

Preliminary Evaluation of the State Board of Pilots

Recommendations: Waive from Full Evaluation

Extend Termination Date by Nine Years to July 1, 2022

Require Follow-up Report by October 1, 2010

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Pilots was not scheduled for a preliminary evaluation under statute until 2010; however, DLS accelerated the review process for this board – along with several others – to more evenly distribute the number of evaluations conducted over the next few interims. The State Board of Pilots last underwent a full evaluation as part of sunset review in 2001. The 2001 full evaluation found that the board is effective at ensuring the safe passage of ships through the Chesapeake Bay and Chesapeake and Delaware (C&D) Canal by licensing pilots to perform pilotage and that continued regulation of pilotage is necessary to ensure public safety. However, the evaluation also concluded that the board needed to revise several statutory funding provisions, develop a better methodology for determining the appropriate number of licensed pilots, formally adopt regulations regarding oversight of pilot work rules, and create a more comprehensive database containing specified data. DLS recommended an extension of the board’s termination date to July 1, 2013. Chapter 523 of 2002 extended the termination date to July 1, 2013, and required the board to report on its progress implementing recommendations of the 2001 evaluation. The board submitted the required progress report in October 2002.

In conducting this preliminary evaluation, DLS staff reviewed minutes from board meetings for the past four years, incident and complaint data, statute and regulations pertaining

to pilotage in the State of Maryland, the prior full sunset reviews of the board, the board's October 2002 report to committees of the General Assembly, and the board's licensing and financial data. In addition, DLS staff interviewed the president of the Association of Maryland Pilots, the board's acting executive director, the board president, and other staff. Finally, DLS staff observed a State bay pilot operating a cargo vessel from the Port of Baltimore through the C&D Canal.

The State Board of Pilots and the Association of Maryland Pilots reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

Regulation of the Marine Pilotage Profession

Pilotage is the act of guiding a marine vessel by a person who is licensed to conduct the ship into or out of port or through dangerous water. Oversight of the profession is maintained through federal and State regulation. Federal law states that "...pilots in the bays, rivers, harbors, and ports of the United States shall be regulated only in conformity with the laws of the States." Maryland law in turn requires that each "...American vessel engaged in foreign trade and each foreign vessel shall employ a licensed pilot to pilot the vessel when it is underway on the navigable waters of the State, including when the vessel is towing or being towed by another vessel." American vessels involved in coastwise, as opposed to foreign, trade are required to have federally licensed pilots. The U.S. Court of Appeals for the Second Circuit describes this division of responsibility in *Interport Pilots Agency, Inc. v. Sammis* as "... Congress has preempted state regulation of pilotage only with respect to vessels on the Great Lakes ... and American flag vessels sailing between American ports ("coastwise vessels"). Thus, the states have authority over the pilotage of all American vessels sailing under register, that is, engaged in foreign trade, and all foreign flag vessels ..."

In Maryland, pilotage is accomplished by pilots who are licensed by the State Board of Pilots and who are members of the Association of Maryland Pilots. The State regulates pilotage while the association manages the day-to-day implementation of pilotage services. As of July 2009, 65 individuals were licensed by the State to provide pilotage for the Port of Baltimore and other ports in the State. Most vessel movements in the State occur between the Port of Baltimore and the Chesapeake Bay entrance at Cape Henry, Virginia, the single longest pilot route in the United States at approximately 150 miles, or between the Port of Baltimore and Chesapeake City on the C&D Canal.

Responsibilities and Structure of the State Board of Pilots

The State Board of Pilots has been in existence for over 200 years, and its priorities and legislative mandate remain largely the same today as when the board was first established: to provide safety in navigation of Maryland's commercial waterways in the interests of the ships, the citizens of the State, and the environment. Specifically, the board's responsibilities include:

- licensing pilots at four different levels;
- collecting licensing fees;
- maintaining continuing education credentials of pilots;
- selecting individuals to become pilots-in-training and approving training programs;
- maintaining oversight of all incidents involving a pilot and disciplining pilots as necessary; and
- approving pilot work rules.

The State Board of Pilots consists of nine members appointed for two-year terms by the Governor, including the president of the association; three retired or licensed pilots with at least five years' experience providing pilotage; one consumer member; two members of the steamship industry who actively employ pilots; one representative of the ship docking tugboat industry in the Port of Baltimore; and the Secretary of Labor, Licensing, and Regulation or a designee of the Secretary. At this time, the board receives direct support from several Department of Labor, Licensing, and Regulation (DLLR) staff. DLLR advises that the board's executive director, who dedicated part of his time to the board, is on permanent disability leave, but there are plans to hire a new individual for this position. The executive director's responsibilities have been assumed by existing staff, which has resulted in additional strain on already limited resources. The board's acting executive director dedicates approximately 5% to 10% of her time to the board, with the remainder of her time dedicated to staffing five other DLLR boards. Other DLLR staff provides direct support by taking board meeting minutes and periodically reviewing pilot-in-training applications. Furthermore, additional DLLR staff provides indirect support to the board, which includes legal, information technology, budgeting, and personnel services.

To fulfill its various duties, the board has four committees. The incident committee reviews all incidents and complaints and makes recommendations to the full board on the disposition of each matter. The qualification committee evaluates pilot performance in order to make licensing recommendations to the full board. The committee on work rules evaluates work rules approved by the association that affect the safe operation of vessels by pilots and makes recommendations to the full board. The selection committee makes selections for the list of qualified applicants for the position of pilot-in-training.

The board has no authority over rates for pilotage services; rate setting has been handled by the Public Service Commission since 1984.

Association of Maryland Pilots

All pilots licensed by the State Board of Pilots are also members of the Association of Maryland Pilots, founded in 1852. A board of supervisors consisting of a president, first vice president, second vice president, treasurer, harbor list representative, and secretary administers the pilots' association. Pilots act as independent contractors in providing their services as State-licensed pilots. The association acts as a collection agent for the pilots, collecting fees from shipping lines and disbursing these fees to the association members after covering expenses and making other required payments. Payments must be made to specified inactive pilots and to the Maintenance and Replacement Fund for the replacement and repair of the association's major equipment. The association also has responsibility for developing and implementing pilot-in-training programs, proposing work rules, and recommending candidates for licensure to the board.

In addition to the roles described above, the association provides the actual service of pilotage by maintaining pilot work rotation schedules. The association assigns pilots to ships entering or leaving the port in accordance with approved work rules and shipping agents' requests for service. The association's work rules, as administered by the association's dispatchers, establish a rotation schedule so that each pilot is subject to approximately the same workload. The association also makes arrangements for transporting pilots to and from vessels and maintains pilot transfer stations and other capital equipment in Maryland at Solomons Island (Mid-Bay Station), Annapolis, Chesapeake City, Dundalk Marine Terminal, and the Baltimore headquarters office, and in Virginia at Cape Henry. The association includes all pilots-in-training and active pilots as well as approximately 50 full- and part-time employees.

Recent Trends and Developments

Statutory Changes Affecting the Board Since the 2001 Sunset Review

Since the full sunset evaluation in 2001, several statutory changes have affected board operations. As shown in **Exhibit 1**, Chapter 523 of 2002 extended the termination date of the board to July 1, 2013, clarified the board's funding, and changed several fiscal practices. Additional significant changes occurred in response to Chapter 520 of 2004, which expanded the definition of pilotage to include the docking and undocking of vessels and transferred the State Board of Docking Masters' functions and duties to the State Board of Pilots.

Exhibit 1
Major Legislative Changes Since the 2001 Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	523	<p>Extends termination date by 10 years to July 1, 2013.</p> <p>Clarifies that the board is general funded and requires that board revenues be deposited into the general fund.</p> <p>Modifies eligibility for inactive pilot payments.</p> <p>Codifies specified fiscal practices carried out by the Association of Maryland Pilots and requires the association to submit annual financial audits concerning payments to pilots and payments from the Maintenance and Replacement Fund.</p>
2004	520	<p>Abolishes the State Board of Docking Masters, transfers its regulatory authority to the State Board of Pilots, and expands the definition of pilotage to include the docking and undocking of vessels.</p> <p>Expands and makes more stringent the qualifications for pilots-in-training.</p> <p>Adds an incident committee to the board with the authority to review complaints and recommend the disposition of each complaint.</p> <p>Changes the date on which licenses expire to two years after issuance.</p> <p>Expands the grounds for taking disciplinary action against licensees.</p> <p>Bars licensed pilots from participating in job actions or strikes.</p> <p>Replaces one of the two consumer representatives on the board with a representative of the ship docking tugboat industry.</p> <p>Defines situations in which a conflict of interest exists for pilots and prohibits licensed pilots from engaging in such conduct.</p>

Source: Laws of Maryland

Merger with the State Board of Docking Masters Implemented

Docking services involve tug boat-assisted berthing and unberthing of a vessel, or shifting a vessel within a port. Prior to 2000, docking masters were not subject to State licensing requirements, and accountability in the event of a docking incident was not clearly defined. Chapter 509 of 2000 established the State Board of Docking Masters to assume regulatory authority governing and licensing docking masters; ensure the safety of docking services; and maintain a list of all licensees. Four years later, in accordance with Chapter 520 of 2004, the functions and duties of the State Board of Docking Masters were transferred to the State Board of Pilots. As a result of this merger, 10 docking masters became unlimited licensed pilots, but their piloting authority only extends to before, during, and after docking or undocking of vessels with the assistance of tugboats in the various Maryland ports and navigating vessels without tugboats in the Port of Baltimore.

The board advises that its assumption of State Board of Docking Masters responsibilities went smoothly. The board clarified, in regulations, the training and experience requirements for a pilot to perform docking maneuvers and the authority of individuals who held docking master licenses prior to October 1, 2004, to pilot vessels in specified areas. As of September 2009, 10 individuals who were previously licensed docking masters are serving as pilots with the authority to perform docking maneuvers and shift vessels only within specified areas. Also, docking requirements were added to the association's pilot-in-training program to ensure that all new pilots are qualified to perform all docking and piloting assignments. In addition, five of the traditional bay pilots have now been cross trained and approved by the board to perform harbor work. In the future, the board may be required to establish training and experience requirements for previously licensed docking masters to perform all the tasks of an unlimited licensed pilot.

Pilot Licensing Trends: New Unlimited Licensed Pilots Anticipated

The board licenses and oversees a relatively small population. As illustrated in **Exhibit 2**, there were 65 pilots with licenses at the end of fiscal 2009. Licenses must be renewed every two years, and the term of licensure begins on the date of issuance. When a limited licensed pilot is approved for a higher draft license, which usually occurs in a year, DLLR recodes their license to the higher draft license level and no longer tracks the lower draft license, even though it is in effect for two years. Therefore, several of the 65 licensees in June 2009 may have had a second license as well, but DLLR does not track this information.

Exhibit 2
Pilot License Categories and Fees

<u>Type of License</u>	<u>Pilots with Licenses as of June 2009</u>	<u>Fee</u>	<u>Scope of License</u>	<u>Requirements</u>
Unlimited License – New or Renewal	53	\$600	Vessels of any draft	Meet licensing requirements of 37-foot draft limited licensure for one year
37-foot Draft Limited License – New or Renewal	4	\$300	Vessels not exceeding 37-foot draft	Meet licensing requirements of 34-foot draft limited licensure for one year
34-foot Draft Limited License – New or Renewal	3	\$300	Vessels not exceeding 34-foot draft	Meet licensing requirements of 28-foot draft limited licensure for one year
28-foot Draft Limited License – New or Renewal	5	\$200	Vessels not exceeding 28-foot draft	Serve as a pilot-in-training under unlimited licensed pilots for two years prior to issuance of 28-foot draft limited license
Total	65			

Source: State Board of Pilots and Laws of Maryland

The total number of licensees at the end of each fiscal year has shifted between 59 and 69 over the past six years, as illustrated in **Exhibit 3**. However, there have been significant shifts within the types of licensees. Between fiscal 2007 and 2008 unlimited licenses decreased by 20%, from 65 to 52 licenses. Also, while there were no limited licensed pilots in fiscal 2006, 12 limited licenses were granted in fiscal 2009. These licensing trends are the result of a number of pilots retiring as well as the board accepting new pilots-in-training every year for the past six years (fiscal 2004 through 2008). In recent years new pilots have been moving through the five-year training period that involves two years as a pilot-in-training and at least three years with a limited licensed pilot. These shifts in the total number and type of licenses have resulted in fewer unlimited licensed pilots being available and an increase in the workload associated with selecting and instructing pilots-in-training.

Exhibit 3
Total Number of Pilot Licenses
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Unlimited License	68	69	63	65	52	53
37-foot Draft Limited License	0	0	0	0	0	4
34-foot Draft Limited License	0	0	0	0	4	3
28-foot Draft Limited License	0	0	0	4	3	5
Total	68	69	63	69	59	65

Source: State Board of Pilots

Expand State Licensing Requirements to Require Federal License

Prior to obtaining an unlimited license, individuals must complete a rigorous two-year pilot-in-training program and a three-year limited license training program. To qualify as a pilot-in-training, an applicant must (1) be at least 21 years old; (2) provide the board with proof of recent satisfactory completion of the physical requirements for a first-class pilot license, as determined by the U.S. Coast Guard; (3) agree to participate in a U.S. Coast Guard-approved random drug testing program; (4) pass any mental or physical examination that the board requires to verify that the applicant is mentally and physically capable of providing pilotage; and (5) have one or more of the following maritime credentials:

- a degree from a four-year course of study at an accredited maritime institution acceptable to the board, and a current license as third mate, or greater grade, of steam and motor vessels, any gross tons upon oceans;
- a current license as a master of steam and motor vessels, any gross tons upon oceans, that is issued by the U.S. Coast Guard and that contains an appropriate radar endorsement; or
- a minimum of five years' experience in the maritime industry working on vessels in the deck department as a licensed master or mate on tugs or inspected vessels, of which at least two years' experience must be as the master of a ship-assist harbor tug.

Upon completion of the five-year training period, the association may recommend that a pilot be promoted to an unlimited licensed pilot. To obtain limited and unlimited pilot licenses, applicants must demonstrate to the satisfaction of the board by the actual observation of demonstrated performance that the individual possesses sufficient ability, skill, and experience. The board must consider recommendations of the qualification committee, the length of time spent piloting vessels, the number of vessels piloted, the pilotage routes, and other licenses obtained.

At this time, State licensing requirements do not require that pilots maintain a U.S. Coast Guard license. Federal licenses are required by the State only to qualify as a pilot-in-training. Recently, the U.S. Coast Guard determined that a Maryland pilot had been operating without a federal license for over a year. This incident raises concerns about the need to strengthen the link between State and federal licensing to ensure that all pilots maintain the same minimum credentials. Occasionally Maryland pilots guide vessels engaged in coastwise trade; a federal license is required for such assignments. Consideration should be given to making State pilot licenses contingent upon a valid federal pilot license. In October 2009, the board agreed to propose regulations that require each licensed pilot to maintain an active U.S. Coast Guard license. If approved, these regulations should address this concern.

In accordance with State statute, the board must seal each license it issues with its official seal. However, the board does not have a seal at this time, and the need for a seal is not clear. Therefore, consideration should be given to deleting this seemingly outdated statutory requirement.

Steady Pilot Incident and Complaint Rates, but Hefty Litigation Demands

Pilot incidents involve collisions, groundings, mechanical/equipment failure, fatalities, unsafe conduct, and substantial property damage. A licensed pilot involved in an incident must report the incident to the U.S. Coast Guard and submit a written report to the board within seven calendar days, detailing factually what happened and the actions taken by the pilot. The board's incident committee is responsible for investigating incidents and complaints and making recommendations to the full board on the disposition of each matter. The board reviews the recommendation and determines whether to close the incident without action, conduct a more extensive investigation, or take disciplinary action. Disciplinary action may range from issuance of a fine to suspension or revocation of a pilotage license.

The number of incidents brought to the board on an annual basis is low and has not changed significantly in recent years, as illustrated in **Exhibit 4**. Between 2004 and 2009, approximately half of the incidents involved collisions or allisions (a vessel coming in contact with a stationary object). In most cases, the U.S. Coast Guard investigated these incidents, no violation by the pilot was found, and the case was closed. Very few license actions have been taken against pilots in recent years. The three most recent license actions involved a November 2004 incident that was recently addressed by the Court of Special Appeals and is described in greater detail below, a February 2007 incident that resulted in a pilot retiring, and an April 2007 incident that was resolved through a special meeting with the pilot.

Exhibit 4
Pilot Incidents and Disciplinary Responses
Calendar 2004-2009

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Incident Reports:						
Mechanical problem or equipment failure	1	0	0	0	1	0
Collision/Allision	0	2	4	0	1	1
Grounding	1	1	0	1	0	1
Conduct	1	0	0	0	0	0
Other	0	0	0	2	1	0
Total:	3	3	4	3	3	2
Action Taken:						
No violation found	2	3	4	1	3	1
License actions taken	1	0	0	2	0	0
Still under investigation	0	0	0	0	0	1

Note: The 2009 incidents reflect only the eight-month period of January through August.

Source: State Board of Pilots

Unlike incidents, complaints involve issues such as allegations of unprofessional conduct by a pilot, unsafe docking by a pilot, and conflict of interest. **Exhibit 5** illustrates the number of complaints received in 2005 through 2009 and board actions taken on these complaints. The board has received a modest number of annual complaints, and the vast majority of the complaints result in a finding of no violation or insufficient evidence.

The board has recently seen an increase in the volume of litigation, and associated costs, as a result of two particular matters. One was a disciplinary case against a licensed pilot, which was appealed by the licensee from the board to the circuit court, and then by the board to the Court of Special Appeals. That court recently upheld the board's decision which found that the licensee had acted with the intent to benefit his family's tug assist company in violation of the statutory code of ethics provisions. That same licensed pilot and his family's tug-assist company have filed a civil suit in the Circuit Court for Baltimore City against the State of Maryland, the board, and the Association of Maryland Pilots and several of its members. The claims against the State challenge the statutory scheme to regulate pilots and seek \$5.0 million in compensatory damages. Defense of this lawsuit has and will continue to require a substantial amount of time on the part of the Office of the Attorney General as well as the out-of-pocket costs associated with a vigorously contested civil case.

Exhibit 5
Complaint Volume and Disposition
Calendar 2005-2009

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Complaints Filed	5	4	0	2	1
Disposition of Complaints					
Closed – no violation	3	1	0	0	0
Closed – insufficient evidence	2	1	0	1	0
Warning issued	0	1	0	0	0
Under review	0	1	0	1	1

Note: The 2009 incidents reflect only the eight-month period of January through August.

Source: State Board of Pilots

Total Board-related Expenditures Are Not Clear

The board meets just four times per year and licenses only approximately 65 individuals; consequently, it has a relatively small budget. The board's recent fiscal history, as provided by DLLR, is outlined in **Exhibit 6**. Board revenues are composed of licensing and pilot application fees, which are deposited into the general fund. Exhibit 6 illustrates that the board still receives the majority of its licensing revenue every two years, the artifact of a provision repealed in 2004 requiring that licenses expire in May of even numbered years, and that average biennial licensing revenues have not fluctuated significantly. Board expenditures, which are generally attributed and not necessarily charged and budgeted, are divided into direct, indirect, and direct legal costs. The board's minimal direct costs are coded primarily as contractual service costs. The indirect costs, which were first uniformly calculated by DLLR in fiscal 2005, reflect general assistance provided by DLLR's departmental and division-level staff, including budgeting, information technology, telephone center, and personnel services. Direct legal expenditures, which DLLR began discretely tracking in fiscal 2009, reflect legal services provided by the Office of the Attorney General. The board's expenditures decreased significantly between fiscal 2004 and 2008, but then increased significantly in fiscal 2009 when DLLR began tracking legal service costs. These expenditure trends are difficult to evaluate, as explained below.

Overall, DLLR's method of tracking the board's expenditures fails to account for significant costs and thus provides an incomplete picture of board operations. For example, the board's expenditures do not account for DLLR's personnel costs associated with staffing the board or periodic investigation of pilot incidents, when required by the Attorney General and not completed by the Coast Guard. Furthermore, since DLLR's methodology for calculating indirect

costs is based on personnel costs and the board's personnel costs are not tracked as direct labor, the board's indirect costs have been zero in recent years. Since all of the board's costs are not tracked, it is difficult to determine whether adequate resources are being dedicated to fulfilling the board's responsibilities. Furthermore, it is difficult to determine the extent to which, or whether, licensing revenue exceeds board expenditures.

Exhibit 6
Fiscal History of the State Board of Pilots
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Revenues	\$37,306	\$2,160	\$37,702	\$3,856	\$33,950	\$4,313
Total Costs	\$13,039	\$14,104	\$6,896	\$6,135	\$4,153	\$38,693
Direct	13,039	12,779	6,133	6,133	4,153	4,387
Legal*	-	-	-	-	-	34,306
Indirect**	-	1,325	763	2	0	0
Surplus/(Gap)	\$24,267	(\$11,944)	\$30,806	(\$2,279)	\$29,797	(\$34,380)
<i>Biennial Basis</i>	-	\$12,323	-	\$28,527	-	(\$4,583)

*DLLR began tracking legal resources dedicated to the board in fiscal 2009.

**DLLR began uniformly tracking indirect costs in fiscal 2005.

Note: Prior to October 2004, all licenses expired in May of even-numbered years.

Source: Department of Labor, Licensing, and Regulation

Application and Licensing Fees Could Increase

There have been few changes in the fees associated with pilot-in-training applications and pilot licenses in recent years. The current pilot-in-training application fee of \$25 has been in effect for over 25 years. As described earlier, limited and unlimited licenses range from \$200 for a 28-foot draft limited license to \$600 for an unlimited license. These licensing fees have not changed since the 37-foot draft license was introduced in 1996. Given the State's continuing fiscal crisis and the likelihood that board-related expenditures may be significantly greater than currently attributed, consideration should be given to adjusting these fees to reflect inflation and cover the board's operating costs.

2001 Sunset Evaluation Recommendations Addressed in Part

Legislative Services' 2001 full evaluation of the board contained many statutory and programmatic recommendations. The statutory recommendations were largely implemented by Chapter 523 of 2002, as previously described. The status of the board's implementation of each of the programmatic recommendations is described below.

- **The State Board of Pilots should report to the General Assembly by October 1, 2002, on the development of a methodology for determining the appropriate number of licensed pilots to ensure reliable pilotage service, including the source of future Port of Baltimore vessel call information, pilot complement, and future actions to be taken by the board to monitor this information.**

The board submitted a report in October 2002 describing several factors that would inform a methodology for determining an appropriate pilot complement in the future. The relevant factors identified in this report included the current length of service and age of pilots, planned retirements, current and potential work rules, the length and timing of most pilot trips, and vessel traffic and cargo tonnage trends. In the report, the board promised to create a monitoring process that involved data gathering on a three- to six-month basis and semiannual reports.

The board now monitors pilot complement data at every board meeting but has no formal process for forecasting vessel activity. The association has developed a series of charts that track vessel arrivals, vessel shifts within the harbor, pilots' years of service, pilot ages, planned pilot retirements, and total foreign cargo tonnage. The board has not developed a detailed, consistent methodology for determining the most appropriate pilot complement. However, the board does consider the data described above and has a proposed pilot complement table that tracks the number of licenses, pilots-in-training, and inactive pilots during the five previous years and five years into the future. This table is periodically adjusted to reflect new information and informal estimates of future vessel activity. Since formal forecasts of vessel activity are still not available, maintaining an appropriate pilot complement remains more of an inexact art than a defined methodology.

- **The State Board of Pilots should formally adopt regulations regarding oversight of pilot work rules, including hours of service and required rest periods. The board should regularly review the association's work rules.**

In 2003, regulations were adopted that established a committee on work rules, composed of three board members. The committee was given responsibility for evaluating work rules approved by the association that affect the safe operation of vessels by pilots and making recommendations to the full board. The board must approve safety-related work rules before they may go into effect. Safety-related work rules have not been proposed or considered since 2006. In 2006, the board approved three work rules that clarified policies concerning trading

ahead for pilotage assignments, the minimum number of pilots for large draft vessels, and the definition of a pilotage assignment.

In May 2009, the association completed a book that documents all work rules, not just those affecting pilot safety, that are in effect. The association advises that it intends to periodically update this work rule book in the future. In October 2009, the board agreed to propose regulations that would require the association to submit all proposed changes in work rules that affect pilot list administration, appointments, assignment intervals, or relief pilots to the board's committee on work rules. The committee on work rules would then determine whether any of the proposed changes affect safe operations of vessels by Maryland pilots, and, if so, would identify actions that should be taken and make recommendations to the full board for its consideration.

- **The State Board of Pilots should develop a more comprehensive database to include such information as incidents by type, resolution of incidents, licenses issued, licenses revoked or suspended, license terms, and applications received in addition to pilot continuing education credits.**

Due to the board's small size, it continues to receive limited staffing support and thus has limited recordkeeping capacity. Nevertheless, the board has made some improvements to its recordkeeping practices since 2001. Upon recent request, board staff was able to provide board meeting minutes, basic historical information about the number of licenses as well as a brief description of past incidents and complaints. The board has also developed more standardized and professional processes and records for selection of pilots-in-training. However, the board still does not actively track compliance with continuing education requirements. In addition, the board continues to rely upon the association to track other relevant trend information, such as port cargo trends and pilot work rules. Finally, much of information on the board's web site has not been updated since 2006, and it does not reflect some important changes to the two-year licensing period. Therefore, while some improvements have been made, the board has not addressed all the previously identified recordkeeping weaknesses.

Trends and Developments Impacting Pilotage in the Future

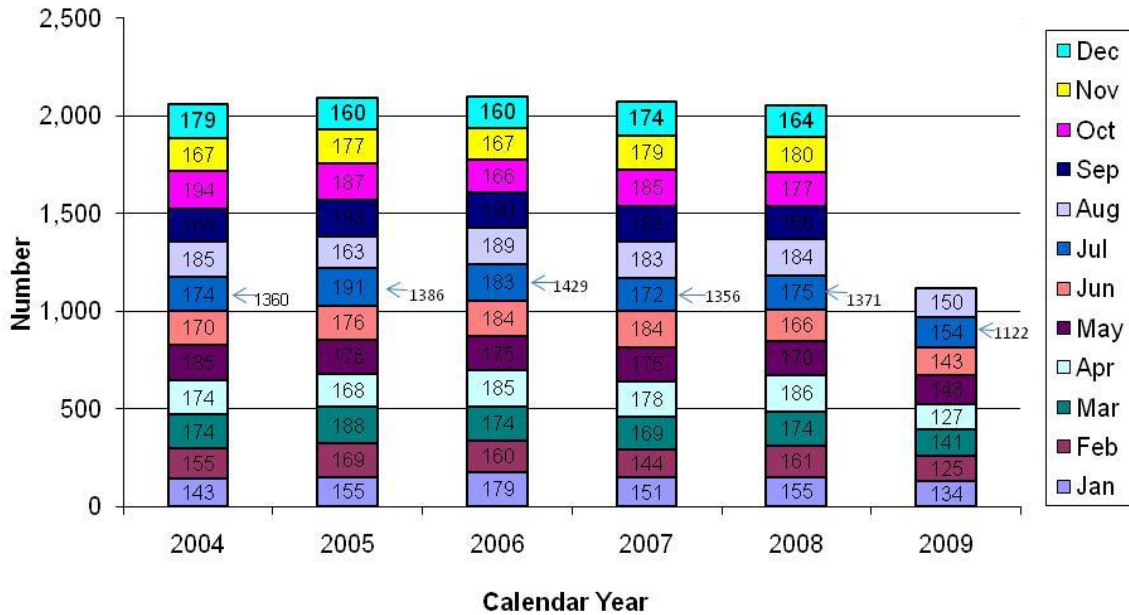
Over the next 10 years, several trends and developments may have a significant impact on pilotage in Maryland.

Sharp Decrease in Vessel Calls

While the number of vessels arriving in the Port of Baltimore remained steady from 2004 through 2008, there has been a dramatic reduction in year-to-date figures for 2009. As illustrated in **Exhibit 7**, vessel arrivals decreased by 249 vessels, or 18%, when the first eight months of 2009 are compared to the same period in 2008. According to the association, the reduction in

ship calls has led to a 15% to 20% reduction in the piloting workload over the past year. If this trend continues, the board may be required to adjust its pilot recruitment efforts.

**Exhibit 7
Vessel Arrivals
Calendar 2004-2009**



Note: This information is current as of August 31, 2009.

Source: Association of Maryland Pilots

Vessel Draft Continues to Increase Over Time

According to the Maryland Port Authority (MPA) and the association, there has been a steady increase in the average draft of vessels traveling the Chesapeake Bay. As a result, pilotage opportunities for limited licensed pilots have decreased and the demand on unlimited licensed pilot’s services has increased. This trend has made it increasingly difficult to provide limited licensed pilots with adequate experience. It has been over 25 years since the minimum draft associated with a license was updated; in 1984 the minimum license draft was increased from 17 feet to 28 feet. At the June 2009 board meeting, the board approved a motion to pursue legislation that increases the draft levels associated with each of the three limited licenses. Under the proposal, the 28-foot draft license becomes a 32-foot draft license, the 34-foot draft license becomes a 36-foot draft license, and the 37-foot draft license becomes a 40-foot draft license. Since a pilot-in-training must be accompanied by an unlimited licensed pilot on all trips during

their first two years, they gain experience with a variety of vessel types and sizes. Therefore, the association advises that no changes to the pilot training program would be required if the licensing draft levels are adjusted.

Port Infrastructure Expansion Anticipated

While the pilotage workload has decreased over the past year, expansion efforts at the Panama Canal and the Port of Baltimore may prompt a significant pilotage workload increase in the future. Efforts are underway at the Panama Canal to construct a new set of locks to double capacity to permit additional traffic and wider vessels. MPA and the Panama Canal Authority finalized a memorandum of understanding agreement in June 2009 that seeks to increase economic growth and commercial activity between the two entities. MPA is exploring the use of a public-private partnership to operate Seagirt Marine Terminal and fund a 50-foot berth and other significant infrastructure improvements at the terminal. MPA plans to have that 50-foot berth in operation when the Panama Canal expansion project is completed in 2014. The Port of Baltimore is currently one of only two U.S. East Coast ports with a 50-foot channel.

Association Financial Audits Not Evaluated

Since the Association of Maryland Pilots has primary responsibility for pilotage operations, it manages significant financial responsibilities. In 2008, the association managed \$33.0 million in pilotage income as well as the Maintenance and Replacement Fund, which had net assets of \$359,717. In accordance with statute, the association is required to submit annual financial audit information about payments to pilots and the Maintenance and Replacement Fund to the board. The association has complied with this auditing requirement in recent years. Furthermore, the board is required to keep copies of these financial audits. There are no statutory or regulatory provisions requiring a formal review or assessment of the association's audit documents upon submission. To date, an assessment or review has not been conducted by DLLR or the board.

In light of the association's significant fiscal responsibilities, close review of its annual audit information is merited. It is possible that a basic assessment of the audit documents could be completed by DLLR budget and fiscal services staff. A periodic analysis of the audit documents may improve the board's understanding of the association's operations, result in better information about pilotage operations for board decision making, and help the association justify any financial challenges and operational needs.

Compliance with Continuing Education Requirements Not Ensured

In accordance with regulations, unlimited licensed pilots are required to complete board-approved courses in specified fields and provide the board with a certification of satisfactory completion of the courses, on a form approved by the board, within a six-month period. These

courses must be completed every five years. Currently, the association, not the board, notifies pilots of continuing education requirement deadlines and maintains continuing education records submitted by pilots. The board does not have an approved form or process for tracking and certifying pilot completion of the continuing education courses. Furthermore, the board has not sought to ensure pilot compliance with these continuing education requirements nor does it have clear statutory authority to enforce this requirement.

The five-year framework for completing pilot continuing education requirements was established in an attempt to align State and federal requirements. State regulations require completion of the four courses "... by May 1, 1998, and every 5-year period after that...". Federal pilot licenses require completion of one of these courses (radar operations) every five years. By aligning the time periods associated with the two sets of requirements, pilots may count their federally required course toward the State requirements. However, pilots currently do not adhere to the State's May 1 deadlines. In practice, the association advises that pilots simply complete each renewal course within five years of completing the course previously. While this approach ensures that each pilot has a full five years to comply with the requirement, having unique deadlines for each pilot makes it difficult to track compliance. Therefore, while a five-year cycle may be reasonable, consideration should be given to modifying current regulation to replace the specified May 1 completion dates with a more flexible approach that reflects current practice. In October 2009, the board agreed to propose regulations that would replace the May 1 deadline with a general requirement that the courses be completed once every five years.

Recommendations

State regulation of pilotage is required by federal statute and clearly necessary to ensure the safety of the ships, pilots, citizens of the State, and recreationalists using the bay or living along the transit routes of ocean vessels. The State Board of Pilots appears to be a well-run and professional entity. The board has made many improvements since the 2001 full evaluation and appears well positioned to meet piloting needs in the future. **Consequently, the Department of Legislative Services recommends that the Legislative Policy Committee waive the State Board of Pilots from full evaluation and that legislation be enacted to extend its termination date by nine years to July 1, 2022.** However, several ongoing and emerging concerns about the board's current licensing requirements, expenditures, recordkeeping practices, and monitoring and enforcement efforts should be addressed.

Therefore, the Department of Legislative Services also recommends that the Department of Labor, Licensing, and Regulation, in collaboration with the State Board of Pilots, submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2010, detailing the steps that have been taken to:

- **determine whether additional requirements, such as a federal pilot license, should be a requirement for State pilot licensing;**

- **improve DLLR's accounting of board-related expenditures when staff are shared among several boards to ensure the majority of board-related costs, including personnel, are tracked;**
- **increase the pilot-in-training application and licensing fees to reflect inflation and help offset board expenses;**
- **revise the draft levels associated with licenses in response to overall increases in vessel draft;**
- **develop statutory, regulatory, or other provisions to ensure adequate review and evaluation of the association's annual audits; and**
- **improve the tracking of, and ensure compliance with, pilot continuing education requirements.**

Appendix 1.
Written Comments of the State Board of Pilots



December 1, 2009

Ms. Jennifer B. Chasse
Senior Policy Analyst
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401-1991

Dear Ms. Chasse:

The Department of Labor, Licensing and Regulation (DLLR) has received the draft report of the preliminary evaluation of the State Board of Pilots (Board). We appreciate the time and attention that was spent reviewing the Board's operations.

We are pleased that the evaluation found that the Board is fulfilling its statutory duties and has recommended that the Legislative Policy Committee waive the Board from full evaluation and that legislation be enacted to extend the Board's termination date by 11 years to July 1, 2022.

After review, we have found the following factual errors/discrepancies:

Regulation of the Marine Pilotage Profession – Page 2

At the end of the second paragraph of this section, it may be appropriate to mention that State-licensed pilots also provide pilotage for the docking, undocking, and shifting of vessels in the Port of Baltimore and other ports in the State of Maryland.

Responsibilities and Structure of the State Board of Pilots – Pages 2 and 3

In the second-to-last paragraph in this section, the report states that the Board has three work committees. There are actually four committees of the Board. The fourth committee is the Selection Committee, which makes selections for the list of qualified applicants for the position of pilot-in-training. The term "work committees" is not one used by the Board. They are generally referred to simply as committees of the Board. One function of the qualification committee is listed as "develops model training programs." In fact the board has not found it necessary to carry out this part of the authority given by regulation. We suggest that the sentence state "The qualification committee evaluates pilot performance in order to make licensing recommendations to the full board."

Association of Maryland Pilots – Page 4

Referencing the second sentence of the first paragraph of this section, the Board of Supervisors presently consists of the president, first vice president, second vice president,

treasurer, harbor list representative, and secretary; “harbor list representative” should be substituted for “unlimited licensed pilot” in this sentence.

In the second paragraph of this section, the third and fourth sentences do not accurately reflect the Association’s system. We suggest those sentences be amended to read as follows:

The Association’s Work Rules, as administered by the Association’s dispatchers, establish the rotation schedule so that each pilot is subject to approximately the same workload. The Association also makes arrangements for transporting pilots to and from vessels and maintains pilot transfer stations and other capital equipment in Maryland at Solomons Island (Mid-Bay Station), Annapolis, Chesapeake City, Dundalk Marine Terminal, and the Baltimore headquarters office, and in Virginia at Cape Henry.

The last sentence of the paragraph should refer to “pilots-in-training”, rather than “apprentice” pilots.

Recent Trends and Developments – Page 4

Statutory Changes Affecting the Board Since the 2001 Sunset Review

In Exhibit 1 (page 5), it should be mentioned that the 2004 legislative changes included the addition of a conflict of interest provision.

Merger with the State Board of Docking Masters Implemented

At the end of the first paragraph of this sub-section, on page 6, we suggest that the last sentence be modified to read as follows: “As a result of this merger, 10 docking masters became unlimited licensed pilots, but their piloting authority only extends to before, during, and after docking or undocking of vessels with the assistance of tugboats in the various Maryland ports and navigating vessels without tugboats in the Port of Baltimore.

In the second paragraph of this sub-section, we suggest that the words “only within the port” be deleted at the end of the third sentence, as the docking pilots perform work at locations other than the Port of Baltimore, *e.g.*, at Piney Point and Cove Point. We suggest adding a sentence here that says, “In addition, 5 of the traditional bay pilots have now been cross trained and approved by the Board to perform harbor work.”

Pilot Licensing Trends: New Unlimited Licensed Pilots Anticipated

In the last paragraph of this sub-section, at the bottom of page 7, in the second-to-last sentence, “an apprentice” should be changed to “a pilot-in-training” and “with a limited pilot license” should be changed to “as a limited licensed pilot.” The term “apprentice” also needs to be replaced with “pilot-in-training” in Exhibit 2, requirements for the 28-foot limited license. With respect to the last sentence in this paragraph, while the shifts in the total number and types of licenses have resulted in fewer unlimited licensed pilots, the temporary reduction in the number of unlimited licensed pilots has been compensated for by an increase in the number of limited licensed pilots. Additionally, the Board is not aware of any measurable increase in the workload associated with selecting and instructing pilots-in-training.

Expand State Licensing Requirements to Require Federal License

In the second full paragraph of this sub-section, at the top of page 9, we suggest that the word “senior” in the first sentence should be replaced by “unlimited licensed” and that the words “and be issued an unlimited license” should be deleted. We note that the Board approved a proposed regulation at its October 2009 meeting that would require each licensed pilot to maintain an active United States Coast Guard license.

Steady Pilot Incident and Complaint Rates, but Hefty Litigation Demands

In the second paragraph of this section, second sentence, the more correct statement is that approximately half of the incidents involved “collisions or allisions (a vessel coming in contact with a stationary object)”. The same change is suggested for Exhibit 4 on page 10. (In fact, there has been only one incident in this time period that involved a collision between two vessels. The other incidents have been allisions that occurred while docking or undocking vessels, or when a vessel came into contact with a navigational buoy.)

Total Board-related Expenditures Are Not Clear

In the third from last sentence in the first paragraph on page 11, there is an indication that there are legal services provided by DLLR and the Office of the Attorney General. This is incorrect. All legal services are provided by the Office of the Attorney General. In Exhibit 6, on page 12, it would make sense to drop a footnote to the FY 2009 legal expense to indicate that the civil lawsuit referred to on page 10 was filed at the beginning of FY 2009.

2001 Sunset Evaluation Recommendations Addressed in Part

The last sentence of the first full paragraph on page 14 is not accurate. Rather, we believe this sentence should be replaced by something along the lines of the following: “The Board reviewed the Association’s Work Rules following the prior sunset review. Pursuant to another recently proposed regulatory change, the Association will submit to the Committee on Work Rules ‘all proposed changes in the Association’s Work Rules that affect pilot list administration, appointments, assignment intervals, or relief pilots.’ The Committee on Work Rules will then determine ‘whether any of the proposed changes affect safe operations of vessels by Maryland pilots, and, if so, what action should be taken on them.’ Those changes will then be referred to the full Board for its consideration.”

Trends and Developments Impacting Pilotage in the Future

Sharp Decrease in Vessel Calls

In the last sentence of the first paragraph of this sub-section, we suggest that the word “curtail” might be replaced by the word “adjust” or a similar word to ensure flexibility with regard to recruitment efforts. In fact, according to the Association, the trend of reduced ship calls seems to have ended, as the number of ship calls in the fall of 2009 was approximately the same as the number of calls for the same period in 2008.

Association Financial Audits Not Evaluated

In the second sentence of the second paragraph, on page 16, there is a reference to “DLLR finance office staff.” DLLR does not have a “finance office” so it is not clear what is being suggested as an entity to review audit documents. The Board would need to secure

additional assistance, possibly through a contractual arrangement, to perform this financial review function.

Compliance with Continuing Education Requirements Not Ensured

We suggest the addition of a sentence at the end of the second paragraph of this section that would mention the regulations currently proposed by the Board and would say something along the lines of the following: “This has been addressed in a proposed regulation relating to the continuing legal education requirements, by which the May 1 completion date would be replaced by a requirement that the courses be completed once every five years, without a date specified.”

Proposed Regulations

We have mentioned in three instances regulations proposed by the Board at its October 2009 meeting. The regulations have been transmitted to the AELR Committee, and it is anticipated that they will be published in the Maryland Register by the end of the year. These regulations directly address the concerns expressed in the draft report. While we were unsure whether it was appropriate to include them in the evaluation, we thought that they could be relevant to the analysis undertaken.

We would like to express our appreciation for the candor and professionalism provided by your office in conducting this review. We look forward to working with the legislative staff addressing issues that were raised in the report as well as future issue which may arise. If you office should require additional information or a clarification as to the corrections, please do not hesitate to contact me at (410) 230-6262.

Sincerely,

Jay Hutchins
Executive Director
Professional Licensing Boards

Cc: Secretary Alex Sanchez
Commissioner Stan Botts
Deputy Commissioner Harry Loleas
Robert B. Schulman, Esquire, Chairman, Board of Pilots
Captain Eric A. Nielsen, President, Association of Maryland Pilots