

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6519

65th Legislature
2018 Regular Session

Passed by the Senate March 5, 2018
Yeas 49 Nays 0

President of the Senate

Passed by the House February 28, 2018
Yeas 98 Nays 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6519** as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6519

AS AMENDED BY THE HOUSE

Passed Legislature - 2018 Regular Session

State of Washington 65th Legislature 2018 Regular Session

By Senate Transportation (originally sponsored by Senators King and Hobbs)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to revising the establishment of marine pilotage
2 tariffs; amending RCW 53.08.390, 88.16.035, 88.16.070, 88.16.120,
3 88.16.130, and 88.16.061; adding a new section to chapter 88.16 RCW;
4 adding a new chapter to Title 81 RCW; creating a new section; and
5 providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 88.16
8 RCW to read as follows:

9 (1) The utilities and transportation commission shall under
10 sections 7 through 12 of this act periodically, but not more
11 frequently than annually, establish the pilotage tariffs for pilotage
12 services provided under this chapter: PROVIDED, That the utilities
13 and transportation commission may establish extra compensation for
14 extra services to vessels in distress, for awaiting vessels, for all
15 vessels in direct transit to or from a Canadian port where Puget
16 Sound pilotage is required for a portion of the voyage, or for being
17 carried to sea on vessels against the will of the pilot, and for such
18 other services as may be determined by the commission: PROVIDED
19 FURTHER, That as an element of the Puget Sound pilotage district
20 tariff, the utilities and transportation commission may consider
21 pilot retirement expenses incurred in the prior year in the Puget

1 Sound pilotage district. However, under no circumstances shall the
2 state be obligated to fund or pay for any portion of retirement
3 payments for pilots or retired pilots.

4 (2) By December 1, 2018, the utilities and transportation
5 commission shall submit to the transportation committees of the
6 legislature any additional statutory changes necessary to implement
7 this act.

8 (3) By July 1, 2020, the utilities and transportation commission
9 shall provide a report to the governor and the transportation
10 committees of the legislature regarding matters pertaining to
11 establishing tariffs under this section that includes a comparison of
12 the process and outcomes in relation to the recommendations made in
13 the January 2018 joint transportation committee Washington state
14 pilotage final report and recommendations.

15 **Sec. 2.** RCW 53.08.390 and 2010 c 8 s 16003 are each amended to
16 read as follows:

17 A countywide port district located in part or in whole within the
18 Grays Harbor pilotage district, as defined by RCW 88.16.050(2), may
19 commence pilotage service with the following powers and subject to
20 the conditions contained in this section.

21 (1) Persons employed to perform the pilotage service of a port
22 district must be licensed under chapter 88.16 RCW to provide
23 pilotage.

24 (2) Before establishing pilotage service, a port district shall
25 give at least sixty days' written notice to the chair of the board of
26 pilotage commissioners to provide pilotage.

27 (3) A port district providing pilotage service under this section
28 requiring additional pilots may petition the board of pilotage
29 commissioners to qualify and license as a pilot a person who has
30 passed the examination and is on the waiting list for the training
31 program for the district. If there are no persons on the waiting
32 list, the board shall solicit applicants and offer the examination.

33 (4) In addition to the power to employ or contract with pilots, a
34 port district providing pilotage services under this section has such
35 other powers as are reasonably necessary to accomplish the purpose of
36 this section including, but not limited to, providing through
37 ownership or contract pilots launches, dispatcher services, or
38 ancillary tug services required for operations or safety.

1 (5)(a) A port district providing pilotage services under this
2 section may recommend to the utilities and transportation commission
3 tariffs for pilotage services provided under chapter 88.16 RCW, and
4 may recommend to the board of pilotage commissioners rules of service
5 governing its pilotage services for consideration and adoption
6 consistent with RCW 88.16.035. The rules of service, rates, and
7 tariffs (~~governing its pilotage services for consideration and~~
8 adoption pursuant to RCW 88.16.035. The rules, rates, and tariffs))
9 recommended by the port district must have been approved in open
10 meetings of the port district (~~ten~~) thirty or more days after
11 published notice in a newspaper of general circulation and after
12 mailing a copy of the notice to: (i) The utilities and transportation
13 commission for rate and tariff consideration, or (ii) the chair of
14 the board of pilotage commissioners for rules of service
15 consideration. The port district shall release its pilotage budget,
16 including the five year capital spending plan, prior year pilotage
17 financial statement, and the proposed pilotage tariff, no later than
18 thirty days prior to a public hearing. The port district shall
19 receive public comments for thirty days before the port district
20 commission may approve and recommend the pilotage tariff, rates, or
21 rules of service.

22 (b) The port district must include a charge in its tariff until
23 such time as the pilot retirement agreement expenses for Grays Harbor
24 pilotage district pilots employed prior to October 1, 2001, are no
25 longer owed. The port district shall determine the charge owed as
26 pilot retirement agreement expenses. The charge must be sufficient to
27 cover costs associated with the pilot retirement agreement expenses
28 for Grays Harbor pilots employed prior to October 1, 2001. The
29 revenue collected from the charge must be deposited into an account
30 maintained by the port district solely for the pilot retirement
31 agreement expenses of the Grays Harbor pilots employed prior to
32 October 1, 2001. Under no circumstances shall the port district be
33 obligated to fund or pay for any portion of the retirement agreement
34 expenses for Grays Harbor pilots employed prior to October 1, 2001.

35 (6) A pilot providing pilotage services under this section must
36 comply with all requirements of the pilotage act, chapter 88.16 RCW,
37 and all rules adopted thereunder.

38 **Sec. 3.** RCW 88.16.035 and 2009 c 496 s 1 are each amended to
39 read as follows:

1 (1) The board of pilotage commissioners shall:

2 (a) Adopt rules, pursuant to chapter 34.05 RCW, necessary for the
3 enforcement and administration of this chapter;

4 (b)(i) Issue training licenses and pilot licenses to pilot
5 applicants meeting the qualifications provided for in RCW 88.16.090
6 and such additional qualifications as may be determined by the board;

7 (ii) Establish a comprehensive training program to assist in the
8 training and evaluation of pilot applicants before final licensing;
9 and

10 (iii) Establish additional training requirements, including a
11 program of continuing education developed after consultation with
12 pilot organizations, including those located within the state of
13 Washington, as required to maintain a competent pilotage service;

14 (c) Maintain a register of pilots, records of pilot accidents,
15 and other history pertinent to pilotage;

16 (d) Determine from time to time the number of pilots necessary to
17 be licensed in each district of the state to optimize the operation
18 of a safe, fully regulated, efficient, and competent pilotage service
19 in each district;

20 (e) (~~Annually fix the pilotage tariffs for pilotage services~~
21 ~~provided under this chapter: PROVIDED, That the board may fix extra~~
22 ~~compensation for extra services to vessels in distress, for awaiting~~
23 ~~vessels, for all vessels in direct transit to or from a Canadian port~~
24 ~~where Puget Sound pilotage is required for a portion of the voyage,~~
25 ~~or for being carried to sea on vessels against the will of the pilot,~~
26 ~~and for such other services as may be determined by the board:~~
27 ~~PROVIDED FURTHER, That as an element of the Puget Sound pilotage~~
28 ~~district tariff, the board may consider pilot retirement plan~~
29 ~~expenses incurred in the prior year in either pilotage district.~~
30 ~~However, under no circumstances shall the state be obligated to fund~~
31 ~~or pay for any portion of retirement payments for pilots or retired~~
32 ~~pilots)) Provide assistance to the utilities and transportation
33 commission, as requested by the utilities and transportation
34 commission, in its performance of pilotage tariff setting functions
35 under sections 7 through 12 of this act;~~

36 (f) File annually with the governor and the chairs of the
37 transportation committees of the senate and house of representatives
38 a report which includes, but is not limited to, the following: The
39 number, names, ages, pilot license number, training license number,
40 and years of service as a Washington licensed pilot of any person

1 licensed by the board as a Washington state pilot or trainee; the
2 names, employment, and other information of the members of the board;
3 the total number of pilotage assignments by pilotage district,
4 including information concerning the various types and sizes of
5 vessels and the total annual tonnage; the annual earnings or stipends
6 of individual pilots and trainees before and after deduction for
7 expenses of pilot organizations, including extra compensation as a
8 separate category; the annual expenses of private pilot associations,
9 including personnel employed and capital expenditures; the status of
10 pilotage tariffs, extra compensation, and travel; the retirement
11 contributions paid to pilots and the disposition thereof; the number
12 of groundings, marine occurrences, or other incidents which are
13 reported to or investigated by the board, and which are determined to
14 be accidents, as defined by the board, including the vessel name,
15 location of incident, pilot's or trainee's name, and disposition of
16 the case together with information received before the board acted
17 from all persons concerned, including the United States coast guard;
18 the names, qualifications, time scheduled for examinations, and the
19 district of persons desiring to apply for Washington state pilotage
20 licenses; summaries of dispatch records, quarterly reports from
21 pilots, and the bylaws and operating rules of pilotage organizations;
22 the names, sizes in deadweight tons, surcharges, if any, port of
23 call, name of the pilot or trainee, and names and horsepower of tug
24 boats for any and all oil tankers subject to the provisions of RCW
25 88.16.190 together with the names of any and all vessels for which
26 the United States coast guard requires special handling pursuant to
27 their authority under the Ports and Waterways Safety Act of 1972; the
28 expenses of the board; and any and all other information which the
29 board deems appropriate to include;

30 (g) Make available information that includes the pilotage act and
31 other statutes of Washington state and the federal government that
32 affect pilotage, including the rules of the board, together with such
33 additional information as may be informative for pilots, agents,
34 owners, operators, and masters;

35 (h) Appoint advisory committees and employ marine experts as
36 necessary to carry out its duties under this chapter;

37 (i) Provide for the maintenance of efficient and competent
38 pilotage service on all waters covered by this chapter; and do such
39 other things as are reasonable, necessary, and expedient to insure

1 proper and safe pilotage upon the waters covered by this chapter and
2 facilitate the efficient administration of this chapter.

3 (2) The board may pay stipends to pilot trainees under subsection
4 (1)(b) of this section.

5 **Sec. 4.** RCW 88.16.070 and 2017 c 88 s 1 are each amended to read
6 as follows:

7 Every vessel not exempt under this section that operates in the
8 waters of the Puget Sound pilotage district or Grays Harbor pilotage
9 district is subject to compulsory pilotage under this chapter.

10 (1) A United States vessel on a voyage in which it is operating
11 exclusively on its coastwise endorsement, its fishery endorsement
12 (including catching and processing its own catch outside United
13 States waters and economic zone for delivery in the United States),
14 and/or its recreational (or pleasure) endorsement, and all United
15 States and Canadian vessels engaged exclusively in the coasting trade
16 on the west coast of the continental United States (including Alaska)
17 and/or British Columbia shall be exempt from the provisions of this
18 chapter unless a pilot licensed under this chapter be actually
19 employed, in which case the pilotage rates provided for in this
20 chapter or established under sections 7 through 12 of this act shall
21 apply.

22 (2) The board may, upon the written petition of any interested
23 party, and upon notice and opportunity for hearing, grant an
24 exemption from the provisions of this chapter to any vessel that the
25 board finds is (a) a small passenger vessel that is not more than one
26 thousand three hundred gross tons (international), does not exceed
27 two hundred feet in overall length, is manned by United States-
28 licensed deck and engine officers appropriate to the size of the
29 vessel with merchant mariner credentials issued by the United States
30 coast guard or Canadian deck and engine officers with Canadian-issued
31 certificates of competency appropriate to the size of the vessel, and
32 is operated exclusively in the waters of the Puget Sound pilotage
33 district and lower British Columbia, or (b) a yacht that is not more
34 than one thousand three hundred gross tons (international) and does
35 not exceed two hundred feet in overall length. Such an exemption
36 shall not be detrimental to the public interest in regard to safe
37 operation preventing loss of human lives, loss of property, and
38 protecting the marine environment of the state of Washington. Such
39 petition shall set out the general description of the vessel, the

1 contemplated use of same, the proposed area of operation, and the
2 name and address of the vessel's owner. The board shall annually, or
3 at any other time when in the public interest, review any exemptions
4 granted to this specified class of small vessels to insure that each
5 exempted vessel remains in compliance with the original exemption.
6 The board shall have the authority to revoke such exemption where
7 there is not continued compliance with the requirements for
8 exemption. The board shall maintain a file which shall include all
9 petitions for exemption, a roster of vessels granted exemption, and
10 the board's written decisions which shall set forth the findings for
11 grants of exemption. Each applicant for exemption or annual renewal
12 shall pay a fee, payable to the pilotage account. Fees for initial
13 applications and for renewals shall be established by rule, and shall
14 not exceed one thousand five hundred dollars. The board shall report
15 annually to the legislature on such exemptions.

16 (3) Every vessel not exempt under subsection (1) or (2) of this
17 section shall, while navigating the Puget Sound and Grays Harbor
18 pilotage districts, employ a pilot licensed under the provisions of
19 this chapter and shall be liable for and pay pilotage rates in
20 accordance with the pilotage rates herein established or which may
21 hereafter be established under the provisions of this chapter or
22 under sections 7 through 12 of this act: PROVIDED, That any vessel
23 inbound to or outbound from Canadian ports is exempt from the
24 provisions of this section, if said vessel actually employs a pilot
25 licensed by the Pacific pilotage authority (the pilot licensing
26 authority for the western district of Canada), and if it is
27 communicating with the vessel traffic system and has appropriate
28 navigational charts, and if said vessel uses only those waters east
29 of the international boundary line which are west of a line which
30 begins at the southwestern edge of Point Roberts then to Alden Point
31 (Patos Island), then to Skipjack Island light, then to Turn Point
32 (Stuart Island), then to Kelleet Bluff (Henry Island), then to Lime
33 Kiln (San Juan Island) then to the intersection of one hundred
34 twenty-three degrees seven minutes west longitude and forty-eight
35 degrees twenty-five minutes north latitude then to the international
36 boundary. The board shall correspond with the Pacific pilotage
37 authority from time to time to ensure the provisions of this section
38 are enforced. If any exempted vessel does not comply with these
39 provisions it shall be deemed to be in violation of this section and
40 subject to the penalties provided in RCW 88.16.150 as now or

1 hereafter amended and liable to pilotage fees as determined by the
2 board. The board shall investigate any accident on the waters covered
3 by this chapter involving a Canadian pilot and shall include the
4 results in its annual report.

5 **Sec. 5.** RCW 88.16.120 and 1987 c 485 s 4 are each amended to
6 read as follows:

7 No pilot shall charge, collect or receive and no person, firm,
8 corporation or association shall pay for pilotage or other services
9 performed hereunder any greater, less or different amount, directly
10 or indirectly, than the rates or charges herein established or
11 ~~((which may be hereafter fixed))~~ subsequently established by the
12 utilities and transportation commission under sections 7 through 12
13 of this act and by the board ~~((pursuant to))~~ under this chapter. Any
14 pilot, person, firm, corporation or association violating the
15 provisions of this section shall be guilty of a misdemeanor and shall
16 be punished pursuant to RCW 88.16.150 as now or hereafter amended,
17 said prosecution to be conducted by the attorney general or the
18 prosecuting attorney of any county wherein the offense or any part
19 thereof was committed.

20 **Sec. 6.** RCW 88.16.130 and 2013 c 23 s 533 are each amended to
21 read as follows:

22 Any person not holding a license as pilot under the provisions of
23 this chapter who pilots any vessel subject to the provisions of this
24 chapter on waters covered by this chapter shall pay to the board the
25 pilotage rates ~~((payable under the provisions of this chapter))~~
26 established by the utilities and transportation commission under
27 sections 7 through 12 of this act. Any master or owner of a vessel
28 required to employ a pilot licensed under the provisions of this
29 chapter who refuses to do so when such a pilot is available shall be
30 punished pursuant to RCW 88.16.150 as now or hereafter amended and
31 shall be imprisoned in the county jail of the county wherein he or
32 she is so convicted until said fine and the costs of his or her
33 prosecution are paid.

34 NEW SECTION. **Sec. 7.** The definitions in this section apply
35 throughout this chapter unless the context clearly requires
36 otherwise.

37 (1) "Board" means the board of pilotage commissioners.

1 (2) "Commission" means the utilities and transportation
2 commission.

3 (3) "Person with a substantial interest" means: (a) A pilot or
4 group of pilots licensed under chapter 88.16 RCW; (b) a vessel
5 operator or other person utilizing the services of a licensed pilot
6 and paying pilotage fees and charges for such services or an
7 organization representing such vessel operators or persons; and (c)
8 any other person or business that can show that the requested tariff
9 changes would be likely to have a substantial economic impact on its
10 operations.

11 NEW SECTION. **Sec. 8.** (1) The commission shall establish in
12 tariffs the rates for pilotage services provided under chapter 88.16
13 RCW.

14 (2) The commission shall maintain a list of persons who have
15 indicated to the commission a desire to be notified of any potential
16 change in pilotage tariffs and in any proposed rules regarding the
17 setting of pilotage tariffs.

18 (3) The commission shall ensure that the tariffs provide rates
19 that are fair, just, reasonable, and sufficient for the provision of
20 pilotage services.

21 (4) In setting tariffs, the commission may fix extra compensation
22 for extra services to vessels in distress, for awaiting vessels, for
23 all vessels in direct transit to or from a Canadian port where Puget
24 Sound pilotage is required for a portion of the voyage, or for being
25 carried to sea on vessels against the will of the pilot, and for such
26 other services as may be determined by the board. In setting tariffs,
27 the commission must include a tariff surcharge to fund the stipend
28 the board of pilotage commissioners is authorized to pay to pilot
29 trainees and to use in its pilot training program under RCW
30 88.16.035. As an element of the Puget Sound pilotage district tariff,
31 the commission may consider pilot retirement expenses incurred in the
32 prior year in the Puget Sound pilotage district. However, under no
33 circumstances shall the state be obligated to fund or pay for any
34 portion of retirement payments for pilots or retired pilots.

35 (5) In exercising duties under this section, the commission may:

36 (a) Request assistance from the board;

37 (b) Assign an administrative law judge to handle the proceeding
38 and prepare an initial order, which the commission may review

1 pursuant to RCW 34.05.464, or assign an administrative law judge as a
2 facilitator for settlement purposes; and

3 (c) Adopt rules or issue orders to implement the provisions of
4 this act.

5 NEW SECTION. **Sec. 9.** (1) Any person with a substantial interest
6 may file with the commission a revised tariff with an effective date
7 no earlier than thirty days from the date of filing and no earlier
8 than one year following the effective date the tariffs in effect at
9 the time of filing were established.

10 (2) The proposed tariff must be accompanied by:

11 (a) The names and contact information of the person or persons
12 requesting the tariff revision;

13 (b) A description of why the existing tariffs are not fair, just,
14 reasonable, and sufficient, along with financial information to
15 demonstrate a need for the tariff revision and information addressing
16 the criteria for approval of tariff revisions set forth in section
17 8(3) of this act;

18 (c) If the petitioner proposes a tariff with an annual or
19 periodic adjustment mechanism, information justifying such a
20 mechanism; and

21 (d) Any other information required by the commission by rule or
22 by order.

23 (3) After receipt of a proper petition, the commission shall give
24 notice of the petition to interested persons that have stated a
25 desire to be notified pursuant to section 8(2) of this act. Any
26 person with a substantial interest in the proposed tariff revision
27 may submit comments in support or opposition of the petition within
28 twenty days of the notice.

29 (4) The filed tariff shall take effect on its stated effective
30 date unless, within thirty days of filing of the tariff, the
31 commission suspends it. The commission may suspend the tariff for a
32 period not exceeding ten months from the time the change would
33 otherwise go into effect. During that time, the commission may set
34 the matter for a hearing pursuant to chapter 34.05 RCW or set the
35 matter for consideration at a subsequent open public meeting.

36 (5) The burden of proof to show that the tariff rates are not
37 fair, just, reasonable, and sufficient is upon the person with a
38 substantial interest that files the revised tariff.

1 NEW SECTION. **Sec. 10.** The commission shall encourage
2 alternative forms of dispute resolution to resolve disputes between
3 an association or group of pilots and any other person regarding
4 matters covered by this chapter.

5 NEW SECTION. **Sec. 11.** The tariffs established by the board
6 prior to the effective date of this section shall remain in effect
7 and be deemed pilotage tariffs set by the commission until such time
8 as they are changed by the commission pursuant to this chapter.

9 NEW SECTION. **Sec. 12.** The commission may include as part of the
10 tariff for pilotage services provided under chapter 88.16 RCW
11 reasonable costs for the setting of tariff rates under this chapter.
12 The costs of the commission included as part of the tariff must be
13 appropriated from the pilotage account in RCW 88.16.061.

14 **Sec. 13.** RCW 88.16.061 and 2008 c 128 s 17 are each amended to
15 read as follows:

16 (~~The account in the general fund designated in RCW 43.79.330(17)~~
17 ~~as the "Puget Sound pilotage account" is hereby redesignated as the~~
18 ~~"pilotage account".~~)

19 The pilotage account is (~~hereby redesignated as a~~
20 ~~nonappropriated account, and is therefore~~) created in the (~~eustody~~
21 ~~of the~~) state (~~treasurer. All receipts designated, credited, or~~
22 ~~transferred to the pilotage account must be deposited into the~~
23 ~~account~~) treasury. Moneys in the account may be spent only after
24 appropriation. Expenditures from the account may be used only for the
25 purposes of the board of pilotage commissioners as prescribed under
26 this chapter(~~. Only the board or the board's designee may authorize~~
27 ~~expenditures from the account~~) and by the utilities and
28 transportation commission for purposes related to pilotage tariff
29 rate setting. The account is subject to allotment procedures under
30 chapter 43.88 RCW(~~, but an appropriation is not required for~~
31 ~~expenditures~~).

32 NEW SECTION. **Sec. 14.** Sections 7 through 12 of this act
33 constitute a new chapter in Title 81 RCW.

34 NEW SECTION. **Sec. 15.** To ensure that this act is implemented in
35 a timely manner, the utilities and transportation commission may

1 adopt rules under section 8 of this act prior to July 1, 2019, and
2 may accept tariff filings from a person with a substantial interest
3 beginning thirty days after the effective date of these adopted
4 rules. The utilities and transportation commission must suspend a
5 tariff filing made before July 1, 2019, within thirty days of receipt
6 of the filing. Any tariff filings made under this section may not
7 take effect until after June 30, 2019.

8 NEW SECTION. **Sec. 16.** Except for section 15 of this act, this
9 act takes effect July 1, 2019.

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