_\_\_\_\_

