

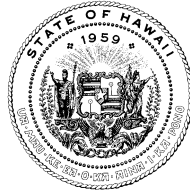
SB2

RELATING TO PILOTAGE.

Regulates the liability of port pilots. Requires the department of commerce and consumer affairs to establish continuing education requirements as a qualification for application or renewal of a port pilot license. Changes the type of vessels required to take a pilot when entering or departing State port or waters.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



CATHERINE P. AWAKUNI COLÓN
DIRECTOR

CELIA C. SUZUKI
LICENSING ADMINISTRATOR

STATE OF HAWAII
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P.O. BOX 3469
HONOLULU, HAWAII 96801
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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE SENATE COMMITTEE ON TRANSPORTATION
AND
TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Tuesday, February 17, 2015
2:45 p.m.

TESTIMONY ON SENATE BILL NO. 2, RELATING TO PILOTAGE.

TO THE HONORABLE CLARENCE K. NISHIHARA, CHAIR,
TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Alan Taniguchi, Executive Officer for the Port Pilots Program, Professional and Vocational Licensing Division (“PVLD”) of the Department of Commerce and Consumer Affairs (“Department”). Thank you for the opportunity to present testimony on Senate Bill No. 2, Relating to Pilotage.

The PVLD has concerns with this bill. Section 2 of this bill requires continuing education (“CE”) for port pilots. It is our understanding that the pilots already take courses voluntarily, specifically, a bridge management course every five years and a manned scale model ship handling course every seven years. A pilot’s license is renewed every two years and professions that require CE are required to take courses

every two years as a condition to renew. To be consistent with other professions and vocations requiring CE, we would require the pilot's CE be taken every two years. The PVLD is unsure whether or not the pilots are willing to take these courses every two years.

We are also concerned that the language on page 3, lines 1-4, implies that the PVLD would be required to determine if pilots are qualified every time they renew their licenses. This is not required for any other profession or vocation that PVLD regulates. If there is an issue with a licensee, the proper procedure is to file a complaint with the Department's Regulated Industries Complaints Office.

Thank you for the opportunity to testify on Senate Bill No. 2.

HAWAII PILOTS ASSOCIATION

P. O. Box 721 Honolulu, Hawaii 96808
Telephone: (808) 532-7233



February 16, 2015

SENATE COMMITTEE ON TRANSPORTATION SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Tuesday, February 17, 2015

2:45 PM

Conference Room 229

TESTIMONY OF HAWAII PILOTS ASSOCIATION IN SUPPORT OF SENATE BILL, 2 RELATING TO PILOTAGE

Honorable Chairs Nishihara and Baker and Committee Members:

My name is Captain Tom Heberle, and I am a state licensed port pilot, currently serving as the president of the Hawaii Pilots Association (HPA). HPA's membership consists of all state licensed port pilots in Hawaii. The total number of state licensed pilots in Hawaii varies over time between 8 and 10 individuals. HPA supports SB 2, which would regulate pilot liability, require continuing education for pilots, and clarify the types of vessels required to use the services of a pilot.

Port pilots have the responsibility of ensuring the safe movement of all types of vessels in Hawaii's commercial harbors, including cruise ships, oil tankers and container ships. Port pilots go aboard ships before they enter or depart from a harbor. For arriving vessels, the pilot usually goes aboard the ship from a pilot boat at a distance of about 2 to 3 miles from shore. Once on board a ship, the pilot directs the movement of the vessel as it moves throughout the harbor. The pilot accomplishes this by giving specific engine and steering commands to the ship's crew, as well as directing the movements of the assisting tug boats. Pilots in Hawaii are regulated by the Department of Commerce and Consumer Affairs (DCCA). The DCCA licenses individual pilots and sets the rates charged by the pilots for their pilotage services.

Pilots perform their duties as independent contractors, and as such are individually liable for damages in the event that they are sued. Many coastal states, including all of the west coast states (Alaska, Washington, Oregon and California) have some form of statutory mechanism to

limit civil liability for compulsory port pilots. The proposed liability provision in SB 2 is based on a composite of similar statutes in other states, most of which have a limit of \$5,000. The state legislatures that have enacted such provisions have decided that regulating civil liability for pilots is sound public policy. Specifically, they recognize that regulating a pilot's civil liability: (1) is a beneficial component of pilot regulatory systems; (2) prevents unnecessary costs to the shipping industry; (3) does not adversely affect a third party's ability to recover damages resulting from a vessel casualty; and (4) does not remove incentives for pilots to perform their duties in a professional and responsible manner.

I am including with this testimony a brief from the American Pilots Association (APA) on this subject. This brief explains in detail the public policy benefits of statutes that regulate pilot liability. The APA is the national trade association of professional maritime pilots. Its membership is made up of approximately 60 groups of state-licensed pilots, including the Hawaii Pilots Association. APA members pilot over 95 percent of all ocean-going vessels moving in United States waters.

HPA also supports the intent of the continuing education section of SB 2. Continuing education requirements for pilots are supported by national and international organizations such as the National Transportation Safety Board, the International Maritime Pilots Association and the International Maritime Organization. Requiring pilots to take such courses periodically will help ensure that the current high level of professionalism in Hawaii's pilotage system is maintained in the future. We do ask that this section of the bill be modified by leaving 462A-3 (3) as it is worded in the existing statute, and inserting a separate section in the statute to address the continuing education requirement. The proposed wording of 462A-3(3) in SB 2 could cause confusion over which requirements relate to the issuance of original licenses and which requirements relate to the renewal of licenses. The statute should make it clear that continuing education relates to the renewal of licenses, and that examinations and investigations relate to the original issuance of licenses. We also recommend that this part of the bill not take effect immediately upon approval. Implementation of the continuing education requirement should be delayed to give the DCCA enough time to revise the pilotage administrative rules (HAR 16-96) to incorporate continuing education requirements.

The current version of HRS 462A-18 requires a vessel that is "involved in trade or commerce" to employ a pilot, no matter how small that vessel is. The term "involved in trade or commerce" defines the operational status of a vessel at that time, and does not relate to the size of the vessel or to the safety risk that the vessel poses to Hawaii's ports. Furthermore, this operational status can change from voyage to voyage for some vessels, resulting in certain vessels being required to employ a pilot for some movements and not for others. The

determination of whether or not a vessel is “involved in trade or commerce” can be a judgment call, requiring knowledge of information about the vessel’s operations that is not always readily available to harbor personnel.

The accepted method to determine pilotage requirements and exemptions in other ports in the United States is by the size of the vessel. This is a more practical method to determine which vessels should be required to employ a pilot. Larger vessels pose greater safety risks, and therefore should be required to have additional risk mitigation measures in place such as guidance from a local pilot. 300 gross tons is an appropriate measure to determine the minimum size vessel required to employ a pilot since it is consistent with pilotage requirements in similar west coast ports (Los Angeles and Long Beach) which also have significant amounts of smaller recreational vessel traffic. The 300 gross ton limit is also consistent with Hawaii DOT – Harbors Division administrative rules, which use 300 gross tons as an upper limit for exempting small vessels from certain other safety requirements which are more appropriate for larger vessels (see HAR 19-42-3, HAR 19-42-5, and HAR 19-42-88).

Thank you for this opportunity to provide comments in support of SB 2.

Captain Thomas Heberle
President

Attachment: American Pilots’ Association Brief on Statutory Provisions to Limit or Allocate Liability for Negligence of a Compulsory Pilot, March 22, 2013



The American Pilots' Association

STATUTORY PROVISIONS TO LIMIT OR ALLOCATE LIABILITY FOR NEGLIGENCE OF A COMPULSORY PILOT

Statutory provisions to limit or allocate civil liability for a compulsory marine pilot's negligence: (1) are common and important components of a state's comprehensive pilotage regulatory system; (2) are economically efficient; (3) do not eliminate a third party's ability to recover damages resulting from pilot negligence; and (4) are not a disincentive to professionalism in pilot performance.

Introduction: Every time a state-licensed compulsory pilot boards a ship, he or she knows that a moment's inattention, complacency, wrong decision, or simple mistake could lead to a potentially catastrophic vessel casualty with hundreds of millions of dollars in damages and/or loss of life, the end of the pilot's career, and financial ruin for the pilot and the pilot's family. Coupled with the physical dangers involved in piloting (around the world, most every year, marine pilots are killed or seriously injured on the job), no other occupation or profession presents such risks to its practitioners in the normal course of their activities.

Unbridled exposure to this enormous liability risk could serve as a hindrance to states' efforts to attract and maintain sufficient numbers of qualified pilots and could therefore threaten states' ability to maintain effective compulsory pilotage systems.¹ As a result, statutory provisions dealing with pilot liability have been in place in a number of states for decades and are being implemented or actively considered by other states with growing frequency. Presently, ten of the twenty-four coastal states have some form of statutory mechanism to limit or allocate the civil liability of compulsory marine pilots. These limitation of liability statutes cover more than 60% of all state-licensed pilots in the United States. Statutory provisions limiting or allocating liability for pilot negligence: (1) are common and important components of a state's comprehensive pilotage regulatory system; (2) are economically efficient; (3) do not eliminate a third party's ability to recover damages resulting from pilot negligence; and (4) are not a disincentive to professionalism in pilot performance.

(1) Statutory provisions regulating the civil liability of state-licensed compulsory pilots are common and important components of a state's comprehensive pilotage regulatory system.

It has long been recognized that the broad grant of authority to states to regulate pilotage includes the authority to regulate rates and to fix the duties and liabilities of pilots. Under this authority, as a component of a broader effort to maintain sufficient rolls of pilots, states have enacted statutes that address civil liability for conduct occurring while the pilot is working under his or her state license. To date, ten coastal states have put in place pilot liability statutes. These statutes have been in existence

¹ For a detailed overview of the development of the state pilot system in the U.S. and of the broad authority states have to regulate pilots and pilotage in their waters, see Attachment (1).

long enough (several decades in some instances) to be generally accepted as proper and important components of a state's comprehensive pilotage regulatory system.

The economic reality of a pilot's liability exposure today is that the potential damages from a marine accident can be thousands of times – even hundreds of thousands of times – greater than the compensation the pilot receives for an assignment and substantially greater than the typical personal resources of the pilot. Even a minor oil spill can result in damages of millions of dollars. Without some protection against potentially ruinous civil suits, recruitment of top-notch maritime professionals into the piloting ranks, and retention of these individuals as state-licensed pilots, can be challenging.

The pilot liability provisions adopted by coastal states to date can be divided into two basic categories: (1) statutory damages caps and (2) dual rate systems. The most common approach to limiting pilot liability is a simple statutory damages cap. Under this approach, a pilot's liability for damages occasioned by the pilot's errors, omissions, fault, etc. in the performance of pilotage services, will not exceed a fixed dollar amount except in the case of pilot performance that involves something beyond simple negligence (e.g., intentional, willful or reckless misconduct, etc.). Under the second category, a dual rate statute, each vessel requiring a state pilot is offered the option of two pilotage rates. The higher rate includes the cost of obtaining reasonable trip insurance covering a portion of the pilot's potential liability for the pilotage assignment.² Alternatively, a vessel may elect a lower rate. The acceptance of the lower rate constitutes an irrevocable, binding agreement by the vessel interests not to assert any personal liability against the pilot and to defend, indemnify, and hold harmless the pilot from third party claims, except claims arising out of the pilot's willful misconduct or gross negligence.

While these provisions take different approaches to addressing pilot civil liability, the respective state legislatures, exercising the broad pilotage oversight responsibilities envisioned in Congress' grant of this authority, decided how best to advance their public policy goal of ensuring that their states maintain sufficient numbers of licensed pilots to protect their waterways.

(2) Statutory provisions to limit or allocate liability for negligence by a state-licensed compulsory pilot are economically efficient.

The significant number of states that have adopted statutes allocating or limiting civil liability for damages caused by pilot error have recognized that there is no economic justification for exposing pilots to ruinous civil liability. The legislatures in these states have concluded that unlimited and unrestrained civil liability for pilots is economically inefficient and imposes unnecessary costs on the shipping industry. In the absence of a statutory device to limit the pilot's liability exposure, pilots may be compelled to recover through their pilotage fees either (1) the expense of insurance premiums for liability coverage in meaningful amounts to cover the unlimited liability exposure of all of the pilotage assignments that may occur during the insurance policy term (if such insurance coverage is even commercially available) or (2) compensation that would reflect the magnitude of the pilot's uninsured, unlimited liability exposure.

It is well-settled maritime law that a vessel is responsible *in rem* for damages caused by pilot negligence.³ As a result, it is a longstanding maritime standard that insurance policies for sea-going

² The amount of required insurance is either fixed or agreed upon and only covers the single pilotage assignment for which the rate is selected. These factors make this dual rate "trip insurance" feasible, whereas it is generally not feasible or is cost prohibitive for an individual pilot to obtain sufficient insurance to cover the unlimited liability exposure for all of the pilotage assignments that might take place during the term an insurance policy.

³ The China v. Walsh, 74 U.S. (7 Wall.) 53 (1868).

vessels cover damages from accidents that occur while the vessel is under pilotage.⁴ Vessel owners, therefore, already pay for insurance that covers damages caused by a pilot's errors in the performance of pilotage duties. If pilots are forced to seek pilotage fees that cover adequate insurance premiums or produce compensation commensurate with unlimited civil liability exposure, and commercial shipping interests had to pay such pilotage fees, ship owners would be paying, in effect, double insurance. This is economically inefficient and introduces unnecessary costs to the maritime industry.

In general, commercial vessel interests understand the value of statutory pilot liability allocation provisions. A vessel owner is not personally liable for damage caused by a pilot's negligence⁵ and a vessel owner could seek recovery of the cost of damages from the pilot. Historically, vessel interests in states with statutory pilot liability provisions have made the judgment, however, that the value to the vessel owner of a potential recovery against a pilot is outweighed by the costs to the vessel, applied through pilotage fees, of the pilots obtaining sufficient insurance or being compensated to reflect the magnitude of their uninsured liability exposure.

Given the economic rationales of addressing liability as a way of preventing inefficient "double payment" of insurance and holding pilotage rates to reasonable and just levels, compulsory pilot liability allocation provisions are economically efficient and represent sound public policy.

(3) Statutory provisions to limit or allocate the civil liability of state-licensed compulsory pilots do not eliminate a third party's ability to recover damages resulting from pilot negligence

Traditionally, it is not common for third parties or vessel owners who claim to have suffered damage as a result of pilot negligence to seek a judgment against the pilot. This has been for the simple reason that a judgment against a pilot has little value. In most instances, pilots are not able to carry liability insurance in any meaningful amount. As already discussed, such insurance is either not available to pilots at all or would be available only at a cost that far exceeds what pilots could afford or could be passed on to the users of pilotage services through the pilotage rates. The resources of the typical pilot are not sufficient to make recovery of damages from an uninsured pilot a worthwhile exercise, and the pilot's association has no liability for the negligence of one of its members.⁶ Irrespective of any liability statute, however, since the vessel itself is liable for damages to a third party caused by the performance of the pilot, and since a vessel's insurance covers damages caused by pilot error, a third party's ability to recover damages is firmly in place.

Additionally, vessel owners and their insurers have generally not sought to establish the pilot as the cause of an accident where, as in most accidents, there are actual or potential third party claims. Again, in those types of situations, the vessel is liable for the pilot's negligence, and the vessel's insurance covers damage due to pilot negligence or error. As a result, even if a vessel owner or its insurance carrier succeeds in proving that an accident or other mishap was solely due to the fault of a pilot, this merely establishes the vessel's liability to injured third parties. Moreover, where there are third party claims, it is in the vessel's interest not to be in an adversarial position vis-à-vis the pilot.

⁴ *Kane v. Hawaiian Indep. Refinery, Inc.*, 690 F.2d 722, 725 (9th Cir. 1982).

⁵ *Homer Ramsdell Transp. Co. v. Compagnie Generale Transatlantique*, 182 U.S. 406 (1901); *Folkstone Maritime, Ltd. v. CSX Corp.* 64 F. 3d 1037 (7th Cir. 1995); *People of California v. Italian Motorship Ilice*, 534 F. 2d 836 (9th Cir. 1976); *Mattina v. Commercial Cable Co.*, 137 F. Supp. 472 (S.D.N.Y. 1956).

⁶ The rule that a pilot association is not liable for the negligence of one of its members is perhaps the most venerable principle in United States pilotage law. It was established in *Guy v. Donald*, 203 U.S. 399 (1906), and has been religiously followed by courts in numerous cases since.

(4) Statutory provisions to limit or allocate liability for negligence by a state-licensed compulsory pilot are not a disincentive to professionalism in pilot performance.

Unlimited liability exposure does not provide any meaningful added measure of deterrence to substandard pilotage. Even without civil liability exposure, a pilot faces a host of potentially serious administrative, regulatory and criminal sanctions for negligence, misconduct, or violations of statutes and regulations. Federal and state licensing authorities may revoke or suspend a pilot's license and in the process deny the pilot an opportunity to practice his or her profession and otherwise earn a living. The Coast Guard and various other regulatory entities can also assess substantial civil penalties and fines related to marine casualties. There are also a number of federal statutes that prescribe criminal penalties – including fines and imprisonment – for conduct leading to a maritime accident, particularly an accident resulting in an oil spill.

Unlimited exposure to civil liability does not incentivize poor pilot performance. The compulsory state-licensed pilot is always responsible for his or her own professional actions and the consequences of those actions, and there is no lack of severe consequences for a pilot who is involved in an accident or has a substandard performance during a piloting assignment. State disciplinary and license actions, federal and state civil penalties, and criminal charges provide incentive enough for pilots to carry out their pilotage assignments in a professional manner.

Attachments:

(1) P.G. Kirchner and C.L. Diamond - Unique Institutions, Indispensable Cogs, and Hoary Figures: Understanding Pilotage Regulation in the United States, University of San Francisco Maritime Law Journal, vol. 23 (2010). For the article go to:
http://www.americanpilots.org/docs/Understanding_Pilotage_Regulation_APA_Law_Review_Article_.pdf

HAWAII PORTS MARITIME COUNCIL

affiliated with

Maritime Trades Department

AMERICAN FEDERATION OF LABOR and CONGRESS OF INDUSTRIAL ORGANIZATION

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Member Unions:

*International Brotherhood of
Boilermakers, Iron Ship
Builders, Blacksmiths,
Forgers and Helpers
Lodge 627*

*International Brotherhood of
Electrical Workers Local 1260*

*International Union of
Elevator Constructors
Local 126*

*Hawaii Government
Employees Association
AFSCME Local 152*

*Hawaii Pilots Association,
MM&P Pilots Division*

*Inlandboatmen's Union
of the Pacific*

*International Longshore and
Warehouse Union Local 142*

*Laborers' International Union
of North America Local 368*

*Marine Engineers'
Beneficial Association*

*Marine Firemen,
Watertenders, Oilers & Wipers*

*Masters, Mates and Pilots,
Offshore Division*

Sailors' Union of the Pacific

Seafarers International Union

*United Food and Commercial
Workers International Union
Local 480*

SENATE COMMITTEES ON TRANSPORTATION AND COMMERCE AND CONSUMER PROTECTION

February 17, 2015

2:45 PM

State Capitol Room 229

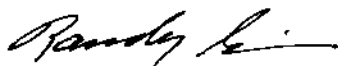
TESTIMONY IN SUPPORT OF SENATE BILL 2 RELATING TO PILOTAGE

Chairs Nishihara, Baker and committee members:

The Hawaii Ports Maritime Council is writing in support of Senate Bill 2. As maritime workers, we are all aware of vital safety role served by port pilots, and the importance of a comprehensive pilotage regulatory system. Senate Bill 2 will strengthen the pilotage system in Hawaii by regulating port pilot liability, requiring continuing education for port pilots and clarifying the pilotage requirements for non-commercial and smaller vessels.

We thank you for this opportunity to express our support for this bill.

Sincerely,



Randy Swindell

President



TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 2

Date: Tuesday, February 17, 2015

Time: 2:45 pm

To: Chairman Clarence Nishihara and Chairperson Rosalyn Baker and Members of the Senate Committee on Transportation and the Senate Committee on Commerce and Consumer Protection:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to S.B. No. 2, Relating to Pilotage.

One purpose of this bill is create a limitation for damages in excess of \$5,000 for port pilots for any negligent acts in the performance of pilotage or in the training of pilots except for willful, intentional or reckless misconduct. The consequence of this bill is to basically absolve a port pilot from liability for negligent acts when the result of a pilot's negligence or error may cause injury to a person, damage to property or even damage to the environment.

Hawaii requires that large ships using Hawaii harbors and ports use licensed harbor or port pilots to assist in the safe navigation of these ships. These ships are assessed charges for port pilot services and other port related services and facilities.

HAJ has always been opposed to any form of immunity or limited immunity for negligent acts by any individual and especially where such individual is engaged in hazardous activity that has the potential to cause catastrophic injury and damage, has been specially trained to perform specific functions, and charges substantial fees for their services. This bill reduces the responsibility and accountability of port pilots. The purpose of tort law is to encourage responsible behavior and hold individuals responsible

for negligent acts that cause injury to other or to property. Tort law has a common sense framework of requiring more care as the potential hazard increases. Common negligence is used for ordinary situations, higher care is used for situations requiring additional protection, and strict or absolute liability is used for extremely dangerous activities involving high risk of death or mass destruction. In that way, tort law serves as both an incentive to avoid accidents and a disincentive to careless conduct.

Port or Harbor pilots have a very dangerous job. The national average annual salary for port pilots is \$400,000. The high pay reflects the danger involved in their work and is commensurate with the high degree of responsibility required of them. Carelessness on the part of a port pilot can result in catastrophic injury or death to passengers on a cruise ship, millions of dollars of damage to cargo and vessel for a container ship, or ecological disaster for an oil tanker accident. The \$5,000 limitation in damages is unreasonable, if not absurd, considering the magnitude of damages involved. It is simply unlikely that \$5,000 will adequately cover any major accident involving the large ships that require harbor pilot assistance.

Reported incidences of ship accidents involving port pilots are few and far between in Hawaii. Public policy should favor encouraging the continued use of the highest degree of care and responsibility in connection with this dangerous job. Reducing liability here is a step in the wrong direction. Particularly, when there does not appear to be any overwhelming public interest reason to do so. Yes, the job is dangerous and the potential liability great, but so are other comparable jobs, such as airline pilots who are similarly required to exercise the highest degree of care to insure public safety.

HAI requests that the committees delete section 1 if it is the committees' intent to move the bill forward to establish the educational requirements in section 2 of this bill.

Thank you for the opportunity to present this testimony.



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SENATE COMMITTEES ON TRANSPORTATION AND COMMERCE AND
CONSUMER PROTECTION

State Capitol, Room 229
Honolulu, HI

Re: Testimony in support of Senate Bill 2 relating to Pilotage,
Hearing of February 17, 2015

Chairs, Nishihara, Baker and Committee Members,

We own and operate the Sailing Vessel Kwai, serving the Line Islands of Kiribati and Cook Islands from Honolulu. The ship is 136' in length and 179 gross registered tons, and under Cook Islands registry. We visit Honolulu 3 or 4 times a year and often stay for 4 weeks to work on the ship. Under current law we are required to carry a pilot when in commercial service, but not when out of service for repairs. This can lead to confusion when, for example, the ship is partly loaded and we have to shift berth to make way for other traffic. Just when the ship must move, a question may arise from DOT Harbor Control whether the pilot must be aboard. Our Captains know Honolulu Harbor well, and the regulations can interfere with timely and safe operation of the ship. We strongly support Senat Bill 2 which creates the one criteria of size to determine pilotage requirements. This is the standard for most ports of the world and is clearly understood by all vessels and ship's agents.

Thank you for the opportunity to state our support for this bill.

Sincerely,

Stephen B Ives, Senior Captain SV Kwai

Capt. Ed Enos
State Port Pilot #16-US Coast Guard Licensed Pilot
PO BOX 1746
Kailua, HI 96734

TESTIMONY IN SUPPORT OF SB2, RELATING TO PILOTAGE

SUBMITTED TO: THE SENATE COMMITTEE ON TRANSPORTATION; THE
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

February 17, 2015 at 2:45 PM
State Capitol Conference Room #229

TO: CHAIRS NISHIHARA & BAKER:

I have been a Harbor Pilot licensed by the State of Hawaii and the US Coast Guard for 21 years. In my opinion, the State Pilotage Statute would benefit from some revision and updating. The proposed bill SB2, addresses some issues that have needed clarification.

- 1) SB2 clarifies pilotage requirements and the “exemption for vessels not involved in trade or commerce”. Those of you who have seen large private mega-yachts moored at Aloha Tower can appreciate that these huge ships should employ a local pilot. ***This is in our best interests to protect our ports and waterways.***
- 2) The recommendation to embrace continuing education as part of the port pilot licensing requirements ***ensures that the public and industry are best served by the most qualified pilots available in Hawaii.*** In fact, this wording formalizes into our statute, what the Port Pilots have voluntarily been doing. Continuing education requirements are recognized in many other states as an important component of a comprehensive pilot regulatory system.
- 3) The section regarding limitation of liability for Port Pilots is intended to bring Hawaii’s statute into alignment with an industry accepted practice. Most vessels calling at Hawaii’s ports are already subject to this policy at US West Coast ports. ***It will have no qualitative impact on routine day to day vessel operations*** involving Hawaii’s Port Pilots.

I am pleased to see a legislative effort that enhances the regulatory protection of Hawaii’s vitally important ports and coastal waterways. Our economic lifeline served by the ocean transportation industry deserves our vigilant attention.

Thank you for the opportunity to comment on this bill.

FROM: CAPTAIN SINCLAIR G. BROWN
PORT PILOT #18
HAWAII PILOTS ASSOCIATION
PO BOX 721
HONOLULU, HI 96808

SUBMITTED ON: FEBRUARY 16, 2015

TESTIMONY IN SUPPORT OF SB2, RELATING TO PILOTAGE, ON FEBRUARY 17, 2015 AT 2:45 PM IN CONFERENCE ROOM #229, STATE CAPITOL

SUBMITTED TO: THE SENATE COMMITTEE ON TRANSPORTATION; THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

CHAIRS BAKER AND NISHIHARA:

Having been a licensed Port Pilot for the State of Hawaii for the past 11 years, I am in full support of SB2. Adjusting Chapter 462A-18, Hawaii Revised Statutes, by changing our present pilotage requirements to eliminate the exemption for vessels not involved in trade or commerce, and adding an exemption for vessels under 300 gross tons would clear up any confusion for all entities involved (pilots, ship owners, ship agents, DOT-Harbors, DCCA, etc) on which vessels are required to take a pilot.

Each year here in Hawaii we have seen privately owned yachts keep getting larger, and continue to be exempted from State Pilotage requirements as it is not considered to be "engaged in trade or commerce." A great number of these yachts are much larger than many of the commercial vessels that are required to have a licensed State Pilot on board. Vessels of this nature carry large quantities of fuel and other varieties of oil and they are allowed to enter and depart the harbors of the State of Hawaii without a pilot, even if no crew member on board has transitted our harbors.

To protect the environment of the State of Hawaii, our state harbors and for the interest of public safety, I am in total support of this statute being revised to eliminate this loophole for these Super-yachts and to add the pilotage exemption for vessels under 300 gross tons. Additionally, I also support the other two provisions of the bill which will improve Hawaii's pilotage system by regulating port pilot liability and requiring continuing education for pilots.

Thank you for the opportunity to comment on this bill.