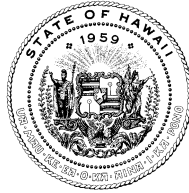


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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE SENATE COMMITTEE ON
JUDICIARY AND LABOR

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Friday, February 27, 2015
9:05 a.m.

WRITTEN COMMENTS ONLY

TESTIMONY ON SENATE BILL NO. 2, S.D. 1, RELATING TO PILOTAGE.

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Alan Taniguchi, Executive Officer for the Port Pilot 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, S. D. 1, Relating to Pilotage.

The PVLD is concerned that the language in Section 4, page, 4, 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. For this reason we respectfully request that Section 4, page 4, lines 1-4 be removed. In addition, PVLD notes that the parameters of the license renewal process

Testimony on Senate Bill No. 2, S.D. 1
Friday, February 27, 2015
Page 2

referenced in the same section are, in large part, based on consultation with the Department of the Attorney General. As such, PVLD suggests that if the language in Section 4, page 4, lines 1-4 is retained, the Department of the Attorney General be referenced in the bill as well.

Thank you for the opportunity to testify on Senate Bill No. 2, S.D. 1.

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 2, SD 1

Date: Friday, February 27, 2015

To: Chairman Gilbert Keith-Agaran and Members of the Senate Committee on Judiciary and Labor:

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, SD 1, 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 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. Only four states have adopted a cap of \$5,000 or less. One state, Alaska, has a \$250,000 cap and the vast majority of states with navigable waters using pilots (approximately 18 states) have retained the traditional negligence standard for pilots.

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.

Further, there are alternatives to a cap on damages where a state can adopt a system whereby the ship and the ship's owner would indemnify the port pilot by having an insurance policy that covers them in the event of their negligence that causes damage. Under maritime law there is a reasonable standard of care imposed on port pilots and this standard should not be diminished by legislation creating a cap on damages for negligent acts. See, e.g., California Harbors & Navigation Code section 1198; Oregon Revised Statutes section 776.520.

HAI requests that the committees delete section 1 if it is the committee's 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.