AB 1372 (Bonta) – Board of Pilot Commissioners COVID Rate Process Modification

(As Amended)

SUMMARY

AB 1372 would reform the Board of Pilot Commissioners (Board) pilotage rate setting process to bring California into alignment with other regulated jurisdictions throughout the country. These reforms would result in a quasi-adjudicative process with evidentiary hearings that are subject to the California Administrative Procedures Act (APA). If enacted, AB 1372 would allow for a more agile and responsive rate setting process that would be beneficial in times of rapidly changing economic conditions.

BACKGROUND

The San Francisco Bar Pilots (SFBP) provide an essential, frontline service that is critical to maintaining the safe and efficient transit of commercial vessels to, and from, all ports in the Bay Area. To fund their operations, by regulation, the SFBP is 100% dependent on fees paid by these commercial vessels. The rate that determines these fees must be approved by the Legislature.

Because the Legislature has not adjusted rates in fourteen years, the SFBP's ability to invest in critical business and personnel infrastructures has been severely impacted. While the pilotage system has been buoyed by previous years of robust economic expansion, the unforeseeable economic contraction caused by the COVID-19 pandemic has highlighted weaknesses in the system. This situation poses a major threat to the sustainability of future SFBP operations.

CURRENT LAW

The Board of Pilot Commissioners is the state agency responsible for overseeing the SFBP. The Board is responsible for regulating pilots; including selection, licensing, physical fitness standards, training and making rate recommendations to the Legislature.

California's current rate process is unique in two ways: First, it is the only state in which the legislature must act after its pilot commission has already conducted a comprehensive and lengthy administrative hearing process. Second, of the few states that set rates legislatively, it is the only state that does not adopt new rates on a regular cycle.

Unfortunately, California's pilotage rate setting system has become highly politicized, resulting in the deferral of much-needed investments for many critical systems. The COVID-19 pandemic has exacerbated these already-existent cost pressures as revenues have declined dramatically since the initial outbreak.

THE COVID-19 IMPACT

The current rate process is not responsive to crisis situations such as the COVID-19 pandemic. In reaction to COVID-19, the SFBP, like many, have made significant budget cuts and workplace adjustments. However, limited flexibility and further declining revenues now make it nearly impossible to adopt cost containment measures without an impact to services provided by the SFBP.

California's economy is dependent on the 365/24/7 service the SFBP is required by state regulation to provide. Fixed costs associated with the operation and maintenance of the pilotage system remain constant irrespective of how many ships call. The number of ships calling at local ports is the sole driver of revenue. Simply put, with less ships calling over a sustained period, there are insufficient resources to cover accumulated costs.

By simultaneously requiring on demand services while limiting the ability of the Board to be responsive in adjusting rates, California is placing the pilotage system in a precarious position that allows very little room for crisis mitigation efforts. This, in turn, affects the entire regional supply chain from ports and farmers to the consumers who rely upon the jobs and goods delivered by robust maritime commerce.

PROPOSED SOLUTION

AB 1372 would provide for an alternative and limited rate adjustment framework (6-year pilot program) that will allow the Board to set rates that appropriately respond to economic shocks from major world events, such as the COVID-19 emergency. The proposal closely mirrors the processes used by rate setting bodies such as the California Public Utilities Commission (CPUC) as well as the Washington State Utility & Transportation Commission (UTC) – both models that industry representatives have cited as viable alternatives to the current pilotage rate-setting system. AB 1372 would introduce much needed agility, eliminate the politicization of rate setting and address the deferred maintenance to California's supply chain and maritime infrastructure.

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