

REPORT 2009-043 SUMMARY - NOVEMBER 2009

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

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.
- 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.

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 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 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.

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.

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

▪ [View this entire report in Adobe Portable Document Format \(PDF\)](#)

▪ [Return to the home page of the California State Auditor/Bureau of State Audits](#)



California State Auditor, Bureau of State Audits
555 Capitol Mall, Suite 300, Sacramento, CA 95814
(916) 445-0255