



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

November 2009 Report 2009-043



**CALIFORNIA
STATE AUDITOR**

The first five copies of each California State Auditor report are free. Additional copies are \$3 each, payable by check or money order. You can obtain reports by contacting the Bureau of State Audits at the following address:

California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814
916.445.0255 or TTY 916.445.0033

OR

This report is also available on the World Wide Web <http://www.bsa.ca.gov>

The California State Auditor is pleased to announce the availability of an on-line subscription service. For information on how to subscribe, please contact the Information Technology Unit at 916.445.0255, ext. 456, or visit our Web site at www.bsa.ca.gov.

Alternate format reports available upon request.

Permission is granted to reproduce reports.

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

Elaine M. Howle
State Auditor
Doug Cordiner
Chief Deputy

CALIFORNIA STATE AUDITOR

Bureau of State Audits

555 Capitol Mall, Suite 300

Sacramento, CA 95814

916.445.0255

916.327.0019 fax

www.bsa.ca.gov

November 24, 2009

2009-043

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by Chapter 567, Statutes of 2008, the California State Auditor presents its audit report concerning a comprehensive review of the performance and finances of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board). This report concludes that the board did not consistently follow state law when licensing pilots and investigating navigational incidents, misconduct, or other matters involving pilots. For example, state law requires that, as part of an application for licensure, pilots receive a physical examination from a physician appointed by the board. In three instances, the board licensed pilots before they had received a physical examination and in one instance, a pilot guided vessels 18 times before receiving the physical examination. Further, we determined that the board did not always follow state law requiring that it complete investigations within 90 days or grant an extension. 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. Of the 24 investigations we reviewed, 17 went beyond the 90-day statutory deadline. Furthermore, in seven of 17 instances that required an extension, the board either did not grant an extension or granted one late. Finally, although required to do so by law, the board did not investigate reports of suspected safety standard violations regarding the equipment pilots use to board vessels.

Further, we determined that the board lacks administrative procedures and needs to improve oversight of its finances. For example, the board does not yet have a process in place to protect confidential information on pilots, board members, and staff, as required by state law. Also, the board did not approve certain changes to the rates pilots charge for their services, as required by law. Additionally, we determined that some board expenditures may constitute a misuse of state funds, including paying for business-class airfare, which can cost significantly more than economy-class airfare, for pilots attending training in France. Lastly, the board does not follow state law in keeping separate records of its expenditures for new pilot training and continuing education.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Contents

Summary	1
Introduction	7
Chapter 1	
The Board Sometimes Failed to Follow the Law When Licensing Pilots and Investigating Incidents	23
Recommendations	31
Chapter 2	
The Board Lacks Administrative Procedures and It Needs to Improve Oversight of Its Finances	33
Recommendations	46
Appendix A	
Summary of Selected Characteristics of Some West Coast Ports and Piloting Organizations	49
Appendix B	
Revenues and Expenditures for the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun, Fiscal Years 2007–08 and 2008–09	51
Response to the Audit	
Business, Transportation and Housing Agency, Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun	53
California State Auditor’s Comments on the Response From the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun	63

Summary

Results in Brief

The mission of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) is to license and regulate the pilots who guide certain vessels into, out of, and through San Francisco, San Pablo, Suisun, and Monterey bays and the ports of West Sacramento and Stockton.

In our review of the board's activities, we determined that the board did not consistently follow procedures outlined in law when licensing pilots. Specifically, the board licensed a pilot before he had received the physical examination required by law. As a result, he piloted vessels 18 times before receiving his required physical examination. By licensing a pilot in advance of the required physical examination, the board risks having a pilot who is not fit for duty guiding vessels into, out of, and through the bays.

According to the board's president, there was a disconnect in the past between the board and board staff regarding the application process and the paperwork to be filed before licensure. He stated that in the future, board staff will use a checklist to ensure that all application requirements are completed before licensure, and he or the board's vice president will review the checklist and supporting documentation to ensure that all of the requirements have been met.

The board also renewed some pilots' licenses even though the pilots had received physical examinations from physicians the board had not appointed¹ and, in one case, renewed a license for a pilot who had not had a physical examination that year. Because it did not ensure that physical examinations were conducted only by appointed physicians, the board lacked assurance that the physicians were familiar with the board's standards, as described in state regulations. Further, because it did not ensure that all licensees receive an annual physical examination, the board risked licensing an individual who was not fit to perform the duties of a pilot.

Additionally, the board did not fully comply with state law regarding investigations. We reviewed the 24 incidents reported to the board from January 1, 2007, through March 31, 2009, that

¹ State law effective January 1, 2009, requires the board to "appoint" the physicians who conduct physical examinations of pilots. Prior to the effective date of this law, the board's regulations required the board to "designate" these physicians, which we interpret to mean that the board was required to formally approve or appoint the physicians. We use "appoint" throughout this report.

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.*
- » *The board did not ensure that some of its members and investigators filed required statements of economic interests.*

continued on next page . . .

- » *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.*

were investigated by the Incident Review Committee. The Incident Review Committee's duties include investigating, with the assistance of one or more investigators, navigational incidents, misconduct, and other matters involving pilots (incidents) and presenting reports on these incidents to the board. Of the 24 incidents, 17 investigations required extensions because the Incident Review Committee did not complete its investigation within 90 days of the date of the incident, as required by law. In seven cases, the board either did not grant an extension or granted it after the 90-day deadline had passed. Without timely investigations, the board may risk additional incidents, because pilots are generally allowed to continue working while the board completes its investigation. The board's president stated that the board would start including the 90-day deadline on board agendas.

The board also failed to comply with state law requiring that it inspect pilot boarding equipment, such as pilot ladders or hoists, that had been reported as a suspected safety standard violation. According to the board's president, the former executive director² relied upon information provided by the pilots to carry out the Incident Review Committee's responsibilities regarding pilot boarding equipment. When proper investigations of reported violations of safety standards regarding pilot boarding equipment do not occur, the board risks injury to pilots.

Further, we determined that two pilots did not attend training as required by the board's regulations. Licensed pilots must attend a combination course, which includes topics related to emergency maneuvering, emergency medical response, handling ships in close quarters, and regulatory review, at least every three years. However, two of the seven pilots we reviewed had last attended this training in April 2005 and did not attend again until October 2009, more than a year after the required deadline for taking this course. 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 to require that pilots attend this training every five years instead of every three. Nevertheless, these changes were only proposed and never took effect; thus, the board inappropriately rescheduled these pilots to attend training beyond the established deadline.

Also, the board lacks controls to protect confidential information. As of September 2009 the board had not yet established a procedure for accessing confidential information, as required by state law. Without such a procedure, the board risks inadvertently

² The board's executive director resigned effective October 30, 2009. Thus, throughout this report, we refer to him as the "former executive director."

sharing confidential information with the public. In fact, the board shared a pilot's home address and Social Security number in information it faxed to a nonprofit organization's counsel. According to the board's president, he has since requested that the board's assistant director develop and recommend to the board an appropriate set of procedures for accessing confidential information; however, he did not specify when the procedures will be finalized.

Furthermore, we noted that the board did not adhere to some requirements regarding administrative processes. For example, the board did not have copies of statements of economic interests for some of its members for the period of our review. According to the board's president, board staff did not always follow up with board members to ensure that they filed timely statements of economic interests. When required statements of economic interests are not filed, neither the board nor the public is made aware of potential conflicts of interest board members may have.

In addition, the board did not approve several adjustments to the rates vessels must pay for pilotage services, as the law requires. State law establishes these rates and allows adjustment to them based on the number of pilots licensed. According to the board's president, the law does not require the board to approve the adjustments; instead, the board receives a copy of the rate sheet from the San Francisco Bar Pilots (Bar Pilots)—a private affiliation of pilots licensed by the board—that reflects the adjustment. However, state law requires that such rates become effective "as directed by the board," which, according to our counsel, reflects the Legislature's intent that the board take some affirmative action to authorize a rate change.

The board also does not ensure that an independent audit is conducted of the pilot pension surcharge, and there is no audit in place for the pilot boat surcharge. State law establishes the pilot pension surcharge to pay for costs associated with a pension plan defined in state law, and it establishes the pilot boat surcharge to recover the costs of acquiring new pilot boats or extending the service life of existing boats. In both cases, the Bar Pilots collect the surcharges on behalf of the board. We noted that, although the board conducted an independent audit of the pilot pension surcharge for 2007, it did not do so for 2008. According to the board's president, there was a lack of communication between board staff and the independent auditor regarding the need for a 2008 audit. Further, the board did not conduct an audit of the pilot boat surcharge. The board's president explained that the board will consider commissioning an independent audit of each of the

surcharges at its November 2009 meeting. Without such audits, the board lacks assurance that the Bar Pilots are collecting and spending funds from these surcharges in accordance with state law.

In addition, we determined that the board paid physicians who are performing physical examinations of pilots even though the board did not have written contracts with those physicians. Written contracts would outline the duties of the physicians and ensure consistency in the physical examination of pilots. Finally, the board made some expenditures that may constitute a misuse of state resources. Specifically, in a contract between the board and the Bar Pilots, the board required that the Bar Pilots purchase business-class airfare for pilots attending training in Maryland and at the Centre de Port Revel in France. Business-class airfare provides added amenities of value to the traveler, such as priority check-in, at a higher cost. Such an expense, when an equivalent and less expensive alternative is available, is not appropriate, and it may constitute a misuse of state resources, which state law prohibits.

Recommendations

To ensure that it follows the law when licensing pilots, the board should:

- Follow its recently established procedure to verify that pilots have fulfilled all the requirements for licensure, including the physical examination, before the board issues or renews a license.
- Establish and implement a procedure for approving and monitoring board-appointed physicians.

To ensure that it follows the law when investigating incidents, the board should:

- 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.
- Investigate reports of safety standard violations regarding pilot boarding equipment.
- Ensure that there is proper justification and approval for investigations that require more than 90 days to complete.

To ensure that all pilots complete required training within the time frames required by board regulations, the board should schedule pilots for training within the specified period.

To improve its administrative procedures, the board should:

- 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.
- Establish a formal procedure to complete and maintain copies of required statements of economic interests, including those from the board's investigators.

To improve the oversight of its finances, the board should:

- Review and approve quarterly calculations of the rates pilots charge for their services.
- Establish a requirement for an audit of both the pilot boat and pilot pension surcharges and ensure that the audit is conducted each year.

To ensure that its expenditures are appropriate, the board should:

- Competitively bid contracts with physicians who perform physical examinations of pilots.
- Cease reimbursing pilots for business-class travel when they fly for training and amend its contract with the Bar Pilots accordingly.

Agency Comments

The board generally agrees with our recommendations and outlines actions it plans to take to address them. The board raised some concerns about our recommendations regarding certain expenditures that we believe could constitute a misuse of state resources, including paying for business-class airfare for pilots attending training in France.

Blank page inserted for reproduction purposes only.

Introduction

Background

Pilotage³ in the San Francisco, San Pablo, and Suisun bays has been regulated by a single-purpose state board continuously since 1850. In 2001 the Legislature added Monterey Bay to the area regulated. In 2009 this board, known as the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board), was placed under the authority of the Business, Transportation and Housing Agency (agency) due to legislation, approved in September 2008, that made a number of changes to the board's structure and responsibilities. The board's mission is to license and regulate the pilots who guide certain vessels, including every foreign vessel and every vessel bound between a foreign port and any port within the board's jurisdiction. State law requires the board to establish the number of pilots needed based on current economic trends and other factors, and to license pilots serving the pilotage grounds shown in Figure 1 on the following page. Additionally, the board is required to adopt training standards and programs for pilots and pilot trainees, to investigate incidents involving pilots, to oversee the San Francisco Pilot Pension Plan (pension plan) as defined in state law, and to make recommendations to the Legislature regarding the rates pilots charge for their services.

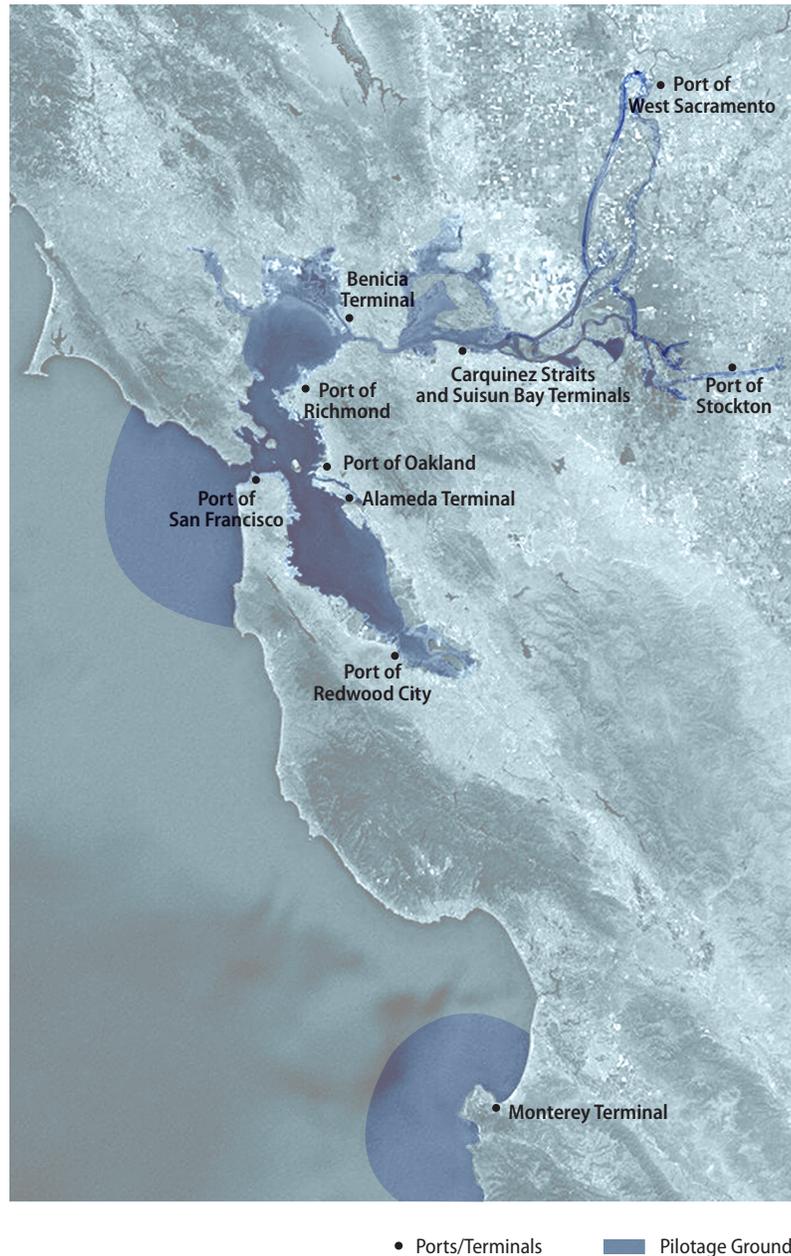
The board consists of eight members representing pilots, the shipping industry, the public, and the agency. Specifically, two members are licensed pilots, two members are from the shipping industry—one from the dry cargo⁴ industry and one from the tanker industry—and three are public members, who may be any person, with some industry-related restrictions. For example, a public member may not have any financial or proprietary interest in piloting or in tugs, cargo, or passenger vessels. These seven members are appointed by the governor with the consent of the Senate and may serve a maximum of two four-year terms. The eighth member is the secretary of the agency, who serves in a nonvoting capacity. The three public members of the board may receive up to \$600 per month, as determined by the board, in compensation for their services.

As of July 2009 the board had three full-time staff members. The executive director, as defined by state law, is hired by the board and is exempt from civil service laws. The executive director is responsible

³ *Pilotage* refers to the act of guiding a maritime vessel by pilots. We discuss the duties of a pilot later in the Introduction.

⁴ According to APL, a container transportation company, *dry cargo* refers to cargo other than liquid cargo or cargo requiring temperature control.

Figure 1
Pilotage Grounds for the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun



Sources: California Harbors and Navigation Code, San Francisco Bar Pilots, and the president of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun.

for a variety of duties that include managing personnel, keeping records of the board’s revenues and expenditures, countersigning licenses, administering investigations, coordinating with other state

and federal agencies, and performing other duties the board's president may assign. Additionally, a state law that took effect on January 1, 2009, establishes a position of assistant director, appointed by the governor but reporting to the board's executive director. The governor filled this position in July 2009. Finally, the board has an administrative assistant.

The board has several committees that provide advice and guidance to the board. The text box includes a selected list of the board's committees. Two of these committees are established in state law, one is established in the board's regulations, and the others were created at the discretion of the board. According to the board's president, he appoints the members of most committees, who do not need to be members of the board. For example, the Pilot Evaluation Committee, which must consist of five pilots with at least 10 years of experience each, had no members who also served on the board as of April 2009.

Duties of a Pilot

A pilot is a maritime specialist who guides vessels into and out of ports, working with the vessel's master (captain), who retains primary authority over the vessel and the vessel's crew. Pilots navigate vessels day and night, through clear weather or thick fog, high winds, and winter storms. They contend with shifting currents and tides, sand bars, and narrow channels and rivers, as well as other marine traffic. Vessels moving into, out of, or through the area under the jurisdiction of the board must use a pilot, with some exceptions, such as recreational vessels of less than 300 gross tons.

The work of a pilot is both physically and mentally challenging. For example, when a pilot boards a vessel at sea, he or she will generally use a pilot ladder, an accommodation ladder, a pilot hoist, or a combination of this equipment (pilot boarding equipment), an example of which is shown in Figure 2 on the following page. The pilot generally transfers from the pilot boat—a boat used to transport pilots to and from vessels—to the pilot boarding equipment and climbs up the side of the vessel, sometimes in rough seas. Additionally, while on board the vessel, a pilot must navigate the vessel safely through some of the nation's busiest

Selected Board Committees (by Establishing Authority) and Some of Their Responsibilities

Established in state law:

- **Incident Review Committee**—Investigates and presents written incident reports involving pilots to the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board).
- **Pilot Evaluation Committee**—Conducts and supervises the board's program to train new pilots.

Established in board regulations:

- **Pilot Power Committee**—Reviews and makes recommendations to the board regarding the number of licensed pilots needed to meet current demand.

Established by the board:

- **Finance Committee**—Monitors board finances and the adequacy of surcharges.
- **Rules and Regulations Committee**—Reviews the board's authorizing statute and board regulations to identify possible improvements and monitors the board's rulemaking process to ensure conformance with applicable requirements.
- **Ad Hoc Advisory Committee on Pilot Selection**—Examines the current racial, ethnic, and gender diversity of licensed pilots and reviews the diversity of the pool of potential applicants for the board's program to train new pilots.

Sources: The board, the board's president, California Harbors and Navigation Code, and the California Code of Regulations.

waterways while contending with weather conditions, currents, and narrow channels and rivers. The pilot must be able to make quick, appropriate decisions or risk damage to the vessel and the environment, as well as harm to the vessel's crew. For example, in January 2009, when a vessel lost power, the pilot took measures that prevented the vessel from hitting the Marin shore. On the other hand, in 2007, according to the U.S. Coast Guard, a pilot guiding the Cosco Busan, an outbound container vessel, failed to properly direct the movement of the vessel and hit one of the towers of the San Francisco–Oakland Bay Bridge, resulting in an oil spill that contaminated miles of coastline and killed wildlife. We discuss this incident in more detail later in the Introduction.

Figure 2
A Pilot Boarding a Vessel Using a Pilot Ladder



Source: San Francisco Bar Pilots. Photograph used with permission.

Responsibilities of the Board

The board issues new licenses for pilots and renews existing licenses. Pilots are required to complete a formal application to receive or renew a state license. A state-issued pilot license is valid for one year. Additionally, pilots renewing their licenses generally must have piloted under authority of their license during the previous 12 months. State law requires pilots to undergo a physical examination performed by a board-appointed⁵ physician before receiving or renewing a license. Pilots also must maintain a federal license from the U.S. Coast Guard with endorsements allowing them to pilot on the high seas and within the area the board regulates.

Because of the demanding nature of the work, pilot physicals are an important part of the licensing process. The physician certifies whether the pilot is fit or not fit to pilot vessels, based on the standards the board prescribes. The text box provides some examples of conditions that would cause a physician to declare a pilot not fit for duty. In 1988, according to the board's counsel, the board adopted the standards established by the Seafarers Health Improvement Program—a collaborative group of seafarers, shipping associations, and federal agencies—in the *Reference Guide for Physicians, Physical Examination for Retention of Seafarers in the U.S. Merchant Marine*.

According to state law, the board is required to appoint and license a number of pilots sufficient to carry out the purposes of state law related to pilotage. Beginning in February 2002, the board set the maximum number of pilot licenses at 60. The board reaffirmed this number in July 2008. State law requires the board to hold a hearing before it changes the maximum number of licensed pilots. In contemplating making such a change, the board is to consider, among other factors, data related to the shipping industry's need for pilots.

To ensure that there are enough qualified pilots for the number of licenses the board has determined it will issue, the board maintains a training program,

Examples of Conditions That Would Result in a Pilot's Exclusion or Suspension From Duties

Permanently Not Fit for Duty:

- Suicidal behavior
- Epilepsy
- Hearing impairment sufficient to disable communications
- Multiple heart attacks
- Amputation causing an inability to grasp or perform shipboard duties

Not Fit for Duty—the physician must reevaluate the condition before the pilot may return to his or her duties:

- Tuberculosis or other communicable disease
- Hypertension, if uncontrolled
- Cataracts
- Abscessed teeth
- Pregnancy
- Drug addiction

Source: *Reference Guide for Physicians, Physical Examination for Retention of Seafarers in the U.S. Merchant Marine*, 1985.

⁵ State law effective January 1, 2009, requires the board to "appoint" the physicians who conduct physical examinations of pilots. Prior to the effective date of this law, the board's regulations required the board to "designate" these physicians, which we interpret to mean that the board was required to formally approve or appoint the physicians. We use "appoint" throughout this report.

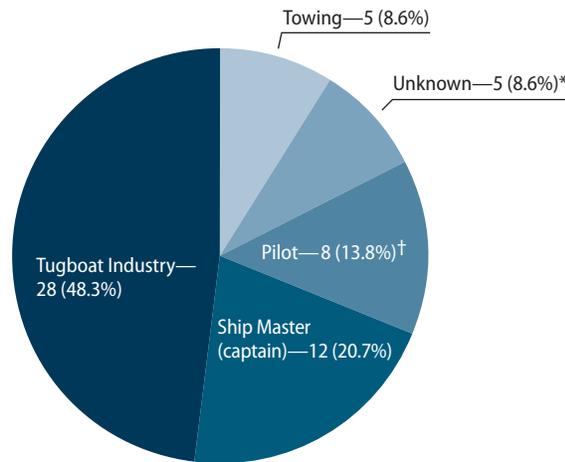
which the board's Pilot Evaluation Committee oversees. Applicants are required by law to complete the training program before becoming state-licensed pilots. To be admitted into the training program, the applicant must meet the minimum eligibility requirements outlined in the board's regulations. For example, an applicant must have at least two years of experience as captain of a vessel within the five years prior to the application cutoff date established by the board, must pass a written examination, and must pass an examination conducted in a simulator that mimics piloting situations. Once in the program, a trainee must make a minimum of 300 trips riding as an observer on a vessel or maneuvering vessels throughout the area the board regulates under the direct supervision of a licensed pilot. According to the chair of the Pilot Evaluation Committee, roughly three-quarters of the trips the trainee makes while in the training program are made with the trainee maneuvering the vessels. Also, of those 300 trips, the trainee must make 50 with members of the Pilot Evaluation Committee. The five pilots who make up this committee are responsible for making a recommendation to the board as to whether a trainee has successfully completed the training program and is ready for licensure by the board.

The board recruits applicants for its training program from several maritime industries and advertises the program with maritime organizations and in a maritime publication. As Figure 3 demonstrates, the 58 pilots licensed by the board as of March 2009 came primarily from the tugboat industry, but some had been captains of vessels or pilots in other areas. To reach this applicant pool, the board advertises its training program in *Professional Mariner* magazine, with six maritime academies throughout the country, and with four maritime unions. Further, the board established the Ad Hoc Advisory Committee on Pilot Selection in 2007 and, according to the committee's chair, charged it with reviewing the racial, ethnic, and gender diversity of pilots and comparing that diversity to the pool of potential program applicants and to the overall population of California. According to the committee's chair, the committee is to develop recommendations for increasing the diversity of licensed pilots; however, as of October 2009 it had not presented any recommendations to the board.

Pilots are required to continue to receive training after licensure. Board regulations require pilots to attend a manned, scale-model ship-handling course every five years. In this course, pilots work on scaled-down models of vessels a pilot might encounter under conditions similar to those in the geographical areas the board regulates. The board contracts with the Centre de Port Revel in France to provide this training. Additionally, board regulations require pilots to attend a "combination" course every three years.

This course includes sections on bridge resource management,⁶ regulatory review, advanced electronic navigation systems, and emergency medical response. The course also includes time in a computer simulation of a vessel’s bridge to study emergency maneuvering. The board contracts with the Maritime Institute of Technology and Graduate Studies in Maryland to provide this training.

Figure 3
Backgrounds of Pilots Licensed by the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun as of March 2009



Source: Bureau of State Audits’ analysis of personnel records for pilots licensed by the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board).

* According to the board’s president, these pilots were independent and operated under their federal licenses prior to January 1, 1985, at which time they were grandfathered in by state law. Specifically, California Harbors and Navigation Code, Section 1171(b), states that all persons possessing a valid state pilot’s license on January 1, 1985, are hereby licensed as if the license was granted by the board. The president explained that the board had no reason to capture or maintain information about the prior employment of these pilots.

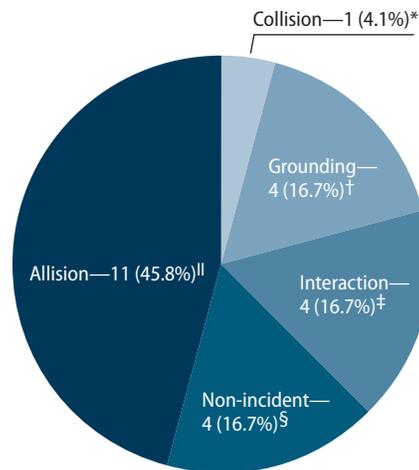
† Employed at a piloting organization not under the authority of the board.

Additionally, state law requires the board to conduct investigations of navigational incidents, misconduct, and other matters involving pilots (incidents). When a pilot is involved in an incident, such as a collision or a grounding, regulations require the pilot to report the incident to the port agent, who in turn notifies the board. Figure 4 on the following page shows the kinds of incidents that were reported to the board from January 2007 through March 2009. When conducting an investigation, an investigator

⁶ According to the Maritime Institute of Technology and Graduate Studies, the goal of the bridge resource management class is to encourage pilots to organize resources (people, equipment, etc.) to prevent accidents.

is required to collect information pertinent to the incident, such as the ship's log and a description of the weather and sea conditions. The board has the authority to use investigators for its investigations and, as of October 2009, the board had active contracts with three investigators. The board's Incident Review Committee, composed of the board's executive director and one of the three public members of the board, is required by state law to prepare and submit to the board a written report of its findings regarding all incidents it investigates.

Figure 4
Navigational Incidents Reported to the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun
January 2007 Through March 2009



Sources: Bureau of State Audits' analysis of meeting minutes for the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board); California Code of Regulations; and interviews with key personnel from the board and its independent legal counsel.

* Collision refers to two vessels hitting each other.

† Grounding occurs when a vessel attempts to maneuver in water that is too shallow, causing the bottom of the vessel to contact the ground underwater.

‡ Interaction refers to the hydrodynamic forces on a moored vessel caused by another vessel's movement through water. An interaction may occur without resulting in damage to the surrounding items.

§ A non-incident is an incident in which, based on the Incident Review Committee's judgment, there is clearly no pilot error involved.

|| Allision refers to a vessel hitting a fixed object, such as a dock or pier.

The board also oversees the pension plan, which state law defines. According to state law, the annual pension for a retired pilot who has completed a full 25 years of service is nearly half of a pilot's annual income. A surcharge on the bill for pilot services provides funding for the pension plan's benefits. Current surcharges pay for the benefits of currently retired pilots and the expenses of the

pension plan. The board's role in oversight is to choose one or more fiduciary agents to administer the pension plan. Beginning in April 2008 the board contracted with an accounting firm to set the pilot pension surcharge rate and to determine the amount of monthly benefit each retired pilot receives, using a formula described in state law. The board is required to review the pension benefit payments to retirees at least every three years and may increase them, but only to the extent allowed in law. Specifically, the board must review the pension benefits every three years or when the cumulative Consumer Price Index for the San Francisco Bay Area (index) exceeds 12 percent, whichever occurs first. Further, the board may not increase the pension benefit by more than 50 percent of the cumulative increase in the index. For example, if the cumulative index increased by 10 percent, the board could not increase the pension benefit by more than 5 percent.

The Legislature sets the rates pilots can charge for their services, but the board is responsible for reviewing those rates and recommending any needed changes to the Legislature. State law allows any party directly affected by pilotage rates to petition the board for a public hearing on the rates, and the board must call for a hearing within 10 days of the petition and hold a hearing within 30 to 60 days of the date the board calls for a hearing. When preparing its rate recommendations for the Legislature, the board is to consider several factors, including the cost of providing piloting services, rates charged in other parts of the United States, and economic factors affecting the local shipping industry. According to the board's president, the board last held a hearing on pilotage rates in 2002, and the Legislature adopted those recommendations in the same year.

State law bases the fee for piloting a vessel through the Golden Gate and into or out of the San Francisco, San Pablo, or Suisun bays on the high gross registered tons⁷ of the vessel (\$0.09039 per high gross registered ton as of July 1, 2009) and the depth of the vessel in water or its "draft" (\$10.26 per foot as of July 1, 2009). For example, the fee to pilot a vessel of 21,000 gross registered tons with a draft of 26 feet, from the ocean into San Francisco Bay, would be \$2,165. Additionally, the San Francisco Bar Pilots⁸ (Bar Pilots)—which we describe later in the Introduction—maintain a schedule of fees for piloting vessels within the bays and to the West Sacramento

⁷ *Gross registered tons* is a measure of the volume of all enclosed spaces on a ship, with some exceptions, such as the ship's bridge. According to the board's president, *high gross registered tons* is used because there is more than one system for calculating gross registered tons and those writing the law wanted to make sure the higher tonnage amount applied.

⁸ The term *bar pilot* is derived from the enormous, horseshoe-shaped sand bar that begins at the Golden Gate Bridge and extends 12 miles west of the Golden Gate.

and Stockton ports. Pilot fees support the administration of the Bar Pilots' organization and provide income to the pilots, averaging \$451,000 per pilot in 2008.

Funding of the Board

The board receives its funding through surcharges added to the bill for a pilot's services. As shown in the Table, the surcharges provide revenue to the board to pay for its operations, including its staff members, and for pilot training. The surcharges also provide funding for pilot boats and for the pension plan. State law establishes each of the surcharges but gives the board discretion to adjust the rates of the training, continuing education, and pilot boat surcharges. Additionally, state law requires the board to impose, and permits the board to periodically adjust, the rate for the board's operations surcharge. State law sets the rate of the operations surcharge at 7.5 percent but allows the board to set a lower rate, with the approval of the Department of Finance. A fiduciary agent chosen by the board determines the pilot pension surcharge rate each quarter. Most bills for pilot services include five surcharges; however, state law requires that the pilot boat and pilot pension surcharges be added only to bills for vessels traveling through the Golden Gate and into or out of the San Francisco, San Pablo, and Suisun bays.

Table

Summary of the Surcharges That Support the Functions of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun

SURCHARGE	THE SURCHARGE SUPPORTS	RATE AS OF JULY 1, 2009	RATE CHARGED ON
Operations	The official services, staff, and incidental expenses of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun	6.6%	Each bill for piloting services
Training	The program to train new pilots for original licensure	\$9 per trainee in the board's training program	Each time a pilot guides a vessel
Continuing education	Continuing education of current pilots	\$45	Each time a pilot guides a vessel
Pilot boat	Obtaining new or extending the life of existing boats pilots use for transportation to and from piloted vessels	\$0.00740 per ton (The average cost on an individual bill is approximately \$318)*	The gross registered tonnage of the vessel piloted
San Francisco Pilot Pension Plan (pension plan)	Pension plan	\$0.01541 per ton (The average cost on an individual bill is approximately \$663)*	The gross registered tonnage of the vessel piloted

Sources: California Harbors and Navigation Code; San Francisco Bar Pilots.

* We calculated the average cost per move using an average gross tonnage of 43,000, based on a sample of 34 bills.

The San Francisco Bar Pilots

The Bar Pilots are an affiliated group of individuals who have been licensed by the board. According to the board’s president, all but one of the pilots licensed by the board are members of the Bar Pilots. He stated that the one pilot who is not a member is an “inland pilot” who guides vessels only between the bays and the ports of West Sacramento and Stockton. Also, the port agent is a licensed pilot and is currently a member of the Bar Pilots. By statute, a majority of the licensed pilots elect the port agent, who is subject to board confirmation. The text box describes the statutory responsibilities of the port agent.

Responsibilities of the Port Agent

- General management and supervision of matters related to the business and official duties of pilots licensed by the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board).
- Immediate reporting to the board’s executive officer of all navigational incidents, misconduct, and other rule violations.

Source: California Harbors and Navigation Code.

State regulations require the pilots to collect the surcharges on behalf of the board. Each month, the Bar Pilots and the inland pilot submit to the board a report of all fees and surcharges collected, by vessel piloted. The Bar Pilots and inland pilot are to remit the operations, training, and continuing education surcharges they collect to the board. Additionally, according to the board’s president, the Bar Pilots retain the pilot boat surcharge, used for pilot boats, and collect and disburse the pilot pension surcharge to pay for the pension plan. He also stated that the Bar Pilots report to the board periodically on the expenditure of these surcharges. The inland pilot does not collect the pilot boat and pilot pension surcharges, according to the board’s president, because he does not handle vessels moving through the Golden Gate and, according to state law, these two surcharges are charged only to such vessels.

Changes in State Law Related to the 2007 Cosco Busan Oil Spill

On November 7, 2007, the Cosco Busan, an outbound container vessel, struck the fender of one of the towers of the San Francisco–Oakland Bay Bridge, causing a breach in the side of the vessel. According to the U.S. Coast Guard’s report of the incident, the breach affected two of the vessel’s fuel tanks, one of which spilled more than 50,000 gallons of fuel oil into the San Francisco Bay. The spill contaminated miles of salt marshes, mudflats, coastline, and sandy beaches and killed birds and other wildlife. The U.S. Coast Guard concluded that a number of factors caused the accident, including multiple errors on the part of the pilot guiding the vessel. For example, the U.S. Coast Guard found that medications the pilot was taking may have contributed to the incident. The board temporarily suspended

the pilot's license on November 30, 2007, and the pilot retired on October 1, 2008. The National Transportation Safety Board estimated the total environmental cleanup costs of the oil spill to exceed \$70 million.

Following the Cosco Busan incident, two bills passed in 2008 that made changes to the structure and responsibilities of the board. A state law effective January 1, 2009, brings the board within the agency and makes the agency secretary a nonvoting member of the board. State law also establishes the position of assistant director, shifts responsibility for taking action on investigations from the Incident Review Committee to the board, and revises other provisions of law regarding the board. For example, state law defines confidential information regarding pilots, establishes penalties for a board representative who willfully discloses such information, and requires the board to develop a procedure for access to confidential information. Finally, a recent state law authorizes this audit.

Another state law effective January 1, 2009, requires pilots to submit a list of prescribed medications as part of the physical examination required for licensure. Specifically, the law added the requirement that an individual seeking a pilot license or a renewal of a license submit, to the physician conducting the pilot's annual physical, a list of all medications prescribed for the applicant. It further requires pilots to report any changes in prescription medications within 10 days so that the physician can determine whether that medication changes the determination that a pilot is fit for duty. State law allows the board to terminate a pilot trainee or to suspend or revoke a pilot license if the pilot or trainee fails to submit this information. The law also requires the board to submit an annual report, beginning in April 2010, detailing the number of vessel movements within the board's jurisdiction and information regarding each licensed pilot. The report will include the pilot's status during the year—for example, whether a pilot was in authorized training or had a suspended license—and a summary description of any incidents involving each pilot.

Scope and Methodology

The California Harbors and Navigation Code, Section 1159.4, requires the Bureau of State Audits to complete a comprehensive performance audit of the board by January 1, 2010, and a comprehensive financial audit by December 1, 2009. This report combines 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. We also interviewed representatives of other large West Coast ports and piloting organizations to identify certain characteristics related, in part, to their form and function. We summarize information on these West Coast ports and piloting organizations, as well as information on the board, in Appendix A.

To assess whether the board adhered to state law and regulations regarding licensing new pilots, we reviewed the licensing records for each of the seven pilots licensed for the first time between May 1, 2007, and April 30, 2009. Additionally, to determine whether the board adhered to state law regarding renewal of existing pilot licenses, we reviewed the most recent renewal records for a random sample of seven pilots whose licenses had been renewed at least two times as of April 30, 2009.

To determine whether the board conducted investigations of incidents in accordance with state law and its own regulations, we reviewed records for each of the 24 reported incidents the board received from the port agent between January 1, 2007, and March 31, 2009. We assessed whether the board's Incident Review Committee presented a report on its completed investigation of each incident to the board within the time frame required by law. Of these 24 incidents, we selected four for further review to determine whether the board's records regarding the investigations were complete. Also, to determine whether the board adhered to state law regarding the inspection of suspected safety violations relating to pilot boarding equipment—such as a ladder with a broken rung—we interviewed the board's former executive director⁹ and the board's president. We reviewed each suspected safety standard violation related to pilot boarding equipment the board had on file that occurred between January 1, 2007, and March 31, 2009. We also interviewed the board's four investigators under contract during the period of our review.

To ensure that the board adhered to state laws and its own regulations regarding the training requirements for applicants seeking pilot licenses and the continuing education requirements for pilots with active licenses, we interviewed board staff and members of the Pilot Evaluation Committee and reviewed the board's training records. Specifically, we reviewed training records for the seven pilots licensed for the first time between May 1, 2007,

⁹ The board's executive director resigned effective October 30, 2009. Thus, throughout this report, we refer to him as the "former executive director."

and April 30, 2009, as described previously. We also reviewed billing records for training courses and other board records, and we interviewed the former executive director to assess compliance with state law and the board's regulations. Finally, we reviewed the contracts the board has with the institutions that provide continuing education for pilots and determined whether the training these institutions agreed to provide covered the topics required in state law and regulations.

To determine whether the board conducted its business according to state requirements that govern boards and commissions in general, and this board in particular, we conducted several different analyses. To determine whether the board's members met the qualifications outlined in state law, we reviewed documentation regarding their appointments, dates of service, and work histories. Based on our review, we determined that the board's members met the qualifications outlined in state law. Also, to assess whether the board adhered to requirements regarding the filing of statements of economic interests, we reviewed state law, the board's regulations, and the statements of economic interests for board members, board staff, and others designated as being required to file for 2006, 2007, and 2008. We also determined whether any board members or staff had attended ethics training as required by state law. Additionally, to assess whether the board adhered to the requirements of the Bagley-Keene Open Meeting Act (act),¹⁰ we interviewed the board's president and assessed whether board activities observed during the course of our audit met open-meeting requirements. For example, we monitored the board's Web site from April 2009 through July 2009 to observe whether the board posted required meeting notices and agendas within the time frame specified in law. Further, to understand the board's information security procedures, including the controls it had in place to protect confidential information, we interviewed the board's former executive director and president. We also inspected the board's facilities to determine whether there was a risk that the public could easily gain access to confidential information.

To review the board's oversight of the pilots' pension plan established in state law, we interviewed the board's president and the former human resources manager of the Bar Pilots. Additionally, we determined whether the board had appointed one or more fiduciary agents to administer the pension plan, as required by state law. We also reviewed an independent audit, conducted by a private accounting firm, of the pension plan

¹⁰ The act establishes open-meeting requirements for all state boards and commissions. For example, the act requires boards and commissions to publicly announce their meetings, prepare agendas, accept public testimony, and conduct their meetings in public unless specifically authorized by the act to meet in closed session.

for 2007 and compared the amount of pension payments reported in the independent audit to the total amount of pension payments the Bar Pilots made to retirees during that year and to the total amount of pilot pension surcharges collected. We concluded that the amounts materially agreed.

To conduct the financial portion of our audit, we reviewed the board's monthly and annual financial statements, analyzed monthly reports prepared by the Bar Pilots detailing surcharges collected on behalf of the board, and assessed the board's internal controls over revenues and expenditures for fiscal years 2007-08 and 2008-09. Specifically, to assess the board's controls over the revenues it receives, we reviewed the laws and regulations pertaining to the various surcharges state law requires be included on the bills vessels pay for pilotage services, including the board's operations surcharge, new pilot training surcharge, continuing education surcharge, pilot boat surcharge, and pilot pension surcharge. We also interviewed the board's president and the former business director of the Bar Pilots.

Further, we randomly selected eight monthly reports—one from each quarter during fiscal years 2007-08 and 2008-09—that the board received from the Bar Pilots. With each report, the Bar Pilots included a check made payable to the board for the amounts of the operations, continuing education, and training surcharges collected on behalf of the board. We verified the accuracy of the amounts of these checks and surcharges by recalculating selected amounts in each report. We also verified that the reports were complete by randomly selecting 34 original pilot bills—bills that the pilots create and that the Bar Pilots use to generate and submit invoices to the shipping companies for the pilots' work—and traced them to the monthly reports. Further, we assessed the accuracy of the Bar Pilots' calculations of the board's surcharges by recalculating the amounts on each pilot bill we reviewed.

To assess the internal controls the board has over its expenditures, we interviewed the board's former executive director, president, and former administrative assistant. We also judgmentally selected 33 expenditures the board made from July 1, 2007, through April 30, 2009, to ensure that they met state requirements and that they were for allowable purposes. We chose the expenditures to ensure that we examined a variety of payments, including contract payments, travel reimbursements, payroll expenses, purchases of office supplies, and payments to board members.

To develop summary financial statements, we reviewed the board's accounting reports and records from the Department of Consumer Affairs for fiscal years 2007–08 and 2008–09.¹¹ We reviewed the Department of Consumer Affairs' annual reconciliations of board funds with the state controller's records for fiscal years 2007–08 and 2008–09. Finally, we summarized the board's financial data as of June 30 for fiscal years 2007–08 and 2008–09, which we present in Appendix B.

¹¹ The Department of Consumer Affairs had a contract with the board to provide administrative services, including accounting services. The term of the contract ended on June 30, 2009, after which the board entered into a contract with the California Highway Patrol, part of the agency, for similar services.

Chapter 1

THE BOARD SOMETIMES FAILED TO FOLLOW THE LAW WHEN LICENSING PILOTS AND INVESTIGATING INCIDENTS

Chapter Summary

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) did not consistently adhere to requirements in state law relating to the licensing of pilots and to investigating navigational incidents, misconduct, and other matters involving pilots (incidents). We reviewed pilot training files and determined that not all pilots had completed continuing education requirements in the time frame specified in the board's regulations. This failure to enforce training requirements increased the risk that pilots would not be qualified to perform their duties or would require additional training. We also determined that the board licensed some pilots before they had received the required physical examination. Further, although required by state law and board regulations, the board did not ensure that board-appointed¹² physicians conducted annual physical examinations of pilots. Additionally, the board did not consistently comply with state law when conducting investigations of incidents involving pilots. For example, the board did not always conduct the investigations within the required time period. Finally, the board may not be prepared to license new pilots if there is an increase in the number of current pilots expected to retire.

The Board Did 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. Part of 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 on numerous occasions before

¹² State law effective January 1, 2009, requires the board to "appoint" the physicians who conduct physical examinations of pilots. Prior to the effective date of this law, the board's regulations required the board to "designate" these physicians, which we interpret to mean that the board was required to formally approve or appoint the physicians. We use "appoint" throughout this report.

The board issued an original pilot license to one pilot 28 days before he received a physical examination and the pilot guided vessels 18 times in those 28 days.

receiving the required physical examination. We also reviewed the 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. 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. By not following the license application process outlined in state law, the board risks licensing pilots who are not physically fit to perform the duties of a pilot.

According to state law, an applicant for an original license must undergo a physical examination by a board-appointed physician before the board may issue a license to the applicant. However, between July 1, 2007, and April 30, 2009, the board issued an original pilot license to one pilot 28 days before he received a physical examination. During those 28 days, he piloted vessels 18 times. 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 licensure, 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.

Moreover, the board did not consistently ensure that pilots received annual physical examinations, as required by law. Pilots' licenses are valid for 12 months and, according to a state law adopted in 1990, a state-issued pilot license may be renewed upon application and successful completion of a physical examination by a board-appointed physician. We reviewed the renewal documents for seven pilots whose licenses had been renewed at least two times as of April 30, 2009, and noted one instance in which a pilot did not undergo a physical examination. In part, this may have occurred because the board's regulations are inconsistent with state law. 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.

Additionally, the board granted some licenses even though the pilots had received physical examinations from physicians who had not been appointed by the board. We noted that, of the 14 pilots' files we reviewed, three of the seven pilots renewing their licenses and three of the seven pilots receiving original licenses received physical examinations from physicians who were not on the board's list of appointed physicians. According to the board's president, board staff accepted physicians from the same clinic as a physician on the board's list of appointed physicians and did not believe that the law required them to appoint all the physicians who were going to conduct physicals. However, board regulations require that physical examinations be performed by physicians appointed by the board, and they make no reference to other physicians who are members of the same medical practice. 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 also noted that the board added physicians to its list of appointed physicians without formally appointing them. According to the board's former executive director,¹³ the board added two physicians to its list when the physicians took over the practices of appointed physicians who retired. However, the board could not provide documentation showing that it had formally appointed or designated the new physicians, or that the physicians were made aware of the standards for physical examinations for

The board could not provide documentation showing that it had formally appointed certain physicians or that they were made aware of the standards for physical examinations for pilot applicants.

¹³ The board's executive director resigned effective October 30, 2009. Thus, throughout this report, we refer to him as the "former executive director."

pilot applicants. According to the board's president, the board does not have a process in place to appoint physicians, but it hopes to have one by the end of 2009. Additionally, he stated that board staff believed it was within their discretion to accept the substitution of a new physician who took over the practice of a board-appointed physician. The board president asserted that board staff did not bring the substitution to the attention of the board or seek board action. Nevertheless, the board did not comply with state law and lacks assurance as to whether the non-appointed physicians are familiar with the standards for physical examinations described in state regulations.

The Board Did Not Fully Comply With State Law Regarding Investigations

In several areas, the board did not always follow state law in conducting its 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. Also, the board has not yet developed the required regulations describing qualifications for its investigators. Further, although state law requires the board to take specific steps to ensure that it properly inspects a pilot ladder, an accommodation ladder, a pilot hoist, or a combination of this equipment (pilot boarding equipment) with suspected safety standard violations and report on its findings, it has not done so. By not complying with state law in these areas, the board is not ensuring the best possible protection against incidents that could harm pilots and crews, the shipping industry, or the environment.

According to state law, the Incident Review Committee must present a completed investigation report to the board within 90 days of the date of an incident, unless the board grants an extension. As we described in the Introduction, the Incident Review Committee is composed of the board's executive director and one of the three public members of the board, and its duties include investigating, with the assistance of one or more investigators, incidents and presenting incident reports 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 of an investigation or make a timely request for an extension. Without prompt investigations, the board risks having additional incidents occur, because pilots are generally allowed to continue working while the board completes its investigations.

Further, the board did not consistently report the reasons for granting extensions for investigations. Because state law requires the Incident Review Committee to present its completed investigation to the board within 90 days, we expected that, in cases requiring an extension, the board would have asked the Incident Review Committee to report the reason it was requesting an extension and would include the reason in its public meeting minutes. However, in reviewing board minutes from January 1, 2007, through March 30, 2009, we noted that the minutes did not always include the reason for the extension. 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 able to assess the cause of the delay and determine how to mitigate such delays in the future.

Also, the board has not yet adopted regulations regarding minimum qualifications for its investigators. State law effective January 1, 2009 requires the board to adopt regulations specifying the minimum standards an investigator must meet. 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 rule-making process to adopt these standards. According to the minutes of the board's meeting, the proposed minimum standards for a board investigator include a basic knowledge of investigative techniques and maritime issues. The board's president estimated that the rule-making process will be completed by May 1, 2010. 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, in response to reports of suspected safety standard violations. The law requires that the board's executive director assign an investigator to inspect pilot boarding equipment reported to the board as not meeting the relevant safety standards established by the U.S. Coast Guard and the International Maritime Organization.

The board granted extensions for four investigations with no reason or justification given.

Summary of Selected Pilot Boarding Equipment Safety Standards

- Whenever the distance from the sea level to the point of access is more than 30 feet, access from a pilot ladder to the vessel must be by way of an accommodation ladder or equally safe and convenient means.
- Each vessel must have lighting positioned to provide adequate illumination for the pilot boarding equipment (i.e., a pilot ladder, an accommodation ladder, a pilot hoist, or a combination of this equipment) and each point of access.
- Each vessel must have suitable pilot boarding equipment available for use on each side of the vessel, or have equipment that can easily be transferred to and used on either side of the vessel.

Sources: Code of Federal Regulations and the *Safety of Life at Sea Convention* published by the International Maritime Organization.

The text box summarizes some of these standards. The board's president stated that 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. However, when we asked the board's staff to produce an example of a completed inspection of pilot boarding equipment with reported violations, they could not produce such an example. The board's president also indicated that conducting inspections of pilot boarding equipment with reported violations is often not feasible because shipping schedules require short turnaround times and the violations, in some cases, may be reported to the board after the ship has left the board's jurisdiction.

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 inspecting 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.

The Board Has Not Ensured That All Pilots Completed 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 once every three years. We reviewed the training records of seven pilots whose licenses had been renewed at least two 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 a year after the required deadline for taking the course. 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 piloting groups 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. However, according to the board's president, neither the Pilot Evaluation Committee nor the board has ever received evaluations of pilots from these institutions, and he was unsure why. 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. Further, state law effective January 2010 will require the training institutions to prepare and submit an evaluation of the pilots' performance to the board, rather than to the Pilot Evaluation Committee. 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 comply with state law, the board must follow through with its intention to require training institutions to prepare and submit evaluations of pilots' performance.

The Board Risks Not Having Enough Pilot Trainees to Replace Retiring Pilots

As described in the Introduction, in 2002 the board determined that a maximum of 60 licensed pilots were required to meet the needs of the shipping industry it serves. It reaffirmed this number in 2008. Several factors can affect the number of licensed pilots actually available to pilot vessels, including pilot retirements. We calculated that 10 of the current pilots will be eligible to receive pension benefits, as defined in state law, by January 1, 2010. According to the board's president, there were eight trainees in the program as of November 2009, but the Pilot Evaluation Committee will not recommend any for licensure before the end of the year. 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. The board president explained that the board has concluded that state law prohibits it from establishing any age limitations for pilots; thus, pilots may work well beyond the date that they are eligible to receive pension benefits, and they have some incentive for doing so. According to state law, a retired pilot who has completed a full 25 years of service can receive an annual pension that is nearly half of his or her annual income. In addition, the pension amount increases with additional years of service.

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. According to state law, pilots generally cannot receive pension benefits unless they provide notice to the board two months in advance of retirement. In contrast, trainees are required by state law to attend the board's training program for at least one year and may take up to three years to complete the program. On average, a trainee takes approximately one-and-a-half years to complete the training program and, if no pilot positions are available, may remain in the program, and continue to receive a trainee stipend from the board, until the end of the three-year period.

According to the board's president, the board is reluctant to take on more trainees because it is concerned that trainees who are qualified to be licensed may reach the end of the three-year training period established in state law without a licensing opportunity because the board will have already reached its current maximum number of licensees. The board president recalled that this circumstance occurred once in the past, but the San Francisco Bar Pilots—which we describe in the Introduction—provided funds to continue the trainee's stipend until the board was able to license the trainee. Although this may have happened in the past, it is not likely to occur in the near future, given that, as of October 2009, there were 56 licensed pilots, four fewer than the number currently permitted, and several pilots are planning to retire. If more pilots retire than the number of trainees successfully completing the training program, the board may risk an increased likelihood of shipping delays and pilot fatigue.

Recommendations

To ensure that it consistently adheres to requirements in state law when licensing pilots, the board should:

- 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.
- Establish and implement a procedure for approving and monitoring board-appointed physicians.
- Review and update its regulations regarding the frequency of pilot physical examinations to ensure that they are consistent with state law.

To ensure that it fully complies with state law regarding investigations, the board should:

- 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.
- Ensure that there is proper justification and appraisal for investigations that require more than 90 days to complete.
- Develop and enforce regulations establishing minimum qualifications for its investigators, as state law requires.
- Investigate reports of safety standard violations regarding pilot boarding equipment.

To ensure that all pilots complete required training within the specified time frames, the board should:

- Schedule pilots for training within the period specified in state law and board regulations.
- 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.

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

Blank page inserted for reproduction purposes only.

Chapter 2

THE BOARD LACKS ADMINISTRATIVE PROCEDURES AND IT NEEDS TO IMPROVE OVERSIGHT OF ITS FINANCES

Chapter Summary

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) could improve several of its administrative practices to comply with state law and its own regulations. Specifically, the board lacks a procedure to ensure that it protects access to confidential information, risking that it will inadvertently disclose such information to the public. Further, the board does not maintain complete records of the required statements of economic interests for its members or its investigators, as state law and its own regulations require, leaving it with no way to verify that board members and investigators do not have real or perceived conflicts. We also found that from January 2007 through April 2009 the board and its staff did not receive required ethics training and did not always adhere to the Bagley-Keene Open Meeting Act (act).¹⁴ The board had also evaluated its former executive director¹⁵ only three times since 1993. The board recently began taking corrective action in these areas. Additionally, the board did not maintain some required information in its investigative files and did not consistently report license renewals in the minutes of its board meetings.

Further, the board does not follow state law as it relates to approving pilotage rates and lacks internal controls over its finances. Specifically, the board does not review and approve the quarterly adjustments made to the fees pilots charge for their services. The board also did not complete an audit of the surcharge collected to fund the San Francisco Pilot Pension Plan (pension plan) for 2008, due to a lack of communication between the board and the independent auditing firm. Additionally, the board does not separately track its expenditures for operations, new pilot training, and continuing education, as state law requires. Finally, we determined that in some cases, the board made expenditures that may constitute a misuse of state resources.

¹⁴ The act establishes open-meeting requirements for all state boards and commissions. For example, the act requires boards and commissions to publicly announce their meetings, prepare agendas, accept public testimony, and conduct their meetings in public unless specifically authorized by the act to meet in closed session.

¹⁵ The board's executive director resigned effective October 30, 2009. Thus, throughout this report, we refer to him as the "former executive director."

The board released confidential information that included a pilot's home address and Social Security number.

The Board Lacks Controls Over Confidential Information

The board cannot ensure that it adequately protects confidential information because it lacks required policies and safeguards. Personal information, as it relates to pilots, is statutorily defined as confidential and includes all personal information, other than an individual's name and mailing address, that identifies an individual, including photographs, Social Security numbers, and medical or disability information. Board files can contain such confidential information, and 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. According to the board's president, he asked the board's assistant director to develop and recommend to the board an appropriate set of procedures for accessing confidential information; however, he did not specify when the procedures were to be finalized. Meanwhile, without such procedures, the board could inadvertently disclose confidential information to 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 organization's counsel. This information included the pilot's home address on one document and Social Security number on another. The document including the Social Security number was a memo from the U.S. Coast Guard to the pilot's file. According to the board's former executive director, the U.S. Coast Guard used the Social Security number as the mariner number on federal licenses. The board's president told us that the board received approval from legal counsel at the Department of Consumer Affairs¹⁶ to release the requested materials. However, according to counsel at the Department of Consumer Affairs, the board had already disclosed the document containing the pilot's address, and so it had become a matter of public record. Further, she stated that the U.S. Coast Guard treats a pilot's mariner number as a public record. Nevertheless, state law prohibits state agencies from disclosing any personal information in a manner that would link the information disclosed to the individual to whom it pertains. Although there are exceptions to this law, such as disclosing information to the individual to whom it pertains or to a government entity when required by state or federal law, the exceptions do not appear to apply in this case.

¹⁶ The Department of Consumer Affairs had a contract with the board to provide administrative services, including accounting services. The term of the contract ended on June 30, 2009, after which the board entered into a contract with the California Highway Patrol, part of the Business, Transportation and Housing Agency, to provide similar services.

Further, the board did not have adequate controls in place to protect the personal and confidential information of pilots, staff, and board members. State law requires agencies to establish appropriate and reasonable administrative, technical, and physical safeguards to protect confidential information. However, we observed and confirmed with the board's former executive director that, although the board's office is locked and alarmed, the board retained files containing the personal information of board members, pilots, and board staff in unlocked file cabinets located in an area used by members of the public when attending board meetings. Without proper safeguards, the board risks having unauthorized individuals gain access to confidential information and being liable for its release. Since we brought this issue to its attention, the board has acquired a large, locking filing cabinet in which, according to the board's president, it now stores files containing confidential information.

Until October 2009 the board and its staff used non-state e-mail accounts when conducting board business, which could jeopardize the board's ability to respond to requests for public records and to protect confidential information. As a state regulatory agency, the board is subject to the California Public Records Act, which requires state agencies to respond to all requests for public records and specifically defines public records as any writing containing information related to the conduct of the public's business, which includes electronic mailings. When the board receives a public records request, it must notify the requester within 10 days whether it has records that may be disclosed in response to the request, and it must provide an estimate as to when it will provide the disclosable records.

However, according to the board's president, board staff used non-state e-mail accounts beginning in 1994. Further, at the beginning of our review, we observed that board members also used non-state e-mail accounts when conducting board business. Only in October 2009 did the board and its entire staff convert to state e-mail accounts. Additionally, according to the board president, board members and board staff who had previously used non-state e-mail accounts have not transferred old data into their new state accounts. Because board members and staff did not use state e-mail accounts until very recently, we question how the board ensured that it fully complied with past public records requests within the prompt time frames required to respond to such requests. We also question how the board ensured the protection of any confidential information board members might have discussed by e-mail. Because it did not know what security and privacy protections existed on board members' personal e-mail accounts, the board risked compromising private and confidential information. The board cannot monitor e-mail

Until October 2009 the board and its staff used non-state e-mail accounts when conducting board business, decreasing its ability to respond to requests for public records and to protect confidential information.

accounts outside the state system, and thus, until the board can ensure that board members and staff are using state e-mail exclusively for state business and have transferred state-related data into their new accounts, it will not know if or when confidential information residing in board members' personal e-mail accounts is compromised.

The Board Did Not Adhere to Some Requirements Regarding Administrative Processes

We identified several instances in which the board did not comply with legal requirements regarding the filing of statements of economic interests, posting notices of meetings in a timely fashion, and conducting annual evaluations of its former executive director. For two board members, the board had incomplete statements of economic interests or was missing copies of the statements, risking that the public may not learn of real or perceived conflicts of interests board members may have. Further, we observed two instances in which the board did not post meeting agendas in a timely fashion, as required by state law. 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. Finally, the board did not conduct annual reviews of the former executive director's performance on the Incident Review Committee, as called for by law, until 2008. Beginning in July 2008, it conducted three reviews before the former executive director resigned. Without an established process for these evaluations, the board does not have a mechanism to provide formal feedback on the executive director's performance on this committee.

According to board regulations, the board must maintain copies of the statements of economic interests filed by all board members, the executive director, consultants who do not receive a waiver from the executive director, and its legal counsel. 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 it did not comply with this regulation. One board member's file did not include attachments detailing his income and investments for 2006, even though his statement of economic interests indicated that such information was attached. Further, the file did not include statements for this same board member for 2007 and 2008. Another board member's file did not include a statement of economic interests for 2006. Although we requested copies of the required statements of economic interests, the board's president acknowledged that the board does not have all the required statements. 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

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.

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. The investigators are consultants that the board contracts with to undertake investigations into navigational incidents, misconduct, and other matters (incidents) involving the board's licensed pilots. Several of the current investigators have contracted with the board to provide their services for periods exceeding one year. Relying on the findings and recommendations of the investigators, the board's Incident Review Committee prepares and submits a written report to the board, and the board relies on the facts gathered by the investigators to decide whether to take disciplinary action against the pilot involved, which may include suspending or revoking the pilot's license.

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. As a result, we expected to find the required statements of economic interests for board investigators or, alternatively, the former executive director's determination that investigators are exempt from filing such statements. Instead, 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.

We believe that the investigators the board contracts with perform a traditional staff function in that they conduct investigations that influence governmental decisions and, accordingly, act in a staff capacity. Specifically, investigators influence decisions regarding incidents because they collect, without significant intervening review, the evidence upon which the Incident Review

Until recently some board members and staff had not received required training in state ethics laws and regulations.

Committee bases its recommendations to the board, and upon which the board bases its decisions. These decisions may result in the suspension or revocation of a pilot's license. As such, investigators must be free from any conflicts of interest. Subsequent to our inquiry, in October 2009, the board directed its investigators to complete statements of economic interests and return them to the board. Further, the board's president stated that it will be the board's standard practice going forward to require investigators to file statements of economic interests. By not ensuring that designated individuals file statements of economic interests or obtaining either a written determination by the executive director indicating that such statements are not necessary or an opinion from the Fair Political Practices Commission indicating that investigators under contract do not need to file, the board negates an important component of state law intended to ensure that governmental decisions are not improperly influenced by conflicts of interest.

Further, until recently some board members and staff had not received required training in state ethics laws and regulations. State law mandates that agencies provide an orientation on relevant state ethics laws and regulations at least biennially to each person required to file a statement of economic interests. However, according to the board's president, not all board members or 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.

Without training in state ethics laws and regulations, board members and staff may not be aware of whether their actions violate those laws and regulations. For example, we learned that the board's former executive director received free parking from the San Francisco Bar Pilots (Bar Pilots), the entity representing all but one of the pilots the board currently licenses. This practice could create the appearance that a board staff member was receiving a gift in return for favorable treatment. According to the board's president and the port agent, this practice ended about two years ago. State law generally requires that state officials report gifts of \$50 or more on the annual statement of economic interests and prohibits gifts from a single source in excess of a specified aggregate value that was \$360 in 2006 and \$390 in 2007, and is currently \$420. However, the board's former executive director did not report the value of the parking on his statements of economic interests for 2006 and 2007. We did not attempt to quantify the historical rate for parking; however, the board began leasing two parking spaces for use by its employees in August 2009 at a monthly rate of \$340 per space. Based on this rate, the former executive

director's free parking would have exceeded the annual gift limit in 2009 in less than two months. We believe the facts warrant an investigation of whether a violation of state law or regulations regarding the reporting of gifts occurred. We also believe that the provision of free parking by the board to current employees, as mentioned previously, raises questions as to whether the parking expenditures paid by the board, which are primarily for private benefit, constitute a misuse of state resources.

Under government auditing standards, we must refer possible violations to appropriate authorities. Accordingly, we have referred the matter regarding the former executive director's parking arrangements to the Fair Political Practices Commission for its consideration.

In another instance in which the board did not meet administrative requirements, it did not properly provide notice of two recent meetings, as the act requires. State law requires a state body, such as the board, to provide public notice of its meetings, including a specific agenda for the meeting, on the Internet at least 10 days in advance of a meeting. In June and July 2009, the board did not post its meeting notices to the board's Web site in a timely manner, in violation of the act. 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.

Although staff are responsible for updating meeting information on the board's Web site, they have not always done so and did not receive training until recently in how to update this information. 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 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, 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, staff received training in how to update the Web site using the administrative page, and she explained that the board intends to have staff rather than a

The board did not properly provide public notice of two recent meetings, as the Bagley-Keene Open Meeting Act requires.

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. Moreover, according to state law, actions taken by the board during an improperly noticed meeting can expose the board to litigation that could result in a declaration that the actions were null and void.

Additionally, 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. The board's president, who has served in that capacity since 2007, was not aware of the reasons why the board had not conducted such performance evaluations

previously. 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 may not have an effective mechanism for providing formal feedback on his or her performance on the Incident Review Committee.

Information That Must Be Included in Incident Investigation Reports

- Name of vessel, date, location, and identification of the pilot.
- Description of the weather and sea conditions.
- An illustration and description of the incident under investigation.
- Estimate of damages, if any.
- Names of witnesses providing information.
- Nature and extent of any injuries.
- Summary of prior investigations involving the same pilot.
- Relevant correspondence or records from the U.S. Coast Guard.
- Historical record of the actions taken in the investigation and the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun's actions based on its consideration of the report and recommendations presented by the Incident Review Committee.
- Summary of the factual background of the incident.
- Confidential information, including a report from the pilot and the investigator.

Source: California Harbors and Navigation Code.

The Board's Record Keeping Needs Improvement

The board does not always maintain adequate records to demonstrate that it complies with state law. State law requires the board, at a minimum, to include the information summarized in the text box in the reports on its investigations of incidents. In addition, state law requires the board to retain a record of the investigation and the final disposition of the incident for 10 years after completion of the investigation. 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. Thus, the incident investigation file does not contain all of the information required by law.

Additionally, based on minutes of board meetings, 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. Because state law requires pilots to renew licenses annually, we expected the board to consistently announce all renewals at its meetings and record those renewals in the minutes of the applicable meeting. We also expected each pilot's file to contain copies of all license renewals, but this was not the case. We selected the months of February and April and reviewed board minutes for these months in 2007, 2008, and 2009. We found that the board reported license renewals in its minutes for meetings held in February and April 2007 and 2008, but did not report any renewals in board minutes for February or April 2009. Nevertheless, pilots who had licenses up for renewal in those months neither appeared in the board's minutes nor were copies of their renewed licenses found in their files. 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. Nevertheless, without a proper record in the board's minutes or copies of each pilot's annual license renewal in the files, the board may not be able to demonstrate that a pilot held an active license during a given year.

Without a proper record in the board's minutes or copies of each pilot's annual license renewal in the files, the board may not be able to demonstrate that a pilot held an active license during a given year.

The Board Lacks Internal Policies and Controls Over Pilotage Rates and Other Aspects of Its Finances

Although state law requires it, the board does not approve changes to a rate charged to vessels for using pilotage services. Further, the board does not consistently audit the pilot pension or pilot boat surcharges, nor does it take action to monitor and verify the accuracy of revenues it receives from various surcharges that vessels pay for pilotage services. Without verifying the accuracy of these revenues, the board lacks assurance that it is receiving the amounts to which it is entitled. Further, the board does not follow state law in keeping separate records of its expenditures for new pilot training and continuing education. Also, the board paid physicians who were not under contract to conduct physical examinations of pilots, and it reimbursed pilots for business-class airfare, which can cost significantly more than economy-class airfare.

Although an independent auditor completed an audit of the pilot pension surcharge for 2007, no such audit was conducted for 2008.

State law sets the rates vessels must pay for pilotage service in San Francisco, San Pablo, Suisun, and Monterey bays. The rates are based on a dollar amount per draft foot (*draft* is the depth of a vessel in the water) and an amount equal to a fraction of a dollar per high gross registered ton¹⁷ of the vessels, referred to as the mill rate. State law allows the mill rate to change each quarter, based on the number of pilots licensed by the board. According to the Bar Pilots' rate letters, 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, no such audit was conducted 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. However, given that the Bar Pilots collect and spend funds obtained from this surcharge on behalf of the board, as they do with the pilot pension surcharge, it would seem prudent for the board to have an independent audit conducted of the pilot boat surcharge. The board's president explained that the board's Finance Committee has considered having an independent audit conducted of each of the surcharges, including the pension and pilot boat surcharges, and will recommend that the board authorize its staff to contract with an independent auditor to conduct such audits. He asserted that this item of business will be on the board's November 2009 meeting agenda and stated that he anticipates the board will approve the Finance Committee's recommendation.

¹⁷ *Gross registered tons* is a measure of the volume of all enclosed spaces on a ship, with some exceptions, such as the ship's bridge. According to the board's president, *high gross registered tons* is used because there is more than one system for calculating gross registered tons and those writing the law wanted to make sure the higher tonnage amount applied.

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 new pilot training (training) surcharges collected and include a report detailing all of the pilotage fees and surcharges billed and collected. According to the board's president, the board considers the reports it receives from the Bar Pilots to be the "record of accounts" required by state law, once those reports are received and accepted by the board's staff. Additionally, he stated that the board's staff processes the monthly check it receives from the Bar Pilots but that there are no procedures in place to verify the accuracy or completeness of these reports.

However, we reviewed eight monthly reports and determined that they did not contain certain information required by state law, such as the name of the vessel's master or where the vessel is registered. Further, one of the eight reports we reviewed was missing pages detailing the board's operations, continuing education, and training surcharges. According to the board's president, the board, through the Business, Transportation and Housing Agency, sought legislation to eliminate the requirements for the name of the master and the vessel's country of registration. As of October 2009, the Legislature and the governor had approved this legislation and, effective January 1, 2010, this information will no longer be required in the reports. The board's president also 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 training surcharge. According to state law, money charged and collected each month from the training surcharge, levied on each movement of a vessel using pilotage services, is to be paid to the board. 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

The board did not receive all revenues for the surcharge to fund training for new pilots.

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, as required by law.

board's president, the inland pilot did not collect the training surcharge because 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. The board's president told us that the inland pilot stated that his belief was based on advice received from someone on the board when the training surcharge was first established in the 1980s. Regardless, state law requires the training surcharge to be applied to each movement of a vessel using pilotage services, and therefore the inland pilot should collect and remit this surcharge.

Also, 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. For example, in one month's financial statements, the board categorized both a payment for a trainee stipend and a payment related to continuing education conducted at the Centre de Port Revel in France as "training." 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 record-keeping 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. For example, if the board's expenditures for its operations were to exceed its revenues from the operations surcharge, the board would not be able to demonstrate that it used funds for operations, and not for training or continuing education, to address the shortfall. Similarly, because the board does not track the sources of the funds in its reserve balance, it would not be able to demonstrate that it did not use training funds to cover the hypothetical shortfall in the board's operations discussed in our example.

In addition, although the board contracts for various services, it does not have written contracts with the physicians it has appointed¹⁸ 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. Contracts of \$5,000 or more are generally subject to competitive bidding under state law.¹⁹ According to the board’s president, the board has not formerly 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 also determined that the board made some inappropriate 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, which may include priority check-in at the airport and access to exclusive menus and premium beverages. 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.

The board made some inappropriate expenditures that could constitute a misuse of state resources.

¹⁸ State law effective January 1, 2009 requires the board to “appoint” the physicians who conduct physical examinations of pilots. Prior to the effective date of this law, the board’s regulations required the board to “designate” these physicians, which we interpret to mean that the board should have formally approved or appointed the physicians.

¹⁹ The California Public Contract Code requires agencies to secure competitive bids before entering into consulting services contracts equal to or greater than \$5,000, with some exceptions. Agencies may not split contracts to avoid the \$5,000 threshold.

According to the board's president, the board reimburses the Bar Pilots for business-class airfare for pilots attending training in France because it strives to ensure that pilots arrive rested, are comfortable, and are ready to begin the training, and likewise, that they arrive back in San Francisco rested and ready to go back to work. Further, the board's president said that 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 state law prohibits. Also, as we described previously, 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.

Recommendations

To ensure that it has adequate controls to protect confidential information, the board should:

- 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.
- Consistently use state-based e-mail accounts when conducting board business and, to the extent possible, import prior non-state e-mail into the state accounts.

To adhere to requirements regarding administrative practices, the board should:

- Establish a formal procedure to complete and maintain copies of required statements of economic interests.
- Institute a process of ensuring that investigators complete statements of economic interests and seek advice from the Fair Political Practices Commission when there are questions as to whether other consultants should file such statements.
- Develop procedures to ensure that board members and designated staff continue to receive required training, such as training in state ethics rules.

- Establish processes to ensure that it posts accurate information about its meetings within the timelines required by law.
- Formalize a procedure for evaluating the executive director's performance on an annual basis.

To improve its record keeping, the board should:

- Establish formal procedures related to document retention in files regarding investigations. For example, the board should ensure that its investigation files contain a report of the Incident Review Committee's opinions and recommendations and the board's actions based on these recommendations.
- Determine and document what it needs to include in minutes of the board's meetings, such as pilot renewals, and ensure that copies of license renewals are placed in the pilots' files.

To ensure that it strengthens internal policies and controls over pilot rates and its finances, the board should:

- Review and approve any quarterly changes made to that portion of the pilot fee based on the mill rate.
- Establish a requirement for an independent audit of the pilot boat and pilot pension surcharges and ensure that such audits are conducted each year.
- Establish a monthly review of the revenue reports it receives from the Bar Pilots that includes verifying that the amount of the accompanying check is accurate and that the report is complete.
- Instruct the inland pilot to collect and remit the training surcharge and report these collections to the board.
- Develop procedures to separately track expenditures relevant to the operations, training, and continuing education surcharges.

To ensure that its expenditures are appropriate, the board should:

- Cancel its lease for two parking spaces that it entered into in 2009, or require its staff or board members to reimburse the board for their use of those parking spaces.
- Competitively bid contracts with physicians who perform physical examinations of pilots.

- Cease reimbursing pilots for business-class travel when they fly for training and amend its contract with the Bar Pilots accordingly.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of the report.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: November 24, 2009

Staff: Laura Georgina Boll, Project Manager
John Lewis, MPA
Vance Cable
Timothy Jones

Legal: Stephanie Ramirez-Ridgeway, JD

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

Appendix A

SUMMARY OF SELECTED CHARACTERISTICS OF SOME WEST COAST PORTS AND PILOTING ORGANIZATIONS

Although the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) is a state regulatory agency, other jurisdictions, some within California, regulate pilots in a different manner. For example, while pilots are required to maintain a federal pilot license regardless of local jurisdiction, pilots providing pilotage services within the jurisdiction of the board and of the Washington Board of Pilotage Commissioners are also required to maintain state licenses. Additionally, the employment status of pilots varies. For example, the pilots the board regulates are self-employed. In contrast, pilots providing pilotage services for the Port of Los Angeles are employees of the city of Los Angeles, while pilots providing pilotage services for the Port of Long Beach are employees of a private company. Table A on the following page highlights some selected characteristics of the board and of some piloting entities in the state of Washington and the cities of Los Angeles and Long Beach.

Table A
Summary of Selected Characteristics of Some West Coast Ports and Piloting Organizations

SELECTED CHARACTERISTICS	CALIFORNIA PORTS AND PILOTAGE ORGANIZATIONS			WASHINGTON PORTS AND PILOTAGE ORGANIZATIONS	
	San Francisco, Oakland, Richmond, Redwood City, Stockton, and West Sacramento*	Long Beach	Los Angeles	Puget Sound†	Grays Harbor
Ports pilots serve	San Francisco Bar Pilots	Jacobsen Pilot Service, Inc.	Los Angeles Pilot Service	Puget Sound Pilots	Grays Harbor Pilots
Name of pilot organization serving selected ports	U.S. Coast Guard and the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board)	U.S. Coast Guard	U.S. Coast Guard	U.S. Coast Guard and the Washington Board of Pilotage Commissioners	U.S. Coast Guard and the Washington Board of Pilotage Commissioners
Entity or entities responsible for licensing pilots	Federal and state	Federal	Federal	Federal and state	Federal and state
License(s) pilots are required to maintain	State Legislature based on recommendations from the board‡	Board of Harbor Commissioners	Board of Harbor Commissioners, with the approval of the city council	Washington Board of Pilotage Commissioners and promulgated in Washington Administrative Code	Washington Board of Pilotage Commissioners and promulgated in Washington Administrative Code
Body that sets charges for pilotage services	56§	19	18	56	2
Number of pilots as of October 2009	Private affiliation of self-employed individuals	Private company employees	City of Los Angeles employees	Private affiliation of self-employed individuals	Public employees of the Port of Grays Harbor
Pilot employment type	12 to 36 months	36 months (may take longer)	18 months	8 to 36 months (may take longer)	12 months ^{ll}
Length of training program trainee must successfully complete prior to original pilot licensure	300	2,200	800	150	50 ^{ll}
Minimum number of trips, which generally includes riding as an observer on a vessel or maneuvering a vessel, a trainee must make prior to original pilot licensure					

Sources: Information provided by key personnel representing the board, Jacobsen Pilot Service, Inc., Los Angeles Pilot Service, and the Washington Board of Pilotage Commissioners; California Harbors and Navigation Code; Revised Code of Washington; Washington Administrative Code; and U.S. Code.

* According to the board's president, pilots licensed by the board also serve terminals in Alameda, Benecia, Carquinez Straits, San Pablo and Suisun bays, and Monterey Bay.

† Includes the ports of Anacortes, Bellingham, Bremerton, Everett, Seattle, Tacoma, Olympia, and Port Angeles.

‡ Does not include surcharges.

§ According to the board's president, one of these pilots is an inland pilot who is licensed by the board but is not a member of the San Francisco Bar Pilots.

^{ll} According to the administrator of the Washington Board of Pilotage Commissioners, the rules governing the content and length of its training program for Grays Harbor are new and the elements of the training program will be determined as necessary by the Washington Board of Pilotage Commissioners. Thus, according to the administrator, the length of the training program is estimated and the number of vessel trips or movements are approximate.

Appendix B

REVENUES AND EXPENDITURES FOR THE BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF SAN FRANCISCO, SAN PABLO AND SUISUN, FISCAL YEARS 2007–08 AND 2008–09

We reviewed the financial records of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) for fiscal years 2007–08 and 2008–09. Table B on the following page provides a high-level summary of the board’s finances for both state fiscal years, which we derived from each fiscal year’s final financial statements as of June 30. We verified the accuracy and completeness of these statements by reviewing the Department of Consumer Affairs’ reconciliation²⁰ of the board’s accounts with records prepared by the State Controller’s Office.

As we explained in Chapter 2, the board is required by state law to spend the money it receives from the continuing education and new pilot training (training) surcharges only on expenses directly related to each respective program. We expected the board to separately track the yearly beginning and ending balance for the continuing education and training programs, but that was not the case. In addition, its financial statements show only an overall reserve balance, without indicating what portions of the balance are attributable to the operations, training, and continuing education surcharges. As a result, the board is unable to ensure that it makes expenditures from the appropriate surcharge. Therefore, we were able to report only the overall beginning and ending reserve balances in the “Totals” columns in Table B.

²⁰ The Department of Consumer Affairs had a contract with the board to provide administrative services, including accounting services. The term of the contract ended on June 30, 2009, after which the board entered into a contract with the California Highway Patrol, part of the Business, Transportation and Housing Agency, to provide similar services.

Table B
Revenues and Expenditures for the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun
Fiscal Years 2007–08 and 2008–09
(in Thousands)

	FISCAL YEAR ENDING JUNE 30, 2008				FISCAL YEAR ENDING JUNE 30, 2009			
	OPERATIONS	NEW PILOT TRAINING	CONTINUING EDUCATION	TOTALS	OPERATIONS	NEW PILOT TRAINING	CONTINUING EDUCATION	TOTALS
Beginning balances				\$609				\$596
Revenues	\$1,016	\$915	\$286	2,217	\$1,606	\$545	\$387	2,538
Expenditures	1,002	1,227	*	2,229	1,066	866	*	1,932
Ending balances				\$596				\$1,202

Sources: Bureau of State Audits' analysis of the year-end financial statements for the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) for fiscal years 2007–08 and 2008–09, and data prepared by the State Controller's Office.

Note: The board's official financial statements do not reflect separate beginning and ending balances for the operations, new pilot training, or continuing education categories. Additionally, the total expenditures include encumbrances totaling \$294,308 and \$313,012 for fiscal years 2007–08 and 2008–09, respectively. Encumbrances are commitments related to unperformed contracts for goods or services.

* The board's official financial statements aggregate expenditures in the new pilot training and continuing education categories to a single "Training" category. Thus, we do not present expenditures from these categories separately.

(Agency response provided as text only.)

Business, Transportation and Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814-2719

November 5, 2009

Elaine M. Howle, State Auditor*
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Attached please find a response from the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (Board) to your draft audit report *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 It Complies with Legal Requirements to Better Protect Pilots, Shipping, and the Environment* (#2009-043). Thank you for allowing the Board and the Business, Transportation and Housing Agency (Agency) the opportunity to respond to the report. ①

We very much appreciate the thoroughness of your comprehensive performance and financial audit, and are pleased to note that it did not identify any fraud or similar malfeasance. As the Board indicates in its response, it concurs with substantially all the recommendations and has already taken steps to implement corrective actions in most cases. We are satisfied that those recommendations will serve extremely well as a blueprint for the future operation of the Board, and we thank the audit team for their professionalism and assistance in providing that framework.

If you need additional information regarding the Board's response, please do not hesitate to contact Michael Tritz, Agency Deputy Secretary for Audits and Performance Improvement, at (916) 324-7517.

Sincerely,

(Signed by: Marjorie M. Berte for)

DALE E. BONNER
Secretary

Attachment

* California State Auditor's comments appear on page 63.

State of California
Arnold Schwarzenegger, Governor
Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun
Pier 9, Suite 102, San Francisco, CA 94111

November 5, 2009

Mr. Dale E. Bonner, Secretary
Business, Transportation and Housing Agency
980 9th Street, Suite 2450
Sacramento, California 95814

Dear Secretary Bonner:

① The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (Board) thanks the Bureau of State Audits (BSA) for the opportunity to respond to the BSA draft performance and financial audit report, *Board of Pilot Commissioners: It Needs to Develop Procedures and Internal Controls over Its Operations and Finances to Ensure It Complies with Legal Requirements to Better Protect Pilots, Shipping, and the Environment* Report No. 2009-043. The Board appreciates the BSA audit team's professionalism in carrying out its responsibilities, presenting its findings, and providing thoughtful recommendations. As detailed below, we agree with substantially all of the recommendations and in most cases have already taken steps to implement changes consistent with those recommendations.

In its overview of the Board and its operations, the report recognizes that, until January 1, 2009, the Board was an independent agency and not part of a greater cabinet-level organization. Legislation enacted in 2008 and effective January 1, 2009, established the Board as a department under the Business, Transportation and Housing Agency. This change swiftly improved the Board's ability to perform its functions of licensing and regulating the maritime pilots who service shipping in and through San Francisco Bay and its tributaries, and in Monterey Bay. The change also facilitated improvements that will enhance the Board's ability to comply with myriad and important state mandates and requirements. The Board now has access to knowledgeable state executives not previously available to it. Further, administrative support now is available from the California Highway Patrol, which has up-to-date software and systems, and sophisticated personnel to provide that support.

② Also in its overview, the report notes that the Board's staff consists of three personnel: an executive director, an assistant director, and an administrative assistant. This has been the case since July 2009. However, during most of the period on which the audit focused – January 2007 until July 2009 – the Board's staff consisted of only two personnel: the executive director and the administrative assistant. For a brief part of that time, a retired annuitant provided limited telecommuting assistance, but, in the main, the Board operated for approximately 16 years with a staff of two – clearly, in retrospect, an inadequate capacity to address the Board's principal mission and to comply with other requirements that govern state agency functions and activities.

The Legislature specifies in Harbors and Navigation Code Section 1100 the principal mission of the Board:

The Legislature finds and declares that it is the policy of the state to ensure the safety of persons, vessels, and property using Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun, and the tributaries thereof, and to avoid damage to those waters and surrounding ecosystems as a result of vessel collision or damage, by providing competent, efficient, and regulated pilotage for vessels required by this division to secure pilotage services.

Mr. Dale E. Bonner
November 5, 2009
Page 2

The Legislature has enacted many other requirements applicable to all state agencies, but they are too numerous to recite here. They are important, however, and the Board is committed to complying with them.

Suffice it to say that previous Boards would have been well advised to increase the Board staff capacity to carry out its responsibilities on all fronts rather than focusing primarily on the principal mission, often to the exclusion of other legitimate responsibilities. Unfortunately, until recently, the Board did not take that important step.

The following are the Board's responses to the BSA recommendations:

Chapter 1

To ensure it consistently adheres to requirements in state law when licensing pilots, the board should:

- 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.

Response: The Board concurs with this recommendation and will continue to follow its procedure requiring (1) completion of the checklist to ensure that all prerequisites for the issuance or renewal of a license, including the physical examination, have been met and (2) presentation of the completed checklist to the Executive Director and the Board President or Vice President before an original or renewed license is issued.

- Establish and implement a procedure for approving and monitoring board-appointed physicians.

Response: The Board concurs with this recommendation. The process for approving and monitoring Board-appointed physicians, including the adoption of minimum qualifications, is in the rulemaking stages. Completion of this rulemaking is projected for the second quarter of calendar year 2010.

- Review and update its regulations regarding the frequency of pilot physical examinations to ensure they are consistent with state law.

Response: The Board concurs with this recommendation and has begun the rulemaking process to review and amend its regulations to ensure that provisions addressing the frequency of physical examinations, as well as other elements of the fitness determination process, are consistent with state law. Completion of this rulemaking is projected for the second quarter of calendar year 2010.

Mr. Dale E. Bonner
November 5, 2009
Page 3

To ensure it fully complies with state law regarding investigations, the board should:

- 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.

Response: The Board concurs with this recommendation and 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.

- Ensure that there is proper justification and appraisal for investigations that require more than 90 days to complete.

Response: The Board concurs with this recommendation. Any requests for an extension will be reviewed by the Board 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.

- Develop and enforce regulations describing the qualifications of its investigators, as state law requires.

Response: The Board concurs with this recommendation. The adoption of minimum standards for commission investigators is currently in the rulemaking stages. Completion date is projected for the end of March 2010.

- Investigate reports of safety standard violations regarding pilot boarding equipment.

Response: The Board concurs with this recommendation. All reports of safety standard violations received by the Board concerning pilot boarding equipment will be investigated in accordance with Harbors and Navigation Code Section 1156.5. Where feasible, 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.

To ensure that all pilots complete required training within specified timeframes, the board should:

- Establish a procedure to ensure pilots attend training as required by state law and board regulations.

Response: The Board concurs with this recommendation. The Board has implemented a checklist to track each pilot's training cycle and the expiration dates for the 3-year and 5-year training periods to ensure timely attendance at Board-mandated training. 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.

Mr. Dale E. Bonner
November 5, 2009
Page 4

- 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.

Response: The Board concurs with this recommendation and is currently working with its continuing education providers to develop performance evaluations, which will be incorporated in future contracts.

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

Response: The Board concurs with this recommendation. The Board 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.

Chapter 2

To ensure it has adequate controls to protect confidential information, the board should:

- 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.

Response: The Board concurs with this recommendation. The Board 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.

- Consistently use state-based e-mail accounts when conducting board business.

Response: The Board concurs with this recommendation. Having no technical capability or support in the past for connecting to state government-based e-mail systems, the Board had to rely on state-contracted private providers (the Association of Bay Area Governments). After joining the Business, Transportation and Housing Agency, the Board started a step-by-step technical infrastructure change. In that process, the Board just obtained state-based e-mail accounts for all Board members and staff. As there are still some technological issues to resolve, it expects that Board members and staff will be conducting all Board business on their state-based email accounts by the end of December 2009.

To adhere to requirements regarding administrative practices, the board should:

- Establish a formal procedure to complete and maintain copies of required statements of economic interests.

Mr. Dale E. Bonner
November 5, 2009
Page 5

Response: The Board concurs with this recommendation. The Board has developed a checklist and a process 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.

- Complete the process of ensuring that investigators complete statements of economic interests and seek advice from the Fair Political Practices Commission when there are questions as to whether other consultants should file such statements.

Response: The Board concurs with this recommendation. All commission investigators have now filed statements of economic interest. When questions regarding whether other consultants should file such statements arise in the future, the Board will seek appropriate legal advice.

- Develop procedures to ensure board members and designated staff continue to receive required training, such as training in state ethics rules.

Response: The Board concurs with this recommendation and 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.

- Establish processes to ensure its Web site contains timely and accurate information about its meetings, as required by law.

Response: The Board concurs with this recommendation and has implemented training of its staff in the update and maintenance of the Board's webpage displaying notices of its meetings. Information on the website will be reviewed routinely to ensure that timely and accurate meeting information is provided in accordance with state law.

- Formalize a procedure for evaluating the executive director on an annual basis, as required by law.

Response: The Board concurs with this recommendation. The Board 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.

To improve its recordkeeping, the board should:

- Establish formal procedures related to document retention in files regarding investigations. For example, the board should ensure its investigation files contain a report of the Incident Review Committee's opinions and recommendations and the board's actions based on these recommendations.

Response: The Board concurs with this recommendation. The Board 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.

Mr. Dale E. Bonner
November 5, 2009
Page 6

- Determine and document what it needs to include in minutes of the board's meetings, such as pilot renewals.

Response: The Board concurs with this recommendation. The Board 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.

To ensure it has internal policies and controls over pilot rates and its finances, the board should:

- Review and approve quarterly calculations of that portion of the pilot fee based on the mill rate.

Response: The Board concurs with this recommendation and will include in its quarterly review of other surcharge rates a review and approval of any changes in the mill rate authorized under Harbors and Navigation Code Section 1190(a)(1)(A).

- Establish a requirement for an independent audit of the pilot boat and pilot pension surcharges and ensure the audit is conducted each year.

Response: The Board concurs with this recommendation. As noted in the report, the Board has conducted one audit of the pilot pension surcharge receipts and disbursements. The Board is now seeking authority to contract for annual audits of all surcharges on pilotage fees.

- Establish a monthly review of the revenue reports it receives from the Bar Pilots that includes verifying that the amount of the accompanying check is accurate and that the report is complete.

Response: The Board concurs with this recommendation and has commenced a monthly review of the revenue reports from the SFBP, including verification of the amount on the accompanying check and completeness of the report.

- Instruct the inland pilot to collect and remit the training surcharge and report these collections to the board.

Response: The Board concurs with this recommendation and has instructed the inland pilot to begin collecting and remitting the Pilot Trainee Training Surcharge and to report these collections to the Board. The inland pilot has acknowledged the instruction and will commence collection of the surcharge beginning with his next trip.

- Develop procedures to track expenditures relevant to the operations, training, and continuing education surcharges separately.

Response: The Board concurs with this recommendation. 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 Harbors and Navigation Code Sections 1195.1 through 1196.3. It expects to have that process in place by the end of January 2010.

Mr. Dale E. Bonner
November 5, 2009
Page 7

To ensure its expenditures are appropriate, the board should:

- Cancel its lease for two parking spaces that it entered into in 2009, or require its staff or board members to reimburse the board for use of those parking spaces.

Response: The Board concurs 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 uses those spaces when not otherwise in use, staff must reimburse the Board.

- ③ *The parking spaces at Pier 9 have been leased for the parking need and convenience of commissioners, investigators, and visitors invited to Board, committee, and other business meetings. Commissioners are appointed members who do not receive salaries but are entitled to reimbursement of their travel expenses incurred in the performance of their duties. Investigators are independent contractors who are paid on an hourly basis entitled to reimbursement of their necessary travel and business expenses.*

Both commissioners and investigators regularly come to Board, committee, and business meetings, or stop by at the office in performance of their duties. Every trip to the office is a business trip for them and their parking expenses must be reimbursed by the Board. To that extent, requiring them to reimburse the Board for parking expenses at the office is not possible.

In addition, the Board regularly invites visitors from various marine organizations and other institutions for their committee and Board meetings. Those visitors are directed to the parking spaces leased by the Board.

The lease agreement contains the description of two vehicles owned by staff because of the landlord's insistence that some vehicles must be identified in the contract. The identification of staff vehicles does not mean that the parking is for staff. In those instances when either of the parking spaces is used by staff, reimbursement will be required from them at the appropriate daily rate.

- Competitively bid contracts with physicians who perform physical examinations of pilots.

Response: The Board concurs with this recommendation and 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 calendar year 2010.

- Cease reimbursing pilots for business-class travel when they fly for training and amend its contract with the Bar Pilots accordingly.

Response: The Board concurs with the underlying premise that the use of business-class travel must have a legitimate public purpose and not be simply for the convenience of the traveler. The Board does not mandate or reimburse business-class domestic travel for training, notwithstanding the wording of the contract with the Bar Pilots. The Board has in the past mandated and reimbursed business-class intercontinental travel for training.

Mr. Dale E. Bonner
November 5, 2009
Page 8

The fundamental reason and justification for purchasing business-class airfare for intercontinental travel in the past has been based on safety considerations as well as ensuring the effectiveness of the training. The Board president has requested, and the chairman 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. That meeting is scheduled for January 13, 2010. The next manned-model training session at Port Revel in Viriville, France, begins June 21, 2010, giving the Board ample time to consider and implement recommendations from the Committee.

④

The BSA audit report is a very important tool for the Board. We are happy to have it. It brings to us the knowledgeable expertise of the BSA audit team – a team that brings to the fore many years of experience and a genuine focus on producing a comprehensive assessment of the audited organization with specific recommendations for change and improvements. The audit report provides the Board with a roadmap to the way ahead.

Sincerely yours,

(Signed by: Knute Michael Miller)

Knute Michael Miller, President
Board of Pilot Commissioners for the Bays of
San Francisco, San Pablo and Suisun

Blank page inserted for reproduction purposes only.

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF SAN FRANCISCO, SAN PABLO AND SUISUN

To provide clarity and perspective, we are commenting on the response to our audit from the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board). The numbers below correspond to the numbers we placed in the margins of the board's response.

We shortened the title of the report after the agency had already reviewed it.

①

We believe it is unclear whether additional staff would have addressed the board's ability to comply with legal and regulatory requirements, given that we found there were not adequate controls and processes already in place.

②

We disagree. We believe the board's leasing of parking spaces is unnecessary and not a prudent use of public funds. Specifically, assuming 20 business days in a given month, the daily cost of each leased parking space is \$17, which can be as much as \$3 higher than the daily cost of parking charged by a parking lot directly across the street from the board's office. Further, the contract agreement for the parking spaces specifies that the board accepts all liability for problems arising from violations of parking rules. To the extent users of these parking spaces violate such rules, the board has accepted liability, exposing the board to further expenditures of public funds.

③

As we state on page 46, the board is a regulatory agency and not a private shipping company. Purchasing business class airfare for pilots attending training, when an equivalent and less expensive alternative is available, is not appropriate, and may constitute a misuse of state resources, which state law prohibits.

④

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press