

HOUSE BILL REPORT

SSB 6519

As Reported by House Committee On: Transportation

Title: An act relating to revising the establishment of marine pilotage tariffs.

Brief Description: Revising the establishment of marine pilotage tariffs.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators King and Hobbs).

Brief History:

Committee Activity:

Transportation: 2/20/18, 2/21/18 [DPA].

Brief Summary of Substitute Bill (As Amended by Committee)

- Transfers marine pilotage tariff rate-setting authority from the Board of Pilotage Commissioners (Board) to the Utilities and Transportation Commission (UTC) as of July 1, 2019.
- Requires the UTC to ensure that the marine pilotage tariffs it sets are fair, just, reasonable, and sufficient for the provision of pilotage services.
- Allows any person with a substantial interest in marine pilotage tariffs, including marine pilots and shippers, to file a revised proposed tariff with the UTC.
- Transfers consideration of a port district's tariff rate recommendations for pilotage services from the Board to the UTC.
- Authorizes the UTC to include reasonable costs for setting tariff rates as part of the tariff.
- Modifies the Pilotage Account to be an appropriated account, and authorizes the UTC's use of it for expenditures related to pilotage tariff setting.

HOUSE COMMITTEE ON TRANSPORTATION

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.

Majority Report: Do pass as amended. Signed by 24 members: Representatives Clibborn, Chair; Fey, Vice Chair; Wylie, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Harmsworth, Assistant Ranking Minority Member; Chapman, Gregerson, Hayes, Irwin, Kloba, Lovick, McBride, Ortiz-Self, Pellicciotti, Pike, Riccelli, Rodne, Shea, Stambaugh, Tarleton, Valdez, Van Werven and Young.

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.

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; awaiting vessels; all vessels in direct transit to or from a Canadian port where Puget Sound pilotage is required for a portion of the voyage; being carried to sea on vessels against the will of the pilot; and 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.

Expenditures from the Pilotage Account may only be used for expenditures related to Board responsibilities. The Pilotage Account is an unappropriated account from which only the Board or its designee may authorize expenditures.

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 currently employs pilots licensed by the Board to provide pilotage services in the Grays Harbor Pilotage District. The Port of Grays Harbor 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 of Grays Harbor 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 output of the study, the *Washington State Pilotage Final Report and Recommendations* (2018), 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 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 UTC 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 Amended Bill:

Puget Sound Pilotage District Tariffs.

The authority to set marine pilotage tariffs for the Puget Sound Pilotage District 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 for the provision of pilotage services. 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 of 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.

In setting tariffs, the UTC must include a tariff surcharge to fund the stipend the Board is authorized to pay to pilot trainees and to use in its pilot training program under current state law. The Pilotage Account is modified to become an appropriated account, and authorization to make expenditures from it is extended to the UTC for expenditures related to pilotage tariff rate 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. The UTC may accept tariff filings from a person with a substantial interest beginning 30 days after the effective date of UTC-adopted rules for tariff setting. The UTC must suspend any tariff filing made before July 1, 2019, within 30 days of receipt to prevent the filing from taking effect prior to July 1, 2019.

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 report on pilotage.

Grays Harbor Pilotage District Tariffs.

A port district is authorized to recommend tariffs for pilotage services to the UTC, provided that they have been approved in open meetings 30 or more days after published notice in a newspaper of general circulation and following a public hearing. Board consideration is only required for rules of service governing pilotage services. A port district that establishes pilotage tariffs and rules of service is required to release its pilotage budget, including its five-year capital spending plan, prior year's pilotage financial statement, and the proposed pilotage tariff, no later than 30 days prior to a public hearing. It must also receive public comments for 30 days prior to adopting and approving pilotage tariffs or rules of service.

The Grays Harbor Pilotage District must include a charge in its tariff until its pilot retirement agreement expenses for Grays Harbor Pilotage District pilots employed prior to October 1, 2001, is no longer in effect, and must deposit revenue collected for this purpose into an account maintained solely for these pilot retirement expenses. The charge must be sufficient to cover the costs associated with expenses mandated by the pilot retirement agreement. The Grays Harbor Pilotage District may not be obligated to fund or pay any portion of these retirement expenses.

Amended Bill Compared to Substitute Bill:

The amended bill requires that tariffs be fair, just, reasonable, and sufficient for the provision of pilotage services. It 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.

The amended bill 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). It requires that the UTC include a pilot trainee surcharge to fund training stipends and the Board's training program.

In addition, the amended bill mandates the following be part of the UTC tariff setting: notification of tariff setting, use of an administrative law judge, contents of tariff filings, the UTC's response time, persons eligible to comment, certain burden-of-proof requirements, and encouragement of alternative dispute resolution.

The amended bill also 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. It 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 incurred by both pilotage districts, and it removes references to the charge a port district may assess for pilot retirement agreement expenses as part of its tariff as a pension charge.

Finally, the amended bill requires the 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.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on July 1, 2019, except for section 15, relating to granting the UTC the authority to adopt rules for the tariff-setting process and the acceptance of early tariff filings, which takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) A great deal of work has gone into this bill, with the concerns of stakeholders addressed. This bill will effectively carry out the recommendations of the JTC study's consultant to move tariff setting from the Board to the UTC. This is the most important aspect of this bill. The changes implemented by the bill will mitigate uncertainty for pilots and attract a strong pool of pilots in the future, and will help to preserve the strong safety record of pilotage in the state. This bill is needed now because a test for new pilots is being conducted later this year.

In the bill, tariffs for the Puget Sound District would be determined by the UTC. Tariffs for the Grays Harbor District can still be developed and negotiated by the port district, but will

need to be submitted to the UTC. If there are no disagreements over the submitted Grays Harbor District tariffs, then the UTC would place them on its consent calendar and they would be adopted.

At the Port of Grays Harbor, pilots are employees of the Port. The different model used for rate setting by the Port works well because the Grays Harbor Pilotage District is operated at a smaller scale than the Puget Sound Pilotage District. When the Port sets the tariff, it accounts for all relevant costs in a transparent manner. All information is publicly available and the Port Commission recommends tariff rates in public hearings and reaches out to the Pacific Merchant Shipping Association prior to making recommendations. This process has worked well for the past 17 years, and repeating the same process twice is unnecessary and could be costly.

(Opposed) None.

(Other) The UTC can administer provisions in the striking amendment to the bill, and is prepared to move forward to implement tariff setting. Costs for administration of tariff setting should be minimal and reasonable. If the Port of Grays Harbor is required to file its tariff with the UTC or to send the tariff to the UTC for consideration, costs should be very minimal to the Port.

The Board has a long record of fair tariff setting and the establishment of pilotage fees. However, the Board will work with the UTC as needed for the transfer of tariff-setting responsibility. The Pilotage Account should remain nonappropriated due to the variability in the number of trainees and in the frequency with which pilotage examinations are given over time. The UTC and the Board should each have its own designated account for pilotage expenditure purposes.

Persons Testifying: (In support) Senator King, prime sponsor; Scott Hazlegrove, Pacific Merchant Shipping Association; James Thompson, Washington Ports; Gary Nelson, Port of Grays Harbor; and Eric Von Brandenfels, Puget Sound Pilots.

(Other) Sheri Tonn, Board of Pilotage Commissioners; and Jay Balasbas, Washington Utilities and Transportation Commission.

Persons Signed In To Testify But Not Testifying: None.