



AB-1888 Harbors and ports: Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun: pilotage. (2009-2010)

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Assembly Bill No. 1888

CHAPTER 455

An act to amend Sections 1127, 1137, and 1150 of, and to add Section 1193 to, the Harbors and Navigation Code, relating to harbors and ports.

[Approved by Governor September 29, 2010. Filed with Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1888, Ma. Harbors and ports: Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun: pilotage.

Existing law provides for the regulation and licensing of pilots for Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun by the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun. The board consists of 7 members, appointed by the Governor, with the consent of the Senate, with specified staggered terms.

This bill would revise the terms for members of the board who are licensed pilots and members who represent the industry.

Existing law specifies the rates of bar pilotage for vessels inward or outward bound through the Golden Gate and into or out of the Bays of San Francisco, San Pablo, and Suisun and also imposes certain movement fees and surcharges.

This bill would exempt from those pilotage fees and surcharges noncommercial vessels that are maritime academy training vessels and vessels owned and operated by nonprofit museums or foundations. These vessels would be subject to the board operations surcharge.

Existing law exempts from pilotage fees a vessel sailing under a coastwise license or appropriately endorsed registry and engaged in the coasting trade, as described, unless a pilot or inland pilot is actually used. A foreign vessel, a vessel bound to or from a foreign port, or a vessel sailing under a register is required to use a pilot or inland pilot. These provisions do not apply to a vessel that is less than 300 gross tons and is manufactured and used for private recreation.

This bill would instead state that those provisions do not apply to a vessel that is less than 750 gross tons and is manufactured and used for private recreation.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

(c) The board shall regulate pilotage on waters of the state as provided in this division.

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

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

SEC. 2. Section 1137 of the Harbors and Navigation Code is amended to read:

1137. (a) The account required pursuant to Section 1136 shall show all of the following:

- (1) The name of each vessel piloted.
- (2) The name of each vessel for which pilotage has been charged or collected.
- (3) The amount charged to or collected for each vessel.
- (4) Any rebates made and allowed and for what amounts.
- (5) The amount of the fees and surcharges not collected pursuant to Section 1193.
- (6) The depth of each vessel's draft and its highest gross tonnage.
- (7) Whether the vessel was inward or outward bound.

(b) The board shall record the accounts in full detail in a book prepared for that purpose. The account book is a public record.

SEC. 3. Section 1150 of the Harbors and Navigation Code is amended to read:

1150. (a) There is in the Business, Transportation and Housing Agency a Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun, consisting of seven members appointed by the Governor, with the consent of the Senate, as follows:

- (1) Two members shall be pilots licensed pursuant to this division.
- (2) Two members shall represent the industry and shall be persons currently engaged as owners, officers, directors, employees, or representatives of a firm or association of firms that is a substantial user of pilotage service in the Bay of San Francisco, San Pablo, Suisun, or Monterey, one of whom shall be engaged in the field of tanker company operations, and one of whom shall be engaged in dry cargo operations. The board of directors of a regional maritime trade association controlled by West Coast vessel operators that specifically represents the

persons for each category of industry member to be appointed.

(3) Three members shall be public members. Any person may serve as a public member unless otherwise prohibited by law, except that during his or her term of office or within the two years preceding his or her appointment, no public member appointed may have (A) any financial or proprietary interest in the ownership, operation, or management of tugs, cargo, or passenger vessels, (B) sailed under the authority of a federal or state pilot license in waters under the jurisdiction of the board, (C) been employed by a company that is a substantial user of pilot services, or (D) been a consultant or other person providing professional services who had received more than 20 percent in the aggregate of his or her income from a company that is a substantial user of pilot services or an association of companies that are substantial users of pilot services. Ownership of less than one-tenth of 1 percent of the stock of a publicly traded corporation is not a financial or proprietary interest in the ownership of tugs, cargo, or passenger vessels.

(4) Notwithstanding any other provision of law, this chapter does not prohibit the Governor from notifying the nominating authority identified in paragraph (2) that persons nominated are unacceptable for appointment. Following that notification, the nominating authority shall submit a new list of nominees to the Governor, naming three persons, none of whom were previously nominated, from which the Governor may make the appointment. This process shall be continued until a person nominated by the nominating authority and satisfactory to the Governor has been appointed.

(b) Members appointed pursuant to subdivision (a) shall be appointed with staggered terms as follows:

(1) Each of the members appointed pursuant to paragraphs (1) and (2) of subdivision (a) shall be appointed for a four-year term, except that the first member appointed after December 31, 2012, to an initial term pursuant to paragraph (1) of subdivision (a) shall be appointed to a term expiring on December 31, 2014, and the first member appointed after December 31, 2012, to an initial term pursuant to paragraph (2) of subdivision (a) shall be appointed to a term expiring on December 31, 2014.

(2) Members appointed pursuant to paragraph (3) of subdivision (a) shall be appointed with staggered four-year terms with the initial four-year terms expiring on December 31 of the years 1988, 1990, and 1991, respectively.

(3) A person may not be appointed for more than two terms.

(4) Vacancies on the board for both expired and unexpired terms shall be filled by the appointing power in the manner prescribed by subdivision (a).

(c) A quorum of the board members consists of four members. All actions of the board shall require the vote of four members, a quorum being present.

(d) The Secretary of the Business, Transportation and Housing Agency shall serve as an ex officio member of the board who, without vote, may exercise all other privileges of a member of the board.

SEC. 4. Section 1193 is added to the Harbors and Navigation Code, to read:

1193. (a) Notwithstanding Section 1120, only the following noncommercial vessels that use pilotage services are exempt from the pilotage fees and surcharges established pursuant to this division, except for the board operations surcharge as established and calculated pursuant to Section 1159.1:

(1) Maritime academy training vessels, whether foreign or domestic.

(2) Vessels owned and operated by a nonprofit museum or foundation.

(b) The vessels specified in subdivision (a) are subject to Section 1198.



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Date	Action
09/29/10	Chaptered by Secretary of State - Chapter 455, Statutes of 2010.
09/29/10	Approved by the Governor.
08/25/10	Enrolled and to the Governor at 2:50 p.m.
08/12/10	Senate amendments concurred in. To enrollment. (Ayes 78. Noes 0. Page 6165.)
08/05/10	In Assembly. Concurrence in Senate amendments pending. May be considered on or after August 7 pursuant to Assembly Rule 77.
08/05/10	Read third time, passed, and to Assembly. (Ayes 33. Noes 0. Page 4374.)
08/03/10	Read second time. To Consent Calendar.
08/02/10	From committee: Be placed on second reading file pursuant to Senate Rule 28.8 and to Consent Calendar.
06/22/10	From committee: Do pass, and re-refer to Com. on APPR with recommendation: To Consent Calendar. Re-referred. (Ayes 9. Noes 0.) (June 22).
06/14/10	From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on G.O.
05/20/10	Referred to Com. on G.O.
05/06/10	In Senate. Read first time. To Com. on RLS. for assignment.
05/06/10	Read third time, passed, and to Senate. (Ayes 74. Noes 0. Page 5053.)
05/03/10	Read second time. To Consent Calendar.
04/29/10	From committee: Do pass. To Consent Calendar. (April 28).
04/20/10	From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 13. Noes 0.) (April 19).
04/06/10	Re-referred to Com. on TRANS.
04/05/10	From committee chair, with author's amendments: Amend, and re-refer to Com. on TRANS. Read second time and amended.
03/22/10	In committee: Hearing postponed by committee.
03/16/10	Re-referred to Com. on TRANS.
03/15/10	From committee chair, with author's amendments: Amend, and re-refer to Com. on TRANS. Read second time and amended.
02/25/10	Referred to Com. on TRANS.
02/17/10	From printer. May be heard in committee March 19.
02/16/10	Read first time. To print.

**SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION
Senator Roderick D. Wright, Chair
2009-2010 Regular Session
Staff Analysis**

**AB 1888 Author: Ma
As Amended: June 14, 2010
Hearing Date: June 22, 2010
Consultant: Art Terzakis**

SUBJECT

Bays of Monterey, San Francisco, San Pablo & Suisun: pilotage rates

DESCRIPTION

AB 1888 makes the following substantive and clarifying changes to the Harbors & Navigation Code relating to the Board of Pilot Commissioners and pilotage for the Bays of Monterey, San Francisco, San Pablo and Suisun:

1. Staggers the terms for members of the Board who are licensed pilots and industry representatives, as specified.
2. Exempts from pilotage fees and surcharges noncommercial vessels that are maritime academy training vessels and vessels owned and operated by nonprofit museums or foundations.
3. Increases the minimum size of vessel that requires pilotage from 300 gross tons to 750 gross tons.
4. Requires bar pilots to include the amount of fees and surcharges not collected from training and nonprofit vessels in their monthly accounting reports.

EXISTING LAW

Existing law establishes in state government the Board of Pilot Commissioners, with jurisdiction over Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun. Existing law directs the Board to regulate pilotage and provides for the licensing, regulation, and management of pilots in these Bays. The Board consists of 7 members appointed by the Governor, with the consent of the Senate, as follows: (1) two members must be licensed pilots; (2) two members must represent the industry and be substantial users of Monterey Bay and any of the waters of the Bays of San Francisco, San Pablo, or Suisun; and, (3) three must be "public" members.

Existing law prescribes pilotage rates for vessels and requires vessels spoken inward or outward bound to pay a specified rate of bar pilotage through the Golden Gate and into or out of the Bays of San Francisco, San Pablo and Suisun and vessels navigating the waters of Monterey Bay are also required to pay a specified rate.

Existing law provides that the Board shall, from time to time, review pilotage expenses and establish guidelines for the evaluation and application of these expenses regarding its recommendations for adjustments in rates. Currently, those rates may be adjusted at the direction of the Board in the event of specified changes in the number of pilots or catastrophic cost increases. Specifically, current law requires an adjustment to rates when the number of pilots falls below 60 or rises above 60.

Existing law also imposes a Board operation surcharge of pilotage fees, as specified, to be deposited in the Board of Pilot Commissioners' Special Fund and used to support the Board, and imposes an additional charge for pension benefits payable to a fiduciary agent, as specified. The Fund is continuously appropriated for the payment of the compensation and expenses of the Board, its officers and employees. Additionally, existing law provides for a pilot trainee surcharge and a pilot and inland pilot training program surcharge that pays for these respective training programs.

Existing law exempts from those pilotage fees and surcharges referenced above noncommercial vessels that are maritime academy training vessels and vessels owned and exhibited by nonprofit museums or foundations.

Existing law exempts from pilotage fees a vessel sailing under a coastwise license or appropriately endorsed registry and engaged in the coasting trade, as described, unless a pilot or inland pilot is actually used. A foreign vessel, a vessel bound to or from a foreign port, or a vessel sailing under a register is required to use a pilot or inland pilot. These provisions do not apply to a vessel that is less than 300 gross tons and is manufactured and used for private recreation.

Existing law requires pilots to submit to the Board every month a verified account of all moneys or other compensation received by the pilot or inland pilot as a result of pilotage services, or by any other person for the pilot or inland pilot, or on the pilot's or inland pilot's account, on the forms furnished by the board.

BACKGROUND

Brief Historical Perspective: Bar pilots have been guiding ships into San Francisco Bay, one of the most treacherous passages in the world, since at least 1835. The work that bar pilots performed was so important that one of the first legislative enactments by the newly formed California Legislature that met in San Jose in 1850 was to address the regulation of bar pilots.

California's history of piloting parallels to a large extent the history of pilotage throughout the United States. Prior to the American Revolution, pilotage was regulated by colonial legislatures. They generally provided for the commissioning of pilots, apprenticeship requirements to become a pilot, specified the type and size of pilot boats used in the service, and established fees to be charged. When the United States

Constitution was adopted, it recognized that pilotage fell within the domain of the federal government because it involved regulation of instruments of foreign commerce. One of the first acts of the newly formed Congress in 1789 was to recognize the existing state laws regulating pilots and delegate to the states the authority to continue to regulate pilotage because of its unique character.

Bar pilots are responsible for steering an arriving vessel through the Golden Gate of San Francisco Bay, the Bay waters and adjoining navigable waters, which include San Pablo Bay, Suisun Bay, the Sacramento River and its tributaries. When a vessel approaches the "SF" buoy 12 miles west of the Golden Gate Bridge, a bar pilot boards the ship and takes navigational control. It becomes the pilot's responsibility to guide the ship to its berth. The bar pilots provide service to all types of vessels, from 100-foot tugs to 1000-foot supertankers.

Purpose of AB 1888: According to the sponsor of this measure, the San Francisco Bar Pilots Association, bar pilots have historically waived fees for museum ships as well as for maritime academy ships. Last year the bar pilots were informed that this practice was in violation of existing law that states all ships must pay. The bar pilots have requested an amendment to existing law that will permit the free service to continue. According to the bar pilots, pilots piloted such vessels only three or four times last year.

Additionally, as noted above, existing law exempts from mandatory pilotage fees recreational vehicles (yachts) of 300 gross registered tons or less. Bar pilots contend that it is often unsafe to board yachts because of their hull designs and therefore have requested an amendment to the Harbors & Navigation Code which would exempt from mandatory pilotage recreational vehicles of 750 registered tons or less. Unlike larger commercial vessels, larger pleasure craft draw only about 10-12 feet of water, making them unlikely to run aground and, therefore, free of need for pilotage. Bar pilots also claim that large recreational craft tend to have flared sides, rather than vertical sides like most commercial vessels, making the recreational craft dangerous to board in the open sea. Last year, the bar pilots piloted 9 yachts between 300 gross tons and 750 gross tons for a total of 36 boardings.

PRIOR/RELATED LEGISLATION

SB 300 (Yee) Chapter 497, Statutes of 2009. Established a surcharge for payment of navigational aids for bar pilots and revised the pilotage rate based upon the current number of bar pilots.

SB 1627 (Wiggins) Chapter 567, Statutes of 2008. Made numerous substantive, clarifying and technical changes to the body of law relating to the Board of Pilot Commissioners. Specifically, injected ongoing and continuous legislative oversight and administrative responsibility within the existing pilot licensing framework, without altering the Board, its charge, or composition and without changing current pilotage rates, pilot pension benefits, or duties and responsibilities of current, past or future licensed pilots.

SB 1217 (Yee) Chapter 568, Statutes of 2008. Required the Board of Pilot Commissioners to appoint a physician or physicians who are qualified to determine the

suitability of a person to perform his or her duties as a pilot, an inland pilot, or a pilot trainee in accordance with specified requirements. Also, required the Board to terminate a pilot trainee or suspend or revoke the license of a pilot or an inland pilot who fails to submit the prescribed medication information required by these provisions.

AB 852 (Leno) Chapter 129, Statutes of 2005. Among other things, authorized revenue generated by the pilot boat surcharge to be used to pay for pilot boat design and engineering modifications intended to extend the service life of existing boats, in addition to the existing purpose of purchasing new pilot boats.

SB 1303 (Torlakson) Chapter 560, Statutes of 2004. Made a minor change to an existing provision of law relative to representation on the Board of Pilot Commissioners by clarifying that the Board's two industry members must be substantial users of any of the waters of the Bays of San Francisco, San Pablo, Suisun, or Monterey.

SB 1353 (Perata) Chapter 765, Statutes of 2002. Established a schedule of incremental changes (through January 1, 2006) to the rates and special surcharges that bar pilots may impose on vessels that move in and out of the Bays of San Francisco, San Pablo and Suisun.

SB 637 (McPherson) Chapter 177, Statutes of 2001. Allowed San Francisco bar pilots to pilot commercial vessels calling on ports in "Monterey Bay" by including Monterey Bay within the system of state regulated pilotage for the Bays of San Francisco, San Pablo and Suisun.

SB 2177 (McPherson) 1999-2000 Session. Would have applied existing provisions of law relative to the regulation, licensing, and management of pilots for the Bays of San Francisco, San Pablo and Suisun to persons who pilot vessels into or out of the waters of Monterey Bay. (Held in Assembly policy committee at author's request)

SB 2144 (Perata) Chapter 394, Statutes of 2000. Made various modifications to provisions of law governing the licensing of bar pilots.

SB 1109 (Burton) Chapter 786, Statutes of 2000. Among other things, required a vessel owner and its operators to defend, indemnify, and hold harmless, a bar pilot from any liability and expenses in connection with any civil claim suit as action arising out of the pilot's performance of the pilotage services, except for acts of willful misconduct.

AB 951 (Wiggins) Chapter 261, Statutes of 1999. Codified the agreement on bar pilot rate increases reached between the San Francisco Bar Pilots and the Pacific Merchant Shipping Association.

SB 1741 (Johnston) Chapter 1115, Statutes of 1996. Among other things, established a schedule of bar pilotage rate increases that were phased in over a three-year period (1997-99).

SB 496 (M. Thompson) Chapter 711, Statutes of 1995. Revised the formula the fiduciary uses to calculate the quarterly adjustment for pilotage rates. Also, changed the schedule of pilotage fees for ship movements and internal operations, as specified.

SB 2068 (Johnston) Chapter 385, Statutes of 1994. Increased the pilotage rate from 60.70 mills to 64.88 mills and required the board to temporarily reduce the additional charge, as specified, if maintenance and repair costs of two pilot boats are less than \$200,000.

SB 238 (Lockyer) Chapter 1192, Statutes of 1993. Increased the rate of the additional pilotage charge from 60.56 mills per high gross registered ton to 60.70 mills. Also, included inland pilots, as defined, in the pension benefit program.

AB 1768 (Papan) Chapter 1653, Statutes of 1984. Among other things, established a unified system of state regulated pilotage whereby inland pilots became members of the San Francisco Bar Pilots Association and the combined group assumed joint responsibility for all pilotage moves on the pilotage grounds (e.g., San Francisco, San Pablo, and Suisun Bays and all other ports included therein.) _

SUPPORT: As of June 18, 2010:

San Francisco Bar Pilots Association
Pacific Merchant Shipping Association

OPPOSE: None on file as of June 18, 2010.

FISCAL COMMITTEE: Senate Appropriations Committee
