

BILL ANALYSIS

Senate Research Center
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H.B. 3366
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Natural Resources
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Engrossed

DIGEST AND PURPOSE

Currently, state law provides for the licensing and regulation of branch pilots and deputy pilots and the establishment of pilotage rate for the port in this state. The ports of Corpus Christi, Houston, and Galveston have adopted similar Acts which provide due process rights for pilots and consignees of vessels; standard pilot qualifications; hearing processes for pilot license applications and applications for rate changes; and accountability provisions for both pilots and consignees of vessels. H.B. 3366 sets forth the guidelines for the licensing and regulation of branch pilots and deputy branch pilots for the Ports of Jefferson and Orange counties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of pilot commissioners for the ports of Jefferson and Orange counties in SECTION 1 (Sections 69.016, 69.017, and 69.068, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 69, Transportation, Code, as follows:

CHAPTER 69. New heading: JEFFERSON AND ORANGE COUNTY PILOTS LICENSING AND REGULATORY ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 69.001. SHORT TITLE. Authorizes this chapter to be cited as the Jefferson and Orange County Pilots Licensing and Regulatory Act.

Sec. 69.002. DEFINITIONS. Defines "board," "consignee," "Jefferson or Orange County port," "pilot," "pilotage rate," "pilot services," and "vessel."

Sec. 69.003. APPLICABILITY OF CHAPTER. Provides that this chapter applies only to a Jefferson or Orange County port.

[Reserves Sections 69.004-69.010 for expansion.]

SUBCHAPTER B. BOARD OF PILOT COMMISSIONERS

Sec. 69.011. COMPOSITION OF BOARD. (a) Provides that the board of pilot commissioners (board) for all of the ports and private terminals located in Jefferson or Orange County, or both, is composed of five commissioners from Jefferson or Orange County appointed by the governor in the manner provided by Subchapter A, Chapter 63.

(b) Requires the presiding officer of the board to be selected by the members of the board.

Sec. 69.012. PROHIBITED INTEREST. Prohibits a person from being a member of the board if the person has a direct or indirect pecuniary interest in a pilot boat or branch pilot in the business of the board's trust.

Sec. 69.013. OATH. Requires each board member, before beginning service as a board member, to take and sign before a person authorized to administer oaths an oath to faithfully and impartially discharge the duties of the office.

Sec. 69.014. TERMS OF OFFICE. (a) Provides that board members serve staggered two-year terms of office.

(b) Provides that a board member holds office until the member's successor is appointed and qualified.

Sec. 69.015. JURISDICTION OF BOARD. Provides that the board has exclusive jurisdiction over the pilot services provided in Jefferson or Orange County, including intermediate stops and landing places for vessels on navigable streams wholly or partially located in the board's jurisdiction.

Sec. 69.016. ADMINISTRATION; RULES. (a) Requires the board to administer this chapter. Authorizes the board to perform any act or function necessary to carry out its powers and duties under this chapter.

(b) Authorizes the board to adopt rules to carry out this chapter.

Sec. 69.017. DUTIES. (a) Requires the board to perform certain acts.

(b) Authorizes the board to recommend the number of deputy pilots each branch pilot may appoint under Section 69.038 and make any other provision for proper, safe, and efficient pilotage under this chapter and for the efficient administration of this chapter.

(c) Authorizes the board to assess against the users of pilot services certain costs or other expenses.

(d) Prohibits assessments against the users of pilot services under Subsection (c) from exceeding \$100,000 in a fiscal year.

(e) Prohibits funds collected under this section from being used for compensation to any member of the board.

Sec. 69.018. UNFAIR DISCRIMINATION PROHIBITED. (a) Prohibits the board, in all its duties, including rulemaking, from sanctioning discriminatory practices or discriminate against a pilot or pilot applicant because of race, religion, sex, ethnic origin, or national origin.

(b) Requires a person seeking a remedy for a violation of this section to bring suit in a district court in Jefferson County.

Sec. 69.019. OPEN MEETINGS LAW. Provides that Chapter 551, Government Code, applies to actions and proceedings under this chapter.

Sec. 69.020. RULE OR RATE CHANGE. (a) Requires the board to give at least 10 days' notice as provided by this section before the board adopts a rule or changes a pilotage rate.

(b) Requires the board to send the notice and a copy of the proposed rule or change by registered mail to the last known address of certain persons and entities.

(c) Requires the board to post a copy of the proposed rule or change at the county courthouse of Jefferson County and of Orange County, as well as the subcourthouse in Port Arthur, for public inspection.

(d) Requires the board to publish a copy of the proposed rule or change in a newspaper of general circulation in Jefferson and Orange Counties.

Sec. 69.021. **CONTESTED CASE NOTICE.** Requires the board to give notice in each contested case to the persons and in the manner provided by Section 69.020(b) that includes the same information as the notice given to the parties in each contested case.

Sec. 69.022. **JUDICIAL REVIEW.** Requires proceedings for judicial review of a board decision to be brought in a district court in Jefferson County.

Sec. 69.023. **BUDGET; ANNUAL REPORT; AUDITS.** (a) Requires the board to adopt a budget not later than the 45th day before the start of a fiscal year. Authorizes the budget to be adopted only after a public meeting has been held to explain the budget.

(b) Provides that accounts of the board are subject to audit by the state auditor.

(c) Requires the board to keep minutes of its meetings and other books and records that clearly reflect all acts and transactions of the board. Requires the board to open its records to examination by any person during regular business hours.

(d) Requires the board, not later than the 30th day after the end of a fiscal year, to submit to the governor a report itemizing all income and expenditures and describing all activities of the board during the previous fiscal year.

Sec. 69.024. **DEPOSITORY BANK; EXPENDITURE OF FUNDS.** Requires the board to deposit all money received by the board under this chapter, including assessments and grants from governmental agencies, in a bank located in Jefferson or Orange County and selected by the board.

[Reserves Sections 69.025-69.030 for expansion.]

SUBCHAPTER C. PILOT LICENSES AND CERTIFICATES

Sec. 69.031. **LICENSES OR CERTIFICATE REQUIRED.** Prohibits a person from providing pilot services unless the person has a license or certificate issued under this chapter for the Jefferson and Orange County ports in which the pilot services are to be provided.

Sec. 69.032. **EXEMPTIONS.** Provides that the requirement to use a pilot does not apply to certain vessels.

Sec. 69.033. **QUALIFICATIONS FOR LICENSE.** Requires a person, to be eligible for a license as a branch pilot for the ports within the jurisdiction of the board, to meet certain criteria.

Sec. 69.034. **QUALIFICATIONS FOR CERTIFICATE.** Requires a person, to be eligible for a certificate as a deputy branch pilot, to meet certain criteria.

Sec. 69.035. **APPLICATION FOR LICENSE OR CERTIFICATE.** Requires a person, to apply for a branch pilot's license or a deputy branch pilot's certificate, to give the board a written application in the form and manner required by board rule.

Sec. 69.036. **CONSIDERATION OF APPLICATION.** (a) Requires the board to carefully consider each application submitted under Section 69.035 and to conduct any investigation it considers necessary to determine whether an applicant is qualified for a license or certificate.

(b) Authorizes the board, as part of its consideration under Subsection (a), to

develop and administer standardized examinations to determine an applicant's knowledge of piloting, management of vessels, and the waterways in the board's jurisdiction.

Sec. 69.037. BRANCH PILOT APPOINTMENT BY GOVERNOR. (a) Requires the board, on filing of the bond and oath required by Section 69.039, to certify to the governor that a person licensed as a branch pilot has qualified.

(b) Requires the governor, on receipt of the board's certification, to issue to the person, in the name of the state and under the state seal, a commission to serve as a branch pilot to and from Jefferson and Orange County ports.

Sec. 69.038. DEPUTY BRANCH PILOT APPOINTMENT BY BRANCH PILOT. (a) Authorizes each branch pilot, subject to examination and approval of the board, to appoint two deputy branch pilots.

(b) Authorizes a branch pilot to appoint an additional deputy branch pilot if the board considers the appointment advisable.

(c) Provides that a branch pilot who appoints a deputy branch pilot without the approval of the board forfeits the pilot's appointment as a branch pilot.

(d) Provides that a branch pilot who appoints a deputy branch pilot is responsible for the actions of the deputy branch pilot.

Sec. 69.039. OATH AND BOND. (a) Requires a person appointed as a pilot to take the official oath before entering service as a pilot. Requires the oath to be endorsed on the bond required by Subsection (b).

(b) Requires each pilot to execute a \$25,000 bond payable to the governor and conditioned on compliance with the laws, rules, and orders relating to pilots and on the faithful performance of the pilot's duties.

(c) Requires each bond to be approved by the board.

Sec. 69.040. TERMS OF LICENSES AND CERTIFICATES. (a) Provides that a branch pilot's license expires on the earlier of a certain date.

(b) Provides that Subsection (a)(2) does not apply to a person who is a branch pilot serving a port covered under this chapter on the effective date of this chapter or who reaches his or her 68th birthday within one year after the effective date of this chapter.

(c) Provides that a deputy branch pilot's certificate expires on the second anniversary of the date it is issued and prohibits it from being renewed.

Sec. 69.041. BRANCH PILOT'S LICENSE RENEWAL. (a) Requires the governor to renew a branch pilot's expiring license if the board recommends renewal.

(b) Requires the board, if a pilot applies in writing and qualifies, to recommend renewal unless the board determines there is probable cause not to renew the license.

(c) Provides that probable cause not to renew a license exists if the board finds that the license holder does not meet certain criteria.

(d) Requires the board, if the board determines that it has probable cause not to renew a license, to notify the license holder not later than the 60th day before the date the license expires. Requires the board, on request, to provide a hearing after proper notice to consider whether the board has cause not to recommend renewal

of the license.

(e) Requires the board, if the board finds at the conclusion of the hearing that the board lacks probable cause for nonrenewal of the license, to recommend that the governor renew the license.

(f) Requires the board to issue a written order recommending that the governor not renew a license and prohibits the governor from renewing the license if certain conditions exist.

(g) Provides that the denial of renewal of a pilot's license does not prohibit the pilot from applying for a new license and being reappointed.

Sec. 69.042. DEPUTY BRANCH PILOT. Prohibits a person who has been issued a deputy branch pilot's certificate from being issued a deputy branch pilot's certificate before the fifth anniversary of the date the person was previously issued a deputy branch pilot's certificate.

Sec. 69.043. SUSPENSION OR REVOCATION OF BRANCH PILOT'S LICENSE. (a) Authorizes the board, on complaint or on its own motion, and after notice and hearing, to suspend a branch pilot's license for not more than six months or recommend that the governor revoke a branch pilot's license if the board finds certain evidence regarding the pilot.

(b) Requires the board, on determining that a license should be suspended or revoked, to adopt a written order that states its findings and suspends the license for a stated period or recommends to the governor revocation of the license.

(c) Requires the board, on a finding that it has good cause, if the federal pilot's license of a pilot licensed under this chapter is suspended or revoked, to suspend the license for the same period or revoke the license under this chapter.

(d) Requires the governor, on receipt of a board order recommending revocation of a license, to revoke the license.

(e) Provides that suspension of a license on the recommendation of a pilot review board takes effect on adoption of the board's order. Provides that a revocation of a branch pilot's license takes effect on issuance of the governor's decision.

Sec. 69.044. SUSPENSION OR REVOCATION OF DEPUTY BRANCH PILOT'S CERTIFICATE. Authorizes a deputy branch pilot's certificate to be suspended or revoked by the board in the same manner and for the same reasons as provided for the suspension or revocation of a branch pilot's license by Section 69.043.

Sec. 69.045. LIABILITY TO PILOT. (a) Provides that a person who is not a pilot and who, in violation of this chapter, pilots a vessel and the consignee of the vessel are liable to a pilot, on written demand, for the amount of the applicable pilotage rate.

(b) Authorizes the court, in an action to recover compensation under Subsection (a), to include in a judgment in favor of a pilot an award of court costs and reasonable attorney's fees.

[Reserves Sections 69.046-69.060 for expansion.]

SUBCHAPTER D. PILOTAGE RATES

Sec. 69.061. PILOTAGE RATE CHANGE. Prohibits the board from changing pilotage rates before the first anniversary of the preceding rate change.

Sec. 69.062. PILOTAGE RATE CHANGE APPLICATION. (a) Authorizes an application for a change in a pilotage rate to be filed with each commissioner of the board by a certain person or entity.

(b) Requires the application to be written and to state specifically the changes requested.

(c) Requires the board to set a hearing date within two weeks of receipt of an application. Prohibits the hearing from being set for a day earlier than the 20th day or later than the 40th day after the date the board sets the hearing.

(d) Requires an applicant to give notice of the application and the hearing date, by certified mail to the last known address, to certain pilots and entities.

(e) Prohibits the board from increasing pilotage rates for the public ports of Beaumont, Port Arthur, or Orange unless the affected board of commissioners approves the increase.

Sec. 69.063. PILOT FINANCIAL REPORT. (a) Requires the pilots who are licensed or certified to serve the port for which the rates are being considered, not later than the 10th day before the date set for a pilotage rate hearing, to submit in writing to the board and to any party designated by the board complete accounts of certain information.

(b) Requires the pilots to provide the information for certain dates.

(c) Authorizes the board to require an independent audit of financial information submitted under Subsection (a) by an accountant selected by the board. Requires the board, as it considers fair and just, to assess the costs of the audit against one or more of the applicants and objecting parties.

(d) Authorizes the board to require relevant additional information it considers necessary to determine a proper pilotage rate.

Sec. 69.064. FACTORS FOR BOARD CONSIDERATION. Requires the board, in acting on a pilotage rate change application, to consider certain factors.

Sec. 69.065. RATE DECISION. Requires the board, not later than the 10th day after the date of the completion of a hearing on an application for a change in pilotage rates, to issue a written decision that grants or denies the application wholly or partly, states the reasons for the decision, and states each new pilotage rate.

Sec. 69.066. COSTS. Authorizes the board, in a final order under this subchapter, to charge all or part of the costs of processing an application to the parties in the proceedings.

Sec. 69.067. APPEAL OF BOARD DECISION. Authorizes any party aggrieved by a board decision on pilotage rates, after exhausting all administrative remedies, to appeal the order to a court.

Sec. 69.068. EMERGENCY PILOTAGE RATES. (a) Authorizes the board to establish emergency pilotage rates for the period of an emergency, not to exceed 30 days, if the board finds that certain factors exist.

(b) Provides that in adopting emergency pilotage rates, the board is not required to comply with the procedures in this chapter and in its rules relating to the adoption of pilotage rates.

(c) Prohibits emergency pilotage rates from being appealed.

(d) Requires the board to adopt rules to carry out this section.

Sec. 69.069. PILOT SERVICES REQUIRED. Requires the consignee of a vessel under the consignee's control to obtain pilot services for the vessel and to pay the pilot who pilots the vessel into and out of the port area compensation according to the pilotage rates filed by the board.

Sec. 69.070. PILOTAGE RATE LIABILITY. (a) Provides that a consignee who declines the services of a pilot offered outside the bar and enters the port without the aid of a pilot is liable for the payment of pilotage to the first pilot whose services were declined.

(b) Provides that a consignee is liable for the payment of pilotage to the pilot who brings a vessel in if the vessel goes out without employing a pilot.

(c) Provides that a consignee is liable for the payment of pilotage for a vessel that goes out without the aid of a pilot and that came in without the aid of a pilot to the pilot who first offered services before the vessel came in.

(d) Provides that a consignee is not liable for the payment of pilotage for a vessel going out without a pilot if the vessel came in without the aid of a pilot or came in without the offer of a pilot outside.

(e) Provides that Subsections (a)-(d) do not apply to a consignee exempt under this chapter from payment of pilotage rates.

(f) Provides that a pilot who charges a pilotage rate for pilot services different from the pilotage rates established under this chapter for the port in which the pilot serves is liable to each person who was charged the different rate for double the amount of pilotage.

(g) Authorizes court to include in a judgment in favor of a person who files suit to collect an amount owed under this chapter an award to cover court costs and reasonable attorney's fees.

Sec. 69.071. RECOVERY OF COMPENSATION. Provides that a pilot who offers pilot services to a vessel required under this chapter to obtain pilot services and whose services are refused is entitled to recover from the consignee the pilotage rate for the services.

[Reserves Sections 69.072-69.080 for expansion.]

SUBCHAPTER E. PILOT LIABILITY

Sec. 69.081. PURPOSE. Provides that the purpose of this subchapter is to, in the public interest, stimulate and preserve maritime commerce on the pilotage grounds of this state by limiting and regulating the liability of pilots and to maintain pilotage fees at reasonable levels.

Sec. 69.082. PILOT LIABILITY. Provides that a pilot is not liable directly or as a member of an organization of pilots for a claim that arises from an act or omission of another pilot or organization of pilots and relates directly or indirectly to pilot services.

Sec. 69.083. PILOT LIABILITY LIMITED. (a) Provides that a pilot providing pilot services is not liable for more than \$1,000 for damage or loss caused by the pilot's error, omission, fault, or neglect in the performance of the pilot services, except as provided by Subsection (b).

(b) Provides that Subsection (a) does not apply to certain damages or liabilities.

(c) Provides that this section does not exempt the vessel or its owner or operator from liability for damage or loss caused by the vessel to a person or property on certain grounds.

(d) Requires the court, in an action brought against a pilot for an act or omission for which liability is limited as provided by this section and in which other claims are made or anticipated with respect to the same act or omission, to dismiss the proceedings as to the pilot to the extent the pleadings allege pilot liability that exceeds \$1,000. Deletes text regarding SUBCHAPTER A. PILOT RATES and SUBCHAPTER B. PILOT LIABILITY.

SECTION 2. (a) Requires a person who is a branch pilot serving a port covered under Chapter 69, Transportation Code, as amended by this Act, on the effective date of this Act to continue to serve as a branch pilot until the person's current commission expires, at which time the person will be eligible for license renewal under the license renewal provisions of Chapter 69, Transportation Code, as amended by this Act, and provides that the branch pilot is governed by Chapter 69, Transportation Code, as amended by this Act, after its effective date.

(b) Requires a person appointed as a deputy branch pilot before the effective date of this Act, and acting as a deputy branch pilot serving a port covered under Chapter 69, Transportation Code, as amended by this Act, on requesting the certificate in writing and without having to comply with other procedural provisions of Chapter 69, Transportation Code, as amended by this Act, to be issued a deputy branch pilot certificate by the board of pilot commissioners in whose jurisdiction the person is acting as deputy branch pilot.

(c) Requires a certificate described by Subsection (b) of this section to be issued for a term of two years unless the deputy branch pilot has less than two years to serve as a deputy branch pilot. Requires the certificate, if a deputy branch pilot has less than two years to serve as a deputy branch pilot, to be issued for the remaining time the deputy is required to serve. Provides that a deputy branch pilot in a port covered by Chapter 69, Transportation Code, as amended by this Act, is governed by that chapter, as amended by this Act, after its effective date.

SECTION 3. Effective date: upon passage or September 1, 2003.