

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun

It Needs to Develop Procedures and Controls Over Its Operations and Finances to Ensure That It Complies With Legal Requirements

REPORT NUMBER 2009-043, NOVEMBER 2009

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun's response as of November 2009

The California Harbors and Navigation Code, Section 1159.4, requires the Bureau of State Audits to complete a comprehensive performance audit of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) by January 1, 2010, and a comprehensive financial audit by December 1, 2009. Our report combined both audits. Because state law does not specify the topics these audits should address, we identified and reviewed applicable state laws and regulations related to the form and function of the board and identified five areas on which to focus our review. Specifically, we focused on the licensing of pilots, investigations of incidents involving pilots, pilot training, board structure and administration, and the board's finances.

Finding #1: The board does not consistently adhere to requirements in state law when licensing pilots.

The board did not always ensure that applicants seeking original licensure as pilots completed the application process called for in state law before granting them pilot licenses. The application process requires that applicants seeking an initial pilot's license first receive a physical examination from a board-appointed physician. However, of the seven pilots seeking first-time licenses that we reviewed, the board issued licenses to three before the pilots had undergone the physical examination the law requires. In fact, one of these three piloted vessels 18 times before receiving the required physical examination. According to the board's president, there was a disconnect between the board and board staff regarding the application process and the necessary paperwork to be filed before licensure. He explained that in the past, the board had assumed that board staff were ensuring that all licensing requirements had been addressed before issuing a license. He stated that in the future, board staff will use a checklist to ensure that all application requirements are complete, and indicated that he or the board's vice president will review the checklist and supporting documentation to ensure that all requirements for licensure have been met. To the extent that the board does not adhere to this new process, it risks licensing an individual who does not meet the qualifications for a pilot, including being able to physically perform the job. This may increase the risk of injury to pilots and crews or damage to vessels and the environment.

Audit Highlights . . .

Our review of the form, functions, and finances of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) revealed the following:

- » *The board did not consistently adhere to state law when licensing pilots. In one case, it licensed a pilot 28 days before he received a required physical examination; he piloted vessels 18 times during this period.*
- » *The board renewed some pilots' licenses even though the pilots had received physical examinations from physicians the board had not appointed and, in one case, renewed a license for a pilot who had not had a physical examination that year.*
- » *Of the 24 investigations we reviewed, 17 went beyond the 90-day statutory deadline for completion.*
- » *The board did not investigate reports of suspected safety standard violations of pilot boarding equipment, as required by law.*
- » *The board failed to ensure that all pilots completed required training within specified time frames.*
- » *The board lacked a procedure, required in state law, for access to confidential information, and it released information to the public that included a pilot's home address and Social Security number.*

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- » *The board did not ensure that some of its members and investigators filed required statements of economic interests.*
- » *The board did not approve several changes to the rates pilots charge for their services, as required by law.*
- » *The board paid for business-class airfare for pilots attending training in France, which may constitute a misuse of public funds.*

We also reviewed files of seven pilots whose licenses the board renewed and found that, contrary to state law, the board renewed one pilot's license even though the pilot had not undergone a physical examination that year. In part, this may have occurred because board regulations are inconsistent with state law, as they require less frequent physicals for younger pilots. According to the board's regulations, which have been in place since 1988, a medical examination is required annually only for pilots who are renewing a state license and who will be at least age 50 when the license expires. The regulations require less frequent medical examinations for pilots who are younger than age 50. However, state law changed in 1990 to require annual physicals for all pilots, regardless of age, and the board has not updated its regulations to reflect this change. According to the board's president, although the board was aware of the changes made to state law in 1990, it failed to interpret those changes to mandate that younger pilots must have more frequent physicals than those required under existing board regulations. By not ensuring that pilots receive their annual physical examinations as required by law, the board risks licensing an individual who is not fit to perform the duties of a pilot.

Further, the board could not provide documentation demonstrating that it had followed the law by appointing all the physicians it used to conduct physical examinations of pilots during the period of our review. As a result, the board granted six out of the 14 new licenses or license renewals we reviewed even though it had not appointed the physicians who conducted the physicals. If the board allows physicians that it has not appointed to examine pilots, it is not only out of compliance with its regulations but it also risks that physicians conducting annual physicals will not be familiar with the standards the board has adopted for pilot fitness. These standards outline conditions that would render a pilot permanently or temporarily not fit for duty. For example, suicidal behavior would result in a pilot being permanently excluded from duty, while cataracts would require that a physician reevaluate the condition before a pilot was allowed to return to duty.

We recommended that the board follow its recently established procedure to complete a checklist to verify that trainees and pilots have fulfilled all the requirements for licensure, including the physical examination, before the board issues or renews a license. Also, we recommended that the board establish and implement a procedure for approving and monitoring board-appointed physicians. Finally, we recommended that the board review and update its regulations regarding the frequency of pilot physical examinations to ensure they are consistent with state law.

Board's Action: Partial corrective action taken.

The board stated that it will continue to follow its procedure to complete a checklist to verify that trainees and pilots have fulfilled all the requirements for licensure, including the physical exam, before the board issues or renews a license. Further, the board reported that the process for approving and monitoring board-appointed physicians is in the rulemaking stages, with a projected completion for the second quarter of 2010. Similarly, the board told us that it has begun the rulemaking process to ensure its regulations that address the frequency of physical examinations are consistent with state law, and projects this process to be complete for the second quarter of 2010.

Finding #2: The board did not fully comply with state law regarding investigations.

Some of the board's investigations of incidents involving pilots were not timely or failed to follow specified procedures for granting extensions to the 90-day deadline required by state law. The board's Incident Review Committee is responsible for investigating, with the assistance of one or more investigators, navigational incidents, misconduct, and other matters involving pilots and presenting reports on these incidents to the board. We reviewed the 24 incidents reported by the port agent to the board between January 1, 2007, and March 31, 2009, and investigated by the Incident Review Committee, and we noted that 17 required extensions because the Incident Review Committee did not complete its investigation within 90 days. Of these 17, the board did not grant an extension in two cases and granted an extension after the 90-day deadline in another five. After reviewing the seven cases we identified, the board's president stated that beginning in October 2009, the board's agenda for its monthly meetings will include the 90-day deadline to help remind the Incident Review Committee and the board of the need to either present the results or make a timely request for an extension. Without timely investigations, the board risks having additional incidents occur, because pilots are generally allowed to continue working while the board completes its investigation.

Further, the board did not consistently report the reasons for granting extensions for an investigation. We noted that, of the 17 investigations requiring an extension, eight were extended because the investigations were incomplete, while four were extended with no reason or justification given. The board extended the remaining five for other reasons, including an Incident Review Committee member being unavailable and the board asking for additional information. If the board had requested the reasons for the delays from the Incident Review Committee, it would have been better able to assess the cause of the delay and determine how to mitigate such delays in the future.

Also, the board has not yet developed the regulations describing qualifications for its investigators, as required by law. In February 2009 the board approved draft standards for use in contracting with investigators. In August 2009 the board approved a version of the standards and directed staff to begin the rulemaking process to adopt these standards. Until the board adopts and enforces standards for its investigators in accordance with state law, it may risk retaining investigators who are not qualified to conduct thorough and timely investigations.

Finally, the board has not complied with a state law requiring the inspection of pilot boarding equipment, such as pilot ladders or hoists, in response to reports of suspected safety standard violations. The board's president stated that the former executive director—the board's executive director resigned effective October 30, 2009, and thus, we refer to him as the "former executive director"—acknowledged that he had not dispatched investigators to inspect pilot boarding equipment that had been reported to be in violation of safety standards during the period of our review. He explained that the former executive director had instead relied upon information provided by the pilots regarding the reported equipment. The board president explained that as of October 2009, he has requested the chair of the board's Rules and Regulations Committee to study the issue and make recommendations to the board, which may result in the board seeking changes to state law as it relates to investigating suspected violations. Nevertheless, pursuant to the California Constitution, unless or until an appellate court invalidates the law requiring the board to inspect suspected safety standard violations of pilot boarding equipment, the board must comply with the statute.

We recommended that the board implement procedures to track the progress of investigations, including a procedure to identify those investigations that may exceed the 90-day deadline established in law, and ensure that there is proper justification and appraisal for investigations that require more than 90 days to complete. We also recommended that the board develop and enforce regulations establishing minimum qualifications for its investigators, as state law requires, and investigate reports of safety standard violations regarding pilot boarding equipment.

Board's Action: Pending.

The board stated that it has implemented a system of tracking the progress of open investigations by requiring a monthly report on the status of each open investigation and the expected reporting date and by tracking the expiration of the 90-day period in which investigation reports are to be presented, absent a timely extension for good cause. Further, the board reported that it will review any requests for an extension to determine the reason and whether the underlying cause for the request can be addressed to avoid unnecessary delays in the future. The reasons for the request for an extension will be recorded in the board's minutes. Moreover, the board stated that the adoption of minimum standards for commission investigators is currently in the rulemaking stages and project this process to be complete by the end of March 2010. The board also stated that all reports of safety standard violations it receives concerning pilot boarding equipment will be investigated in accordance with state law. Where feasible, the board explained, a commission investigator will be assigned to personally inspect the equipment for compliance with applicable federal and international standards. Where that is not feasible (such as when the report is received after a vessel has departed port), the investigation will be based on such information as is available.

Finding #3: The board has not ensured that all pilots completed the required training within specified time frames.

The board's regulations require every pilot to attend a combination course, which must include topics relating to emergency maneuvering, emergency medical response, ship handling in close quarters, and regulatory review, at least every three years. We reviewed the training records of seven pilots whose licenses had been renewed at least three times as of April 30, 2009, and determined that two had last attended the required training in April 2005 and did not attend again until October 2009, more than four years later. According to the board's former executive director, at the time these pilots were originally scheduled for training, the board was pursuing a regulatory change that would have allowed pilots to attend the required training every five years instead of every three. He explained that the board had relied on the proposed change to regulations and delayed the attendance of these two pilots. According to the board's president, changing the requirement to every five years would have been more in line with the training cycles of other pilotage grounds around the country. However, he stated that the board chose not to reduce its training requirements because the change might have been perceived by members of the public as potentially reducing the safety of pilotage on the waters in the board's jurisdiction. Because these regulatory changes were only proposed, the board inappropriately delayed training for these pilots beyond the existing legal deadline.

Additionally, state law mandates that the board require the institutions it selects to provide continuing education for pilots to prepare an evaluation of the pilots' performance and to provide a copy to the Pilot Evaluation Committee (to the board beginning in 2010). We reviewed the contracts between the board and the continuing education institutions but did not identify a requirement for the institutions to provide evaluations of pilot performance to the Pilot Evaluation Committee. The board's president asserted that the Continuing Education Committee will negotiate with the training institutions to develop an appropriate evaluation process. To comply with state law, the board must follow through with its intention to require training institutions to prepare and submit evaluations of pilots' performance. Without these evaluations, the board lacks assurance as to whether a pilot successfully completed the required training program or whether that pilot will need additional training before being allowed to navigate vessels as a licensed pilot.

To ensure that all pilots complete the required training within the specified time frames, we recommended that the board schedule pilots for training within the period specified in state law and board regulations and include in its contracts with institutions providing continuing education for pilots a provision requiring those institutions to prepare an evaluation of pilots' performance in the training.

Board's Action: Partial corrective action taken.

The board implemented a checklist to track each pilot's training cycle and the expiration dates for the three-year and five-year training periods to ensure timely attendance at board-mandated training. The board told us that procedures for obtaining limited extensions to complete training under specified circumstances are in the rulemaking stages, with a projected completion date in the second quarter of calendar year 2010. The board also stated it is currently working with its continuing education providers to develop performance evaluations, which will be incorporated in future contracts.

Finding #4: The board risks not having enough pilot trainees to replace retiring pilots.

To help it forecast the need for additional trainees, the board conducted six surveys between June 2006 and July 2009, asking all pilots to indicate when they intend to retire. Of the 58 pilots who responded to the board's most recent survey, which it conducted in June 2009, three indicated that they plan to retire by January 1, 2010, and an additional five stated that they plan to retire by January 1, 2011. However, because the length of time it takes a trainee to complete the pilot training program is typically much longer than the length of time between a pilot's retirement announcement and the effective date when the pilot may begin receiving a pension, the board runs the risk that the number of licensed pilots will decrease if more pilots choose to retire than the number of trainees completing the training program.

To ensure that it is able to license the number of pilots it has determined it needs, we recommended that the board continue to monitor its need for additional trainees to replace those who retire.

Board's Action: Corrective action taken.

The board stated that it has developed a comprehensive process for evaluating future pilotage needs and will continue to conduct regular retirement surveys of existing pilots. The board currently has eight trainees in various stages of training and two qualified candidates on its eligibility list. The board expects to hold further selection examinations in the second quarter of calendar year 2010, which will provide a new eligibility list that should meet the board's needs for training an adequate number of future pilots through the summer of 2013.

Finding #5: The board lacks controls over confidential information.

A state law effective January 1, 2009, requires the board to develop procedures for access to confidential or restricted information to ensure that it is protected. However, as of September 2009, the board had not yet established such procedures. Meanwhile, without such procedures, the board could inadvertently share confidential information with the public. In fact, the board did release confidential information when the board's president requested that board staff fax certain information about one of its pilots to an independent, nonprofit association's counsel. This information included the pilot's home address on one document and Social Security number on another.

Also, until October 2009, board staff, as well as board members, used nonstate e-mail accounts to conduct state business, which could jeopardize the board's ability to respond to requests for public records and to protect confidential information. According to the board's president, board staff used nonstate e-mail accounts beginning in 1994. Additionally, he stated that board members and board staff who had previously used nonstate e-mail accounts have not transferred old data into their new state accounts.

We recommended that the board create a process, as state law requires, for accessing confidential information, such as board records containing confidential information on board members, board staff, or pilots and that it consistently use state-based e-mail accounts when conducting board business, including transferring old e-mail records to their new accounts.

Board's Action: Partial corrective action taken.

The board reported that it is developing written procedures for the treatment of confidential information and the handling of requests for such information consistent with state law, and expects to have them completed by the end of January 2010. Further, as of November 2009, board members and staff are using state e-mail accounts. Also, after joining the Business, Transportation and Housing Agency, the board started a step-by-step technical infrastructure change. In that process, the board obtained state-based e-mail accounts for all board members and staff. The board expects that board members and staff will be conducting all board business on their state-based e-mail accounts by the end of December 2009.

Finding #6: The board lacks controls over filings of statements of economic interests and required ethics training.

We identified several instances in which the board did not comply with legal requirements regarding the filing of statements of economic interests. We examined the files for the 10 board members and two board staff who served from January 1, 2007, through March 31, 2009, and found four instances in which the board did not comply with this regulation. According to the board's president, the board's staff have not consistently followed up to ensure that all required statements of economic interests have been completed and that board files include a copy. Without complete statements of economic interests, neither the board nor the public has access to information that would reveal whether board members may have conflicts of interest.

Additionally, according to the board's president, the board did not require its investigators to file statements of economic interests. Board regulations require consultants to file statements of economic interests, although the executive director may make a determination in writing that a particular consultant does not meet the regulatory criteria necessary to file a statement. None of the four investigators under contract during all or part of the period we reviewed filed statements of economic interests, nor did the former executive director determine in writing that board investigators are not required to comply with the disclosure requirement. The former executive director explained that he recalled discussing this issue with legal counsel and that they had determined that investigators are not consultants; rather, they are "finders of facts" and therefore do not participate in the Incident Review Committee's decision-making process. Therefore, he explained, they do not need to file statements of economic interests, and no written exemption is required. However, the board's regulations require a written exemption from the executive director if consultants, such as investigators under contract to the board, are not required to file statements of economic interests. According to the board's president, the board did not seek formal advice on this determination from the Fair Political Practices Commission, the state authority in this area.

Until recently some board members and staff had not received training in state ethics laws and regulations, as required by law. However, according to the board's president, not all board members or board staff had received such training prior to 2009. He stated that the board members were not aware of the requirement. Subsequent to our inquiry, all of the board members and staff received ethics training by August 2009.

We recommended that the board establish a formal procedure to complete and maintain copies of required statements of economic interests and complete the process of ensuring that investigators complete statements of economic interests. When there are questions as to whether other consultants

should file such statements, the board should seek advice from the Fair Political Practices Commission. Finally, the board should develop procedures to ensure that board members and designated staff continue to receive required training, such as training in state ethics rules.

Board's Action: Partial corrective action taken.

The board developed a checklist to ensure that annual, as well as assuming and leaving office, statements of economic interest are filed and that copies are maintained in office files in accordance with the state's political reform laws and the conflict-of-interest code provisions. The board also stated it is developing a package of comprehensive ethics training and a checklist with dates of completion for each board member and staff, with a projected completion date of the end of January 2010.

Finding #7: The board did not adhere to some requirements regarding administrative processes.

We observed that the board did not properly provide notice on its Web site of two recent meetings at least 10 days in advance, as the Bagley-Keene Open Meeting Act (act) requires. On June 16, 2009, the board's Web site indicated that the next board meeting would be held on June 25—nine days later—but the agenda posted to the board's Web site was for the prior month's meeting on May 28. Subsequently, on July 15, 2009, the board's Web site announced the board meeting held in June, even though a July meeting was scheduled for July 23, 2009—less than 10 days from the date we reviewed the Web site. The board has a contract with the Association of Bay Area Governments to maintain, in part, the board's Web site. However, one provision of the contract enables board staff to update meeting information on the board's home page and to post agendas, minutes, and news items through an administrative page. According to the board's assistant director, the board had been using the administrative page until a staffing change in March 2009. Subsequently, the board requested that the Association of Bay Area Governments update the board's meeting and agenda notices on the Web site. However, in both June and July, board staff made this request on the last day the board would have been in compliance with state law. The assistant director stated that in October 2009, board staff received training in how to update the Web site using the administrative page, and she explained that the board intends to reinstate its previous practice of having board staff, rather than a contractor, update meeting information on the Web site. Without proper notice, members of the public may not be aware of upcoming board meetings or of the topics the board will discuss at those meetings.

Further, until recently the board had not complied with state law requiring it to formally review the executive director with respect to his or her performance on the Incident Review Committee at least once each year. According to the board's president, the evaluation covering the former executive director's performance on the committee during July 1, 2007, through June 30, 2008, was the first the board had conducted, yet the board had employed the former executive director since 1993. Subsequent to the first evaluation, the board conducted two additional evaluations of the former executive director for the periods covering July 1, 2008, through December 31, 2008, and January 1, 2009, through June 30, 2009. The board's president explained that the board has not formalized its process for reviewing the performance of the executive director, but he expects the board to settle on a formal process and document it appropriately within six months after hiring a new executive director. If the board does not have a process in place when it hires a new executive director, it will not have the mechanism to provide formal feedback on his or her performance on the Incident Review Committee.

We recommended that the board establish processes to ensure that its Web site contains timely and accurate information about its meetings, as required by law, and that it formalize a procedure for evaluating the executive director's performance on an annual basis.

Board's Action: Partial corrective action taken.

The board stated that it has implemented training of its staff in the update and maintenance of the board's Web page displaying notices of its meetings. The board told us that information on the Web site will be reviewed routinely to ensure that timely and accurate meeting information is provided in accordance with state law. Also, the board reported that it is currently in the process of selecting a new executive director and anticipates that the review process and the performance appraisal form used for the past two years will be refined and formally adopted as part of the process for evaluating the new executive director.

Finding #8: The board's recordkeeping needs improvement.

The board does not always maintain adequate records to demonstrate that it complies with state law. During the period of our review, January 1, 2007, through March 31, 2009, there were 24 reported incidents. Of the 24 incidents, we judgmentally selected four to determine whether their respective files contained the required information and noted that one did not contain the Incident Review Committee's opinions and recommendations or the board's actions based on these recommendations.

Additionally, we determined that the board is inconsistent in announcing pilots whose licenses the board renewed. Further, board staff did not maintain copies of licenses issued after 2000 in the pilots' files. We found that the board reported license renewals in its minutes for meetings held in February and April of 2007 and 2008 but did not report any renewals in board minutes for February or April 2009. Nevertheless, several pilots had licenses up for renewal in those months. According to the board's president, the board generally announces renewals at board meetings and stated that the two instances we found in which such announcements were not recorded in meeting minutes were due to an inexperienced staff person not reporting such announcements in the minutes. Without a proper record in the board's minutes or copies of each pilot's annual license renewal in the files, however, the board may not be able to demonstrate that a pilot held an active license during a given year.

We recommended that the board establish formal procedures related to document retention in files regarding investigations, determine and document what it needs to include in minutes of the board's meetings, and ensure that copies of license renewals are placed in the pilots' files.

Board's Action: Pending.

According to the board, it is developing written procedures regarding document retention, including checklists of what should be in each investigation file, such as the Incident Review Committee's opinions and recommendations and the board's actions, and how long each file is to be retained in accordance with state laws. Completion date is projected for the end of March 2010. Also, the board stated that it is developing written guidelines for the preparation of minutes for the board's meetings, including the inclusion of information on the issuance and renewals of pilot licenses, and expects to have those guidelines in place by the end of January 2010.

Finding #9: The board lacks internal policies and controls over pilotage rates and its revenues.

State law sets the rates vessels must pay for pilotage service in San Francisco, San Pablo, Suisun, and Monterey bays, but allows a portion of the rate, called the "mill rate," to change each quarter, based on the number of pilots licensed by the board. According to the Bar Pilots' rate sheet, the mill rate changed five times between January 2007 and June 2009. We expected to find that the board had authorized the changes to this rate; however, the board's minutes do not reflect any such activity. Instead, according to the board's president, the board receives a copy of the Bar Pilots' rate letter each quarter, and these rates reflect changes to the mill rate. The board's president stated that the law does not require the board to take action to approve these rate changes. However, we disagree, as the law clearly states that

rate adjustments will take effect quarterly “as directed by the board.” By not reviewing and approving such adjustments, the board is not in compliance with the law and risks that the Bar Pilots may miscalculate the rate.

The board also does not consistently ensure that an independent audit of the pilot pension surcharge is conducted, and there is no audit in place for the pilot boat surcharge. Although an independent auditor completed an audit of the pilot pension surcharge for 2007, it did not complete an audit of the pilot pension surcharge for 2008, according to the board’s president, due to the auditor’s staffing changes and to a lack of communication between the board and the independent auditor. Further, the board’s president explained that the board had not considered having a similar audit conducted of the pilot boat surcharge, which state law established to recover the costs of obtaining new pilot boats or extending the service life of existing pilot boats. Without such annual audits, the board lacks assurance that the Bar Pilots are collecting and spending funds from these surcharges in accordance with state law.

The board also lacks a process to verify the accuracy of the surcharge amounts the Bar Pilots collect and remit to the board on a monthly basis. State law requires pilots to submit to the board, and the board to maintain, a record of accounts that includes the name of each vessel piloted and the amount charged to or collected for each vessel. Each month, the Bar Pilots remit the total amount of the board operations, continuing education, and training surcharges collected and include a report detailing all of the pilotage fees and surcharges billed and collected. We reviewed eight monthly reports and determined that they did not contain all information required by law and, in one case, the report was missing pages. The board’s president explained that a review of the monthly reports was not done in the past because the board had limited staff to conduct such reviews. However, given that the board is required to maintain complete records of accounts, we believe it needs to take the steps necessary to ensure that the Bar Pilots’ reports contain the required information, such as information pertaining to the three surcharges the Bar Pilots collect and remit to the board.

Additionally, the board did not receive all revenues for the surcharge to fund training new pilots (training surcharge), as required by law. We determined that the inland pilot, the one pilot who is not a member of the Bar Pilots and who guides vessels between the bays and the ports of West Sacramento and Stockton, was not collecting the training surcharge on the vessels he piloted. According to the board’s president, it was both the inland pilot’s and the board staff’s understanding that the training surcharge does not pay for the training of future inland pilots. However, state law requires the training surcharge to be applied to each movement of a vessel using pilot services, and therefore the inland pilot should collect this surcharge.

We recommended that the board review and approve any quarterly changes made to that portion of the pilot fee based on the mill rate. Further, the board should establish a requirement for an annual, independent audit of the pilot boat and pilot pension surcharges and establish a monthly review of the revenue reports it receives from the Bar Pilots. Additionally, we recommended that the board instruct the inland pilot to collect and remit the training surcharge and report these collections to the board.

Board’s Action: Partial corrective action taken.

The board stated it will include in its quarterly review of other surcharge rates a review and approval of any changes in the mill rate authorized under state law. The board also stated it will seek authority to contract for annual audits of all surcharges on pilotage fees. Further, the board asserted that it commenced a monthly review of the revenue reports from the San Francisco Bar Pilots, including verification of the amount on the accompanying check and completeness of the report. The board demonstrated that it instructed the inland pilot to begin collecting and remitting the pilot trainee training surcharge and the inland pilot is doing so. The inland pilot has acknowledged the instruction and will commence collection of the surcharge beginning with his next trip.

Finding #10: The board lacks internal policies and controls over its expenditures.

We determined that the board does not track its expenditures in a manner that is consistent with state law. In its financial statements, the board tracks expenditures in only two categories—operations and training—combining expenditures for the training program and for pilots' continuing education. However, state law requires that the board spend the money collected from the continuing education and training surcharges only on expenses directly related to each respective program. Additionally, the board maintains a reserve balance, but its financial statements do not specify the amounts of this balance that relate to its operations, training, and continuing education surcharges. According to the board's president, for many years the board wanted to establish different categories in its formal accounting records in order to track the expenditures related to each surcharge independently. However, he added that neither the Department of Consumer Affairs nor the Department of Finance tracked the expenditures as the board desired and thus, in order to generate the information necessary to comply with statutory requirements, the board maintained its own internal accounting of expenditures within each surcharge. He stated that this internal recordkeeping system is not reconciled to state reports. Unless it tracks expenditures relevant to each surcharge separately in its formal financial reports, the board cannot demonstrate that it is complying with the law and risks miscalculating the rate of the surcharges in the future.

In addition, the board does not have written contracts with the physicians it has appointed to conduct physical examinations of pilots. Written contracts between the board and its appointed physicians would outline the duties of the physicians under contract and ensure consistency in the physical examinations of pilots. Additionally, because these contracts would be subject to competitive bidding as described in state law, the board would have to solicit bids for these contracts. For example, we reviewed board payments to one medical clinic and determined that they totaled more than \$14,000 and \$26,000 in fiscal years 2007–08 and 2008–09, respectively, amounts equal to or greater than the \$5,000 that is exempt from competitive bidding under state law. According to the board's president, the board has not contracted with the physicians; however, as of October 2009, he stated that the board is defining criteria for the approval of physicians and for use in the contracting process in the future. He added that the board's Pilot Fitness Committee began to address this issue in April 2009 and hopes to be able to recommend criteria to the board by the end of 2009.

We recommended that the board develop procedures to separately track expenditures relevant to the operations, training, and continuing education surcharges. Additionally, we recommended that the board competitively bid contracts with physicians who perform physical examinations of pilots.

Board's Action: Pending.

The board stated that, while board staff has been tracking separately the revenues and expenditures related to the board operations, continuing education and trainee training surcharges, it has requested the sister state agency providing administrative support to the board to establish a formal tracking process that will comply with state law. It expects to have that process in place by the end of January 2010. Further, the board stated it will begin the competitive bid process upon its adoption of the criteria for board physician qualifications, appointment process and operational structure, which it expects to adopt in the second quarter of 2010.

Finding #11: The board made some expenditures that could constitute a misuse of state resources.

According to state law, state agencies cannot use state funds to pay for expenses used for personal purposes. However, in a contract between the board and the Bar Pilots covering July 1, 2006, through June 30, 2011, the board requires that the Bar Pilots purchase round-trip, business-class airline tickets for pilots attending training in Baltimore, Maryland, and at the Centre de Port Revel in France, and it requires that the board reimburse the Bar Pilots for these expenses. Business-class air travel provides the same basic service as economy class, but with added amenities of value to the traveler. We reviewed one invoice from the Bar Pilots requesting reimbursement for travel to the Centre de Port Revel in France and noted that business-class airfare cost an average of \$6,200 for each pilot in August 2007.

Using similar travel dates in August 2009, including the airline used by the pilots, we determined that, on average, purchasing economy-class tickets offered by three airlines to Lyon, France—the airport five of the six pilots in our sample used—could reduce costs by roughly 40 percent. According to the board's president, it is private industry practice to fly a mariner first class—which offers amenities beyond business class—when he or she must travel internationally to transfer onto another vessel. For example, a mariner leaving a vessel in Hong Kong to join a vessel in San Francisco would fly first class. However, the board is a regulatory agency and not a private shipping company. Such an expense, when an equivalent and less expensive alternative is available, is not appropriate and may constitute a misuse of state resources, which the state Constitution prohibits.

Also, the board's provision of free parking to current employees raises questions as to whether the parking expenditures, which are primarily for private benefit, constitute a misuse of state resources.

We recommended that the board cease reimbursing pilots for business-class airfare when they fly for training and amend its contract with the Bar Pilots accordingly; and cancel its lease for parking spaces or require its staff to reimburse the board for their use of the parking spaces.

Board's Action: Pending.

The board stated that its president has requested, and the chair of the board's Pilot Continuing Education Committee has agreed to schedule, a meeting of the committee to consider and recommend to the board alternatives to mandating and reimbursing business-class travel for training. According to the board, that meeting is scheduled for January 13, 2010, and the next manned-model training session begins June 21, 2010, giving the board ample time to consider and implement recommendations from the committee. Also, the board concurred with the underlying premise that parking spaces rented by the board must be used for a legitimate public purpose and that, to the extent that staff use those spaces when not otherwise in use, staff must reimburse the board.