

ACT 231

S.B. NO. 893

A Bill for an Act Relating to Pilotage.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. It is declared to be the policy and intent of the legislature and the purpose of this Act, to provide for a system of state pilotage in order (1) to provide maximum efficiency in navigating vessels entering or leaving the waters of this State; (2) to maintain a state pilotage system devoted to the preservation and protection of lives, property, and vessels entering or leaving waters of the State; and (3) to insure an adequate supply of pilots well-qualified for the discharge of their duties in aid of commerce and navigation.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read:

**“CHAPTER —
PILOTAGE**

Sec. -1 Definitions. As used in this chapter:

- (1) "Board" means a board of pilot commissioners established pursuant to this chapter.
- (2) "License" means a pilot's license issued pursuant to this chapter.
- (3) "Pilot" means a state pilot licensed pursuant to this chapter as a port pilot or a deputy port pilot.
- (4) "Pilotage waters" means the waters of this State covered by this chapter.
- (5) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. Each tug and each of its tows shall be considered a separate vessel.

Sec. -2 Board of pilot commissioners. There is established within the department of regulatory agencies for administrative purposes a board of pilot commissioners consisting of five members who shall be appointed under section 26-34. Two of the members shall be port pilots licensed under this chapter, except those port pilots first appointed to the board need not be licensed but shall be persons who qualify for licensing under this chapter; two of the members shall represent commercial marine interests; and one of the members, who shall not be connected with the commercial marine industry or the port pilots or in public employment, shall represent the public. The members of the board shall serve without pay but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties. Four members shall constitute a quorum for the transaction of all business.

Sec. -3 Powers and duties of the board. The board shall have powers and perform the duties hereinafter set forth and such other powers and duties as may be provided by law:

- (1) Adopt rules pursuant to chapter 91, not inconsistent with law, which shall be binding upon all pilots licensed by the board and upon all parties employing such pilots; and from time to time, revise or amend such rules as may be necessary to enable the board to carry into effect the provisions of this chapter. The rules shall include but shall not be limited to:
 - (A) Establishment of the qualifications of and examinations for any person applying for a pilot's license;
 - (B) Issuance, suspension, or revocation of any pilot's license and regulation of the number of pilots that may be licensed;
- (2) Hear and decide complaints made in writing against any pilot for any misbehavior or neglect or breach of rules, which it deems material to be investigated;
- (3) Administer oaths and compel the attendance of witnesses at such hearings as it may conduct;
- (4) Make an annual report to the governor for the preceding calendar year, including an account of the amounts paid to the State;
- (5) Do all things reasonable, necessary, and expedient to insure proper and safe pilotage and to facilitate the efficient administration of this chapter.

Sec. -4 Prior service and initial licensing. After June 30, 1978, and no later than six months thereafter, all pilots who are then actively engaged as pilots in the employment of the State under the civil service system shall be terminated from such employment, subject to sections 76-30 and 88-87, to the rules of the department of personnel services, and to collective bargaining agreements pertaining to voluntary termination of employment. At the time of termination of such employment, all pilots who have been for at least two years immediately prior thereto actively engaged as a pilot in the service of the State shall, upon application be issued a port pilot license without examination. All pilots who have less than two years of such service, as a regular or probationary employee, shall, upon application, be issued a deputy port pilot license. All other applicants for a license as port pilot or deputy port pilot shall be required to meet the qualifications and pass the examinations established by the board.

Sec. -5 Limitation of Licenses. (a) Between July 1, 1978 and December 31, 1978, the number of licenses issued shall be limited to a maximum of nine, whether port pilot licenses or deputy port pilot licenses. Thereafter, the board may set the number of licenses issued, provided that the number of licenses shall not be increased or decreased without a hearing in accordance with Section 91-3, Hawaii Revised Statutes.

(b) The board, in setting or adjusting the number of licenses, shall give primary consideration to the public interest in assuring that there is an adequate supply of qualified pilots to safely and economically meet the requirements of commerce.

Sec. -6 Duration and renewal of license. All licenses shall expire on June 30 of even-numbered years. All applicants for renewal of license shall submit a renewal application and comply with all applicable rules of the board. No applicant shall be denied a renewal of his license, except as provided in section -8, as long as he possesses the qualifications established by the board and remains in active service as a pilot in the State.

Sec. -7 Pilot examination and license fees. An applicant for examination for a pilot's license shall pay a fee of \$25. Upon the issuance of an original port pilot license or a renewed port pilot license, the licensee shall pay a fee of \$200. Upon the issuance of an original deputy port pilot license or a renewed deputy port pilot license, the licensee shall pay a fee of \$50.

Sec. -8 Denial, suspension, or revocation. The board may deny the issuance of a license to any applicant, and may suspend or revoke the license of any pilot upon satisfactory proof that such applicant or pilot:

- (1) Has wilfully disobeyed this chapter or any rule adopted by the board;
- (2) Has negligently lost or damaged any vessel which he was piloting;
- (3) Is habitually intoxicated rendering him unfit to be entrusted with the charge of a vessel;
- (4) Is physically or mentally incapable of performing the duties of a pilot;
or
- (5) Is no longer actively serving as a pilot in the State.

Sec. -9 Exhibition of license. A pilot, on boarding a vessel, and if re-

quired by the master thereof, shall exhibit his license or a photostatic copy thereof.

Sec. -10 Piloting without a license. It shall be unlawful for any person not licensed as a pilot under this chapter to pilot or to offer to pilot a vessel not exempt from this chapter. It shall be unlawful for any person on board a tug or towboat to tow a vessel or barge not exempt from this chapter, unless the vessel or barge shall have on board a pilot licensed under this chapter. Violation of this section shall be a misdemeanor.

Sec. -11 Rates of Pilotage. The board shall establish the rates of pilotage for vessels subject to this chapter as follows:

- (1) The rates of pilotage in effect upon passage of this bill shall remain in effect until changed by the board pursuant to this chapter.
- (2) No rate shall be increased, lowered or altered without a public hearing in accordance with chapter 91. Due notice of hearing shall be mailed at least thirty days prior to the date of hearing to the individual licensed pilots, the pilot's association, and all owners, charterers, operators, and agents of vessels who have registered with the board.
- (3) The board, in setting rates of pilotage, shall fix such amounts as will be a fair charge for the services rendered with due regard to necessary operating expenses, maintenance of, depreciation on, and return on investment for property used in the business of pilotage, and the rates and charges of pilotage at comparable ports of the United States.
- (4) Persons aggrieved by the board's decision setting the rates of pilotage may appeal to circuit court as provided in chapter 91.

Sec. -12 Lawful compensation. No pilot shall demand or receive any greater, lesser, or different compensation for piloting a vessel upon any of the pilotage waters of the State than is allowed by law.

Sec. -13 Liability for pilotage fees. The master, owner, charterer, agent, or consignee entering or clearing a vessel at any port in the State shall be jointly and severally liable for pilotage fees at the rate prescribed by the rules of the board.

Sec. -14 Lien for pilotage fees. Every licensed pilot shall have a lien for his pilotage fees upon the whole of any vessel liable to him therefor.

Sec. -15 Pilot association. The pilots licensed under this chapter, each of whom shall be deemed an individual contractor, may form a nonprofit association which shall not be deemed a partnership or corporation for liability purposes, in order to provide such arrangements and facilities as may be necessary and desirable for the efficient dispatching of vessels and rendering of pilotage services required under this chapter. The association shall have no control over the selection of persons to be licensed as pilots or their discharge. The association shall have no direction over the manner in which an individual pilot performs his duties. The association may adopt any working rules that are not inconsistent with the law or of the rules of the board. The association shall maintain liability insurance coverage which protects the State against liability arising out of or caused by any acts or omissions of an association pilot. The amount of

insurance coverage shall be specified by the commission.

Sec. -16 Accounts of pilotage fees; payments to the board. Once in every quarter, the pilot association shall render to the board an accurate account of all vessels subject to this chapter, piloted by its individual members and all moneys received by the pilots as fees for pilotage of such vessels. The board may impose on the pilots a charge not to exceed one-half per cent of such pilotage fees for the operation of the board.

Sec. -17 Description of pilotage waters. Pilotage waters as established under this chapter shall be the waters of the State described as follows:

- (1) Port Allen: All waters inside a line drawn from Puolu Point to Weli Point.
- (2) Nawiliwili: All waters inside a line drawn from Ninini Point to Kawaii Point.
- (3) Honolulu: All waters inside a line drawn from Diamond Head Light, 278° true, to the intersection of a line drawn from Ahua Point, 180° true.
- (4) Kahului: All waters inside a line drawn from Waiehu Point to Waihee Reef Lighted Buoy 2 in Latitude 20°55.9' North and Longitude 156°28.5' West and thence to Papaula Point.
- (5) Hilo: All waters inside a line drawn from the outer extremity of the Hilo Bay breakwater to Paukaa Point Light.
- (6) Kawaihae: All waters inside a line drawn from the outer extremity of the Kawaihae Harbor breakwater due West to Longitude 155°51' West, thence due North to Latitude 20°03' North and thence due East to where it intersects with the shoreline.

Sec. -18 Vessels required to take a pilot. Every vessel involved in trade or commerce, other than an exempt vessel, entering or departing from any port in or traversing the waters of the State designated as pilotage waters shall employ a pilot licensed under this chapter.

Sec. -19 Exempt vessels. This chapter does not apply to:

- (1) Any vessel licensed or enrolled under the laws of the United States of America, engaged in trade between ports of the United States of America;
- (2) Public vessels of the United States of America; or
- (3) Motorboats as defined in section 1 of the Federal Motorboat Act of 1940.

If any such exempt vessel employs a pilot, such pilot shall be entitled to receive, as compensation for his services, pilotage fees in the amount prescribed by the rules of the board.

This section provides minimum pilotage requirements, and is not intended to negate the department of transportation's responsibility for the safety of all ports and shore waters in the State, nor does it limit the department's right to require additional pilotage should that department determine it is necessary to ensure safety in the ports or shore waters of the State.

Sec. -20 Hearings; appeal. (a) Before any applicant may be denied a

license, and before any pilot shall have his license suspended or revoked by the board, the applicant or pilot shall be given a hearing pursuant to chapter 91.

(b) An applicant who has been denied a license, and a pilot whose license has been suspended or revoked may appeal the board's decision to a circuit court as provided in chapter 91."

SECTION 3. Section 266-2, Hawaii Revised Statutes, is amended to read:

"Sec. 266-2 Powers and duties of department. The department of transportation shall have and exercise all the powers and shall perform all the duties which may lawfully be exercised by or under the State relative to the control and management of the shores, shore waters, navigable streams, harbors, harbor and waterfront improvements, ports, docks, wharves, quays, bulkheads, and landings belonging to or controlled by the State, and the shipping using the same, and shall have the authority to use and permit and regulate the use of the wharves, piers, bulkheads, quays, and landings belonging to or controlled by the State for receiving or discharging passengers and for loading and landing merchandise, with a right to collect wharfage and demurrage thereon or therefor, and subject to all applicable provisions of law, to fix and regulate from time to time rates for services rendered in mooring vessels, charges for the use of moorings belonging to or controlled by the State, rates or charges for [the services of pilots,] wharfage or demurrage, rents or charges for warehouses or warehouse space, for offices or office space, for storage of freight, goods, wares and merchandise, for storage space, for the use of donkey engines, derricks, or other equipment belonging to the State, under the control of the department, and to make other charges including toll or tonnage charges on freight passing over or across wharves, docks, quays, bulkheads, or landings. The department shall likewise have power to appoint and remove clerks, wharfingers, and their assistants, [pilots and] pilot boat crews, and all such other employees as may be necessary, and to fix their compensation; to make rules [and regulations] pursuant to [this] chapter 91 and not inconsistent with law; and generally shall have all powers necessary fully to carry out this chapter.

All moneys appropriated for harbor improvements, including new construction, reconstruction, repairs, salaries, and operating expenses, shall be expended under the supervision and control of the department, subject to this chapter and chapter 103.

All contracts and agreements authorized by law to be entered into by the department shall be executed on its behalf by the director of transportation.

The department shall prepare and submit annually to the governor a report of its official acts during the preceding fiscal year, together with its recommendations as to harbor improvements throughout the State."

SECTION 4. Section 266-3(a), Hawaii Revised Statutes, is amended to read:

"(a) The director of transportation may from time to time [make, alter, amend, and repeal such] adopt rules [and regulations] not inconsistent with law as he may deem necessary respecting the manner in which all vessels may enter and moor, anchor or dock in the shore waters, navigable streams, harbors, ports,

and roadsteads of the State, or move from one dock, wharf, bulkhead, quay, landing, anchorage, or mooring to another within the waters, streams, harbors, ports, or roadsteads; the examination, guidance, and control of [pilots and] harbor masters and their assistants, and their conduct while on duty; the embarking or disembarking of passengers; the expeditious and careful handling of freight, goods, wares, and merchandise of every kind which may be delivered for shipment or discharged on the wharves, docks, quays, bulkheads, or landings belonging to or controlled by the State; and defining the duties and powers of carriers, shippers, and consignees respecting passengers, freight, goods, wares, and merchandise in and upon the wharf, landing, dock, quay, or bulkhead. The director may also make further rules and regulations for the safety of the docks, wharves, landings, quays, bulkheads, and harbor and waterfront improvements belonging to or controlled by the State."

SECTION 5. Section 266-7, Hawaii Revised Statutes, is amended to read:

"Sec. 266-7 Department; duties. The department of transportation shall collect all moneys, fees, and dues paid to the State for [pilotage,] wharfage, demurrage, harbor master fees, and all other fees or compensation in respect to the entry, anchorage, and wharfage of all boats, steamers, vessels, and other craft entering into the ports of the State, and shall account for the same to the State as hereinafter provided. The department shall keep a full and complete record of the official acts of the department and of the rules and regulations made by the department, and shall cause the rules and regulations to be printed and distributed without cost to the agents, masters, or owners of vessels, or other persons who request the same. The department shall certify the vouchers of all [pilots and] crews of pilot boats, harbor masters, assistants, and other persons appointed or employed by the department."

SECTION 6. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision of application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.

SECTION 8. This Act shall take effect on July 1, 1978.

(Approved June 8, 1978.)