
THIRD READING

Bill No: AB 2056
Author: Grayson (D)
Amended: 8/22/22 in Senate
Vote: 27 - Urgency

SENATE GOVERNMENTAL ORG. COMMITTEE: 11-2, 6/14/22
AYES: Dodd, Nielsen, Allen, Becker, Bradford, Hertzberg, Hueso, Jones,
Kamlager, Portantino, Roth
NOES: Borgeas, Wilk
NO VOTE RECORDED: Glazer, Melendez

SENATE APPROPRIATIONS COMMITTEE: 6-0, 8/11/22
AYES: Portantino, Bradford, Jones, Laird, McGuire, Wieckowski
NO VOTE RECORDED: Bates

ASSEMBLY FLOOR: 56-0, 5/16/22 - See last page for vote

SUBJECT: Bar pilots: pilotage rates

SOURCE: Cruise Lines International Association
Pacific Merchant Shipping Association
San Francisco Bar Pilots Author

DIGEST: This bill revises and recast the current pilot boat surcharge provisions, including specifying that the costs of obtaining new pilot boats includes preliminary design and engineering and the costs of repowering existing pilot boats or the acquisition of new pilot boats in order to meet the requirements of any rule governing the emissions of commercial harbor craft adopted by the California State Air Resources Board (CARB), as specified.

Senate Floor Amendments of 8/22/22 make technical and clarifying changes.

ANALYSIS:

Existing law:

- 1) Establishes the Board of Pilot Commissioners (Board) for the Bays of San Francisco, San Pablo, and Suisun for the purpose of regulating bar pilotage.
- 2) Prescribes the rates of bar pilotage required to be charged by pilots and paid by vessels inward and outward bound through the above mentioned bays.
- 3) Requires the Board to recommend that the Legislature, by statute, adopt a schedule of pilotage rates providing fair and reasonable return to pilots engaged in movements other than bar pilotage.
- 4) Imposes a board operations surcharge of up to 7.5% of all pilotage charges, which is paid by pilots to the Board.
- 5) Imposes, among other things, an incremental rate of additional mills per high gross registered ton as is necessary and authorized by the Board to recover a pilot's costs of obtaining new pilot boats and of funding design and engineering modifications.
- 6) Requires all moneys received by the Board to be paid into the State Treasury to the credit of the Board's Special Fund, moneys in which are continuously appropriated for the payment of the compensation and expenses of the Board and its officers and employees.
- 7) Requires the Board, from time to time, to review pilotage expenses and establish guidelines for the evaluation and application of these expenses regarding its recommendations for adjustment rates.
- 8) Authorizes party directly affected by pilotage rates to petition the Board for a public hearing, as prescribed.
- 9) Provides that a pilot who is carried to sea against the pilot's will or unnecessarily detained on board a vessel, as provided, is entitled to receive \$600 per day, plus expenses, from the owner, operator, or agents of the detaining vessel.

This bill:

- 1) Revises and recasts the current pilot boat surcharge provisions, including specifying that the costs of obtaining new pilot boats includes preliminary design and engineering and the costs of repowering existing pilot boats or the acquisition of new pilot boats in order to meet the requirements of any rule governing the emissions of commercial harbor craft adopted by the State Air Resources Board.
- 2) Imposes related requirements on the Board, including, among others, auditing or causing to be audited all pilot boat surcharges.
- 3) Authorizes the pilot boat surcharge to be collected prospectively before the imposition of certain costs, as prescribed.
- 4) Authorizes the Board to adjust the amount of the surcharge as necessary to efficiently administer the pilot boat surcharge.
- 5) Requires the moneys charged and collected each month from the pilot boat surcharge to be paid to the Board Special Fund and used credited to the Pilot Boat Surcharge Account (Account), which the bill would establish in the Board's Commissioners' Special Fund.
- 6) Continuously appropriates the moneys in the Account to fund the pilot boat costs of obtaining new pilot boats and funding design and engineering modifications for the purpose of extending the service of existing pilot boats, except as prohibited.
- 7) Establishes maximum expenditure levels, as specified, at specified monetary amounts for the Account based on fiscal year.
- 8) Increases the rates of bar pilotage required to be charged by pilots and paid by vessels to a minimum of \$3,000 on and after January 1, 2024, for each vessel piloted.
- 9) Increases pilotage rates providing fair and reasonable return to pilots engaged in movements other than bar pilotage by 15% on January 1, 2023, except as otherwise established by the bill for certain types of ship movements, and would delete the requirement that the Board recommend a schedule of those pilotage rates by the legislature.

- 10) Establishes, in addition to other charges for pilotage, temporary transit charges at specified amounts for all vessels moved across the bar, with specified exceptions, and for all bay moves and river moves.
- 11) Makes inoperative the temporary transit charges as of the date the Board publishes the first pilotage tariff pursuant to the provisions of this bill.
- 12) Repeals current provisions in law that requires Board, from time to time, to review pilotage expenses and establish guidelines for the evaluation and application of these expenses regarding its recommendations for adjustment rates and that authorizes party directly affected by pilotage rates to petition the Board for a public hearing, as prescribed.
- 13) Requires the Board, pursuant to prescribed procedures, to adopt, and caused to be published, a pilotage tariff that establishes fair, just, reasonable, and sufficient rates for the provision of a safe, competent, reliable, and efficient pilotage service.
- 14) Establishes procedures to request a change in the established pilotage rates, including procedures for petitions, notice, comment, hearings and orders, and review.
- 15) Authorizes the adopted pilotage tariff to include the reasonable costs for the setting of tariff rates of the Office of Administrative Hearings and would require those moneys to be paid into, and continuously appropriated from, the Board Commissioners' Special Fund.
- 16) Provides that pilotage rates imposed pursuant to specified existing law are subject to adjustments, as specified.
- 17) Requires the Board, after the adoption of the first pilotage tariff, to convene a committee to review the effectiveness of the revised rate setting process and to present and submit a related report to the Legislature, the Governor, and the Secretary of Transportation, as specified.
- 18) Changes the amount for when a pilot who is carried to sea against the pilot's will or unnecessarily detained on board a vessel, as provided, is entitled to receive \$600 per day, plus expenses to \$5,000 per day plus expenses.
- 19) Contains an urgency statute.

Background

Purpose of this bill. According to the author's office, "AB 2056 revises and recasts the pilot boat surcharge to meet the requirements of CARB emission regulations. By authorizing these surcharges, this will ensure that pilot vessels are able to meet the proposed Commercial Harbor Craft (CHC) regulation amendments, whilst contributing to the state's overall emission reduction goals. Additionally, AB 2056 makes several changes to the pilot boat surcharge to streamline and ensure fiscal stability for San Francisco Bar Pilots whilst ensuring that rates are fair and reasonable whilst not being unduly burdensome for oceangoing vessels."

The Board of Pilot Commissioners. The Board is the oversight body that licenses and regulates approximately 60 maritime pilots who make up the San Francisco Bar Pilots. The Board was established in California's first Legislative Session and has been in continuous existence since 1850. The Board is a "tax neutral" agency as all of its expenses are paid for by the shipping industry through surcharges on pilotage fees and not by state or local taxes.

Specifically, San Francisco bar pilots are responsible for steering large commercial vessels through the Golden Gate of San Francisco Bay and adjoining navigable waters, which include San Pablo Bay, Suisun Bay, the Sacramento River, and associated tributaries. When a vessel arrives at a point eleven miles west of the Golden Gate Bridge, a San Francisco bar pilot boards the ship, takes navigational control, and guides the ship to its berth. The same process occurs in reverse as ships depart from the San Francisco Bay. The San Francisco bar pilot's primary function is to ensure that large commercial vessels are navigated safely through the San Francisco Bay's confined waters. They provide service for all types of commercial vessels, from 100-foot tugs to 1000-foot supertankers.

CARB Regulations. CARB adopted the Airborne Toxic Control Measure for Diesel Engines on CHC in 2008 to reduce emissions of diesel particulate matter, oxides of nitrogen, and reactive organic gases from diesel engines used on commercial harbor craft operated in regulated California waters. CARB amended the original regulation in 2010 to include additional vessel categories, including crew and supply, barge, and dredge vessels. The current regulation will be fully implemented by the end of 2022. At the end of 2021, CARB proposed to amend the current regulation to further reduce emissions from harbor craft in impacted communities.

The proposed regulations accelerate the bar pilots' new build program to a schedule that requires the construction of three vessels by year-end 2024, one by year-end 2025 and one by year end 2028. Compliant equipment adds an additional \$10.5 million in construction costs resulting in a \$45 million build program.

Current law provides for cost recovery of acquisition or life-extension modifications to pilot boats through the imposition of a pilot boat surcharge. The pilot boat surcharge was established to be recovered upon completion of delivery of the new boats. Delivery is required prior to setting an actual amount to be recovered or a timeframe for recovery. This process is administered by the Board per a regulatory process that includes industry participation and oversight, and has been used for the past two decades with little controversy and pilot-industry collaboration.

According to the author, "this bill authorizes the [Board] to adjust the pilot boat surcharge to include the costs associated with the acquisition of new pilot boats or repowering existing boats in order to meet CARB emissions requirements. By authorizing these surcharges, this will ensure that pilot vessels are able to meet the proposed commercial harbor craft amendments, whilst contributing to the state's overall emission reduction goals."

Rate setting Reform. AB 2056 reflects a compromise between the San Francisco Bar Pilots, the Pacific Merchant Shipping Association, the Western States Petroleum Association, and the Cruise Lines International Association. After many failed attempts, it became clear that no new rates would be likely to pass the Legislature without consensus from all the stakeholders mentioned above.

The new rate setting process established by this bill removes the Legislature and establishes an independent administrative process similar to processes in other states like Oregon and Washington. The new process would be conducted by an independent Administrative Law Judge (ALJ) with review and oversight by the Board. The rate determination would be formulaic and would include evidentiary proceedings involving impacted parties. The ALJ's rate order would be considered final and only under certain circumstances can the Board make technical changes or refer elements to the ALJ for further review or reject the order in its entirety.

According to supporters, "the new process emphasizes that joint petitions and stipulated agreements are preferred and is stakeholder driven."

Rate Charges & Temporary Transit Fees. The bill also increase various charges that have not been revised since 2006 and institutes a set of temporary transit fees (TTF), considered to be extraordinary in the wake of the COVID-19 pandemic and

resulting supply chain crisis. These fees were negotiated by all parties and represent the first major consensus on rate increases in the SF Bay for pilotage in 15 years.

The TTFs will range from \$1,000 to \$750, depending on the vessel type and destination with the pilot's service area. These TTFs are specified as short-term and pandemic related revenue measures and are required to sunset when new pilot rates are established under the process described above. Regarding the changes in the inland rates and minimum charges across the bar, these are proposed to be revised similar to the consensus revisions included in AB 807 (Grayson, Chapter 172, Statutes of 2021) which were approved by the Legislature last year.

According to supporters of this bill, "by revising these rates to be compensatory such that they reflect the actual minimum costs of providing service by pilots. This in turn eliminates ratepayer and industry cross-subsidization within the system."

Related/Prior Legislation

AB 807 (Grayson, Chapter 172, Statutes of 2021) deleted the authority of the Board to adjust pilotage fees due to catastrophic cost increases and instead required a surcharge to be imposed per each movement of a vessel as is necessary and authorized by the Board to recover the cost of the pilot associated with a catastrophic event, as specified.

AB 1432 (Bonta, Chapter 119, Statutes of 2016) authorized, until January 1, 2021, a technology surcharge, not to exceed a cumulative amount of \$1.2 million, to recover a pilot's costs for the purchase or lease of navigation hardware and software to enhance navigation safety.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, unknown, potentially significant fiscal impact to the Board of Pilot Commissioners (BOPC) (BOPC's Special Fund). This includes:

- One-time cost in the hundreds of thousands of dollars for activities related to rulemaking for the adoption of the new tariff. This would include staff time and resources to hold public meetings and review and collect stakeholder feedback.
- One-time cost to convene the committee and create and submit the required rate setting report.

- Ongoing, but not annual costs in the mid-tens of thousands of dollars to facilitate rate setting hearings with an Administrative Law Judge. These costs will materialize only in the event that rates will need to be adjusted.
- Ongoing administrative costs in the tens of thousands of dollars annually related to auditing and accounting activities.

BOPC's administrative costs and expenses are covered by an existing indirect surcharge of five percent on all moneys collected on various fees paid by harbor crafts and the BOPC does not receive any state or General Fund moneys. To the extent that the above workload related to new activities required in the bill is not absorbable within BOPC's existing resources, additional staff or resources may be required. For context the 2022-23 Budget includes 4.0 PYs for the BOPC with a total budget of approximately \$3.1 million.

Unknown, ongoing increased revenue in the millions of dollars from increased pilotage fees and surcharges, to be deposited into the newly created Pilot Boat Surcharge Account and BOPC's Special Fund.

SUPPORT: (Verified 8/12/22)

Cruise Lines International Association (co-source)
Pacific Merchant Shipping Association (co-source)
San Francisco Bar Pilots (Co-source)

OPPOSITION: (Verified 8/12/22)

None received

ARGUMENTS IN SUPPORT: According to supporters of the bill, "the proposed [CARB] regulations accelerate our [the Bar pilots'] build program to a schedule that, as a practical matter, is unattainable; requiring the construction of three vessels by year-end 2024, one by year-end 2025 and one by year end 2028. Schedule and sourcing challenges aside, compliant equipment adds additional \$10.5 million in construction costs, 25% higher, resulting in a \$45 million program that creates significant financial hurdles given all these constraints. AB 2056 will specifically include the cost of the updated regulation and new build program for pilot boats in the existing Pilot Boat Surcharge."

Additionally, supporters of the bill argue that "the compromise reached in AB 2056 would implement changes to the rate setting process and remove the Legislature from decisions by establishing an independent administrative process built around the Oregon and Washington models. As a result, the new proposed

process would be conducted by an ALJ with review and oversight by the Board. The rate determination will be formulaic and will include evidentiary proceedings involving impacted parties.”

ASSEMBLY FLOOR: 56-0, 5/16/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Cooley, Cooper, Daly, Davies, Flora, Mike Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Maienschein, Mayes, McCarty, Medina, Mullin, O'Donnell, Petrie-Norris, Quirk, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Santiago, Stone, Villapudua, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Bigelow, Choi, Cunningham, Megan Dahle, Fong, Kiley, Lackey, Low, Mathis, Muratsuchi, Nazarian, Nguyen, Patterson, Quirk-Silva, Blanca Rubio, Salas, Seyarto, Smith, Ting, Valladares, Voepel, Waldron

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