

BILL ANALYSIS

Senate Research Center

S.B. 1352
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DIGEST

Currently, state law provides for the licensing and regulation of branch pilots and deputy pilots and the establishment of pilotage rates for the ports of this state. Each port has a separate licensing law. The ports of Houston and Galveston have adopted similar model acts for this purpose. The model acts 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. This bill would adopt a similar model act for the Port of Corpus Christi. Additionally, this bill would make changes in the qualifications for a pilot's license and the term of a deputy branch pilot's certificate in the ports of Houston and Brazoria County.

PURPOSE

As proposed, S.B. 1352 sets forth the guidelines for the licensing and regulation of branch pilots and deputy branch pilots for the Port of Corpus Christi. This bill makes changes in the qualifications for a pilot's license and the term of a deputy branch pilot's certificate in the ports of Houston and Brazoria County.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the board of pilot commissioners for the Port of Corpus Christi in SECTION 4 (Sections 70.016(b), 70.017(9), 70.034, and 70.070(d), Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 66.033 and 66.040, Transportation Code, to require a person, among other qualifications, to be at least 25 years of age and less than 68 years of age in order to be eligible for a license as a branch pilot; and to have at least three, rather than two, years' service as a deputy branch pilot or equivalent service piloting vessels of at least 5,000 gross tons within the jurisdiction of the board of pilot commissioners for Harris County ports. Provides that a branch pilot's license expires on the fourth anniversary of the date it is issued or renewed, provided that no pilot may furnish pilot services under authority of a license after the pilot's 68th birthday. Provides that a deputy branch pilot's license expires on the third, rather than the second, anniversary of the date it is issued and may not be renewed.

SECTION 2. Amends Section 68.033, Transportation Code, to make a conforming change.

SECTION 3. Amends Section 68.040(a), Transportation Code, to make a conforming change.

SECTION 4. Amends Title 4, Transportation Code, by adding Chapter 70, as follows:

**CHAPTER 70. PORT OF CORPUS CHRISTI PILOTS LICENSING
AND REGULATORY ACT.
SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 70.001. SHORT TITLE. Port of Corpus Christi Pilots Licensing and Regulatory Act.

Sec. 70.002. DEFINITIONS. Defines "board," "consignee," "Port of Corpus Christi," "pilot," "pilotage rate," "pilot services," and "vessel."

Sec. 70.003. APPLICATION OF ACT. Provides that this chapter applies only to the Port of Corpus Christi. Provides that this chapter does not affect the existing laws for ports in other counties, and those laws do not apply to the Port of Corpus Christi.

SUBCHAPTER B. BOARD OF PILOT COMMISSIONERS

Sec. 70.011. COMPOSITION OF BOARD. Provides that the board of pilot commissioners (board) for the Port of Corpus Christi is composed of the seven port commissioners for the Port of Corpus Christi Authority.

Sec. 70.012. PROHIBITED INTEREST. Prohibits a person from being a member of the board if the person has a conflict of interest or a direct or indirect interest in any business affected by or connected with the performance of the person's duties as a pilot commissioner.

Sec. 70.013. OATH. Requires each board member, before beginning service as a board member, to take and sign an oath to faithfully and impartially discharge the duties of the office.

Sec. 70.014. TERM OF OFFICE. Provides that the term of office of a commissioner of pilots coincides with the person's term as a port commissioner for the Port of Corpus Christi Authority. Provides that a member holds office until the member's successor is appointed and qualified.

Sec. 70.015. JURISDICTION. Provides that the board has exclusive jurisdiction over the piloting of vessels in the Port of Corpus Christi.

Sec. 70.016. ADMINISTRATION AND RULES. Requires the board to administer this chapter and is authorized to perform any act or function necessary to carry out its powers and duties under this chapter. Authorizes the board to adopt rules to carry out this chapter.

Sec. 70.017. DUTIES. Sets forth the required duties of the board under this chapter.

Sec. 70.018. PILOT REVIEW BOARD. Requires the board to establish a pilot review board consisting of two active state-commissioned pilots serving the Port of Corpus Christi, two members of the marine industry, and a chairperson, who shall be the secretary of the board, or his or her designee, to hear and review complaints against pilots and to make recommendations to the board concerning the complaints.

Sec. 70.019. UNFAIR DISCRIMINATION PROHIBITED. Prohibits the board, in all its duties, from sanctioning discriminatory practices nor discriminating against a pilot or pilot applicant because of race, religion, sex, ethnic origin, or national origin. Requires a person seeking a remedy for a violation of this section to bring suit in a district court in Nueces County.

Sec. 70.020. OPEN MEETINGS LAW. Provides that Chapter 551, Government Code, applies to actions and proceedings under this chapter.

Sec. 70.021. 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. Requires a board to mail the notice and a copy of the proposed rule or change by registered mail to certain individuals. Requires the board to post a copy of the proposed rule or change at the Nueces County courthouse for public inspection.

Sec. 70.022. JUDICIAL REVIEW. Requires proceedings for judicial review of a board decision to be brought in a district court in Nueces County.

SUBCHAPTER C. PILOTS' LICENSES OR CERTIFICATES

Sec. 70.031. 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 Port of Corpus Christi.

Sec. 70.032. QUALIFICATIONS FOR LICENSE. Set forth the required qualifications for a person to be eligible for a license as a branch pilot.

Sec. 70.033. QUALIFICATIONS FOR CERTIFICATE. Sets forth the required qualification for a person to be eligible for a certification as a deputy branch pilot.

Sec. 70.034. APPLICATION FOR LICENSE OF CERTIFICATE. Requires a person to give the board a written application in the form and manner required by board rule in order to apply for a branch pilot's license or a deputy branch pilot's certificate.

Sec. 70.035. CONSIDERATION OF APPLICATION. Authorizes the board to examine and decide on the qualifications of an applicant for the position of branch pilot as part of its consideration of applications for licensees.

Sec. 70.036. BRANCH PILOT APPOINTMENT BY GOVERNOR. Requires the board to certify to the governor that a person licensed as a branch pilot has qualified on filing of the bond and oath required by Section 70.038, Transportation Code. Requires the governor 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 the Port of Corpus Christi upon receipt of the board's certification. Requires the governor to appoint the number of branch pilots necessary to provide adequate pilot services for the Port of Corpus Christi.

Sec. 70.037. DEPUTY BRANCH PILOT APPOINTMENT BY BRANCH PILOT. Authorizes each branch pilot to appoint two deputy branch pilots. Authorizes a branch pilot to appoint an additional deputy branch pilot if the board considers the appointment advisable. 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.

Sec. 70.038. OATH AND BOND. 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 this section. 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. Requires each bond to be approved by the board.

Sec. 70.039. TERMS OF LICENSES AND CERTIFICATES. Provides that a branch pilot's license expires on the fourth anniversary of the date it is issued or renewed. Provides that a deputy branch pilot's certificate expires on the second anniversary of the date it is issued and may not be renewed.

Sec. 70.040. BRANCH PILOT'S LICENSE RENEWAL. Requires the governor to renew a branch pilot's expiring license if the board recommends renewal. 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. Provides that probable cause not to renew a license exists if the board finds that the license holder does not possess a qualification required by this chapter for pilots; or has a disability that will affect the license holder's ability to serve as a pilot. Requires the board, if the board determines that it has probable cause not to renew a license, to notify the license holder by the 60th day before the date the license expires. Requires the board to provide a hearing, upon request, to consider whether the board has cause not to recommend renewal of the license. Requires the board to recommend that the governor renew the license if the board finds at the conclusion of the hearing that the board lacks probable cause for nonrenewal of the license. Requires the board to issue a written order recommending that the governor not renew a license and the governor may not renew the license if one or two optional conditions exist. Provides that the denial of renewal of a

pilot's license does not prohibit the pilot from applying for a new license and being appointed.

Sec. 70.041. 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. 70.042. SUSPENSION OR REVOCATION OF BRANCH PILOT'S LICENSE. Authorizes the board 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 that the pilot has partaken in certain courses of conduct. Requires the board, on determining that a license should be suspended or revoked, to adopt a written order that states its findings and either suspends the license for a stated period; or recommends to the governor revocation of the license. Requires the governor, on receipt of a board order recommending revocation of a license, to revoke the license. Prohibits the governor from revoking the license if the board's order is appealed and until the order is upheld on appeal. Provides that a 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. 70.043. SUSPENSION OR REVOCATION OF DEPUTY BRANCH PILOT'S CERTIFICATE. Authorizes a deputy branch pilot certificate to be suspended or revoked by the board in the same manner and for the same reason as provided for the suspension or revocation of a branch pilot's license by Section 70.042, Transportation Code.

Sec. 70.044. LIABILITY TO PILOT. 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 the pilot for the amount of the applicable pilotage rates. Authorizes the court to include in a judgment in favor of a pilot an award of court costs and reasonable attorney's fees.

SUBCHAPTER D. PILOTAGE RATES

Sec. 70.061. PILOTAGE RATE CHANGE. Prohibits the board from changing pilotage rates before its first anniversary of the preceding rate change.

Sec. 70.062. PILOT RATE CHANGE APPLICATION. Authorizes an application of a change in a pilotage rate to be filed with each commissioner of the board by one or more pilots; or the owner, agent, or consignee of a vessel navigating to or from the Port of Corpus Christi. Sets forth the contents of the application.

Sec. 70.063. OBJECTION; HEARING. Requires the board to hold a hearing as provided by this section if, no later than the 20th day after the date notice is sent, a commissioner receives a written objection to the application from any person who appears to have a legitimate interest in the application. Requires the board to hold the hearing by the 20th day after the date the 20-day period provided by Subsection (a) expires. Requires the board to give notice of the hearing to certain persons. Requires the hearing to be open to the public and held at a convenient time and place in one of the ports that would be affected by the change. Entitles each party who demonstrates a legitimate interest in the application to be heard, to present evidence, and to cross-examine testifying witnesses.

Sec. 70.064. BOARD ACTION ON APPLICATION. Requires the board to act on the application without further proceedings if an objection to an application for a rate change is not received by any commissioner within the period provided by Section 70.063(a), Transportation Code. Requires the board, if a hearing is held as provided by Section 70.063, to grant, deny, or modify the application after receipt of the evidence offered by the parties and arguments and briefs requested by the board.

Sec. 70.065. PILOT FINANCIAL REPORT. Requires the pilots who are licensed or certified to serve the port for which the rates are being considered, no 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 certain accounts. Requires the pilots to provide the information for the calendar or fiscal year preceding the date of the pilotage rate change application; and the subsequent period to within 60 days of the date of the application.

Sec. 70.066. **FACTORS FOR BOARD CONSIDERATION.** Requires the board to consider certain factors in acting on a pilotage rate change application.

Sec. 70.067. **BOARD ACTION.** Requires a board order granting, denying, or modifying an application for a rate change to state its effective date. Provides that the order is final except as provided in this section. Authorizes any party aggrieved by the board's order to appeal the order to a court upon the exhaustion of all administrative remedies.

Sec. 70.068. **REPORTING AND STENOGRAPHIC COSTS.** Authorizes the board to assess the actual costs the board considers fair and just for reporting and stenographic services necessarily incurred in connection with a hearing against one or more of the applicants and objecting parties. Authorizes the board to require that an applicant or objecting party deposit an amount against those costs as a condition of presenting an application or objection.

Sec. 70.069. **ORDER FILED.** Requires the board to file a copy of its order with the Nueces County clerk. Requires the board to file the order by the 20th day after the closing date of a hearing held; or, if no hearing is held, the expiration of the period provided by Section 70.063(a), Transportation Code.

Sec. 70.070. **EMERGENCY PILOTAGE RATES.** Authorizes the board to establish emergency pilotage rates for the period of an emergency if the board finds that certain emergency conditions exist. Provides that in adopting emergency pilotage rates, the board is not required to comply with the procedures in this chapter or in its rules relating to the adoption of pilotage rates. Prohibits emergency pilotage rates from being appealed. Requires the board to adopt rules necessary to carry out this section.

Sec. 70.071. **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. 70.072. **LIABILITY.** 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 services is liable to each person who was charged the different rate for double the amount of pilotage. Authorizes a 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.

SUBCHAPTER E. PILOT LIABILITY

Sec. 70.081. **PURPOSE.** Provides that the purpose of this chapter is to 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. 70.082. **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. 70.083. **PILOTS LIABILITY LIMITED.** 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. Sets forth the conditions in which this section does not apply. 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

the grounds that the vessel was piloted by a pilot; or the damage or loss was caused by the error, omission, fault, or neglect of a pilot. 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.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Provides that this Act does not affect the existing laws for ports in other counties of this state.

SECTION 7. Effective date: September 1, 1997.

SECTION 8. Emergency clause