

AMENDED IN SENATE JUNE 22, 2020  
AMENDED IN ASSEMBLY MARCH 27, 2019  
CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1372**

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**Introduced by Assembly Member ~~Grayson Bonta~~**

February 22, 2019

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*An act to amend Section 432.7 of the Labor Code, and to amend Section 13203 of the Penal Code, relating to public employment. An act to amend Sections 1101, 1127, 1154, 1156, 1156.5, 1157.5, 1170.1, 1190, 1190.1, and 1191 of, to add Section 1190.2 to, and to repeal and add Chapter 6 (commencing with Section 1200) to Division 5 of, the Harbors and Navigation Code, relating to bar pilots, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1372, as amended, ~~Grayson Bonta. Employers: prohibited disclosure of information: arrest or detention. Bar pilots: pilotage rates.~~

*Existing law provides for the regulation and licensing of pilots for Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun and for the payment of specified pilotage rates and charges imposed on vessels piloted in those bays. Existing law also establishes, in the Transportation Agency, a Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun and prescribes the membership, functions, and duties of the board with regard to the licensure and regulation of bar pilots.*

*Existing law prescribes the rates of bar pilotage fees required to be charged by pilots and paid by vessels inward and outward bound through those bays and requires the board to recommend that the*

*Legislature, by statute, adopt a schedule of pilotage rates providing fair and reasonable return to pilots piloting vessels in those bays. Existing law also imposes, among other things, a board operations surcharge of up to 7.5% of all bar pilotage fees charged by bar pilots, which is paid into the State Treasury to the credit of the Board of Pilot Commissioners' Special Fund and continuously appropriated to the board to compensate the board and the agency for their services and expenses.*

*This bill would revise the process for changing the rates of those bar pilotage fees to instead require the board to adopt a schedule of pilotage rates. The bill would further require the board to adopt regulations, as provided, for the adjustment of rates for pilotage services, and would prescribe procedures for the board to review and adjust those pilotage rates, as specified. By authorizing the board to adjust the rates of bar pilotage fees, which may increase bar pilotage fees and thereby may increase the amount of the board operations surcharge and the amount of moneys paid into the fund, the bill would make an appropriation.*

~~Existing law prohibits an employer from asking an applicant to disclose, or from utilizing as a factor in determining any condition of employment, information concerning an arrest or detention that did not result in a conviction, or information concerning a referral or participation in, any pretrial or posttrial diversion program, except as specified. Existing law also prohibits an employer, as specified, from asking an applicant to disclose, or from utilizing as a factor in determining any condition of employment, information concerning a conviction that has been judicially dismissed or ordered sealed, except in specified circumstances. Applicants for employment as peace officers, or with the Department of Justice, or with other criminal justice agencies, or persons already employed as peace officers, are an exception to these prohibitions, so that information about applicants for these positions or employees may be disclosed or sought. Existing law makes it a crime to intentionally violate these provisions.~~

~~This bill would additionally include persons already employed as nonsworn members of a criminal justice agency, as specified, within the exception to these prohibitions, so that information about these employees may be disclosed or sought.~~

~~Existing law authorizes a criminal justice agency to release criminal history information under certain circumstances, including the release of information concerning an arrest or detention of a peace officer, or applicant for a position as a peace officer, which did not result in~~

~~conviction or information concerning a referral to and participation in any postarrest diversion program or deferred entry of judgment program to a government agency employer of that peace officer or applicant.~~

~~This bill would also authorize a criminal justice agency to release that information concerning a nonsworn employee of a criminal justice agency, or an applicant for a nonsworn position within a criminal justice agency, to a government agency employer of that nonsworn employee or applicant.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1101 of the Harbors and Navigation Code  
2     is amended to read:

3     1101. The Legislature further finds and declares all of the  
4     following:

5     (a) The maritime industry is necessary for the continued  
6     economic well-being and cultural development of all California  
7     citizens.

8     (b) The Bays of San Francisco, San Pablo, and Suisun provide  
9     a vital transportation route for the maritime industry.

10    (c) The increase in vessel size and traffic, and the increase in  
11    cargoes carried in bulk, particularly oil and gas and hazardous  
12    chemicals, create substantial hazards to the life, property, and  
13    values associated with the environment of those waters.

14    (d) The federal government has long adopted the policy of  
15    providing minimum standards that ensure port and waterway safety  
16    while encouraging state control over pilot qualifications and  
17    licensing.

18    (e) A program of pilot regulation and licensing is necessary in  
19    order to ascertain and guarantee the qualifications, fitness, and  
20    reliability of qualified personnel who can provide safe pilotage of  
21    vessels entering and using Monterey Bay and the Bays of San  
22    Francisco, San Pablo, and Suisun.

23    (f) The need to ensure safe and pollution-free waterborne  
24    commerce requires that pilotage services be employed in the  
25    confined, crowded, and environmentally sensitive waters of those  
26    bays.

1 (g) Bar pilotage in the Bays of San Francisco, San Pablo, and  
2 Suisun has continuously been regulated by a single-purpose state  
3 board since 1850, and that regulation and licensing should be  
4 continued.

5 (h) The individual physical safety and well-being of pilots is of  
6 vital importance in providing required pilot services.

7 (i) *Periodic setting of pilotage rates is necessary to adjust for*  
8 *fluctuations in economic activity and to support the infrastructure*  
9 *required for the safe pilotage of commercial vessels in Monterey*  
10 *Bay and the Bays of San Francisco, San Pablo, and Suisun. The*  
11 *pilotage system is crucial to the economic well-being of California.*  
12 *To support and protect the state's economy, the ratesetting process*  
13 *must be responsive to the COVID-19 pandemic.*

14 (j) *The setting of pilotage rates by a state board of pilot*  
15 *commissioners is common to many ports in the United States and*  
16 *such a board is most familiar with, and best able to serve and*  
17 *balance, the interests of the public, foreign and domestic vessels,*  
18 *and bar pilots in the setting of those rates.*

19 SEC. 2. *Section 1127 of the Harbors and Navigation Code is*  
20 *amended to read:*

21 1127. (a) The Legislature finds and declares that it is the policy  
22 of the state to ensure the safety of persons, property, and vessels  
23 using the waters of Monterey Bay and the Bays of San Francisco,  
24 San Pablo, and Suisun and to avoid damage to those waters and  
25 surrounding ecosystems as a result of vessel collision or damage  
26 by providing competent, efficient, and regulated pilotage for vessels  
27 required by this division to secure pilotage services.

28 (b) This section does not supersede, modify, or otherwise alter  
29 pilot practices that are not safety related, including, but not limited  
30 to, the determination of rates charged for pilot services or  
31 employer-employee relationships for individuals, agencies, or  
32 organizations involved in providing pilotage services between any  
33 port of Monterey Bay and the Bays of San Francisco, San Pablo,  
34 and Suisun and any other port of the United States that is in  
35 existence on December 31, 1995, or otherwise abridge the authority  
36 of local port or harbor districts relating to pilotage in effect on  
37 December 31, 1995.

38 (c) The board shall regulate pilotage *and pilotage rates* on waters  
39 of the state as provided in this division.

1 (d) A vessel sailing under a coastwise license or appropriately  
2 endorsed registry and engaged in the coasting trade between a port  
3 of Monterey Bay and the Bays of San Francisco, San Pablo, and  
4 Suisun and another port of the United States is exempt from all  
5 pilotage charges unless a pilot is actually employed. A foreign  
6 vessel and a vessel bound between a foreign port and a port of  
7 Monterey Bay and the Bays of San Francisco, San Pablo, and  
8 Suisun, and a vessel sailing under a register between a port of  
9 Monterey Bay and the Bays of San Francisco, San Pablo, and  
10 Suisun and another port of the United States, *States* shall use a  
11 pilot holding a license issued pursuant to this division, except as  
12 otherwise provided by law.

13 (e) Subdivision (d) does not apply to a vessel that is less than  
14 750 gross tons and is manufactured and used for private recreation.

15 *SEC. 3. Section 1154 of the Harbors and Navigation Code is*  
16 *amended to read:*

17 1154. (a) The board is vested with all functions and duties  
18 relating to the administration of this division, except those functions  
19 and duties vested in the Secretary of ~~Business, Transportation and~~  
20 ~~Housing.~~ *Transportation.*

21 (b) The board's vested powers include the power to make and  
22 enforce rules and regulations that are reasonably necessary to carry  
23 out its provisions and to govern its actions. These rules and  
24 regulations shall be adopted in accordance with ~~Chapter the~~  
25 *Administrative Procedure Act (Chapter 3.5* (commencing with  
26 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*  
27 ~~*Code.*~~ *Code).*

28 *SEC. 4. Section 1156 of the Harbors and Navigation Code is*  
29 *amended to read:*

30 1156. (a) The board may appoint, fix the compensation of,  
31 and ~~from time to time~~ *periodically* adjust the compensation of, an  
32 executive director who is exempt from the civil service laws, and  
33 other employees as may be necessary. The executive director may  
34 perform all duties, exercise all powers, discharge all  
35 responsibilities, and administer and enforce all laws, rules, and  
36 regulations under the jurisdiction of the ~~board,~~ *board* with the  
37 approval of the board, including, but not limited to, all of the  
38 following:

39 (1) The administration of personnel employed by the board in  
40 accordance with the civil service laws.

1 (2) To serve as treasurer of the board and keep, maintain, and  
2 provide the board with all statements of accounts, records of  
3 receipts, and disbursements of the board in accordance with the  
4 law.

5 (3) The issuance and countersigning of licenses that shall also  
6 be signed by the president of the board.

7 (4) The administration of matters and the maintenance of files  
8 pertaining to action taken against licenses issued by the board.

9 (5) The administration of investigations of, and reporting on, a  
10 navigational incident or other matter for which a license issued by  
11 the board may be revoked or suspended.

12 (6) To work with board members, staff, and other interested  
13 stakeholders to recommend improvements in the pilot training  
14 program.

15 (7) Under the direction of the board, to coordinate with other  
16 state and federal agencies charged with protecting the environment  
17 and with the oil and hazardous chemical shipping industry.

18 (8) Any other function, task, or duty as may reasonably be  
19 assigned by the president of the board, including, but not limited  
20 to, performing research and obtaining documents and other  
21 evidence for board activities, including rate hearings.

22 (b) The Secretary of ~~Business, Transportation and Housing~~  
23 appoint one assistant director to serve in a career executive  
24 assignment at the pleasure of the secretary. The assistant director  
25 shall have the duties as assigned by the executive director, and  
26 shall be responsible to the executive director for the performance  
27 of ~~his or her~~ *their* duties.

28 (c) The board may employ personnel necessary to carry out the  
29 purposes of this chapter. All personnel shall be appointed pursuant  
30 to the State Civil Service Act (Part ~~4~~ 2 (commencing with Section  
31 ~~18000~~ 18500) of Division 5 of Title 2 of the Government Code),  
32 except for the executive director and the assistant director, who  
33 shall be exempt from state civil service. The board may fix the  
34 compensation of, and ~~from time to time~~ *periodically* adjust the  
35 compensation of, any employees as may be necessary.

36 (d) All personnel of the board shall be appointed, directed, and  
37 controlled by the board, the executive director, or the board's  
38 authorized deputies or agents to whom it may delegate its powers.

39 (e) The board may contract and employ commission  
40 investigators. The board shall adopt regulations for the minimum

1 standards for a commission investigator that shall include, but are  
2 not limited to, a basic knowledge of investigative techniques and  
3 maritime issues.

4 *SEC. 5. Section 1156.5 of the Harbors and Navigation Code*  
5 *is amended to read:*

6 1156.5. (a) The executive director shall serve at the pleasure  
7 of the board and shall be under the direct supervision of the board.  
8 The term of office to which the executive director is appointed is  
9 five years.

10 (b) The Secretary of ~~Business, Transportation and Housing,~~  
11 ~~Transportation,~~ or ~~his or her~~ *their* designee, shall act as the  
12 executive director during the absence from the state or other  
13 temporary absence, disability, or unavailability of the executive  
14 director, or during a vacancy in that position.

15 *SEC. 6. Section 1157.5 of the Harbors and Navigation Code*  
16 *is amended to read:*

17 1157.5. ~~On or before April 15, 2010, and annually thereafter,~~  
18 ~~the~~ The board shall submit to the Secretary of the Senate, the Chief  
19 Clerk of the Assembly, and the Secretary of ~~Business,~~  
20 ~~Transportation and Housing~~ *Transportation,* by April 15 of each  
21 year, a report describing the board's activities for the preceding  
22 calendar year. The report shall include, but not be limited to, all  
23 of the following:

24 (a) The number of vessel movements across the bar, on the bays,  
25 and on the rivers within the board's jurisdiction.

26 (b) The name of each licensed pilot and pilot trainee, and the  
27 status of each person. If a person has had more than one status  
28 during the reporting year, each status and the length of time in that  
29 status shall be indicated. For the purposes of this section, "status"  
30 includes all of the following designations:

- 31 (1) Licensed and fit for duty.
- 32 (2) Licensed and not fit for duty.
- 33 (3) Licensed and on authorized training.
- 34 (4) Licensed and on active military duty.
- 35 (5) Licensed and on leave of absence.
- 36 (6) Licensed but license suspended.

37 (c) A summary of each report of misconduct or a navigational  
38 incident involving a pilot or pilot trainee, or other matters for which  
39 a license issued by the board may be revoked or suspended. For  
40 those cases that have been closed, the summary shall include a

1 description of findings made by the incident review committee  
 2 and of the resulting action taken by the board. For those cases that  
 3 are still under investigation, the summary shall include a  
 4 description of the reported incident and an estimated completion  
 5 date for the investigation. For those closed cases involving a pilot  
 6 who has been involved in a prior incident and a finding of pilot  
 7 error had been made, the report shall also include a summary of  
 8 that incident.

9 *(d) A summary of final decisions of rate hearings held by the  
 10 board pursuant to Chapter 6 (commencing with Section 1200).*

11 *SEC. 7. Section 1170.1 of the Harbors and Navigation Code  
 12 is amended to read:*

13 1170.1. In determining the number of pilots needed, pursuant  
 14 to Section 1170, the board shall take into consideration the findings  
 15 and declarations in ~~Sections 1100~~ *Section 1100, Section 1101, and*  
 16 ~~1101~~, *Section 1102, the results of the study required by Section*  
 17 *1196.5, the 1986 manpower study adopted by the board, the results*  
 18 *of an audit made pursuant to, and the factors specified in,*  
 19 *subdivision (a) of Section* ~~1203~~, *1200.5, the industry's current*  
 20 *economic trends, fluctuations in the number of vessel calls, the*  
 21 *size of vessels, and whether the need for pilotage is increasing or*  
 22 *decreasing.*

23 *SEC. 8. Section 1190 of the Harbors and Navigation Code is*  
 24 *amended to read:*

25 1190. (a) Every vessel spoken inward or outward bound shall  
 26 pay the following rate of bar pilotage through the Golden Gate  
 27 and into or out of the Bays of San Francisco, San Pablo, and  
 28 Suisun:

29 (1) ~~Eight-Ten dollars and eleven~~ *twenty-six cents* ~~(\$8.11)~~  
 30 *(\$10.26)* per draft foot of the vessel's deepest draft and fractions  
 31 of a foot pro rata, and an additional charge of ~~73.01~~ *92.43* mills  
 32 per high gross registered ~~ton as changed pursuant to law~~ *ton. These*  
 33 *rates shall remain in effect on December 31, 1999. The mill until*  
 34 *the board adopts different rates established by this paragraph may*  
 35 *be changed as follows: pursuant to the process set forth in Chapter*  
 36 *6 (commencing with Section 1200).*

37 (A) (i) ~~On and after January 1, 2010, if the number of pilots~~  
 38 ~~licensed by the board is 58 or 59 pilots, the mill rate in effect on~~  
 39 ~~December 31, 2006, shall be decreased by an incremental amount~~  
 40 ~~that is proportionate to one-half of the last audited annual average~~

1 net income per pilot for each pilot licensed by the board below 60  
2 pilots.

3 (ii) On and after January 1, 2010, if the number of pilots licensed  
4 by the board is fewer than 58 pilots, the mill rate in effect on  
5 December 31, 2006, shall be adjusted in accordance with the  
6 method described in clause (i) as though there are 58 pilots licensed  
7 by the board.

8 (iii) The incremental mill rate adjustment authorized by this  
9 subparagraph shall be calculated using the data reported to the  
10 board for the number of gross registered tons handled by pilots  
11 licensed under this division during the same 12-month period as  
12 the audited annual average net income per pilot. The incremental  
13 mill rate adjustment shall become effective at the beginning of the  
14 immediately following quarter, commencing January 1, April 1,  
15 July 1, or October 1, as directed by the board.

16 (iv) On and after January 1, 2010, if, during any quarter  
17 described in this paragraph, the number of pilots licensed by the  
18 board is equal to or greater than 60, clauses (i) to (iii), inclusive,  
19 shall become inoperative on the first day of the immediately  
20 following quarter.

21 (B) There shall be an incremental rate of additional mills per  
22 high gross registered ton as is necessary and authorized by the  
23 board to recover the pilots' costs of obtaining new pilot boats and  
24 of funding design and engineering modifications for the purposes  
25 of extending the service life of existing pilot boats, excluding costs  
26 for repair or maintenance. The incremental mill rate charge  
27 authorized by this subparagraph shall be identified as a pilot boat  
28 surcharge on the pilots' invoices and separately accounted for in  
29 the accounting required by Section 1136. Net proceeds from the  
30 sale of existing pilot boats shall be used to reduce the debt on the  
31 new pilot boats and any debt associated with the modification of  
32 pilot boats under this subparagraph. The board may adjust a pilot  
33 boat surcharge to reflect any associated operational savings  
34 resulting from the modification of pilot boats under this  
35 subparagraph, including, but not limited to, reduced repair and  
36 maintenance expenses.

37 (C) In addition to the incremental rate specified in subparagraph  
38 (B), the mill rate established by this subdivision may be adjusted  
39 at the direction of the board if, after a hearing conducted pursuant  
40 to Article 9 (commencing with Section 11120) of Chapter 1 of

1 Part 1 of Division 3 of Title 2 of the Government Code, the board  
2 determines that there has been a catastrophic cost increase to the  
3 pilots that would result in at least a 2-percent increase in the overall  
4 annual cost of providing pilot services.

5 (2) A minimum charge for bar pilotage shall be six hundred  
6 sixty-two dollars (\$662) for each vessel piloted. *This rate shall*  
7 *remain in effect until the board adopts a different rate pursuant*  
8 *to the process set forth in Chapter 6 (commencing with Section*  
9 *1200).*

10 (3) The vessel's deepest draft shall be the maximum draft  
11 attained, on a stillwater basis, at any part of the vessel during the  
12 course of ~~such~~ that transit inward or outward.

13 (b) The rate specified in subdivision (a) shall apply only to a  
14 pilotage that passes through the Golden Gate to or from the high  
15 seas to or from a berth within an area bounded by the Union Pacific  
16 Railroad Bridge to the north and Hunter's Point to the south. The  
17 rate for pilotage to or from the high seas to or from a point past  
18 the Union Pacific Railroad Bridge or Hunter's Point shall include  
19 a movement fee in addition to the basic bar pilotage ~~rate~~ *rate*, as  
20 specified by the board pursuant to Section 1191.

21 (c) The rate established in paragraph (1) of subdivision (a) shall  
22 be for a trip from the high seas to dock or from the dock to high  
23 seas. The rate specified in Section 1191 shall not be charged by  
24 pilots for docking and undocking vessels. ~~This subdivision does~~  
25 ~~not apply to the rates charged by inland pilots for their services.~~

26 (d) ~~The board shall determine the number of pilots to be licensed~~  
27 ~~based on the 1986 manpower study adopted by the board.~~

28 (e) ~~Consistent with the board's May 2002 adoption of rate~~  
29 ~~recommendations, the rates imposed pursuant to paragraph (1) of~~  
30 ~~subdivision (a) that are in effect on December 31, 2002, shall be~~  
31 ~~increased by 4 percent on January 1, 2003; those in effect on~~  
32 ~~December 31, 2003, shall be increased by 4 percent on January 1,~~  
33 ~~2004; those in effect on December 31, 2004, shall be increased by~~  
34 ~~3 percent on January 1, 2005; and those in effect on December 31,~~  
35 ~~2005, shall be increased by 3 percent on January 1, 2006.~~

36 *SEC. 9. Section 1190.1 of the Harbors and Navigation Code*  
37 *is amended to read:*

38 1190.1. Every vessel that uses a pilot ~~under~~ *pursuant to* this  
39 division while navigating the waters of Monterey Bay shall pay

1 the rate ~~provided by subdivisions~~ *determined pursuant to*  
2 *subdivision (a) and (e) of Section 1190.*

3 *SEC. 10. Section 1190.2 is added to the Harbors and*  
4 *Navigation Code, to read:*

5 *1190.2. There shall be an incremental rate of additional mills*  
6 *per high gross registered ton as is necessary and authorized by*  
7 *the board to recover the pilots' cost of obtaining new pilot boats*  
8 *and of funding design and engineering modifications for the*  
9 *purposes of extending the service life of existing pilot boats,*  
10 *excluding costs for repair or maintenance. The incremental mill*  
11 *rate charge authorized by this section shall be identified as a pilot*  
12 *boat surcharge on the pilots' invoices and separately accounted*  
13 *for in the accounting required by Section 1136. Net proceeds from*  
14 *the sale of an existing pilot boat shall be used to reduce the debt*  
15 *on the new pilot boats and any debt associated with the*  
16 *modification of pilot boats pursuant to this section. The board may*  
17 *adjust a pilot boat surcharge to reflect any associated operational*  
18 *savings resulting from the modification of pilot boats pursuant to*  
19 *this section, including, but not limited to, reduced repair and*  
20 *maintenance expenses.*

21 *SEC. 11. Section 1191 of the Harbors and Navigation Code is*  
22 *amended to read:*

23 *1191. (a) The board, pursuant to Chapter 6 (commencing with*  
24 *Section 1200), shall ~~recommend that the Legislature, by statute,~~*  
25 *adopt a schedule of pilotage rates providing fair and reasonable*  
26 *return to pilots engaged in ship movements or special operations*  
27 *if the rates for those movements or operations are not specified in*  
28 *Section 1190.*

29 *(b) A vessel using pilots for ship movements or special*  
30 *operations that do not constitute bar pilotage shall pay the rate*  
31 *specified in the schedule of pilotage rates adopted by the*  
32 *Legislature: board.*

33 *(c) ~~Consistent with the board's adoption of rate~~*  
34 *~~recommendations in May 2002, the~~ The minimum rates imposed*  
35 *pursuant to this section that are in effect on December 31, 2002,*  
36 *2020, shall be increased by 26 percent on January 1, 2003; those*  
37 *remain in effect on December 31, 2003, shall be increased by 26*  
38 *percent on January 1, 2004; those in effect on December 31, 2004,*  
39 *shall be increased by 14 percent on January 1, 2005; and those in*  
40 *effect on December 31, 2005, shall be increased by 14 percent on*

1 ~~January 1, 2006.~~ *until the board adopts a different rate pursuant*  
 2 *to subdivision (a).*

3 *SEC. 12. Chapter 6 (commencing with Section 1200) of*  
 4 *Division 5 of the Harbors and Navigation Code is repealed.*

5 *SEC. 13. Chapter 6 (commencing with Section 1200) is added*  
 6 *to Division 5 of the Harbors and Navigation Code, to read:*

7  
 8  
 9

*CHAPTER 6. PILOTAGE RATESETTING PROCESS*

10 *1200. (a) (1) The board shall adopt regulations for the*  
 11 *adjustment of rates for pilotage services established by Sections*  
 12 *1190 and 1191 pursuant to the processes set forth in this chapter.*

13 *(2) The board may adopt emergency regulations pursuant to*  
 14 *the Administrative Procedure Act (Chapter 3.5 (commencing with*  
 15 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*  
 16 *Code) to implement paragraph (1).*

17 *(b) The board's authority to set rates for pilotage services*  
 18 *pursuant to this chapter shall include the authority to adopt any*  
 19 *singular rate adjustment or periodic rate adjustment, or both.*

20 *(c) In connection with the board's authority to set rates pursuant*  
 21 *to this chapter, the board may require an independent audit by a*  
 22 *public accountant selected by the board. Any audits required by*  
 23 *the board shall cover pilotage operations for those years that the*  
 24 *board may specify.*

25 *1200.1. (a) Any party directly affected by pilotage rates*  
 26 *established by Sections 1190 or 1191 may file an application for*  
 27 *the review and adjustment of those rates. Ten copies of the*  
 28 *application together with all the written evidence in support shall*  
 29 *be filed with the board at least 30 days prior to the requested*  
 30 *effective date of the rate adjustment.*

31 *(b) Within 10 days of the filing of an application pursuant to*  
 32 *this chapter, the board shall serve a notice of the filing on all*  
 33 *interested parties who have requested notification and make the*  
 34 *contents of the application available on the board's internet*  
 35 *website.*

36 *(c) The application and any material required pursuant to this*  
 37 *subdivision shall be deemed served if served by electronic or any*  
 38 *other means as may be agreed to by the parties and approved by*  
 39 *the board.*

1 1200.2. (a) *Within 20 days of the service of the board's notice*  
2 *of the filing of an application pursuant to Section 1200.1, any party*  
3 *directly affected by the application may file a notice of intent to*  
4 *participate in the proceedings or a protest objecting to the*  
5 *proposed rate change.*

6 (b) *A protest filed pursuant to subdivision (a) shall state with*  
7 *specificity the material issues in dispute and whether the issues*  
8 *may be addressed through written comments or require evidentiary*  
9 *hearings.*

10 (c) *Within 20 days after the filing of a protest, or at a later time*  
11 *as the board may direct, the board shall give notice to all parties*  
12 *of a prehearing conference to define the issues in dispute,*  
13 *determine whether they can be resolved through written comments*  
14 *or require an evidentiary hearing, and establish a schedule for*  
15 *discovery and any hearings.*

16 (d) *Within 15 days following the prehearing conference, the*  
17 *board shall issue a scoping order identifying the issues in dispute,*  
18 *indicating whether evidentiary hearings are required to resolve*  
19 *any issues in dispute, and providing a schedule for discovery and*  
20 *the submission of written testimony for those hearings or for the*  
21 *filing of written comments. A copy of the scoping order shall be*  
22 *posted on the board's internet website and served on all parties.*

23 1200.3. (a) *Within 30 days following the service of the scoping*  
24 *order issued pursuant to subdivision (d) of Section 1200.2, but no*  
25 *later than 20 days before the initial date set for an evidentiary*  
26 *hearing, a party may conduct discovery as set forth in subdivision*  
27 (b). *Within 10 days of service of a discovery request, the*  
28 *responding party shall serve its response or objections to the*  
29 *requesting party.*

30 (b) *Discovery authorized by this section is limited to written*  
31 *requests for data that are reasonably calculated to lead to*  
32 *admissible evidence relevant to one or more of the issues in dispute*  
33 *identified in the scoping order that are not overly burdensome or*  
34 *onerous and that do not require the preparation of studies or other*  
35 *material not then in existence.*

36 (c) *The administrative law judge appointed pursuant to*  
37 *subdivision (b) of Section 1200.4 shall promptly rule on all*  
38 *discovery disputes.*

39 1200.4. (a) *Any rate adjustment adopted by the board pursuant*  
40 *to this chapter shall be determined at a public meeting of the board*

1 *subject to the Bagley-Keene Open Meeting Act (Article 9*  
2 *(commencing with Section 11120) of Chapter 1 of Part 1 of*  
3 *Division 3 of Title 2 of the Government Code). To decide any issues*  
4 *in dispute that require an evidentiary hearing, the board shall hold*  
5 *a public hearing as set forth in this section. To decide issues in*  
6 *dispute that do not require an evidentiary hearing, the board shall*  
7 *proceed in accordance with the process set forth in Section 1200.6.*

8 (b) *Within 10 days after the board orders an evidentiary hearing*  
9 *pursuant to Section 1200.2 or at an earlier time as the board may*  
10 *direct, the board shall request the appointment of an administrative*  
11 *law judge by the Director of the Office of Administrative Hearings*  
12 *for the purpose of ruling on discovery disputes under Section*  
13 *1200.3 and to act as the hearing officer at the evidentiary hearing*  
14 *pursuant to subdivision (d).*

15 (c) *The Office of Administrative Hearings shall be compensated*  
16 *by the board for its costs associated with the services of the*  
17 *administrative law judge provided pursuant to subdivision (b).*  
18 *Any expense shall be funded by revenues received by the board*  
19 *from the board operations surcharge set forth in Section 1159.2.*

20 (d) *Evidentiary hearings shall be held in the board offices unless*  
21 *otherwise directed by the board. The evidentiary hearings shall*  
22 *be held before a quorum of the board and presided over by an*  
23 *administrative law judge appointed pursuant to subdivision (b).*  
24 *The administrative law judge shall conduct the process of the*  
25 *hearings, including, but not limited to, rulings on discovery*  
26 *disputes, all motions, and any objections or disputes arising during*  
27 *the evidentiary hearings.*

28 (e) *All direct testimony for an evidentiary hearing held pursuant*  
29 *to this section shall be submitted in written form in advance of the*  
30 *hearing as set forth in the scoping order pursuant to subdivision*  
31 *(d) of Section 1200.2. Evidentiary hearings shall be limited to the*  
32 *admission of evidence, including the prepared written testimony,*  
33 *the presentation of demonstrative evidence, and cross-examination*  
34 *on the prepared written testimony, and any other evidence set forth*  
35 *in the scoping order.*

36 1200.5. (a) *The board shall consider all of the following*  
37 *factors in preparing its decision on a rate application:*

38 (1) *The cost of providing service.*

39 (2) *The net return to pilots sufficient to attract and hold qualified*  
40 *pilots.*

- 1 (3) *The change in the cost of living.*
- 2 (4) *The rates charged for services in other ports.*
- 3 (5) *The income paid for comparable services.*
- 4 (6) *The methods of determining rates in other ports.*
- 5 (7) *The economic factors affecting local shipping.*
- 6 (8) *The volume of shipping traffic.*
- 7 (9) *The number of available pilots.*
- 8 (10) *The risk to pilots.*
- 9 (11) *The changes in navigational and safety equipment and*
- 10 *pilot support activities.*
- 11 (12) *The results of any audits required pursuant to subdivision*
- 12 *(c) of Section 1200.*

13 (b) *The weight to be given to each of the factors identified in*  
14 *subdivision (a) shall be left to the discretion of the board.*

15 (c) *The party seeking a rate adjustment shall have the burden*  
16 *of proving by a preponderance of the evidence that a change in*  
17 *rates is justified.*

18 1200.6. (a) *If a matter is determined by the board to be eligible*  
19 *for decision on the submission of comments without an evidentiary*  
20 *hearing, any party may file initial comments to address the*  
21 *application for a rate adjustment and the party's proposal for a*  
22 *draft decision. Initial comments shall be limited to 25 pages, filed*  
23 *in writing 20 days after the close of discovery and served on all*  
24 *parties.*

25 (b) *If a matter proceeds to an evidentiary hearing, any party*  
26 *may file any initial comments to address the issues, the evidence*  
27 *admitted into the record, and the party's proposal for a draft*  
28 *decision. Initial comments shall be limited to 25 pages, filed in*  
29 *writing 20 days after the conclusion of the evidentiary hearing*  
30 *and served on all parties.*

31 (c) *Any party may file reply comments addressing any matter*  
32 *raised in the initial comments of another party. Reply comments*  
33 *shall be filed within 10 days of the service of initial comments.*  
34 *Reply comments are limited to 10 pages and shall be served on*  
35 *all parties.*

36 1200.7. (a) *Within 30 days of the submission of comments*  
37 *pursuant to Section 1200.6, the board shall issue a proposed draft*  
38 *decision based on the record. A copy of the draft decision shall be*  
39 *posted on the board's internet website and served on all parties.*

1 (b) *Within 20 days of the service of the draft decision, any party*  
2 *may file initial comments on the draft decision. The comments*  
3 *shall be limited to claims of mistakes of fact in the draft decision*  
4 *or errors of law, limited to 10 pages in length, and served on all*  
5 *other parties.*

6 (c) *Within 10 days after the service of initial comments to the*  
7 *draft decision, any party may file reply comments that are limited*  
8 *to the issues raised in another party's initial comments to the draft*  
9 *decision and are limited to five pages in length.*

10 1200.8. (a) *Within 20 days after the filing of the comments to*  
11 *the draft decision pursuant to Section 1200.6, or after the*  
12 *expiration of time to file comments, but no later than 11 months*  
13 *following the filing of an application for a rate adjustment under*  
14 *Section 1200.1, the board shall issue a final decision. The final*  
15 *decision shall include a statement of the case, a discussion of*  
16 *significant legal issues raised, and findings of fact and conclusions*  
17 *of law on the issues raised.*

18 (b) *Within 20 days after issuance of a final decision, any party*  
19 *may file a request for rehearing which shall state in detail any*  
20 *mistakes in material fact or errors in law in the final decision. If*  
21 *the board does not act within 30 days after the filing of a request*  
22 *for rehearing, the request shall be deemed denied.*

23 (c) *A final decision shall include a schedule of rates that shall*  
24 *be published and made publicly available by the port agent*  
25 *appointed pursuant to Section 1130 and posted on the board's*  
26 *internet website. A copy of the final decision supported by a*  
27 *transcript of the proceedings of the board shall be submitted to*  
28 *the Secretary of the Senate and the Chief Clerk of the Assembly.*

29 (d) *Any rate adjustment approved pursuant to the process*  
30 *provided by this chapter shall be effective upon the adoption of*  
31 *any final decision issued by the board, as otherwise provided for*  
32 *in the final decision, if rehearing is not requested, or upon denial*  
33 *of any request for rehearing pursuant to subdivision (b).*

34 1200.9. *For good cause shown, the timing and page limits*  
35 *provided in this chapter may be extended by an order of the board*  
36 *or the administrative law judge appointed pursuant to subdivision*  
37 *(b) of Section 1200.4.*

38 1200.10. (a) *Within 30 days of the denial of any request for*  
39 *rehearing, or if a rehearing is granted, then 30 days after the*  
40 *issuance of a final decision on rehearing an aggrieved party may*

1 *file a petition for writ of review in the court of appeal for the*  
2 *purpose of having the lawfulness of the final decision determined.*  
3 *The venue for any petition for writ of review shall be in the district*  
4 *in which the board is located.*

5 *(b) The petition for writ of review shall be served on the board,*  
6 *the board’s counsel, and all parties to the proceeding, who shall*  
7 *by right be allowed to file a response to the petition.*

8 *(c) Any final decision of the board under Section 1200.8 shall*  
9 *be effective pending any petition for review pursuant to this section.*

10 *1202. Public hearings for the purpose of investigating pilotage*  
11 *rates shall be conducted in accordance with the Bagley-Keene*  
12 *Open Meeting Act (Article 9 (commencing with Section 11120) of*  
13 *Chapter 1 of Part 1 of Division 3 of Title 2 of the Government*  
14 *Code) and a full record shall be kept of all the evidence offered.*

15 *1203. It is the intent of the Legislature to review this chapter*  
16 *and, if appropriate, enact subsequent legislation to amend this*  
17 *chapter as of January 1, 2027.*

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**All matter omitted in this version of the bill  
appears in the bill as amended in the  
Assembly, March 27, 2019. (JR11)**