



STATE OF WASHINGTON
BOARD OF PILOTAGE COMMISSIONERS

INFORMATION BULLETIN 12-01

June 21, 2012

The Washington State Legislature established the Board of Pilotage Commissioners (Board) to implement policy to “prevent the loss of human lives, loss of property and vessels, and to protect the marine environment” through sound application of compulsory pilotage in Puget Sound, Grays Harbor and Willapa Bay. A primary feature of that policy is to ensure licensed and qualified pilots who are experienced in ship handling are aboard any vessels in these state waters (unless the vessel is exempt from pilotage).

The Legislature has also declared that Washington's position as an able international competitor for waterborne commerce should not be jeopardized and that such commerce should continue to be developed and encouraged.

To accomplish these objectives, the Board operates under various laws, rules, and other documents. This bulletin outlines how such laws, rules, or documents are used by and/or affect the Board.

INTERNATIONAL TREATY or AGREEMENT

Because the pilotage grounds of Puget Sound include an international border with Canada and most international shipping operates under rules promulgated by organizations such as the International Maritime Organization (IMO), there are various treaty agreements that can impact the Board. Generally the specifics of such impacts have been codified by the U.S. Government. In some cases treaties or agreements preempt conflicting Washington law or rule. The Board takes considerable cautions to avoid such conflicts.

FEDERAL LAW AND REGULATION

Federal laws allow states to promulgate their own laws and rules except where the federal government has exercised the right of “federal preemption” and barred a state from creating law or rule in an area where the federal government has already established controlling laws and supporting regulation. In such circumstances, the

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Board is generally bound by the applicable federal law which is promulgated in the United States Code (USC) and the associated Code of Federal Regulations (CFR). The Board considers such potential conflicts and attempts to avoid them. Unresolved conflicts regarding the application of the federal preemption laws are often sorted out using the federal court system and may be ultimately resolved by the U.S. Supreme Court.

WASHINGTON STATUTE

The Legislature of Washington promulgates laws (statutes) that are codified in the Revised Code of Washington (RCW). The act which has the most direct impact on the Board is the Pilotage Act (RCW 88.16). The Board also operates under the Administrative Procedure Act (RCW 34.05, *et seq.*); the Open Public Meetings Act (RCW 42.30, *et seq.*); the Public Records Act (RCW 42.56, *et seq.*); and other state acts. Such laws are mandates from the Legislature and the Board's actions must comply with them (unless exempt by the RCW).

Whenever the Board is unsure of the intent or meaning of an RCW section, it may seek an opinion from the Office of the Attorney General (AG). An Assistant Attorney General (AAG) is assigned to the Board. The AG/AAG researches the legislative history, court precedent, etc. and provides the Board with an AG opinion of the correct interpretation of the RCW.

The Board may request that the Legislature make changes to the RCW whenever it believes such change would enhance pilotage in Washington. However, unless and until such changes are made, the existing law will control the activities of the Board.

WASHINGTON RULE

Rules that implement Washington statutes are promulgated by state agencies including the Board. Rules are published in the Washington Administrative Code (WAC). WAC sections created and maintained by the Board are Pilotage Rules (WAC 363-116) and Practice and Procedure – Board of Pilotage Commissioners (WAC 363-11).

The Board is bound by applicable sections of the WAC including many of those of other agencies. When the Board has a concern or question regarding a WAC promulgated by another agency, it can seek guidance from that agency and/or the AG/AAG.

The Board may change the sections of the WAC for which it is responsible when dictated by changes in the RCW or when necessary to provide proper, efficient and safe pilotage. Such changes to the WAC are accomplished by following the rules established under the Administrative Procedure Act (RCW 34.05) and other applicable statute and/or rule.

BOARD STATEMENT OF POLICY

The Board may promulgate a "Statement of Policy" to advise the public of its current opinions, approaches, and likely courses of action in interpreting sections of the RCW or WAC. The Board will generate such policy statements only after careful consultation with the AG/AAG and, if appropriate, with stakeholders.

The Board adopts Statements of Policy in open, public meetings; publishes them on the Board's website; provides information to the Code Reviser for publication in the Washington State Register; and makes copies available to interested parties. Statements of Policy adopted by the Board are posted on the Board's website. Members of the public may request to be placed on a roster of interested persons to be informed of revised or new Statements of Policy.

A Statement of Policy is advisory only. However, the Board will adhere to its policy statement(s) until cancelled or changed unless circumstances dictate that an action contrary to a Board Statement of Policy is appropriate (such as in the interest of safety). Taking such contrary action does not void the Statement of Policy.

BOARD SAFETY ADVISORY BULLETIN

To reduce risk to life or property from certain maritime procedures, the Board may issue Safety Advisory Bulletins. These will be generated by the Board with input from the AG/AAG and stakeholders as appropriate; formally adopted in an open public meeting; published on the Board's website; and made available to any interested party. They will remain in effect until cancelled or changed by the Board.

Safety Advisory Bulletins are advisory only; are not considered to be an Interpretive or Policy Statement as defined by RCW 34.05.230; and do not carry the force and effect of statute or rule. Their intent is to provide a standard of care that a prudent mariner should consider whenever involved in the kinds of operations covered by the bulletin.

BOARD INFORMATION BULLETIN

"Information Bulletins" assist the public and stakeholders in understanding various aspects of the laws, rules, and other documents under which the Board operates and how the Board considers such laws, rules, and documents when making decisions. Information Bulletins are adopted by the Board in open, public meetings after considering input from the AG/AAG and stakeholders as appropriate. They are published on the Board's website and made available to interested parties. Information Bulletins remain in effect until changed or cancelled by the Board.

Information Bulletins do not meet the definition of an Interpretive or Policy Statements set forth in RCW 34.05.230. They do not have the force or effect of statute or rule and do not mandate how Board members will vote on issues collectively or individually.

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INFORMATIONAL GUIDANCE

Whenever the Chairman of the Board and/or the Board Staff believes that it is appropriate to provide information to the public on an issue about which there is insufficient guidance in the documents listed above, they may provide either verbal or written informational guidance to members of the public, either individuals or groups. The information may also be published on the Board's website; and/or provided to the media as deemed appropriate by the Chair or Staff.

Informational guidance is strictly for general information purposes; is not considered an Interpretive or Policy Statement as defined by RCW 34.05.230; and does not have the force or effect of law or rule. The Board will exercise general oversight with regard to such informational guidance and if it deems that errors have been made, the Board may then direct the Chair or Staff to rescind the information and issue a correction as soon as practical.

CONFLICTS AND PRECEDENCE

In the event there appears to be a conflict between the provisions of two or more documents under which the Board operates, the Board will seek guidance from the AG/AAG to obtain a resolution. In some - but not all - circumstances, federal statute and/or regulation will take precedence over that created by the Washington Legislature or a state agency. Generally, for controlling documents created within the state, the precedence the Board is bound to adhere to in resolving a conflict is as follows:

1. Washington statute as codified in the RCW
2. Washington rule as codified in the WAC
3. Board Statement of Policy
4. Other Board documents such as Safety Advisory or Information Bulletins, etc.