

SSB 6519 - H COMM AMD
By Committee on Transportation

ADOPTED 02/28/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 88.16
4 RCW to read as follows:

5 (1) The utilities and transportation commission shall under
6 sections 7 through 12 of this act periodically, but not more
7 frequently than annually, establish the pilotage tariffs for pilotage
8 services provided under this chapter: PROVIDED, That the utilities
9 and transportation commission may establish extra compensation for
10 extra services to vessels in distress, for awaiting vessels, for all
11 vessels in direct transit to or from a Canadian port where Puget
12 Sound pilotage is required for a portion of the voyage, or for being
13 carried to sea on vessels against the will of the pilot, and for such
14 other services as may be determined by the commission: PROVIDED
15 FURTHER, That as an element of the Puget Sound pilotage district
16 tariff, the utilities and transportation commission may consider
17 pilot retirement expenses incurred in the prior year in the Puget
18 Sound pilotage district. However, under no circumstances shall the
19 state be obligated to fund or pay for any portion of retirement
20 payments for pilots or retired pilots.

21 (2) By December 1, 2018, the utilities and transportation
22 commission shall submit to the transportation committees of the
23 legislature any additional statutory changes necessary to implement
24 this act.

25 (3) By July 1, 2020, the utilities and transportation commission
26 shall provide a report to the governor and the transportation
27 committees of the legislature regarding matters pertaining to
28 establishing tariffs under this section that includes a comparison of
29 the process and outcomes in relation to the recommendations made in
30 the January 2018 joint transportation committee Washington state
31 pilotage final report and recommendations.

1 **Sec. 2.** RCW 53.08.390 and 2010 c 8 s 16003 are each amended to
2 read as follows:

3 A countywide port district located in part or in whole within the
4 Grays Harbor pilotage district, as defined by RCW 88.16.050(2), may
5 commence pilotage service with the following powers and subject to
6 the conditions contained in this section.

7 (1) Persons employed to perform the pilotage service of a port
8 district must be licensed under chapter 88.16 RCW to provide
9 pilotage.

10 (2) Before establishing pilotage service, a port district shall
11 give at least sixty days' written notice to the chair of the board of
12 pilotage commissioners to provide pilotage.

13 (3) A port district providing pilotage service under this section
14 requiring additional pilots may petition the board of pilotage
15 commissioners to qualify and license as a pilot a person who has
16 passed the examination and is on the waiting list for the training
17 program for the district. If there are no persons on the waiting
18 list, the board shall solicit applicants and offer the examination.

19 (4) In addition to the power to employ or contract with pilots, a
20 port district providing pilotage services under this section has such
21 other powers as are reasonably necessary to accomplish the purpose of
22 this section including, but not limited to, providing through
23 ownership or contract pilots launches, dispatcher services, or
24 ancillary tug services required for operations or safety.

25 (5)(a) A port district providing pilotage services under this
26 section may recommend to the utilities and transportation commission
27 tariffs for pilotage services provided under chapter 88.16 RCW, and
28 may recommend to the board of pilotage commissioners rules of service
29 governing its pilotage services for consideration and adoption
30 consistent with RCW 88.16.035. The rules of service, rates, and
31 tariffs ((governing its pilotage services for consideration and
32 adoption pursuant to RCW 88.16.035. The rules, rates, and tariffs))
33 recommended by the port district must have been approved in open
34 meetings of the port district ((ten)) thirty or more days after
35 published notice in a newspaper of general circulation and after
36 mailing a copy of the notice to: (i) The utilities and transportation
37 commission for rate and tariff consideration, or (ii) the chair of
38 the board of pilotage commissioners for rules of service
39 consideration. The port district shall release its pilotage budget,
40 including the five year capital spending plan, prior year pilotage

1 financial statement, and the proposed pilotage tariff, no later than
2 thirty days prior to a public hearing. The port district shall
3 receive public comments for thirty days before the port district
4 commission may approve and recommend the pilotage tariff, rates, or
5 rules of service.

6 (b) The port district must include a charge in its tariff until
7 such time as the pilot retirement agreement expenses for Grays Harbor
8 pilotage district pilots employed prior to October 1, 2001, are no
9 longer owed. The port district shall determine the charge owed as
10 pilot retirement agreement expenses. The charge must be sufficient to
11 cover costs associated with the pilot retirement agreement expenses
12 for Grays Harbor pilots employed prior to October 1, 2001. The
13 revenue collected from the charge must be deposited into an account
14 maintained by the port district solely for the pilot retirement
15 agreement expenses of the Grays Harbor pilots employed prior to
16 October 1, 2001. Under no circumstances shall the port district be
17 obligated to fund or pay for any portion of the retirement agreement
18 expenses for Grays Harbor pilots employed prior to October 1, 2001.

19 (6) A pilot providing pilotage services under this section must
20 comply with all requirements of the pilotage act, chapter 88.16 RCW,
21 and all rules adopted thereunder.

22 **Sec. 3.** RCW 88.16.035 and 2009 c 496 s 1 are each amended to
23 read as follows:

24 (1) The board of pilotage commissioners shall:

25 (a) Adopt rules, pursuant to chapter 34.05 RCW, necessary for the
26 enforcement and administration of this chapter;

27 (b)(i) Issue training licenses and pilot licenses to pilot
28 applicants meeting the qualifications provided for in RCW 88.16.090
29 and such additional qualifications as may be determined by the board;

30 (ii) Establish a comprehensive training program to assist in the
31 training and evaluation of pilot applicants before final licensing;
32 and

33 (iii) Establish additional training requirements, including a
34 program of continuing education developed after consultation with
35 pilot organizations, including those located within the state of
36 Washington, as required to maintain a competent pilotage service;

37 (c) Maintain a register of pilots, records of pilot accidents,
38 and other history pertinent to pilotage;

1 (d) Determine from time to time the number of pilots necessary to
2 be licensed in each district of the state to optimize the operation
3 of a safe, fully regulated, efficient, and competent pilotage service
4 in each district;

5 ~~((Annually fix the pilotage tariffs for pilotage services
6 provided under this chapter: PROVIDED, That the board may fix extra
7 compensation for extra services to vessels in distress, for awaiting
8 vessels, for all vessels in direct transit to or from a Canadian port
9 where Puget Sound pilotage is required for a portion of the voyage,
10 or for being carried to sea on vessels against the will of the pilot,
11 and for such other services as may be determined by the board:
12 PROVIDED FURTHER, That as an element of the Puget Sound pilotage
13 district tariff, the board may consider pilot retirement plan
14 expenses incurred in the prior year in either pilotage district.
15 However, under no circumstances shall the state be obligated to fund
16 or pay for any portion of retirement payments for pilots or retired
17 pilots))~~ Provide assistance to the utilities and transportation
18 commission, as requested by the utilities and transportation
19 commission, in its performance of pilotage tariff setting functions
20 under sections 7 through 12 of this act;

21 (f) File annually with the governor and the chairs of the
22 transportation committees of the senate and house of representatives
23 a report which includes, but is not limited to, the following: The
24 number, names, ages, pilot license number, training license number,
25 and years of service as a Washington licensed pilot of any person
26 licensed by the board as a Washington state pilot or trainee; the
27 names, employment, and other information of the members of the board;
28 the total number of pilotage assignments by pilotage district,
29 including information concerning the various types and sizes of
30 vessels and the total annual tonnage; the annual earnings or stipends
31 of individual pilots and trainees before and after deduction for
32 expenses of pilot organizations, including extra compensation as a
33 separate category; the annual expenses of private pilot associations,
34 including personnel employed and capital expenditures; the status of
35 pilotage tariffs, extra compensation, and travel; the retirement
36 contributions paid to pilots and the disposition thereof; the number
37 of groundings, marine occurrences, or other incidents which are
38 reported to or investigated by the board, and which are determined to
39 be accidents, as defined by the board, including the vessel name,
40 location of incident, pilot's or trainee's name, and disposition of

1 the case together with information received before the board acted
2 from all persons concerned, including the United States coast guard;
3 the names, qualifications, time scheduled for examinations, and the
4 district of persons desiring to apply for Washington state pilotage
5 licenses; summaries of dispatch records, quarterly reports from
6 pilots, and the bylaws and operating rules of pilotage organizations;
7 the names, sizes in deadweight tons, surcharges, if any, port of
8 call, name of the pilot or trainee, and names and horsepower of tug
9 boats for any and all oil tankers subject to the provisions of RCW
10 88.16.190 together with the names of any and all vessels for which
11 the United States coast guard requires special handling pursuant to
12 their authority under the Ports and Waterways Safety Act of 1972; the
13 expenses of the board; and any and all other information which the
14 board deems appropriate to include;

15 (g) Make available information that includes the pilotage act and
16 other statutes of Washington state and the federal government that
17 affect pilotage, including the rules of the board, together with such
18 additional information as may be informative for pilots, agents,
19 owners, operators, and masters;

20 (h) Appoint advisory committees and employ marine experts as
21 necessary to carry out its duties under this chapter;

22 (i) Provide for the maintenance of efficient and competent
23 pilotage service on all waters covered by this chapter; and do such
24 other things as are reasonable, necessary, and expedient to insure
25 proper and safe pilotage upon the waters covered by this chapter and
26 facilitate the efficient administration of this chapter.

27 (2) The board may pay stipends to pilot trainees under subsection
28 (1)(b) of this section.

29 **Sec. 4.** RCW 88.16.070 and 2017 c 88 s 1 are each amended to read
30 as follows:

31 Every vessel not exempt under this section that operates in the
32 waters of the Puget Sound pilotage district or Grays Harbor pilotage
33 district is subject to compulsory pilotage under this chapter.

34 (1) A United States vessel on a voyage in which it is operating
35 exclusively on its coastwise endorsement, its fishery endorsement
36 (including catching and processing its own catch outside United
37 States waters and economic zone for delivery in the United States),
38 and/or its recreational (or pleasure) endorsement, and all United
39 States and Canadian vessels engaged exclusively in the coasting trade

1 on the west coast of the continental United States (including Alaska)
2 and/or British Columbia shall be exempt from the provisions of this
3 chapter unless a pilot licensed under this chapter be actually
4 employed, in which case the pilotage rates provided for in this
5 chapter or established under sections 7 through 12 of this act shall
6 apply.

7 (2) The board may, upon the written petition of any interested
8 party, and upon notice and opportunity for hearing, grant an
9 exemption from the provisions of this chapter to any vessel that the
10 board finds is (a) a small passenger vessel that is not more than one
11 thousand three hundred gross tons (international), does not exceed
12 two hundred feet in overall length, is manned by United States-
13 licensed deck and engine officers appropriate to the size of the
14 vessel with merchant mariner credentials issued by the United States
15 coast guard or Canadian deck and engine officers with Canadian-issued
16 certificates of competency appropriate to the size of the vessel, and
17 is operated exclusively in the waters of the Puget Sound pilotage
18 district and lower British Columbia, or (b) a yacht that is not more
19 than one thousand three hundred gross tons (international) and does
20 not exceed two hundred feet in overall length. Such an exemption
21 shall not be detrimental to the public interest in regard to safe
22 operation preventing loss of human lives, loss of property, and
23 protecting the marine environment of the state of Washington. Such
24 petition shall set out the general description of the vessel, the
25 contemplated use of same, the proposed area of operation, and the
26 name and address of the vessel's owner. The board shall annually, or
27 at any other time when in the public interest, review any exemptions
28 granted to this specified class of small vessels to insure that each
29 exempted vessel remains in compliance with the original exemption.
30 The board shall have the authority to revoke such exemption where
31 there is not continued compliance with the requirements for
32 exemption. The board shall maintain a file which shall include all
33 petitions for exemption, a roster of vessels granted exemption, and
34 the board's written decisions which shall set forth the findings for
35 grants of exemption. Each applicant for exemption or annual renewal
36 shall pay a fee, payable to the pilotage account. Fees for initial
37 applications and for renewals shall be established by rule, and shall
38 not exceed one thousand five hundred dollars. The board shall report
39 annually to the legislature on such exemptions.

1 (3) Every vessel not exempt under subsection (1) or (2) of this
2 section shall, while navigating the Puget Sound and Grays Harbor
3 pilotage districts, employ a pilot licensed under the provisions of
4 this chapter and shall be liable for and pay pilotage rates in
5 accordance with the pilotage rates herein established or which may
6 hereafter be established under the provisions of this chapter or
7 under sections 7 through 12 of this act: PROVIDED, That any vessel
8 inbound to or outbound from Canadian ports is exempt from the
9 provisions of this section, if said vessel actually employs a pilot
10 licensed by the Pacific pilotage authority (the pilot licensing
11 authority for the western district of Canada), and if it is
12 communicating with the vessel traffic system and has appropriate
13 navigational charts, and if said vessel uses only those waters east
14 of the international boundary line which are west of a line which
15 begins at the southwestern edge of Point Roberts then to Alden Point
16 (Patos Island), then to Skipjack Island light, then to Turn Point
17 (Stuart Island), then to Kelleet Bluff (Henry Island), then to Lime
18 Kiln (San Juan Island) then to the intersection of one hundred
19 twenty-three degrees seven minutes west longitude and forty-eight
20 degrees twenty-five minutes north latitude then to the international
21 boundary. The board shall correspond with the Pacific pilotage
22 authority from time to time to ensure the provisions of this section
23 are enforced. If any exempted vessel does not comply with these
24 provisions it shall be deemed to be in violation of this section and
25 subject to the penalties provided in RCW 88.16.150 as now or
26 hereafter amended and liable to pilotage fees as determined by the
27 board. The board shall investigate any accident on the waters covered
28 by this chapter involving a Canadian pilot and shall include the
29 results in its annual report.

30 **Sec. 5.** RCW 88.16.120 and 1987 c 485 s 4 are each amended to
31 read as follows:

32 No pilot shall charge, collect or receive and no person, firm,
33 corporation or association shall pay for pilotage or other services
34 performed hereunder any greater, less or different amount, directly
35 or indirectly, than the rates or charges herein established or
36 (~~which may be hereafter fixed~~) subsequently established by the
37 utilities and transportation commission under sections 7 through 12
38 of this act and by the board (~~(pursuant to)~~) under this chapter. Any
39 pilot, person, firm, corporation or association violating the

1 provisions of this section shall be guilty of a misdemeanor and shall
2 be punished pursuant to RCW 88.16.150 as now or hereafter amended,
3 said prosecution to be conducted by the attorney general or the
4 prosecuting attorney of any county wherein the offense or any part
5 thereof was committed.

6 **Sec. 6.** RCW 88.16.130 and 2013 c 23 s 533 are each amended to
7 read as follows:

8 Any person not holding a license as pilot under the provisions of
9 this chapter who pilots any vessel subject to the provisions of this
10 chapter on waters covered by this chapter shall pay to the board the
11 pilotage rates (~~(payable under the provisions of this chapter)~~)
12 established by the utilities and transportation commission under
13 sections 7 through 12 of this act. Any master or owner of a vessel
14 required to employ a pilot licensed under the provisions of this
15 chapter who refuses to do so when such a pilot is available shall be
16 punished pursuant to RCW 88.16.150 as now or hereafter amended and
17 shall be imprisoned in the county jail of the county wherein he or
18 she is so convicted until said fine and the costs of his or her
19 prosecution are paid.

20 NEW SECTION. **Sec. 7.** The definitions in this section apply
21 throughout this chapter unless the context clearly requires
22 otherwise.

23 (1) "Board" means the board of pilotage commissioners.

24 (2) "Commission" means the utilities and transportation
25 commission.

26 (3) "Person with a substantial interest" means: (a) A pilot or
27 group of pilots licensed under chapter 88.16 RCW; (b) a vessel
28 operator or other person utilizing the services of a licensed pilot
29 and paying pilotage fees and charges for such services or an
30 organization representing such vessel operators or persons; and (c)
31 any other person or business that can show that the requested tariff
32 changes would be likely to have a substantial economic impact on its
33 operations.

34 NEW SECTION. **Sec. 8.** (1) The commission shall establish in
35 tariffs the rates for pilotage services provided under chapter 88.16
36 RCW.

1 (2) The commission shall maintain a list of persons who have
2 indicated to the commission a desire to be notified of any potential
3 change in pilotage tariffs and in any proposed rules regarding the
4 setting of pilotage tariffs.

5 (3) The commission shall ensure that the tariffs provide rates
6 that are fair, just, reasonable, and sufficient for the provision of
7 pilotage services.

8 (4) In setting tariffs, the commission may fix extra compensation
9 for extra services to vessels in distress, for awaiting vessels, for
10 all vessels in direct transit to or from a Canadian port where Puget
11 Sound pilotage is required for a portion of the voyage, or for being
12 carried to sea on vessels against the will of the pilot, and for such
13 other services as may be determined by the board. In setting tariffs,
14 the commission must include a tariff surcharge to fund the stipend
15 the board of pilotage commissioners is authorized to pay to pilot
16 trainees and to use in its pilot training program under RCW
17 88.16.035. As an element of the Puget Sound pilotage district tariff,
18 the commission may consider pilot retirement expenses incurred in the
19 prior year in the Puget Sound pilotage district. However, under no
20 circumstances shall the state be obligated to fund or pay for any
21 portion of retirement payments for pilots or retired pilots.

22 (5) In exercising duties under this section, the commission may:

23 (a) Request assistance from the board;

24 (b) Assign an administrative law judge to handle the proceeding
25 and prepare an initial order, which the commission may review
26 pursuant to RCW 34.05.464, or assign an administrative law judge as a
27 facilitator for settlement purposes; and

28 (c) Adopt rules or issue orders to implement the provisions of
29 this act.

30 NEW SECTION. **Sec. 9.** (1) Any person with a substantial interest
31 may file with the commission a revised tariff with an effective date
32 no earlier than thirty days from the date of filing and no earlier
33 than one year following the effective date the tariffs in effect at
34 the time of filing were established.

35 (2) The proposed tariff must be accompanied by:

36 (a) The names and contact information of the person or persons
37 requesting the tariff revision;

38 (b) A description of why the existing tariffs are not fair, just,
39 reasonable, and sufficient, along with financial information to

1 demonstrate a need for the tariff revision and information addressing
2 the criteria for approval of tariff revisions set forth in section
3 8(3) of this act;

4 (c) If the petitioner proposes a tariff with an annual or
5 periodic adjustment mechanism, information justifying such a
6 mechanism; and

7 (d) Any other information required by the commission by rule or
8 by order.

9 (3) After receipt of a proper petition, the commission shall give
10 notice of the petition to interested persons that have stated a
11 desire to be notified pursuant to section 8(2) of this act. Any
12 person with a substantial interest in the proposed tariff revision
13 may submit comments in support or opposition of the petition within
14 twenty days of the notice.

15 (4) The filed tariff shall take effect on its stated effective
16 date unless, within thirty days of filing of the tariff, the
17 commission suspends it. The commission may suspend the tariff for a
18 period not exceeding ten months from the time the change would
19 otherwise go into effect. During that time, the commission may set
20 the matter for a hearing pursuant to chapter 34.05 RCW or set the
21 matter for consideration at a subsequent open public meeting.

22 (5) The burden of proof to show that the tariff rates are not
23 fair, just, reasonable, and sufficient is upon the person with a
24 substantial interest that files the revised tariff.

25 NEW SECTION. **Sec. 10.** The commission shall encourage
26 alternative forms of dispute resolution to resolve disputes between
27 an association or group of pilots and any other person regarding
28 matters covered by this chapter.

29 NEW SECTION. **Sec. 11.** The tariffs established by the board
30 prior to the effective date of this section shall remain in effect
31 and be deemed pilotage tariffs set by the commission until such time
32 as they are changed by the commission pursuant to this chapter.

33 NEW SECTION. **Sec. 12.** The commission may include as part of the
34 tariff for pilotage services provided under chapter 88.16 RCW
35 reasonable costs for the setting of tariff rates under this chapter.
36 The costs of the commission included as part of the tariff must be
37 appropriated from the pilotage account in RCW 88.16.061.

1 **Sec. 13.** RCW 88.16.061 and 2008 c 128 s 17 are each amended to
2 read as follows:

3 (~~The account in the general fund designated in RCW 43.79.330(17)~~
4 ~~as the "Puget Sound pilotage account" is hereby redesignated as the~~
5 ~~"pilotage account".~~)

6 The pilotage account is (~~hereby redesignated as a~~
7 ~~nonappropriated account, and is therefore~~) created in the (~~custody~~
8 ~~of the~~) state (~~treasurer. All receipts designated, credited, or~~
9 ~~transferred to the pilotage account must be deposited into the~~
10 ~~account~~) treasury. Moneys in the account may be spent only after
11 appropriation. Expenditures from the account may be used only for the
12 purposes of the board of pilotage commissioners as prescribed under
13 this chapter(~~. Only the board or the board's designee may authorize~~
14 ~~expenditures from the account~~) and by the utilities and
15 transportation commission for purposes related to pilotage tariff
16 rate setting. The account is subject to allotment procedures under
17 chapter 43.88 RCW(~~, but an appropriation is not required for~~
18 ~~expenditures~~).

19 NEW SECTION. **Sec. 14.** Sections 7 through 12 of this act
20 constitute a new chapter in Title 81 RCW.

21 NEW SECTION. **Sec. 15.** To ensure that this act is implemented in
22 a timely manner, the utilities and transportation commission may
23 adopt rules under section 8 of this act prior to July 1, 2019, and
24 may accept tariff filings from a person with a substantial interest
25 beginning thirty days after the effective date of these adopted
26 rules. The utilities and transportation commission must suspend a
27 tariff filing made before July 1, 2019, within thirty days of receipt
28 of the filing. Any tariff filings made under this section may not
29 take effect until after June 30, 2019.

30 NEW SECTION. **Sec. 16.** Except for section 15 of this act, this
31 act takes effect July 1, 2019."

32 Correct the title.

EFFECT: Makes the following changes to the regulation of marine
pilotage tariffs:

(1) Requires the Utilities and Transportation Commission (UTC) to
provide a report to the Governor and the transportation committees of

the Legislature to address matters related to establishing the tariff by July 1, 2020;

(2) Requires a port district to provide published notice of open meetings for the setting of tariffs, rates, and rules of service at least 30 days prior to the open meeting rather than 10 days prior to it, to release its pilotage budget and its proposed tariffs at least 30 days prior to this meeting, and to receive public comments for 30 days prior to approving and recommending pilotage tariffs, rates, and rules of service;

(3) Authorizes the UTC to request the Board's assistance in setting pilotage tariff rates and requires the Board to specifically provide its assistance when it is requested, rather than considering the Board a "person with a substantial interest" that may petition the UTC for a proposed tariff rate change;

(4) Explicitly preserves the Board's ability to charge for certain services that it provides that are separate from the tariff (such as pilotage waiver application fees);

(5) Mandates the following be part of UTC tariff setting: Notification of tariff setting, use of an administrative law judge, contents of tariff filings, UTC response time, persons eligible to comment, burden of proof requirements, and encouragement of alternative dispute resolution;

(6) Requires that tariffs be fair, just, reasonable, and sufficient for the provision of pilotage services;

(7) Permits the UTC to consider Puget Sound District pilot retirement expenses incurred in the prior year as an element of the Puget Sound Pilotage District tariff, rather than pilot retirement expenses from both pilotage districts;

(8) Requires that the UTC include a pilot trainee surcharge to fund training stipends and the Board's training program; and

(9) Removes references to the charge a port district may assess for pilot retirement agreement expenses as part of its tariff as a "pension charge."

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