

# Sunset Advisory Commission

## Staff Report

### Issue 8

*The Commission's Role as the Pilot Board to Regulate Houston Pilots Lacks Focused Oversight and Standard Best Practices for Licensing Functions.*

#### Background

Houston port pilots serve a crucial role in ensuring safety and the continued movement of commerce along the Houston Ship Channel. Pilots take direct command of or transfer directions to foreign-flagged vessels navigating the 52-mile long Channel, one of the more difficult to navigate due to its narrow width, shallow depth, winding nature, and heavy traffic. In 2010, Houston was the nation's busiest port, with 6,698 oceangoing vessel calls. This translates to about 20,000 ship movements per year by the pilots, who serve all facilities operating along the Channel, as shown in the chart, *Houston Pilot Ship Movements / Incidents Investigated for Pilot Error*. Incidents, though rare relative to the number of movements, have the potential to cause not only physical injuries and death but damage to public infrastructure, sensitive environmental areas, and millions of dollars of lost economic opportunity.

By statute, the members of the Port of Houston Authority Commission also serve as the Board of Pilot Commissioners for the Ports of Harris County (Pilot Board), the governing body responsible for Houston pilot oversight.<sup>1</sup> To become a pilot, a person must meet licensing requirements established by the U.S. Coast Guard and the Pilot Board, be accepted into the Houston Pilots Association, and receive a state commission from the Governor. Statute requires the Pilot Board to approve pilot applicants and submissions for state commissions, adopt rules to ensure efficient pilot operations, establish pilot rates, hear complaints relating to pilot conduct, and investigate incidents.<sup>2</sup> Staff located in the Authority's Security and Emergency Operations Division carries out the Pilot Board's day-to-day regulatory functions, including convening two committees, the Pilot Board Investigation and Recommendation Committee and the Application Review Committee, made up of Authority staff, pilots, and maritime industry representatives. These two committees play a central role in helping the Pilot Board provide oversight of pilot activities by reviewing pilot applications, investigating incidents involving pilots, and making recommendations to the Pilot Board.

The Pilot Board currently oversees the qualifications, training, and licensing of 86 pilots, who are all members of the Houston Pilots Association. All pilot services are provided through the Association, with members sharing operational costs, such as maintaining 24-hour, 7-day dispatch centers; pilot boats and crews; and providing insurance and other benefits to members.

#### Findings

## **The unique arrangement between the Pilot Board and the Houston Pilots Association should not deter the Pilot Board from its assigned oversight responsibility.**

The credentialing process for Houston pilots is not like licensing for most occupations because it is closely intertwined with the Houston Pilots Association, which plays a large role in the vetting process for pilot applicants. This relationship is akin to a guild system in which the Pilots Association controls significant aspects of training, apprenticeship, and approval processes for Houston pilots. As distinct as the process is from occupational licensing, it is common among ports because the special knowledge needed generally ties the pilot to the specific port in which they trained. As noted, pilot associations also typically provide all pilot services for piloting ships in each port, from the pilot boats and crews, to the dispatch centers. Despite this special relationship between board and association, the Pilot Board should not be removed from its proper oversight of this important activity.

Statute provides the Pilot Board clear authority to perform any act or function necessary to carry out its powers and duties, which includes adopting rules and issuing orders to ensure safe and efficient pilot activities.<sup>3</sup> Authority staff provides administrative support for processing pilot applications and reviewing incidents involving piloted ships along the Channel. However, the Board has not adopted rules specifying information the Association must provide to fully support these activities. The Association schedules work assignments, provides ongoing training opportunities, and generally asserts more regulatory powers than the actual Board. Recognizing that the common practice is for pilot associations to play such a role in U.S. ports, and given the lack of major incidents in Houston, the basic structure and approach are not significant causes for concern. The arrangement does, however, result in concentrating information at the Association that the Board needs to effectively monitor the pilots. A review of Pilot Board meeting minutes indicates a hands-off approach that gives the appearance that discussions and decisions made elsewhere are essentially being rubber-stamped. Meetings are typically short, with little discussion of issues or information sharing on a regular basis. In 2011, for example, of 11 meetings conducted by the Pilot Board, 10 convened and adjourned in one minute or less, not enough time for due diligence on the task at hand.

## **The Pilot Board has not actively pursued safety aspects related to its monitoring and oversight of pilots.**

The Pilots Association's control over so many aspects of pilot regulation results in the Pilot Board not receiving information about key activities that can relate to pilots' ability to perform their job safely. In addition, some elements of state licensing programs are applicable to the oversight of pilots to help improve safety and public understanding of this function. These elements are described in the following material.

- **Training.** When processing pilot license renewals, the Application Review Committee checks to ensure the pilot has the continuing competence to perform the work. However, the Committee does not have a standard way of sharing information about training received since last renewal with the Pilot Board so that it can make its own judgment to ensure that the pilots it recommends for renewal are, in fact, still capable of piloting the big ships such as the Post-Panamax vessels that the Panama Canal expansion will make possible. The Pilots Association has recently begun presenting quarterly information to the Board about training activities, but this still does not provide needed information about specific training received by individual pilots.

- **Fatigue mitigation.** In October 2011, the National Transportation Safety Board (NTSB) recommended state pilot oversight entities improve efforts to reduce pilot fatigue, but this recommendation has not yet been addressed by the Board.<sup>4</sup> This report directed states to ensure pilot oversight organizations effectively monitor and, through their regulations, oversee the practices of their pilots to promote and ensure the highest level of safety. Specifically, the NTSB report recommended requiring pilot oversight organizations to implement fatigue mitigation and prevention programs that regularly inform mariners of the hazards of fatigue and effective strategies to prevent it, and develop hours of service rules that prevent fatigue resulting from extended hours of service, insufficient rest within a 24-hour period, and disruption of circadian rhythms. The Houston Pilots Association has developed work rules and shared information about fatigue indicators with its members on its own initiative. However, the Pilot Board has not requested and does not receive regular information from the Pilots Association on pilot activities, scheduling, work load or any information that would provide oversight information that could indicate fatigue factors.
- **Investigations.** The Investigation and Recommendation Committee investigates and takes action on incidents involving pilots and convened eight hearings between 2008 and 2011. The committee may recommend additional training for pilots based on incident investigations but has no mechanism in place to inform the Pilot Board of pending investigations unless the committee makes a recommendation to the Board. For example, the Pilot Board recently approved a pilot commission renewal while the pilot was being investigated for negligence in an incident. While the pilot was ultimately not found to be negligent and only required to take additional training, the Pilot Board should have been made aware of the investigative committee's review and pending recommendations at the time of the renewal consideration.
- **Criminal history background checks.** When conducting background checks for pilot applications or renewals, the Application Review Committee only checks criminal history in the applicant's or pilot's Home County rather than a statewide check as most state licensing agencies do.

Current policy and process does not adequately research the possible criminal history of pilots, limiting the Pilot Board's ability to ensure that pilots are qualified for their dangerous jobs.

Pilot qualifications for license include requiring applicants to "have good moral character."<sup>5</sup> As with many other state licensing programs, this vague requirement allows subjective disagreements about what should disqualify an applicant once information is discovered during a background check. A provision in the Texas Occupations Code gives some guidance to help state licensing agencies make such a determination that includes ensuring that an offense relates to the duties and responsibilities of the activity regulated.<sup>6</sup> While Authority staff has indicated it is proceeding with a plan to address this issue, it should follow these Texas Occupations Code provisions to focus on behaviors that pose the greatest risk to the public.

- **Complaint process.** Other than the incident review process, the Pilot Board has not established a standard complaint process for use by the public or other maritime professionals who pilot vessels on the Channel, even though its statutory duties clearly require this function.<sup>7</sup> By not having a complaint process, the Pilot Board misses an avenue for dealing with issues before they become more significant problems.
- **Public information.** As a state-created entity, the Pilot Board should inform the public of its statutory responsibilities and duties. The Authority's website does not mention the Port

Commission's role as the Pilot Board and provides only minimal information about Board meeting minutes. The website provides no information, searchable or otherwise, on Board duties, how to submit a complaint about pilots, or the incident review process.

## **Recommendation**

### ***Management Action***

#### **8.1 Direct the Port Commission, acting as the Pilot Board, to take a more active role in oversight of the Houston Pilots.**

- Under this recommendation, the Pilot Board should take action under its existing statutory authority to more actively address safety and public information needs related to pilots, as described below. The Pilot Board should amend its adopted Rules and Regulations governing pilots to clearly specify the information it needs to adequately oversee the Houston pilots. This information should include reporting of pilots' training and continuing education since their last renewal and the results of any incident investigations involving pilots. This information is currently prepared by separate Authority-convened review and investigative committees, but is not routinely presented to the Pilot Board, which is largely responsible for issuing pilot commissions. This recommendation would provide for more complete information being provided to the Pilot Board, and would not change the process or any requirements for approving state pilot commissions or renewals.
- The recommendation would also direct the Authority's staff to work with the Association to develop a formal fatigue mitigation program to educate pilots on best practices relating to rest guidelines needed to overcome or prevent fatigue resulting from scheduling patterns. This effort should include formally developing hours of service rules to prevent fatigue from extended work hours and insufficient rest within a 24-hour period. The staff would also determine the appropriate information to submit to the Pilot Board regarding the program, including the reporting of pilot work records and logs and any fatigue mitigation program activities.
- In addition, the recommendation would direct the Authority to conduct, at a minimum, statewide criminal history background checks during the pilot application and renewal process. The Pilot Board would also need to adopt guidelines for using these criminal history checks according to the provisions in the Texas Occupations Code to help ensure that the consideration of past behavior relates to the duties and responsibilities of being a pilot.
- The recommendation would direct the Pilot Board to implement a complaint process regarding pilots as required by statute and include information about the process and contact information on the Authority's website. The Pilot Board should also include information about its duties and oversight responsibilities on the Authority's website and in other appropriate Authority publications. This change would make its pilot oversight role more transparent to the public.

## **Fiscal Implication**

No significant fiscal impact to the Authority is anticipated.