

BILL ANALYSIS

C.S.H.B. 3366
By: Ritter
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, state law provides for the licensing and regulation of branch pilots and deputy pilots and the establishment of pilotage rates for the ports of this state. Each port has a separate licensing law. The ports of Corpus Christi, Houston and Galveston have adopted similar model acts for this purpose. The model acts provide due process rights for pilots and consignees of vessels; standard pilot qualifications; hearing processes for pilot license applications and applications for rate changes; and accountability provisions for both pilots and consignees of vessels.

As proposed, C.S.H.B. 3366 sets forth the guidelines for the licensing and regulation of branch pilots and deputy branch pilots for the Ports of Jefferson and Orange Counties.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Title 4, Transportation Code, by amending Chapter 69, as follows:

CHAPTER 69. JEFFERSON AND ORANGE COUNTY PILOTS LICENSING AND REGULATORY ACT.

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 69.001. SHORT TITLE. Jefferson and Orange County Pilots Licensing and Regulatory Act.

Sec. 69.002. DEFINITIONS. Defines (1) "Board," (2) "Consignee," (3) "Port," (4) "Pilot," (5) "Pilotage rate," (6) "Pilot services," and (7) "Vessel."

Sec. 69.003. APPLICATION OF CHAPTER. Provides that this chapter applies only to a Jefferson and Orange county port.

SUBCHAPTER B. BOARD OF PILOT COMMISSIONERS

Sec. 69.011. BOARD. Requires that the five board members reside in Jefferson or Orange County and that they be appointed by the Governor to staggered terms. A chairman shall be selected by the board members.

Sec. 69.012. PROHIBITED INTEREST. Prohibits a board member from having a direct or indirect pecuniary interest in a pilot boat or branch pilot in the business of the board's trust.

Sec. 69.013. OATH. Requires each board member to take and sign an oath to faithfully and impartially discharge the duties of the office.

Sec. 69.014. TERM OF OFFICE. States that each board member serves a two year term.

Sec. 69.015. JURISDICTION. Provides that the board has exclusive jurisdiction over the piloting of vessels in the ports of Jefferson and Orange Counties.

Sec. 69.016. ADMINISTRATION AND RULES. (a) Requires the board to administer this chapter and authorizes them to perform any act or function necessary to carry out its powers and duties. (b) Authorizes the board to adopt rules to carry out this chapter.

Sec. 69.017. DUTIES. (b) Sets forth the required duties of the board. (b) Sets forth additional duties which the board may undertake.

Sec. 69.018. UNFAIR DISCRIMINATION PROHIBITED. (a) Prohibits the board from discriminatory practices and from discriminating against a pilot or pilot applicant. (b) Requires a person seeking a remedy for a violation of this section to bring suit in a Jefferson County district court.

Sec. 69.019. OPEN MEETINGS LAW. Provides that Chapter 551, Government Code, applies to actions and proceedings under this chapter.

Sec. 69.020. RULE OF RATE CHANGE. (a) Requires the board to give at least 10 days notice before the board adopts a rule or changes a pilotage rate. (b) Requires the board to mail the notice and a copy of the proposed rule or change by registered mail to certain individuals, post the notice in the Jefferson and Orange County courthouses, and publish the notice in a newspaper of general circulation in Jefferson and Orange Counties.

Sec. 69.021. CONTESTED CASE NOTICE. States that the board will give notice in each contested case that includes the same information as the notice given to the parties in each contested case.

Sec. 69.022. JUDICIAL REVIEW. Requires proceedings for judicial review of a board decision to be brought in a Jefferson County district court.

Sec. 69.023. BUDGET; ANNUAL REPORTS; AUDITS. (a) Requires the board to adopt a proposed budget forty-five days prior to the start of the fiscal year and states that the board may only expend funds after holding a public hearing and after formal board approval of the budget. (b) Sets forth that board accounts are subject to audit by the state auditor. (c) Requires the board to keep minutes of meetings and other records on board actions. (d) Requires the board to submit a report to the governor within thirty days of the end of each fiscal year.

Sec. 69.024. DEPOSITORY BANK; EXPENDITURE OF FUNDS. Requires the board to deposit all money received by the board in a bank located in Jefferson or Orange Counties.

SUBCHAPTER C. PILOTS' LICENSES AND CERTIFICATES

Sec. 69.031. LICENSES OR CERTIFICATE REQUIRED. Prohibits a person from providing pilot services unless the person has a license or certificate issued under this chapter for the Ports of Jefferson and Orange counties.

Sec. 69.032. EXEMPTIONS. States that the requirement to use a pilot does not apply to a vessel sailing under enrollment, or licensed or engaged in the coasting trade between Texas ports or between any Texas port and any other port of the United States; or a vessel exempt under federal law from payment of state pilotage rates.

Sec. 69.033. QUALIFICATIONS FOR LICENSE. Sets forth the required qualifications for a person to be eligible for a license as a branch pilot.

Sec. 69.034. QUALIFICATIONS FOR CERTIFICATE. Sets forth the required qualifications for a person to be eligible for a certification as a deputy branch pilot.

Sec. 69.035. APPLICATION FOR LICENSE OR CERTIFICATE. Requires a person to provide the board with a written application to apply for a branch pilot's license or a deputy branch pilot's certificate.

Sec. 69.036. CONSIDERATION OF APPLICATION. (a) Requires the board to carefully consider each application and conduct any investigation it considers necessary to determine whether an applicant is qualified for a license or certificate. (b) Allows the board to develop and administer examinations to determine an applicant's knowledge of piloting.

Sec. 69.037. BRANCH PILOT APPOINTMENT BY GOVERNOR. (a) Requires the board to certify to the governor that a person licensed as a branch pilot has qualified on filing of the bond and oath. (b) Requires the governor to issue to the person, a commission to serve as a branch pilot to and from the Ports of Jefferson and Orange counties upon receipt of the board's certification.

Sec. 69.038. DEPUTY BRANCH PILOT APPOINTMENT. (1) Authorizes each branch pilot to appoint two deputy branch pilots subject to board approval; Allows an additional deputy pilot to be appointed with board approval; Prohibits deputy pilots from appointing deputy pilots without board approval; States that actions taken by deputy pilots are the responsibility of the branch pilot.

Sec. 69.039. OATH AND BOND. (a) Requires a person appointed as a pilot to take the official oath before entering service as a pilot and requires the oath to be endorsed on the bond. (b) Requires each pilot to execute a \$25,000 bond payable to the governor and conditioned on compliance with the laws, rules, and orders relating to pilots and on the faithful performance of the pilot's duties. (c) Requires each bond to be approved by the board.

Sec. 69.040. TERMS OF LICENSES AND CERTIFICATES. (a) Provides that a branch pilot's license expires on the fourth anniversary of the date it is issued or renewed or after the pilot's 68th birthday unless such an individual is currently licensed or will be licensed within one year of the effective date of this chapter. (b) Provides that a deputy branch pilot's certificate expire on the second anniversary of the date it is issued and may not be renewed.

Sec. 69.041. BRANCH PILOT'S LICENSE RENEWAL. (a) Requires the governor to renew a branch pilot's expiring license if the board recommends renewal. (b) Requires the board, if a pilot applies in writing and qualifies, to recommend renewal unless the board determines there is probable cause not to renew the license. (c) Provides that probable cause not to renew a license exists if the board finds that the license holder is not qualified or has a disability that will affect the license holder's ability to serve as a pilot. (d) States that when the board determines that it has probable cause not to renew a license, it must notify the license holder by the 60th day before the date the license expires; Requires the board to provide a hearing, upon request, to consider the non-renewal. (e) Requires the board to recommend that the governor renew the license if the board finds that it lacks probable cause for non-renewal of the license. (f) Requires the board to issue a written order recommending that the governor not renew a license and the governor may not renew the license if certain conditions exist. (g) Provides that the denial of renewal of a pilot's license does not prohibit the pilot from applying for a new license and being appointed.

Sec. 69.042. DEPUTY BRANCH PILOT. Prohibits a person who has been issued a deputy branch pilot's certificate from being issued a deputy branch pilot's certificate before the fifth anniversary of the date the person was previously issued a deputy branch pilot's certificate.

Sec. 69.043. SUSPENSION OR REVOCATION OF BRANCH PILOT'S LICENSE. (a) Authorizes the board to suspend a branch pilot's license or recommend that the governor revoke a branch pilot's license if the pilot has partaken in certain courses of conduct. (b) Requires the board, on finding that it has good cause, to suspend the license of a pilot if the pilot's federal license is suspended or revoked. (c) Requires the board, on determining that a license should be suspended or revoked, to adopt a written order that states its findings and either suspends the license for a stated period, or recommends to the governor revocation of the license. (d) Requires the governor to revoke a license if he receives a board order recommending license revocation. Prohibits the governor from revoking the license if the board's order is appealed and until the order is upheld on appeal. (e) Provides that a license suspension takes effect on adoption of the board's order. Provides that a revocation of a branch pilot's license takes effect on

issuance of the governor's decision.

Sec. 69.044. SUSPENSION OR REVOCATION OF DEPUTY BRANCH PILOT'S CERTIFICATE. Authorizes a deputy branch pilot certificate to be suspended or revoked by the board in the same manner and for the same reason as provided for the suspension or revocation of a branch pilot's license.

Sec 69.045. LIABILITY TO PILOT. (a) A non-pilot and who pilots a vessel and the consignee of the vessel are liable to a pilot for the amount of the applicable pilotage rate. (b) Allows the court to include in a judgment in favor of a pilot an award of court costs and reasonable attorney's fees.

SUBCHAPTER D. PILOTAGE RATES

Sec. 69.061. PILOTAGE RATE CHANGE. (a) Prohibits the board from changing pilotage rates before its first anniversary of the preceding rate change.

Sec. 69.062. PILOT RATE CHANGE APPLICATION. (a) Sets forth who may submit an application for a change in pilotage rates. (b) Requires the application to be written and to state the requested changes. (c) Directs the board to set a hearing date within two weeks of receipt of an application, and to hold the hearing not earlier than the 20th day and not later than the 40th day after the date the board sets the hearing date. (d) Sets forth to whom an applicant shall give notice of the application and the hearing date, by certified mail. (e) Prohibits the board from increasing pilotage rates for the ports of Beaumont, Port Arthur or Orange unless the commissioners for those ports approves the increase.

Sec.69.063. PILOT FINANCIAL REPORT. (a) Requires the pilots who serve the port for which the rates are being considered, no later than the 10th day before the date set for a pilotage rate hearing, to submit to the board and to any party designated by the board certain accounts. (b) Requires the pilots to provide the information for the calendar or fiscal year preceding the date of the pilotage rate change application; and the subsequent period to within 60 days of the date of the application. (c) Permits the board to require an independent audit of financial information submitted by an accountant. Requires the board to assess the costs of the audit. (d) Permits the board to require additional information to determine a pilotage rate.

Sec. 69.064. FACTORS FOR BOARD CONSIDERATION. Requires the board to consider certain factors in acting on a pilotage rate change application.

Sec. 69.065. RATE DECISION. Sets forth that not later than the 10th day after the date of the completion of a hearing on an application for a change in pilotage rates, the board shall issue a written decision that grants or denies the application in whole or in part, states the reasons for the decision, and states each new pilotage rate.

Sec.69.066. COSTS. Allows the board to charge all or part of the costs of processing an application to the parties in the proceedings.

Sec. 69.067 APPEAL OF BOARD DECISION. Allows any party aggrieved by a board decision on pilotage rates to appeal the order to a court.

Sec. 69.068. EMERGENCY PILOTAGE RATES. (a) Authorizes the board to establish emergency pilotage rates. (b) Provides that in adopting emergency pilotage rates, the board is not required to comply with the procedures in this chapter or in its rules relating to the adoption of pilotage rates. (c) Prohibits emergency pilotage rates from being appealed. (d) Requires the board to adopt rules necessary to carry out this section.

Sec. 69.069. PILOT SERVICES REQUIRED. Requires the consignee of a vessel to obtain pilot services for the vessel and to pay the pilot compensation according to the pilotage rates filed by the board.

Sec. 69.070. PILOTAGE RATE LIABILITY. (a) States that a consignee who declines the services of a pilot offered outside the bar and enters the port without the aid of a pilot is liable for the payment of pilotage to the first pilot whose services were declined. (b) States that a consignee is liable for the payment to the pilot who brings a vessel in if the vessel goes out without employing a pilot. (c) States that a consignee is liable for the payment of pilotage for a vessel that goes out without the aid of a pilot and that came in without the aid of a pilot to the pilot who first offered services before the vessel came in. (d) States that a consignee is not liable for the payment of pilotage for a vessel going out without a pilot if the vessel came

in without the aid of a pilot or came in without the offer of a pilot outside. (e) States that Subsections (a)-(d) do not apply to a consignee exempt under this chapter from payment of pilotage rates. (f) States that a pilot who charges a rate for pilot services in excess of the pilotage rates is liable to each person who was charged the different rate for double the amount of pilotage. (g) Allows a court to include in a judgment in favor of a person who files suit an award to cover court costs and reasonable attorney's fees.

Sec. 69.071. RECOVERY OF COMPENSATION. A pilot who offers pilot services to a vessel required under this chapter to obtain pilot services and whose services are refused is entitled to recover from the consignee the pilotage rate for the services

SUBCHAPTER E. PILOT LIABILITY

Sec. 69.081. PURPOSE. Provides that the purpose of this chapter is to stimulate and preserve maritime commerce on the pilotage grounds of this state.

Sec. 69.082. PILOT LIABILITY. Provides that a pilot is not liable for a claim that arises from an act or omission of another pilot or organization of pilots and relates to pilot services.

Sec. 70.083. PILOTS LIABILITY LIMITED. (a) Provides that a pilot is not liable for more than \$1,000 for damage or loss caused by the pilot's error in the performance of the pilot services. (b) Sets forth the conditions in which this section does not apply. (c) Provides that this section does not exempt the vessel or its owner or operator from liability for damage or loss caused by the vessel to a person or property on the grounds that the vessel was piloted by a pilot; or the damage or loss was caused by the error, omission, fault, or neglect of a pilot. (d) Requires the court, in an action brought against a pilot for an act or omission for which liability is limited, to dismiss the proceedings as to the pilot to the extent the pleadings allege pilot liability that exceeds \$1,000.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute was drafted by the Legislative Council to ensure that the bill was correct in form and substance. Sec. 69.012 is amended to reflect current law so that no changes are made to the board and Sec. 69.064(6) is amended to ensure that when determining rates, rates paid to pilots on coastal waters, not inland waters, are examined.