



Board of Harbor Commissioners for Portland Harbor

Members of the Joint Standing Committee on Transportation
State House, Room 126
Augusta, Maine

Re. Testimony of the Portland Harbor Commission in Opposition to LD 1874

Senator Nangle, Representative Crafts, Members of the Committee:

The Portland Harbor Commission submits this testimony in opposition to LD 1874, An Act to Enable the Maine Pilotage Commission to Oversee Pilots Operating in Portland Harbor. We would, however, be supportive of this legislation with the two amendments discussed below and shown in the enclosed draft amendment to LD 1874.

The Portland Harbor Commission is the governing board, established by statute, for the busiest port in Maine. We are comprised of four members appointed by Portland and South Portland in equal measure and one member appointed by the Governor with the concurrence of both city councils. We currently have jurisdiction over the pilots operating in Portland Harbor and the task of regulating the pilots is one we take very seriously and perform in lockstep with both cities. It involves a careful balance between the concern for safety in our harbor against the need to encourage commerce, a particular concern in Portland Harbor where ship traffic includes tankers, cargo, and cruise ships (among many others), all with their own particular economic importance to the surrounding communities.

Our governing statute, Private and Special Law 1981, ch.98, gives us the authority to grant a branch to a pilot (authorizing that person to conduct pilotage services in Portland Harbor) and to establish the fee to be charged by the pilots for their services. In performing these functions, we must consider what is "necessary for navigational safety and for the convenience of the public and commerce." *Id.* § 5(2).

Portland Harbor is served by a single pilotage company, Portland Pilots, Inc. They are a very capable and professional operation, and we feel fortunate to have them in our harbor. The rates charged by the Portland Pilots have been a subject of significant deliberation in recent years, ever since 2018 when the Maine Superior Court explained the process that must be used when setting pilotage rates. In *Bay Ferries v. Portland Harbor Commission*, the court decided that because our governing statute requires pilotage rates to be "just and reasonable" (a term of art used by other ratemaking bodies including the Maine

Public Utilities Commission) the Board establish a pilotage rate by examining the pilots' revenues and expenses and deciding on a reasonable rate of return. The court explained that

“the Pilots are a monopolistic enterprise, and the judgment of the Board is meant to serve as a stand-in for competition. When setting rates, the Board certainly may consider other factors such as the great skill demanded of pilots and the desirability of compensating them in a manner that acknowledges that skill. Nonetheless, it is apparent that when the Legislature uses the term ‘just and reasonable’ with regard to ratemaking, an evaluation of revenues lies at the core of the intended analysis.”

With this clarification from the Court, we have engaged in a careful, detailed and deliberate ratemaking process each time the pilots have requested a rate increase ever since 2018.

This history provides important context for the Committee as you consider this bill. This is because if this bill passes, pilotage rates will no longer be required to be “just and reasonable” as they are under the Harbor Commission’s Private and Special Law. It is our view that this requirement, one that results in rates that strike a careful balance between safety and commerce, is important for Portland Harbor where it is essential that pilotage rates are not so high as to dissuade commerce. Our understanding is that the Maine Pilotage Commission follows a less-rigorous ratemaking process than we do, one that does not include the “just and reasonable” inquiry as defined by the Superior Court.

This brings us to the two amendments we think are crucial before this bill becomes law, both of which are intended to ensure that it does not negatively impact Portland Harbor and the surrounding communities.

Proposed Amendment No. 1. Maintain the requirement that pilotage rates be “just and reasonable” in Portland Harbor. As outlined above, the requirement that pilotage rates be just and reasonable is in our statute but is not in the statute governing the Maine Pilotage Commission. This legislation should be amended to include the requirement from our law that “the commission may fix and establish by rule the compensation for the services of the pilots as may, from time to time, be deemed just and reasonable.” This is shown in the enclosed amended draft of the bill.

Proposed Amendment No. 2. Give Portland and South Portland a seat on the Maine Pilotage Commission. The pilots provide an important service to Portland Harbor and the rates they charge can significantly impact commerce in our harbor. The economies of Portland and South Portland are deeply intertwined with traffic in Portland Harbor, more so than any other economy in Maine is with its home port. If the Legislature is going to eliminate local control over the pilots, it should ensure that the state board taking over the task includes members local to Portland Harbor. We propose that the Maine Pilotage Commission be expanded by two members (so it remains a board with an odd

number of commissioners) to include one member of the Portland Harbor Commission who was appointed by the City of Portland and one member of the Portland Harbor Commission who was appointed by the City of South Portland. This will ensure that both cities and the Portland Harbor Commission have a fair say in pilotage rates, an important factor in commerce in our harbor. This proposed amendment is also shown in the enclosed amended draft of the bill.

CONCLUSION

Thank you for the opportunity to provide this testimony. The Portland Harbor Commission opposes LD1874 in its current form but would be supportive with the two amendments outlined above.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Carter", followed by a date "2/10/17".

Michael Carter, Chair
Board of Harbor Commissioners
for Portland Harbor