

1-1 By: Williams S.B. No. 1772
1-2 (In the Senate - Filed March 14, 2003; March 24, 2003, read
1-3 first time and referred to Committee on Natural Resources;
1-4 May 15, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; May 15, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1772 By: Lucio

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to licensing and regulation of certain pilots, pilotage
1-11 rates, and pilot service.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 69, Transportation Code, is amended to
1-14 read as follows:

1-15 CHAPTER 69. JEFFERSON AND ORANGE COUNTY PILOTS LICENSING AND
1-16 REGULATORY ACT

1-17 SUBCHAPTER A. GENERAL PROVISIONS

1-18 Sec. 69.001. SHORT TITLE. This chapter may be cited as the
1-19 Jefferson and Orange County Pilots Licensing and Regulatory Act.

1-20 Sec. 69.002. DEFINITIONS. In this chapter:

1-21 (1) "Board" means the board of pilot commissioners
1-22 described by Section 69.011.

1-23 (2) "Consignee" means a person, including a master,
1-24 owner, agent, subagent, firm, or corporation or any combination of
1-25 those persons, who enters or clears a vessel at the office of the
1-26 collector of customs.

1-27 (3) "Jefferson or Orange County port" means a place in
1-28 Jefferson or Orange County into which a vessel enters or from which
1-29 a vessel departs and the waterway leading to that place from the
1-30 Gulf of Mexico.

1-31 (4) "Pilot" means a person who is licensed as a branch
1-32 pilot or certified as a deputy branch pilot under this chapter.

1-33 (5) "Pilotage rate" means the remuneration a pilot may
1-34 lawfully charge a vessel for pilot services.

1-35 (6) "Pilot services" means acts of a pilot in
1-36 conducting a vessel through navigable water in this state and the
1-37 ports in which the pilot is licensed or certified as a pilot.

1-38 (7) "Vessel" means an oceangoing vessel.

1-39 Sec. 69.003. APPLICABILITY OF CHAPTER. This chapter
1-40 applies only to a Jefferson or Orange County port.

1-41 [Sections 69.004-69.010 reserved for expansion]

1-42 SUBCHAPTER B. BOARD OF PILOT COMMISSIONERS

1-43 Sec. 69.011. COMPOSITION OF BOARD. (a) The board of pilot
1-44 commissioners for all of the ports and private terminals located in
1-45 Jefferson or Orange County, or both, is composed of five
1-46 commissioners from Jefferson or Orange County appointed by the
1-47 governor in the manner provided by Subchapter A, Chapter 63.

1-48 (b) The presiding officer of the board shall be selected by
1-49 the members of the board.

1-50 Sec. 69.012. PROHIBITED INTEREST. A person may not be a
1-51 member of the board if the person has a direct or indirect pecuniary
1-52 interest in a pilot boat or branch pilot in the business of the
1-53 board's trust.

1-54 Sec. 69.013. OATH. Before beginning service as a board
1-55 member, each board member must take and sign before a person
1-56 authorized to administer oaths an oath to faithfully and
1-57 impartially discharge the duties of the office.

1-58 Sec. 69.014. TERMS OF OFFICE. (a) Board members serve
1-59 staggered two-year terms of office.

1-60 (b) A member holds office until the member's successor is
1-61 appointed and qualified.

1-62 Sec. 69.015. JURISDICTION OF BOARD. The board has
1-63 exclusive jurisdiction over the pilot services provided in

2-1 Jefferson or Orange County, including intermediate stops and
 2-2 landing places for vessels on navigable streams wholly or partially
 2-3 located in the board's jurisdiction.

2-4 Sec. 69.016. ADMINISTRATION; RULES. (a) The board shall
 2-5 administer this chapter and may perform any act or function
 2-6 necessary to carry out its powers and duties under this chapter.

2-7 (b) The board may adopt rules to carry out this chapter.

2-8 Sec. 69.017. DUTIES. (a) The board shall:

2-9 (1) establish the number of pilots necessary to
 2-10 provide adequate pilot services for each Jefferson or Orange County
 2-11 port;

2-12 (2) establish pilotage rates;

2-13 (3) hear and determine complaints relating to the
 2-14 conduct of pilots;

2-15 (4) make recommendations to the governor concerning
 2-16 any pilot whose license or certificate should not be renewed or
 2-17 should be revoked;

2-18 (5) adopt rules and issue orders to pilots and vessels
 2-19 when necessary to secure efficient pilot services;

2-20 (6) institute investigations or hearings or both to
 2-21 consider casualties, accidents, or other actions that violate this
 2-22 chapter;

2-23 (7) provide penalties to be imposed on a person who is
 2-24 not a pilot for a Jefferson or Orange County port and who pilots a
 2-25 vessel into or out of the port if the person offered pilot services
 2-26 to the vessel;

2-27 (8) establish times during which pilot services will
 2-28 be available;

2-29 (9) accept applications for pilot licenses and
 2-30 certificates and determine whether each applicant meets the
 2-31 qualifications for a pilot;

2-32 (10) submit to the governor the names of persons who
 2-33 have qualified under this chapter to be appointed as branch pilots;
 2-34 and

2-35 (11) approve any changes of the locations of pilot
 2-36 stations.

2-37 (b) The board may:

2-38 (1) recommend the number of deputy pilots each branch
 2-39 pilot may appoint under Section 69.038; and

2-40 (2) make any other provision for proper, safe, and
 2-41 efficient pilotage under this chapter and for the efficient
 2-42 administration of this chapter.

2-43 (c) The board may assess against the users of pilot
 2-44 services:

2-45 (1) the actual costs the board considers fair and just
 2-46 incurred in connection with hearings against any applicant or
 2-47 objecting party; and

2-48 (2) other expenses that are necessary and proper to
 2-49 enable the board to effectively carry out the purposes and
 2-50 requirements of this chapter, including processing of applications
 2-51 for pilot licenses and certificates, establishing pilotage,
 2-52 determining and approving the locations for pilot stations,
 2-53 establishing times during which pilot services will be available,
 2-54 hearing and ruling on complaints relating to the conduct of pilots,
 2-55 adopting rules and issuing orders to pilots or vessels when
 2-56 necessary to secure efficient pilot services, instituting
 2-57 investigations or hearings to consider casualties, accidents, or
 2-58 other actions that violate this chapter, making of any provision
 2-59 for proper, safe, and efficient pilotage, and funding general
 2-60 administrative expenses associated with the operation of the board.

2-61 (d) Assessments against the users of pilot services under
 2-62 Subsection (c) may not exceed \$100,000 in a fiscal year.

2-63 (e) Funds collected under this section may not be used for
 2-64 compensation to any member of the board.

2-65 Sec. 69.018. UNFAIR DISCRIMINATION PROHIBITED. (a) In all
 2-66 its duties, including rulemaking, the board may not sanction
 2-67 discriminatory practices or discriminate against a pilot or pilot
 2-68 applicant because of race, religion, sex, ethnic origin, or
 2-69 national origin.

3-1 (b) A person seeking a remedy for a violation of this
3-2 section must bring suit in a district court in Jefferson County.

3-3 Sec. 69.019. OPEN MEETINGS LAW. Chapter 551, Government
3-4 Code, applies to actions and proceedings under this chapter.

3-5 Sec. 69.020. RULE OR RATE CHANGE. (a) The board shall give
3-6 at least 10 days' notice as provided by this section before the
3-7 board adopts a rule or changes a pilotage rate.

3-8 (b) The board shall send the notice and a copy of the
3-9 proposed rule or change by registered mail to the last known address
3-10 of:

3-11 (1) all known pilots association offices;

3-12 (2) all pilots licensed or certified in the port;

3-13 (3) all steamship agencies and associations in the
3-14 port; and

3-15 (4) all known users of pilot services for the previous
3-16 12 months.

3-17 (c) The board shall post a copy of the proposed rule or
3-18 change at the county courthouse of Jefferson County and of Orange
3-19 County, as well as the subcourthouse in Port Arthur, for public
3-20 inspection.

3-21 (d) The board shall publish a copy of the proposed rule or
3-22 change in a newspaper of general circulation in Jefferson and
3-23 Orange Counties.

3-24 Sec. 69.021. CONTESTED CASE NOTICE. The board shall give
3-25 notice in each contested case to the persons and in the manner
3-26 provided by Section 69.020(b) that includes the same information as
3-27 the notice given to the parties in each contested case.

3-28 Sec. 69.022. JUDICIAL REVIEW. Proceedings for judicial
3-29 review of a board decision shall be brought in a district court in
3-30 Jefferson County.

3-31 Sec. 69.023. BUDGET; ANNUAL REPORT; AUDITS. (a) The board
3-32 shall adopt a budget not later than the 45th day before the start of
3-33 a fiscal year. The budget may be adopted only after a public
3-34 meeting has been held to explain the budget.

3-35 (b) Accounts of the board are subject to audit by the state
3-36 auditor.

3-37 (c) The board shall keep minutes of its meetings and other
3-38 books and records that clearly reflect all acts and transactions of
3-39 the board. The board shall open its records to examination by any
3-40 person during regular business hours.

3-41 (d) Not later than the 30th day after the end of a fiscal
3-42 year, the board shall submit to the governor a report itemizing all
3-43 income and expenditures and describing all activities of the board
3-44 during the previous fiscal year.

3-45 Sec. 69.024. DEPOSITORY BANK; EXPENDITURE OF FUNDS. The
3-46 board shall deposit all money received by the board under this
3-47 chapter, including assessments and grants from governmental
3-48 agencies, in a bank located in Jefferson or Orange County and
3-49 selected by the board.

3-50 [Sections 69.025-69.030 reserved for expansion]

3-51 SUBCHAPTER C. PILOT LICENSES AND CERTIFICATES

3-52 Sec. 69.031. LICENSES OR CERTIFICATE REQUIRED. A person
3-53 may not provide pilot services unless the person has a license or
3-54 certificate issued under this chapter for the Jefferson and Orange
3-55 County ports in which the pilot services are to be provided.

3-56 Sec. 69.032. EXEMPTIONS. The requirement to use a pilot
3-57 does not apply to:

3-58 (1) a vessel sailing under enrollment, or licensed or
3-59 engaged in the coasting trade between Texas ports or between any
3-60 Texas port and any other port of the United States; or

3-61 (2) a vessel exempt under federal law from payment of
3-62 state pilotage rates.

3-63 Sec. 69.033. QUALIFICATIONS FOR LICENSE. To be eligible
3-64 for a license as a branch pilot for the ports within the
3-65 jurisdiction of the board, a person must:

3-66 (1) be at least 25 years of age and younger than 68
3-67 years of age unless exempted under the provisions of Section
3-68 69.040(b);

3-69 (2) be a United States citizen;

4-1 (3) as of the date the license is issued, have resided
4-2 continuously in this state for at least two years;
4-3 (4) have at least one year's service as a deputy branch
4-4 pilot or equivalent service piloting vessels of at least 5,000
4-5 gross tons within the board's jurisdiction;
4-6 (5) have successfully completed the board-approved
4-7 training program;
4-8 (6) have commanded or controlled the navigation of
4-9 vessels such as the person would pilot;
4-10 (7) have extensive experience in the docking and
4-11 undocking of vessels;
4-12 (8) be in good mental and physical health;
4-13 (9) have good moral character;
4-14 (10) possess the requisite skill as a navigator and
4-15 pilot to perform competently and safely the duties of a branch
4-16 pilot; and
4-17 (11) hold a license under federal law to act as a pilot
4-18 on vessels that navigate water on which the applicant will furnish
4-19 pilot services.
4-20 Sec. 69.034. QUALIFICATIONS FOR CERTIFICATE. To be
4-21 eligible for a certificate as a deputy branch pilot, a person must:
4-22 (1) be at least 25 years of age;
4-23 (2) be a United States citizen;
4-24 (3) hold a license under federal law to act as a pilot
4-25 on vessels that navigate water on which the applicant will furnish
4-26 pilot services;
4-27 (4) be in good mental and physical health;
4-28 (5) have good moral character;
4-29 (6) possess the requisite skill as a navigator and
4-30 pilot to perform competently and safely the duties of a deputy
4-31 branch pilot; and
4-32 (7) successfully complete the board-approved
4-33 apprenticeship training program.
4-34 Sec. 69.035. APPLICATION FOR LICENSE OR CERTIFICATE. To
4-35 apply for a branch pilot's license or a deputy branch pilot's
4-36 certificate, a person must give the board a written application in
4-37 the form and manner required by board rule.
4-38 Sec. 69.036. CONSIDERATION OF APPLICATION. (a) The board
4-39 shall carefully consider each application submitted under Section
4-40 69.035 and shall conduct any investigation it considers necessary
4-41 to determine whether an applicant is qualified for a license or
4-42 certificate.
4-43 (b) As part of its consideration under Subsection (a), the
4-44 board may develop and administer standardized examinations to
4-45 determine an applicant's knowledge of piloting, management of
4-46 vessels, and the waterways in the board's jurisdiction.
4-47 Sec. 69.037. BRANCH PILOT APPOINTMENT BY GOVERNOR. (a) On
4-48 filing of the bond and oath required by Section 69.039, the board
4-49 shall certify to the governor that a person licensed as a branch
4-50 pilot has qualified.
4-51 (b) On receipt of the board's certification, the governor
4-52 shall issue to the person, in the name of the state and under the
4-53 state seal, a commission to serve as a branch pilot to and from
4-54 Jefferson and Orange County ports.
4-55 Sec. 69.038. DEPUTY BRANCH PILOT APPOINTMENT BY BRANCH
4-56 PILOT. (a) Each branch pilot, subject to examination and approval
4-57 of the board, may appoint two deputy branch pilots.
4-58 (b) A branch pilot may appoint an additional deputy branch
4-59 pilot if the board considers the appointment advisable.
4-60 (c) A branch pilot who appoints a deputy branch pilot
4-61 without the approval of the board forfeits the pilot's appointment
4-62 as a branch pilot.
4-63 (d) A branch pilot who appoints a deputy branch pilot is
4-64 responsible for the actions of the deputy branch pilot.
4-65 Sec. 69.039. OATH AND BOND. (a) A person appointed as a
4-66 pilot must take the official oath before entering service as a
4-67 pilot. The oath shall be endorsed on the bond required by
4-68 Subsection (b).
4-69 (b) Each pilot must execute a \$25,000 bond payable to the

5-1 governor and conditioned on compliance with the laws, rules, and
 5-2 orders relating to pilots and on the faithful performance of the
 5-3 pilot's duties.

5-4 (c) Each bond must be approved by the board.

5-5 Sec. 69.040. TERMS OF LICENSES AND CERTIFICATES. (a) A
 5-6 branch pilot's license expires on the earlier of:

5-7 (1) the fourth anniversary of the date it is issued or
 5-8 renewed; or

5-9 (2) the license holder's 68th birthday.

5-10 (b) Subsection (a)(2) does not apply to a person who is a
 5-11 branch pilot serving a port covered under this chapter on the
 5-12 effective date of this chapter or who reaches his or her 68th
 5-13 birthday within one year after the effective date of this chapter.

5-14 (c) A deputy branch pilot's certificate expires on the
 5-15 second anniversary of the date it is issued and may not be renewed.

5-16 Sec. 69.041. BRANCH PILOT'S LICENSE RENEWAL. (a) The
 5-17 governor shall renew a branch pilot's expiring license if the board
 5-18 recommends renewal.

5-19 (b) If a pilot applies in writing and qualifies, the board
 5-20 shall recommend renewal unless the board determines there is
 5-21 probable cause not to renew the license.

5-22 (c) Probable cause not to renew a license exists if the
 5-23 board finds that the license holder:

5-24 (1) does not possess a qualification required by this
 5-25 chapter for pilots; or

5-26 (2) has a disability that will affect the license
 5-27 holder's ability to serve as a pilot.

5-28 (d) If the board determines that it has probable cause not
 5-29 to renew a license, the board shall notify the license holder not
 5-30 later than the 60th day before the date the license expires. On
 5-31 request, the board shall provide a hearing after proper notice to
 5-32 consider whether the board has cause not to recommend renewal of the
 5-33 license.

5-34 (e) If the board finds at the conclusion of the hearing that
 5-35 the board lacks probable cause for nonrenewal of the license, the
 5-36 board shall recommend that the governor renew the license.

5-37 (f) The board shall issue a written order recommending that
 5-38 the governor not renew a license and the governor may not renew the
 5-39 license if:

5-40 (1) the pilot does not contest the board's decision not
 5-41 to renew the license; or

5-42 (2) the board after a hearing finds that it has
 5-43 probable cause not to renew the license.

5-44 (g) The denial of renewal of a pilot's license does not
 5-45 prohibit the pilot from applying for a new license and being
 5-46 reappointed.

5-47 Sec. 69.042. DEPUTY BRANCH PILOT. A person who has been
 5-48 issued a deputy branch pilot's certificate may not be issued a
 5-49 deputy branch pilot's certificate before the fifth anniversary of
 5-50 the date the person was previously issued a deputy branch pilot's
 5-51 certificate.

5-52 Sec. 69.043. SUSPENSION OR REVOCATION OF BRANCH PILOT'S
 5-53 LICENSE. (a) On complaint or on its own motion, and after notice
 5-54 and hearing, the board may suspend a branch pilot's license for not
 5-55 more than six months or recommend that the governor revoke a branch
 5-56 pilot's license if the board finds that the pilot has:

5-57 (1) failed to demonstrate and maintain the
 5-58 qualifications for a license required by this chapter;

5-59 (2) used narcotics or other types of drugs, chemicals,
 5-60 or controlled substances as defined by law that impair the pilot's
 5-61 ability to perform the pilot's duties skillfully and efficiently;

5-62 (3) used alcohol to an extent that impairs the pilot's
 5-63 ability to perform the pilot's duties skillfully and efficiently;

5-64 (4) violated a provision of this chapter or rules
 5-65 adopted by the board under this chapter;

5-66 (5) made a material misstatement in the application
 5-67 for a license;

5-68 (6) obtained or attempted to obtain a license under
 5-69 this chapter by fraud or misrepresentation;

6-1 (7) charged a pilotage rate other than that approved
 6-2 by the board;

6-3 (8) intentionally refused to pilot a vessel when
 6-4 requested to do so by the master or person responsible for
 6-5 navigation of the vessel except when, in the judgment of the pilot,
 6-6 movement of the vessel would have constituted a hazard to life or
 6-7 property or when pilotage charges that are due and owing are unpaid
 6-8 by the person ordering the pilot services;

6-9 (9) been absent from duty in violation of board rules
 6-10 and without authorization;

6-11 (10) aided or abetted another pilot in failing to
 6-12 perform the other pilot's duties;

6-13 (11) been guilty of carelessness, neglect of duty,
 6-14 intentional unavailability for normal performance of duties,
 6-15 refusal to perform duties, misconduct, or incompetence while on
 6-16 duty;

6-17 (12) intentionally failed to comply with an order of
 6-18 the board; or

6-19 (13) intentionally caused damage to a vessel.

6-20 (b) On determining that a license should be suspended or
 6-21 revoked, the board shall adopt a written order that states its
 6-22 findings and:

6-23 (1) suspends the license for a stated period; or

6-24 (2) recommends to the governor revocation of the
 6-25 license.

6-26 (c) If the federal pilot's license of a pilot licensed under
 6-27 this chapter is suspended or revoked, the board, on a finding that
 6-28 it has good cause, shall suspend the license for the same period or
 6-29 revoke the license under this chapter.

6-30 (d) The governor, on receipt of a board order recommending
 6-31 revocation of a license, shall revoke the license.

6-32 (e) A suspension of a license on the recommendation of a
 6-33 pilot review board takes effect on adoption of the board's order. A
 6-34 revocation of a branch pilot's license takes effect on issuance of
 6-35 the governor's decision.

6-36 Sec. 69.044. SUSPENSION OR REVOCATION OF DEPUTY BRANCH
 6-37 PILOT'S CERTIFICATE. A deputy branch pilot's certificate may be
 6-38 suspended or revoked by the board in the same manner and for the
 6-39 same reasons as provided for the suspension or revocation of a
 6-40 branch pilot's license by Section 69.043.

6-41 Sec. 69.045. LIABILITY TO PILOT. (a) A person who is not a
 6-42 pilot and who, in violation of this chapter, pilots a vessel and the
 6-43 consignee of the vessel are liable to a pilot, on written demand,
 6-44 for the amount of the applicable pilotage rate.

6-45 (b) In an action to recover compensation under Subsection
 6-46 (a), a court may include in a judgment in favor of a pilot an award
 6-47 of court costs and reasonable attorney's fees.

6-48 [Sections 69.046-69.060 reserved for expansion]

6-49 SUBCHAPTER D. PILOTAGE RATES

6-50 Sec. 69.061. PILOTAGE RATE CHANGE. The board may not change
 6-51 pilotage rates before the first anniversary of the preceding rate
 6-52 change.

6-53 Sec. 69.062. PILOTAGE RATE CHANGE APPLICATION. (a) An
 6-54 application for a change in a pilotage rate may be filed with each
 6-55 commissioner of the board by:

6-56 (1) a pilot;

6-57 (2) an association of pilots;

6-58 (3) a consignee liable under Section 69.070 to pay
 6-59 pilotage rates;

6-60 (4) an association of consignees; or

6-61 (5) a party financially responsible for the payment of
 6-62 pilot services.

6-63 (b) The application must be written and must state
 6-64 specifically the changes requested.

6-65 (c) The board shall set a hearing date within two weeks of
 6-66 receipt of an application. The hearing may not be set for a day
 6-67 earlier than the 20th day or later than the 40th day after the date
 6-68 the board sets the hearing.

6-69 (d) An applicant shall give notice of the application and

7-1 the hearing date, by certified mail to the last known address, to:

- 7-2 (1) all pilots licensed or certified in the port;
- 7-3 (2) all known pilots associations or consignees;
- 7-4 (3) all steamship agencies and associations in the
- 7-5 port;
- 7-6 (4) each Jefferson and Orange County port; and
- 7-7 (5) all known users of pilot service within the past 12
- 7-8 months.

7-9 (e) The board may not increase pilotage rates for the public
7-10 ports of Beaumont, Port Arthur, or Orange unless the affected board
7-11 of commissioners approves the increase.

7-12 Sec. 69.063. PILOT FINANCIAL REPORT. (a) Not later than
7-13 the 10th day before the date set for a pilotage rate hearing, the
7-14 pilots who are licensed or certified to serve the port for which the
7-15 rates are being considered shall submit in writing to the board and
7-16 to any party designated by the board complete accounts of:

- 7-17 (1) all amounts received from performance of pilot
- 7-18 services within the board's jurisdiction organized by categories or
- 7-19 classifications of rates, if rates are set in that manner;
- 7-20 (2) all earnings from capital assets devoted to
- 7-21 providing pilot service;
- 7-22 (3) all expenses incurred in connection with pilotage
- 7-23 activities within the board's jurisdiction; and
- 7-24 (4) estimates of receipts and expenses anticipated to
- 7-25 result from the requested changes in pilotage rates.

7-26 (b) The pilots shall provide the information for:

- 7-27 (1) the calendar or fiscal year preceding the date of
- 7-28 the pilotage rate change application; and
- 7-29 (2) the subsequent period to within 60 days of the date
- 7-30 of the application.

7-31 (c) The board may require an independent audit of financial
7-32 information submitted under Subsection (a) by an accountant
7-33 selected by the board. The board, as it considers fair and just,
7-34 shall assess the costs of the audit against one or more of the
7-35 applicants and objecting parties.

7-36 (d) The board may require relevant additional information
7-37 it considers necessary to determine a proper pilotage rate.

7-38 Sec. 69.064. FACTORS FOR BOARD CONSIDERATION. In acting on
7-39 a pilotage rate change application, the board shall consider:

- 7-40 (1) characteristics of vessels to be piloted;
- 7-41 (2) the public interest in maintaining safe,
- 7-42 efficient, and reliable pilot services;
- 7-43 (3) the average number of hours spent by a pilot in
- 7-44 performing all pilot services and pilot services onboard vessels;
- 7-45 (4) costs to pilots to provide the required pilot
- 7-46 services;
- 7-47 (5) economic factors affecting the shipping industry
- 7-48 in the area in which the port is located;
- 7-49 (6) the average wages of masters of United States flag
- 7-50 vessels;
- 7-51 (7) an adequate and reasonable compensation for the
- 7-52 pilots and a fair return on the equipment and vessels that the
- 7-53 pilots employ in connection with pilot duties; and
- 7-54 (8) the relationship between pilotage rates in
- 7-55 Jefferson or Orange County ports and the rates applicable in other
- 7-56 ports of this state and in competitive ports in other states
- 7-57 bordering the Gulf of Mexico.

7-58 Sec. 69.065. RATE DECISION. Not later than the 10th day
7-59 after the date of the completion of a hearing on an application for
7-60 a change in pilotage rates, the board shall issue a written decision
7-61 that:

- 7-62 (1) grants or denies the application wholly or partly;
- 7-63 (2) states the reasons for the decision; and
- 7-64 (3) states each new pilotage rate.

7-65 Sec. 69.066. COSTS. The board, in a final order under this
7-66 subchapter, may charge all or part of the costs of processing an
7-67 application to the parties in the proceedings.

7-68 Sec. 69.067. APPEAL OF BOARD DECISION. Any party aggrieved
7-69 by a board decision on pilotage rates, after exhausting all

8-1 administrative remedies, may appeal the order to a court.

8-2 Sec. 69.068. EMERGENCY PILOTAGE RATES. (a) The board may
 8-3 establish emergency pilotage rates for the period of an emergency,
 8-4 not to exceed 30 days, if the board finds that:

8-5 (1) a natural or man-made disaster has created a
 8-6 substantial hazard to piloting vessels into and out of a port; and
 8-7 (2) the existence of the hazard overrides the
 8-8 necessity to comply with normal pilotage rate-setting procedures.

8-9 (b) In adopting emergency pilotage rates, the board is not
 8-10 required to comply with the procedures in this chapter and in its
 8-11 rules relating to the adoption of pilotage rates.

8-12 (c) Emergency pilotage rates may not be appealed.

8-13 (d) The board shall adopt rules to carry out this section.

8-14 Sec. 69.069. PILOT SERVICES REQUIRED. The consignee of a
 8-15 vessel under the consignee's control shall obtain pilot services
 8-16 for the vessel and shall pay the pilot who pilots the vessel into
 8-17 and out of the port area compensation according to the pilotage
 8-18 rates filed by the board.

8-19 Sec. 69.070. PILOTAGE RATE LIABILITY. (a) A consignee who
 8-20 declines the services of a pilot offered outside the bar and enters
 8-21 the port without the aid of a pilot is liable for the payment of
 8-22 pilotage to the first pilot whose services were declined.

8-23 (b) A consignee is liable for the payment of pilotage to the
 8-24 pilot who brings a vessel in if the vessel goes out without
 8-25 employing a pilot.

8-26 (c) A consignee is liable for the payment of pilotage for a
 8-27 vessel that goes out without the aid of a pilot and that came in
 8-28 without the aid of a pilot to the pilot who first offered services
 8-29 before the vessel came in.

8-30 (d) A consignee is not liable for the payment of pilotage
 8-31 for a vessel going out without a pilot if the vessel came in without
 8-32 the aid of a pilot or came in without the offer of a pilot outside.

8-33 (e) Subsections (a)-(d) do not apply to a consignee exempt
 8-34 under this chapter from payment of pilotage rates.

8-35 (f) A pilot who charges a pilotage rate for pilot services
 8-36 different from the pilotage rates established under this chapter
 8-37 for the port in which the pilot serves is liable to each person who
 8-38 was charged the different rate for double the amount of pilotage.

8-39 (g) A court may include in a judgment in favor of a person
 8-40 who files suit to collect an amount owed under this chapter an award
 8-41 to cover court costs and reasonable attorney's fees.

8-42 Sec. 69.071. RECOVERY OF COMPENSATION. A pilot who offers
 8-43 pilot services to a vessel required under this chapter to obtain
 8-44 pilot services and whose services are refused is entitled to
 8-45 recover from the consignee the pilotage rate for the services.

8-46 [Sections 69.072-69.080 reserved for expansion]

8-47 SUBCHAPTER E. PILOT LIABILITY

8-48 Sec. 69.081. PURPOSE. The purpose of this subchapter is
 8-49 to:

8-50 (1) in the public interest, stimulate and preserve
 8-51 maritime commerce on the pilotage grounds of this state by limiting
 8-52 and regulating the liability of pilots; and

8-53 (2) maintain pilotage fees at reasonable levels.

8-54 Sec. 69.082. PILOT LIABILITY. A pilot is not liable
 8-55 directly or as a member of an organization of pilots for a claim
 8-56 that:

8-57 (1) arises from an act or omission of another pilot or
 8-58 organization of pilots; and

8-59 (2) relates directly or indirectly to pilot services.

8-60 Sec. 69.083. PILOT LIABILITY LIMITED. (a) A pilot
 8-61 providing pilot services is not liable for more than \$1,000 for
 8-62 damage or loss caused by the pilot's error, omission, fault, or
 8-63 neglect in the performance of the pilot services, except as
 8-64 provided by Subsection (b).

8-65 (b) Subsection (a) does not apply to:

8-66 (1) damage or loss that arises because of the wilful
 8-67 misconduct or gross negligence of the pilot;

8-68 (2) liability for exemplary damages for gross
 8-69 negligence of the pilot and for which no other person is jointly or

severally liable; or
(3) an act or omission related to the ownership and operation of a pilot boat unless the pilot boat is directly involved in pilot services other than the transportation of pilots.

(c) 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:

- (1) the vessel was piloted by a pilot; or
- (2) the damage or loss was caused by the error, omission, fault, or neglect of a pilot.

(d) In an action brought against a pilot for an act or omission for which liability is limited as provided by this section and in which other claims are made or anticipated with respect to the same act or omission, the court shall dismiss the proceedings as to the pilot to the extent the pleadings allege pilot liability that exceeds \$1,000.

[SUBCHAPTER A. PILOT RATES

[Sec. 69.001. PILOTAGE RATE PROCEDURES. (a) A pilot board for a public port of Beaumont, Orange, or Port Arthur or a privately owned dock or terminal in Orange County or Jefferson County may not adopt a pilotage rate applicable to any of these ports, docks, or terminals except as provided by this section.

[(b) An application for a new pilotage rate in Orange County or Jefferson County must be filed with each commissioner of pilots by:

- [(1) a pilot association;
- [(2) a consignee of a vessel who maintains an office in the county in which the application is filed; or
- [(3) the Port of Port Arthur Navigation District, Orange County Navigation and Port District, or Port of Beaumont Navigation District of Jefferson County.

[(c) The application must contain:

- [(1) a brief statement of the circumstances that warrant the change; and
- [(2) a certificate that the applicant has submitted copies of the application to all known pilot associations, navigation districts, and associations of consignees operating in the county at the time of the application.

[(d) The board shall hold a hearing not later than the 40th day after the date notice of the application is sent if, not later than the 20th day after the date notice of the application is sent, a commissioner receives a written objection to the application from any person who appears to have a legitimate interest in the application.

[(e) The board shall give notice of the hearing to:

- [(1) each applicant;
- [(2) each person who objects to the application; and
- [(3) any other party the board determines to be interested in the proceedings.

[(f) The hearing shall be open to the public and held at a convenient public place in one of the ports that would be affected by the rate change. Each party who demonstrates a legitimate interest in the application is entitled to be heard, to present evidence, and, to the extent the board considers practical, to cross-examine testifying witnesses.

[(g) The board shall grant, deny, or modify the application after receiving the evidence offered by the parties and the arguments and briefs the board desires to receive. The board order shall state its effective date. The board shall file a copy of its order in the offices of the appropriate county clerks before the 21st day after the close of the hearing.

[(h) If an objection to an application is not received by any commissioner within the period for objections to the application provided by Subsection (d), the board shall act on the application without further proceedings and file a copy of its order with the appropriate county clerks before the 41st day after the date notice of the application is sent.

[(i) In acting on an application, the board shall consider:

- [(1) the effect that granting, denying, or modifying

10-1 ~~the application would have on:~~

10-2 ~~[(A) residents within the board's jurisdiction,~~
10-3 ~~and~~

10-4 ~~[(B) the ports within the board's jurisdiction,~~
10-5 ~~[(2) the assurance of an adequate and reasonable~~
10-6 ~~compensation to the pilots and a fair return on the equipment and~~
10-7 ~~vessels that the pilots employ in connection with pilot duties; and~~

10-8 ~~[(3) the relationship between the pilotage rates in~~
10-9 ~~the ports under the board's jurisdiction and the rates applied in~~
10-10 ~~other ports of this state and competitive ports in other states.~~

10-11 ~~[(j) The board may assess the actual costs the board~~
10-12 ~~considers fair and just of reporting and stenographic services~~
10-13 ~~necessarily incurred in connection with a hearing against any~~
10-14 ~~applicant or objecting party. The board may require that an~~
10-15 ~~applicant or objecting party deposit an amount against those costs~~
10-16 ~~as a condition of presenting an application or objection.~~

10-17 ~~[(k) The board may not increase pilotage rates for the~~
10-18 ~~public ports of Beaumont, Port Arthur, or Orange unless the~~
10-19 ~~affected board of commissioners of the Port of Beaumont Navigation~~
10-20 ~~District of Jefferson County, Port of Port Arthur Navigation~~
10-21 ~~District, or Orange County Navigation and Port District approves~~
10-22 ~~the increase.~~

10-23 ~~[(l) Pilotage rates for the public ports of Orange,~~
10-24 ~~Beaumont, or Port Arthur or for a privately owned dock or terminal~~
10-25 ~~in Orange County or Jefferson County set under this section are not~~
10-26 ~~subject to the limit provided by Section 64.002.~~

10-27 ~~[(m) In this section, "consignee" has the meaning provided~~
10-28 ~~by Section 64.001.~~

10-29 ~~[SUBCHAPTER B. PILOT LIABILITY~~

10-30 ~~[Sec. 69.051. PURPOSE. The purpose of this subchapter is~~
10-31 ~~to:~~

10-32 ~~[(1) in the public interest, stimulate and preserve~~
10-33 ~~maritime commerce on the pilotage grounds of this state by limiting~~
10-34 ~~and regulating the liability of pilots; and~~

10-35 ~~[(2) maintain pilotage fees at reasonable levels.~~

10-36 ~~[Sec. 69.052. APPLICABILITY. This subchapter applies to a~~
10-37 ~~pilot licensed or certified to render pilotage services to or from a~~
10-38 ~~port in Jefferson or Orange County.~~

10-39 ~~[Sec. 69.053. PILOT LIABILITY LIMITED. (a) A pilot~~
10-40 ~~providing a pilot service is not liable for more than \$1,000 for~~
10-41 ~~damages or loss caused by the pilot's error, omission, fault, or~~
10-42 ~~neglect in the performance of the pilot service.~~

10-43 ~~[(b) Subsection (a) does not apply to:~~

10-44 ~~[(1) damage or loss that arises because of the wilful~~
10-45 ~~misconduct or gross negligence of the pilot;~~

10-46 ~~[(2) liability for exemplary damages for gross~~
10-47 ~~negligence of the pilot and for which no other person is jointly or~~
10-48 ~~severally liable; or~~

10-49 ~~[(3) an act or omission related to the ownership and~~
10-50 ~~operation of a pilot boat unless the pilot boat is directly involved~~
10-51 ~~in pilot services other than the transportation of pilots.~~

10-52 ~~[(c) This section does not exempt the vessel or its owner or~~
10-53 ~~operator from liability for damage or loss caused by the ship to a~~
10-54 ~~person or property on the ground that:~~

10-55 ~~[(1) the ship was piloted by a pilot; or~~

10-56 ~~[(2) the damage or loss was caused by the error,~~
10-57 ~~omission, fault, or neglect of a pilot.~~

10-58 ~~[(d) In an action brought against a pilot for an act or~~
10-59 ~~omission for which liability is limited as provided by this section~~
10-60 ~~and in which other claims are made or anticipated with respect to~~
10-61 ~~the same act or omission, the court shall dismiss the proceedings as~~
10-62 ~~to the pilot to the extent the pleadings allege pilot liability that~~
10-63 ~~exceeds \$1,000.~~

10-64 ~~[Sec. 69.054. LIABILITY FOR ACTS OF OTHER PILOTS. A pilot~~
10-65 ~~is not liable directly or as a member of an organization of pilots~~
10-66 ~~for a claim arising from an act or omission of any other pilot or~~
10-67 ~~organization of pilots that relates directly or indirectly to pilot~~
10-68 ~~services.]~~

10-69 SECTION 2. (a) A person who is a branch pilot serving a

port covered under Chapter 69, Transportation Code, as amended by this Act, on the effective date of this Act shall continue to serve as a branch pilot until the person's current commission expires, at which time the person will be eligible for license renewal under the license renewal provisions of Chapter 69, Transportation Code, as amended by this Act, and the branch pilot is governed by Chapter 69, Transportation Code, as amended by this Act, after its effective date.

(b) On requesting the certificate in writing and without having to comply with other procedural provisions of Chapter 69, Transportation Code, as amended by this Act, a person appointed as a deputy branch pilot before the effective date of this Act, and acting as a deputy branch pilot serving a port covered under Chapter 69, Transportation Code, as amended by this Act, shall be issued a deputy branch pilot certificate by the board of pilot commissioners in whose jurisdiction the person is acting as deputy branch pilot.

(c) A certificate described by Subsection (b) of this section shall be issued for a term of two years unless the deputy branch pilot has less than two years to serve as a deputy branch pilot. If a deputy branch pilot has less than two years to serve as a deputy branch pilot, the certificate shall be issued for the remaining time the deputy is required to serve. A deputy branch pilot in a port covered by Chapter 69, Transportation Code, as amended by this Act, is governed by that chapter, as amended by this Act, after its effective date.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

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