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## Transportation Committee

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### HB 2983

**Brief Description:** Establishing a new marine pilotage tariff setting process.

**Sponsors:** Representative Clibborn.

#### Brief Summary of Bill

- Transfers the authority to set marine pilotage tariffs from the Board of Pilotage Commissioners to the Utilities and Transportation Commission (UTC).
- Requires the UTC to ensure that the marine pilotage tariffs it sets are fair, just, reasonable, and sufficient.
- Allows any person with a substantial interest in marine pilotage tariffs, including marine pilots and shippers, to file a revised proposed tariff.
- Authorizes the UTC to include reasonable costs for setting tariff rates as part of the tariff.

**Hearing Date:** 2/5/18

**Staff:** Jennifer Harris (786-7143).

#### **Background:**

Board of Pilotage Commissioners.

The Board of Pilotage Commissioners (Board) is comprised of a chairperson, who is either the Assistant Secretary of Marine Operations of the Washington State Department of Transportation (WSDOT) or the Assistant Secretary's designee and an employee of the WSDOT's marine division; the Director of the Department of Ecology or the Director's designee; and seven other members appointed by the Governor and confirmed by the Senate. The Board is charged with providing for the maintenance of efficient and competent pilotage service on the waters of the Puget Sound Pilotage District and the Grays Harbor Pilotage District.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Board is responsible for:

1. issuing training licenses and pilot licenses to pilot applicants;
2. maintaining a comprehensive training and evaluation program for pilot applicants;
3. overseeing additional training requirements, including for continuing education;
4. maintaining a register of pilots, records of pilot accidents, and other pertinent information;
5. determining the number of licensed pilots needed;
6. annually setting pilotage tariffs;
7. filing an annual report with the chairs of the transportation committees of the Legislature and with the Governor; and
8. providing for the maintenance of pilotage services on all waters where it is required.

In setting pilotage tariffs, the Board is permitted to fix extra compensation for extra services to vessels in distress, for awaiting vessels, for all vessels in direct transit to or from a Canadian port where Puget Sound pilotage is required for a portion of the voyage, for being carried to sea on vessels against the will of the pilot, and for other services as determined by the board. The Board may consider pilot retirement plan expenses incurred in the prior year in either pilotage district. Under no circumstances may the state be obligated to fund or pay for any portion of retirement payments for pilots or retired pilots.

Pilots are licensed in the state for a term of five years, and must pay an annual license fee to the State Treasurer in an amount set by the Board by rule. The Board is prohibited from increasing the annual license fee (and has been since June 30, 2011). The Board is authorized to pay stipends to pilot trainees. The Board is also authorized to assess penalties and fines for certain specified violations in the performance of pilotage duties, the unlicensed piloting of vessels under state pilotage laws, and other violations of state pilotage laws.

#### Pilotage Districts.

Compulsory pilotage applies to all foreign vessels not exempted in state law that travel in the waters of the Puget Sound Pilotage District or the Grays Harbor Pilotage District. The Puget Sound Pilots, a private organization, contracts with pilots licensed by the Board to provide pilotage services in the Puget Sound Pilotage District. The Port of Grays Harbor (Port) currently employs pilots licensed by the Board to provide pilotage services in the Grays Harbor Pilotage District. The Port is authorized to recommend rules of service, rates, and tariffs governing its pilotage services to the Board for consideration. The rules, rates, and tariffs recommended by the Port must have been approved in open meetings of the port district.

#### Marine Pilotage Study.

In the 2017-2019 Transportation Budget, the Legislature tasked the Joint Transportation Committee (JTC) with overseeing a consultant study of marine pilotage in the state, with the goal of recommending best practices for an analytically-driven pilotage tariff and fee-setting process; determination of the total number of pilots and pilot workload; pilot recruitment, training, review, and selection, with a focus on increasing pilot diversity; and selection of governance structures for the oversight and management of pilotage activities.

The *Washington State Pilotage Final Report and Recommendations* (2018), the output of this study, included a recommendation to transfer rate-setting authority to the Utilities and Transportation Commission (UTC). This recommendation was identified in the report as the preferred approach.

#### Utilities and Transportation Commission.

The UTC's Commission is composed of three members appointed by the Governor for a term of six years, with the consent of the Senate. No more than two members of the Commission may belong to the same political party. The UTC regulates the following in the public interest, as provided by state law:

- Persons engaging in the transportation of persons or property within the state for compensation; and
- Rates, services, facilities, and practices of all persons engaging within the state in the business of supplying utility services or commodities to the public for compensation.

The UTC is authorized to make rules and regulations to carry out its duties.

The UTC may appoint administrative law judges when necessary for its general administration. The administrative law judges may: administer oaths; issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony; examine witnesses; make findings of probable cause and issue complaints in the name of the UTC; and receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under UTC-adopted rules.

Initial orders of administrative law judges become final on the day following expiration of the time established by the UTC for filing a petition for administrative review, unless, within that time, a party petitions for administrative review or the UTC notifies parties that it will review the initial order on its own motion.

#### **Summary of Bill:**

The authority to set marine pilotage tariffs is transferred from the Board to the UTC. The UTC may adopt rules or issue orders to implement tariff setting. The Board is required to assist the UTC, at its request, in its performance of pilotage tariff-setting functions.

The UTC must ensure that it sets tariff rates that are fair, just, reasonable, and sufficient, considering the infrastructure and equipment assets; the nature of business operations; safety equipment and training; and investments necessary to maintain efficient, safe, and competent pilotage service and operations. As part of its tariff-setting responsibilities, the UTC is required to maintain a list of persons who have requested to be notified of any change in pilotage tariffs and in any proposed rules related to the setting of pilotage tariffs.

In carrying out its tariff-setting duties, the UTC may assign an administrative law judge to oversee the proceedings and prepare an initial order, which the UTC may review. The UTC may also assign an administrative law judge as a facilitator for settlement purposes. The UTC is authorized to adopt rules and issue orders to implement tariff setting.

Any person with a substantial interest in marine pilotage tariffs, which includes a licensed pilot or group of pilots and a vessel operator or other person or organization utilizing the services of a licensed pilot and paying pilotage tariffs, (as well as any person or business that can show that requested tariff changes would be likely to have a substantial economic impact on it), may file a revised proposed tariff with the UTC. The proposed tariff is required to be accompanied by an explanation of why the existing tariffs are not fair, just reasonable, and sufficient, along with financial information to demonstrate a need for the tariff revision, as well as any other information required by the UTC. If the petitioner proposes a tariff with an annual or periodic adjustment, information must be provided that justifies the automatic adjustment.

After receipt of a petition in the proper form, the UTC must give notice to interested persons that have informed the UTC of their desire to be notified when such a petition is submitted. Any person with a substantial interest may submit comments in support or opposition of the petition within 20 days of the notice. The filed proposed tariff takes effect on its stated effective date unless the UTC suspends it for a period of up to 10 months. During this time, the UTC is permitted to set the matter for hearing or for consideration at an open public meeting. The burden of proof to show that tariff rates are not fair, just, reasonable, and sufficient is on the person that files the revised tariff.

The UTC must encourage alternative forms of dispute resolution to resolve disputes between an association or group of pilots and any other person with a substantial interest in tariff setting.

The UTC is authorized to include, as part of the tariff for marine pilotage services, reasonable costs for setting tariff rates. The UTC's costs for tariff setting must be appropriated from the Marine Pilotage Tariff Setting Account (account), which is created in the State Treasury. Expenditures from the account may only be used for the purposes of UTC marine pilotage tariff setting.

By December 1, 2018, the UTC is required to submit to the transportation committees of the Legislature any additional statutory changes necessary for implementation of the UTC's tariff-setting process. Additionally, by July 1, 2020, the UTC must provide a report to the Governor and the transportation committees of the Legislature to address matters related to establishing the tariff, which is required to compare the process and outcomes to the recommendations made in the January 2018 JTC marine pilotage report.

**Appropriation:** None.

**Fiscal Note:** Requested on February 1, 2018.

**Effective Date:** The bill contains multiple effective dates. The provision granting the UTC the authority to adopt rules for the tariff-setting process takes effect 90 days after adjournment of the session in which the bill is passed. All other provisions take effect July 1, 2019.