Legislative Summary **LS-568E**

BILL C-4: AN ACT TO AMEND THE PILOTAGE ACT

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LEGISLATIVE HISTORY OF BILL C-4

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	26 October 2007	First Reading:	
Second Reading:		Second Reading:	
Committee Report:		Committee Report:	
Report Stage:		Report Stage:	
Third Reading:		Third Reading:	

Royal Assent:

Statutes of Canada

This bill did not become law before the 39th Parliament ended on 7 September 2008.

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print.**

Legislative history by Michel Bédard

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BACKGROUND

On 26 October 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, introduced Bill C-4, An Act to amend the Pilotage Act, in the House of Commons. The bill is virtually identical to Bill C-64, which was introduced in the House in the 1st Session of the 39th Parliament and was being debated at second reading when it died on the *Order Paper* with the prorogation of Parliament.

Marine pilotage, the conduct (i.e., navigation) of a vessel by a licensed pilot, is an important element of safe marine navigation in Canada. The *Pilotage Act* creates four pilotage authorities – the Atlantic, Laurentian, Great Lakes and Pacific – all of which are Crown corporations required by law to be financially self-sustaining. Their general purpose is to operate and administer, in the interests of safety, an efficient pilotage service within their respective regions. The Act governs how pilotage authorities hire and license pilots, either as employees or through service contracts with pilot corporations (whose purpose is to provide pilot services to pilotage authorities), and imposes a regulatory review process additional to the government's standard process, all of which can impinge upon an authority's financial sustainability.

Departmental sources point out that, in 2002, an arbitrator awarded a large fees increase to the Corporation of Mid St. Lawrence Pilots. Subsequently, the tariff requested by the Laurentian Pilotage Authority (LPA) to help pay for the fees increase was turned down by the Canadian Transportation Agency (CTA). This made it impossible for the LPA to be financially

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

self-sufficient. The Governor in Council agreed to overturn the CTA decision and approve the LPA tariff. Transport Canada was then directed to take any necessary steps to prevent a recurrence of this situation.

The purpose of the bill is to provide additional tools to help ensure the financial self-sufficiency of pilotage authorities. In Transport Canada's news release regarding the bill, the Minister stressed that "The proposed amendments improve the day to day business of pilotage authorities and would in no way affect the safety of persons on board ships, the environment or the vessels."

Consultations were held by Transport Canada on the proposed amendments to the *Pilotage Act* in February and March 2007 in several cities across the country. According to departmental sources, the consultation process included key stakeholders in the pilotage industry.

A. Highlights

The highlights of the bill are that it:

- makes it possible for a pilotage authority to engage both *employee* pilots and *contracted* corporate pilots with a pilot corporation for the provision of pilots, simultaneously;

- ensures that an arbitrator in choosing one or the other of the final offers of a pilotage authority and a pilot corporation in respect of outstanding issues regarding the renewal of a service contract takes into account the objects of the authority under section 18 (including the requirement for an authority to be financially self-sufficient) and the summary of the authority's corporate plan (referred to in section 125(4) of the *Financial Administration Act*);

- includes in the objects of a pilotage authority, as stated in the Act, the requirement to be financially self-sufficient;

- gives the Minister flexibility to conduct an investigation when a notice of objection is received concerning amendments to the regulations regarding compulsory pilotage areas and the qualifications of pilots; and

- requires the Canadian Transportation Agency to consider both the objects of the pilotage authority under section 18 (including the requirement to be financially self-sufficient) and the summary of the authority's corporate plan when making a determination concerning an amendment to a tariff regulation.

DESCRIPTION AND ANALYSIS

A. Employment and Contracts (Clause 1)

The *Pilotage Act*, in section 15, currently prohibits pilotage authorities from hiring individual employee pilots where a service contract between a pilotage authority and a pilot corporation is in effect. Clause 1 replaces section 15 with a new provision permitting an authority, as it considers necessary for the proper conduct of its work, to hire its own employee pilots *and* to simultaneously contract with a pilot corporation for services of pilots.

Departmental sources indicate that this change would directly affect the authority's capacity to develop an internal self-sustaining financial governance structure, as mandated by the Act.

B. Renewal of Contract (Clause 2)

Section 15.1(1) currently provides that where a pilotage authority has entered into a contract with a pilot corporation for the services of pilots, and the contract does not provide for a mechanism for the resolution of disputes in the contract renewal process, then 50 days before the contract expires the parties to the contract must jointly choose a mediator and an arbitrator and must refer to the mediator all issues related to the renewal of the contract that remain unsolved. Section 15.1(3) further states that the mediator has 30 days in which to bring the parties to agreement on the outstanding issues, at the end of which time the parties must refer all of the remaining issues to the arbitrator. Clause 2 changes the period in section 15.1(1) from 50 days to *at least* fifty days.

As well, section 15.1(2) currently provides that the Minister must choose a mediator or arbitrator if the parties cannot agree on one or if the one they choose is unavailable. Clause 2 replaces the current section 15(2) with a new provision requiring the Minister to choose a mediator or *commercial* arbitrator if the parties cannot agree on a mediator or arbitrator or if the one they choose is unavailable. The requirement that the arbitrator chosen by the Minister must be a *commercial* arbitrator is not in the current provision.

C. Final Offers – Arbitrator's Decision (Clause 3)

Section 15.2(1) currently requires that, in respect of outstanding issues between them in the contract renewal process, a pilotage authority and a pilot corporation must submit a final offer to each other and to the arbitrator within five days after the date on which those issues

were referred to the arbitrator. Section 15(2) requires that the arbitrator must, within fifteen days, choose one or the other of the final offers in its entirety. The department points out that this can result in a situation where there is a difference between the amount the authority is entitled to charge for services and the amount it is required to pay the pilot corporation under the new service contract. If the arbitrator's decision were unsuccessfully challenged in Federal Court, the authority's revenues may not be sufficient to pay for the service contract.

Clause 3 therefore proposes to amend section 15.2 to add a new subsection (1.1) to require the arbitrator, before making a choice between one or the other of the final offers under section 15(2), to take into account the objects of the authority under section 18 (including the requirement that the authority be financially self-sufficient) and the summary of the authority's corporate plan referred to in section 125(4) of the *Financial Administration Act*.

D. Continuation of Pilotage Services (Clause 4)

Section 15.3 currently provides that a pilot corporation with which a pilotage authority has entered into a contract for services, and its members and shareholders, are prohibited from refusing to provide pilotage services "while a contract for services is in effect or being negotiated." Clause 4 changes the English wording of the provision to state "while the contract is in effect or a *renewal* is being negotiated." (emphasis added).

E. Objects of a Pilotage Authority (Clause 5)

Section 18 currently states that the objects of a pilotage authority are to "establish, operate, maintain and administer in the interests of safety an efficient pilotage service within the region set out in respect of the Authority in the schedule." Clause 5 amends the section by adding the words "and financially self-sustaining" after the word "efficient." This reinforces the statement already contained in section 33(3) of the Act that the tariffs of pilotage charges prescribed by an authority under section 33(1) must be fixed at a level that permits the authority to operate on a "self-sustaining financial basis" and must be fair and reasonable.

F. Notice of Objection to Proposed Regulation (Clause 6)

Section 21(1) permits a person who believes that a pilotage authority's proposed regulation regarding compulsory pilotage areas or the qualifications that a pilot must meet is not in the public interest may file a notice of objection with the Minister within 30 days following publication in the *Canada Gazette*. In such a case, section 21(2) stipulates that the Minister *must* to appoint a person to make such investigation of the proposed regulation, including the holding

of public hearings, as in the opinion of the Minister, is necessary or desirable in the public interest. Clause 6(1) replaces section 21(2) so as to add a requirement that the Minister must be of the opinion that the matter warrants investigation along with the further stipulation that, in such a case, the Minister *may*, himself or herself, investigate the proposed regulation *or* appoint a person to investigate the proposed regulation and provide a report to the Minister.

Clause 6(2) amends section 21(4) to reflect the amendment to section 21(2). Currently, the section provides that, on completion of a hearing under section 21, the person holding the hearing must send a report to the Minister who "may, by order, approve, amend or disapprove the proposed regulation, and the Authority shall make the regulation accordingly." Clause 6(2) amends the section to also cover the scenario where the Minister conducts an investigation himself or herself under proposed section 21(2); hence the beginning of the section now reads, "After conducting an investigation or receiving a report."

G. Pilot Ceasing to be Employed by an Authority or to Belong to a Pilot Corporation (Clause 7)

Section 30(1) currently provides that a pilot's licence ceases to be valid when a pilot who is an employee of an authority ceases to be employed as a licensed pilot, or where a pilot who belongs to a pilot corporation, which is a party to a contract for the provision of services of pilots with an authority, ceases to be a member or shareholder of that corporation. Clause 7 rewords the provision, so as to provide that a pilot's licence is valid only if the pilot a) is employed by an authority as a pilot; or b) is a member or shareholder of a pilots' corporation with which the authority entered into a service contract *and is an active pilot*.

H. Factors to be Considered in CTA's Recommendation to an Authority (Clause 8)

Section 35(1) provides that the Canadian Transportation Agency, after making an investigation concerning a notice of objection filed with the Agency pursuant to section 34 of the Act (regarding a pilotage authority's proposed tariff of pilotage charges), must make a recommendation to the authority, and that the authority must govern itself accordingly. Clause 8 adds a new section 35(1.1) to require the Agency, prior to making a recommendation under section 35(1), to take into account the objects of the authority under section 18 (including the requirement for the authority to be financially self-sufficient) and the summary of the authority's corporate plan referred to in section 125(4) of the *Financial Administration Act*. The goal is to ensure that the arbitrator has taken into consideration the financial needs of the authority when rendering a decision.

I. Limitation of Liability – Body Corporate (Clause 9)

Clause 9 makes a technical amendment to section 40(2) to add a reference to section 15(*b*) rather than to 15(*2*).

COMMENTARY

During second reading debate in the House on Bill C-4's predecessor, Bill C-64, a virtually identical bill introduced in the 1st Session of the 39th Parliament, Opposition spokespersons were generally opposed to the bill. They expressed concern that that many of the people who work in the marine industry did not support the bill and that some of the stakeholders had not been consulted.

For example, in speaking on Bill C-64 on second reading debate, Mr. Borys Wrzesnewskyj, MP (Liberal), noted that when consultations were held on proposed amendments to the *Pilotage Act* in early 2007, a number of important concerns remained. He pointed out that these concerns were underscored by the Shipping Federation of Canada, which stated that the consultations that took place focused exclusively on "the financial self-sufficiency of the pilotage authorities, rather than addressing the more pressing question of whether the Pilotage Act's overall objectives of providing a safe and efficient pilotage service are actually being met." He went on to say, "Unless there is further substantial review of these proposed changes to the Pilotage Act that can take into account the concerns of all stakeholders, and where safety concerns are not trumped by other concerns, we cannot support this bill as it currently stands."

Similarly, Mr. Peter Julian, MP (NDP), argued that the bill did not do enough to ensure safety in the marine transportation sector. He further expressed his party's opposition to the bill:

> [W]e have difficulty because we are concerned that the government has not consulted the marine employees, the unions that are involved in marine transportation and are the experts in how transportation policy should be adopted. The government did not choose to consult with them. That is unfortunate and that is why we will be opposing this bill.

Likewise, Bloc Québécois MP Mario Laframboise stated "When I meet with marine pilots and marine pilots' associations and they tell me that this bill could jeopardize the entire pilotage system, then I have a problem with this." He went on to say that his party was opposed to the bill, "especially since the pilots' associations have told us that they are opposed to the bill."