



Assembly Bill No. 2056

CHAPTER 769

An act to amend Sections 1122, 1170.1, 1190, 1190.1, 1190.3, 1190.5, and 1191 of, to add Sections 1159.1, 1191.1, 1194, and 1194.1 to, to add Chapter 6 (commencing with Section 1250) to Division 5 of, to add and repeal Sections 1157.6 and 1199 of, to repeal Section 1190.2 of, and to repeal Chapter 6 (commencing with Section 1200) of Division 5 of, the Harbors and Navigation Code, relating to bar pilots, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2022. Filed with
Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2056, Grayson. Bar pilots: pilotage rates.

(1) Existing law provides for the regulation and licensing of pilots for Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun. Existing law also establishes, in the Transportation Agency, a Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board of Pilot Commissioners) and prescribes the membership, functions, and duties of the Board of Pilot Commissioners with regard to the licensure and regulation of bar pilots. Existing law prescribes the rates of bar pilotage required to be charged by pilots and paid by vessels inward and outward bound through those bays and requires the Board of Pilot Commissioners to recommend that the Legislature, by statute, adopt a schedule of pilotage rates providing fair and reasonable return to pilots engaged in movements other than bar pilotage. Existing law imposes a board operations surcharge of up to 7.5% of all pilotage charges, which is paid by pilots to the Board of Pilot Commissioners. Existing law also imposes, among other things, an incremental rate of additional mills per high gross registered ton as is necessary and authorized by the Board of Pilot Commissioners to recover a pilot's costs of obtaining new pilot boats and of funding design and engineering modifications.

Existing law requires all moneys received by the Board of Pilot Commissioners to be paid into the State Treasury to the credit of the Board of Pilot Commissioners' Special Fund, moneys in which are continuously appropriated for the payment of the compensation and expenses of the Board of Pilot Commissioners and its officers and employees.

This bill would revise and recast the pilot boat surcharge provisions, including specifying that the costs of obtaining new pilot boats includes preliminary design and engineering and the costs of repowering existing pilot boats or the acquisition of new pilot boats in order to meet the requirements of any rule governing the emissions of commercial harbor

craft adopted by the State Air Resources Board. The bill would authorize the pilot boat surcharge to be collected prospectively before the imposition of certain costs, as prescribed. The bill would impose related requirements on the Board of Pilot Commissioners, including, among others, auditing or causing to be audited all pilot boat surcharges. The bill would authorize the Board of Pilot Commissioners to adjust the amount of the surcharge as necessary to efficiently administer the pilot boat surcharge.

The bill would require the moneys charged and collected each month from the pilot boat surcharge to be paid to the Board of Pilot Commissioners' Special Fund and credited to the Pilot Boat Surcharge Account, which the bill would establish in the Board of Pilot Commissioners' Special Fund. The bill would continuously appropriate the moneys in the account to fund the pilot boat costs of obtaining new pilot boats and of funding design and engineering modifications for the purposes of extending the service life of existing pilot boats, excluding costs for repair or maintenance, and to cover the administrative costs of the Board of Pilot Commissioners with respect to administration of the account, as specified. By continuously appropriating moneys in the account, the bill would make an appropriation. The bill would establish maximum expenditure levels at specified monetary amounts for the account based on fiscal year.

The bill would increase the rates of bar pilotage required to be charged by pilots and paid by vessels inward and outward bound through those bays to a minimum of \$3,000 on and after January 1, 2024, for each vessel piloted. The bill would also increase pilotage rates providing fair and reasonable return to pilots engaged in movements other than bar pilotage by 15% on January 1, 2023, except as otherwise established by the bill for certain types of ship movements, and would delete the requirement that the Board of Pilot Commissioners recommend a schedule of those pilotage rates to the Legislature. By increasing pilotage rates, which may thereby increase the amount of the board operations surcharge and the amount of moneys paid into the continuously appropriated Board of Pilot Commissioners' Special Fund, the bill would make an appropriation.

The bill would establish, in addition to other charges for pilotage, temporary transit charges at specified amounts for all vessels moved across the bar, with specified exceptions, and for all bay moves and river moves. The bill would make inoperative the temporary transit charges as of the date the Board of Pilot Commissioners publishes the first pilotage tariff pursuant to the bill, as described below.

(2) Existing law requires the Board of Pilot Commissioners, from time to time, to review pilotage expenses and establish guidelines for the evaluation and application of these expenses regarding its recommendations for adjustments in rates. Existing law authorizes any party directly affected by pilotage rates established under that provision to petition the Board of Pilot Commissioners for a public hearing, as prescribed.

This bill would repeal those provisions. The bill would require the Board of Pilot Commissioners, pursuant to prescribed procedures, to adopt, and cause to be published, a pilotage tariff that establishes fair, just, reasonable,

and sufficient rates for the provision of a safe, competent, reliable, and efficient pilotage service. The bill would establish procedures to request a change in the established pilotage rates, including procedures for petitions, notice, comment, hearings and orders, and review. The bill would authorize the adopted pilotage tariff to include the reasonable costs for the setting of tariff rates of the Office of Administrative Hearings and would require those moneys to be paid into, and continuously appropriated from, the Board of Pilot Commissioners' Special Fund, thereby making an appropriation.

The bill would provide that pilotage rates imposed pursuant to specified existing law are subject to adjustment under these provisions. Because an increase in pilotage rates may thereby increase the amount of the board operations surcharge and the amount of moneys paid into the continuously appropriated Board of Pilot Commissioners' Special Fund, the bill would make an appropriation.

The bill would require the Board of Pilot Commissioners, after the adoption of the first pilotage tariff, to convene a committee to review the effectiveness of the revised ratesetting process and to present and submit a related report to the Legislature, the Governor, and the Secretary of Transportation, as specified.

(3) Under existing law, a pilot who is carried to sea against the pilot's will or unnecessarily detained on board a vessel, as provided, is entitled to receive \$600 per day, plus expenses, from the owner, operator, or agents of the detaining vessel, or a higher amount as determined pursuant to existing law.

This bill would instead specify that this amount, on and after January 1, 2023, is \$5,000 per day plus expenses incurred in returning, subject to adjustment by the board.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1122 of the Harbors and Navigation Code is amended to read:

1122. In the event a pilot is carried to sea against the pilot's will, or unnecessarily detained on board a vessel when a pilot vessel is in attendance to receive the pilot, the owner, operator, and agents of the detaining vessel are jointly and severally liable for paying the amount specified in this division.

SEC. 2. Section 1157.6 is added to the Harbors and Navigation Code, to read:

1157.6. (a) After the adoption of the first pilotage tariff pursuant to Chapter 6 (commencing with Section 1250), the board shall convene a committee to review the effectiveness of the revised ratesetting process and to gather stakeholder feedback for the purpose of developing a report for

the board's consideration. Upon adoption of the report by the board based on the findings of the committee, the board shall present and submit the report to the Legislature in compliance with Section 9795 of the Government Code, to the Governor, and to the Secretary of Transportation. The report shall be adopted by the board no later than December 31, 2027.

(b) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2032.

SEC. 3. Section 1159.1 is added to the Harbors and Navigation Code, to read:

1159.1. (a) The Pilot Boat Surcharge Account is hereby established in the Board of Pilot Commissioners' Special Fund. Notwithstanding Section 13340 of the Government Code, moneys in the account are hereby continuously appropriated to the board without regard to fiscal years for allocation by the board for both of the following:

(1) To fund the pilot boat costs of obtaining new pilot boats and of funding design and engineering modifications for the purpose of extending the service life of existing pilot boats, excluding costs for repair or maintenance, as specified in subdivision (a) of Section 1194.

(2) (A) To cover the administrative costs of the board with respect to administration of the account, including any audits of the usage of the account.

(B) No more than 5 percent of all moneys collected may be used by the board to offset administrative costs and expenses related to managing the pilot boat program, including auditing expenses.

(b) (1) The amount expended from the account in the 2022–23 fiscal year in accordance with claims submitted pursuant to Section 1194.1 shall not exceed two million five hundred thousand dollars (\$2,500,000).

(2) The amount expended from the account in the 2023–24 fiscal year to the 2025–26 fiscal year, inclusive, in accordance with claims submitted pursuant to Section 1194.1 shall not exceed five million dollars (\$5,000,000) each fiscal year, unless otherwise specified in the annual Budget Act.

(3) The amount expended from the account in the 2026–27 fiscal year to the 2035–36 fiscal year, inclusive, in accordance with claims submitted pursuant to Section 1194.1 shall not exceed six million dollars (\$6,000,000) each fiscal year, unless otherwise specified in the annual Budget Act.

(c) Of the maximum expenditure amounts specified in subdivision (b), any funds that are unexpended due to the maximum specified amount exceeding the amounts required for the payment of claims against the account pursuant to Section 1194.1 in any fiscal year shall carry over to the subsequent fiscal year.

(d) Interest earned on the moneys in the Pilot Boat Surcharge Account shall be allocated to the Pilot Boat Surcharge Account and shall be expended to recover the pilots' claims submitted pursuant to Section 1194.1.

SEC. 4. Section 1170.1 of the Harbors and Navigation Code is amended to read:

1170.1. In determining the number of pilots needed, pursuant to Section 1170, the board shall take into consideration the findings and declarations

in Sections 1100 and 1101, the industry's current economic trends, fluctuations in the number of vessel calls, the size of vessels, whether the need for pilotage is increasing or decreasing, and the 1986 manpower study adopted by the board.

SEC. 5. Section 1190 of the Harbors and Navigation Code is amended to read:

1190. (a) Every vessel spoken inward or outward bound shall pay the following rate of bar pilotage through the Golden Gate and into or out of the Bays of San Francisco, San Pablo, and Suisun:

(1) Ten dollars and twenty-six cents (\$10.26) per draft foot of the vessel's deepest draft and fractions of a foot pro rata, and an additional charge of 92.43 mills per high gross registered ton.

(2) (A) A minimum charge for bar pilotage shall be six hundred sixty-two dollars (\$662) for each vessel piloted.

(B) On and after January 1, 2022, a minimum charge for bar pilotage shall be one thousand eight hundred seventy-five dollars (\$1,875) for each vessel piloted.

(C) On and after January 1, 2023, a minimum charge for bar pilotage shall be two thousand six hundred dollars (\$2,600) for each vessel piloted.

(D) On and after January 1, 2024, a minimum charge for bar pilotage shall be three thousand dollars (\$3,000) for each vessel piloted.

(3) The vessel's deepest draft shall be the maximum draft attained, on a stillwater basis, at any part of the vessel during the course of that transit inward or outward.

(b) The rate specified in subdivision (a) shall apply only to a pilotage that passes through the Golden Gate to or from the high seas to or from a berth within an area bounded by the Union Pacific Railroad Bridge to the north and Hunter's Point to the south. The rate for pilotage to or from the high seas to or from a point past the Union Pacific Railroad Bridge or Hunter's Point shall include a movement fee in addition to the basic bar pilotage rate, as specified in Section 1191.

(c) The rate established in paragraph (1) of subdivision (a) shall be for a trip from the high seas to dock or from the dock to high seas. The rate specified in Section 1191 shall not be charged by pilots for docking and undocking vessels.

SEC. 6. Section 1190.1 of the Harbors and Navigation Code is amended to read:

1190.1. Every vessel that uses a pilot under this division while navigating the waters of Monterey Bay shall pay the rate provided by Section 1190.

SEC. 7. Section 1190.2 of the Harbors and Navigation Code is repealed.

SEC. 8. Section 1190.3 of the Harbors and Navigation Code is amended to read:

1190.3. (a) There shall be an additional surcharge imposed per each movement of a vessel using pilot services as is necessary and authorized by the board to recover the costs of the pilot associated with a catastrophic event. The surcharge authorized by this subdivision shall be identified as a

catastrophic event surcharge on the invoice of the pilot and separately accounted for in the accounting pursuant to Section 1136.

(b) Subdivision (a) only applies if the board identifies that the costs recorded in a catastrophic event memorandum account are attributable to a specifically identifiable catastrophic event. Catastrophic events include, but are not limited to, fire, earthquake, terrorism, act of war, or epidemic, if the event has been declared an emergency or a disaster by a local, state, or federal governmental authority.

SEC. 9. Section 1190.5 of the Harbors and Navigation Code is amended to read:

1190.5. (a) In addition to any pilot boat surcharge established pursuant to Section 1194, there shall be a movement fee imposed as is necessary and authorized by the board to recover a pilot's costs for the maintenance, both deferred and current, of pilot boats that are presented to the board and identified for purposes of recovery under this section on or after January 1, 2021, and before October 1, 2023.

(b) The movement fee authorized by this section shall be separately identified as a pilot boat maintenance surcharge on the pilots' invoices, and separately accounted for in the accounting required by Section 1136.

(c) The cumulative amount of the pilot boat maintenance surcharge collected pursuant to this section shall not exceed one million four hundred thousand dollars (\$1,400,000).

(d) The board shall review and adjust as necessary the pilot boat maintenance surcharge authorized by this section at least quarterly.

(e) This section shall remain in effect only until January 1, 2024, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2024, deletes or extends that date.

SEC. 10. Section 1191 of the Harbors and Navigation Code is amended to read:

1191. (a) The Legislature finds and declares that, consistent with the board's adoption of rate recommendations in May 2002, the Legislature, by statute, adopted a schedule of pilotage rates pursuant to subdivision (c) providing fair and reasonable return to pilots engaged in ship movements or special operations for those movements or operations that are not specified in Section 1190.

(b) A vessel using pilots for ship movements or special operations that do not constitute bar pilotage shall pay the rate specified in the schedule of pilotage rates adopted by the Legislature pursuant to this section.

(c) Consistent with the board's adoption of rate recommendations in May 2002, the minimum rates imposed pursuant to this section that are in effect on December 31, 2002, shall be increased by 26 percent on January 1, 2003; those in effect on December 31, 2003, shall be increased by 26 percent on January 1, 2004; those in effect on December 31, 2004, shall be increased by 14 percent on January 1, 2005; and those in effect on December 31, 2005, shall be increased by 14 percent on January 1, 2006.

(d) Except as specified in Section 1191.1, the rates imposed pursuant to subdivision (c) that are in effect on December 31, 2022, shall be increased by 15 percent on January 1, 2023.

SEC. 11. Section 1191.1 is added to the Harbors and Navigation Code, to read:

1191.1. (a) A vessel using pilots for ship movements or special operations that do not constitute bar pilotage shall pay the pilotage rates established in this section.

(b) (1) (A) The minimum charge for each bay move shall be two thousand three hundred dollars (\$2,300).

(B) On and after January 1, 2024, the minimum charge for each bay move shall be two thousand five hundred dollars (\$2,500).

(2) (A) The minimum charge for each river move shall be four thousand five hundred dollars (\$4,500).

(B) On and after January 1, 2024, the minimum charge for each river move shall be five thousand dollars (\$5,000).

(c) On and after January 1, 2023, the rate for standby time, delay en route, and pilot on board in excess of eight hours shall be four hundred ten dollars (\$410) per hour.

(d) On and after January 1, 2023, the rate for cancellation of service after a pilot reports shall be two thousand dollars (\$2,000).

(e) On and after January 1, 2023, the rate for cancellation of service with less than four hours notice shall be one thousand dollars (\$1,000).

(f) On and after January 1, 2023, the rate for a pilot carried away per day shall be five thousand dollars (\$5,000) plus expenses incurred in returning.

SEC. 12. Section 1194 is added to the Harbors and Navigation Code, to read:

1194. (a) In addition to other charges for pilotage, there shall be an incremental rate of additional mills per high gross registered ton as is necessary and authorized by the board to recover the pilots' costs of obtaining new pilot boats, including preliminary design and engineering, and of funding design and engineering modifications for the purposes of extending the service life of existing pilot boats, excluding costs for repair or maintenance. The board may adjust the amount of the surcharge established pursuant to this subdivision as necessary to efficiently administer the pilot boat surcharge.

(b) The incremental mill rate charge authorized by this section shall be identified as a pilot boat surcharge on the pilots' invoices and separately accounted for in the accounting required by Section 1136. The moneys charged and collected each month from the pilot boat surcharge shall be paid to the board in accordance with Section 1194.1. The moneys shall be used only to fund pilot boat expenses in the manner established by the board pursuant to Sections 1159.1 and 1194.1.

(c) Net proceeds from the sale of existing pilot boats shall be used to reduce the debt on the new pilot boats, or applied as soon as possible against any balance of a new pilot boat, before any capitalization of the debt of the pilot's costs in obtaining the new pilot boat, and to reduce any debt

associated with the modification of pilot boats under this section. The board may adjust a pilot boat surcharge to reflect any associated operational savings resulting from the modification of pilot boats under this subdivision, including, but not limited to, reduced repair and maintenance expenses.

(d) (1) For purposes of this section, the costs of obtaining new pilot boats includes the costs of repowering existing pilot boats or the acquisition of new pilot boats in order to meet the requirements of any rule governing the emissions of commercial harbor craft adopted by the State Air Resources Board.

(2) For purposes of this subdivision, the costs of obtaining new pilot boats may be authorized for identification as a pilot boat surcharge by the board prospectively for the purpose of funding the costs of compliance to meet the requirements of any commercial harbor craft regulation and may be collected before the imposition of costs.

(3) The board shall require a final determination of all accounting of all necessary and authorized costs upon the delivery of a new pilot boat and compare to the funding preliminarily determined to be necessary and authorized by the board to recover the pilots' costs. All prospectively collected pilot boat surcharge revenues collected before delivery of a new pilot boat shall be identified and used to offset and reduce the costs of design, engineering, construction, and delivery of a new pilot boat, or applied as soon as possible against any balance of a new pilot boat, before any capitalization of the debt of the pilots' costs in obtaining the new pilot boat.

(4) (A) A cost that is identified as paid and recovered prospectively under this subdivision before the date of delivery and operation of a pilot boat shall not be capitalized into a loan or line of credit to finance the construction of the pilot boat subject to cost recovery under this subdivision.

(B) A cost that is not identified as paid and recovered prospectively under this subdivision before the date of delivery and operation of a pilot boat may be capitalized into a loan or line of credit to finance the construction of the pilot boat subject to cost recovery under this subdivision.

(e) The board shall audit or cause to be audited all pilot boat surcharges imposed pursuant to this section.

SEC. 13. Section 1194.1 is added to the Harbors and Navigation Code, to read:

1194.1. (a) The moneys charged and collected each month from the pilot boat surcharge pursuant to Section 1194 shall be paid to the Board of Pilot Commissioners' Special Fund established pursuant to Section 1159 and credited to the Pilot Boat Surcharge Account established pursuant to Section 1159.1. The moneys shall be used only to fund the pilot boat costs of obtaining new pilot boats and of funding design and engineering modifications for the purposes of extending the service life of existing pilot boats, excluding costs for repair or maintenance, as specified in subdivision (a) of Section 1194, and to cover the administrative costs of the board with respect to administration of the Pilot Boat Surcharge Account, including any audits of the usage of the Pilot Boat Surcharge Account.

(b) Information regarding moneys remitted to the Board of Pilot Commissioners' Special Fund collected from the surcharge authorized pursuant to Section 1194, or otherwise collected by the board for that purpose, shall be made available to the public upon request and to the board or its finance committee.

(c) Funds authorized to recover pilot boat maintenance costs pursuant to Section 1190.5 are not subject to this section.

SEC. 14. Section 1199 is added to the Harbors and Navigation Code, to read:

1199. (a) In addition to other charges for pilotage, there shall be temporary transit fees imposed as is necessary and authorized by this section.

(b) (1) The temporary transit fee for all vessels moved across the bar except for vessels calling at San Francisco Piers 27 and 35 shall be one thousand dollars (\$1,000).

(2) On and after January 1, 2024, the temporary transit fee for all vessels moved across the bar shall be eight hundred fifty dollars (\$850).

(c) (1) The temporary transit fee for all bay moves and all river moves shall be seven hundred dollars (\$700).

(2) On and after January 1, 2024, the temporary transit fee for all bay moves and all river moves shall be eight hundred fifty dollars (\$850).

(d) Only one temporary transit fee per invoice may be assessed.

(e) The Legislature finds and declares that the temporary transit fees imposed pursuant to this section are extraordinary, are not to be considered a precedential factor in any future ratesetting, and are established for the sole purpose of addressing the COVID-19 pandemic's induced supply chain crisis and its related impacts on the pilotage system.

(f) This section shall remain operative only until the board publishes the first pilotage tariff under Chapter 6 (commencing with Section 1250), and as of the following January 1 is repealed.

SEC. 15. Chapter 6 (commencing with Section 1200) of Division 5 of the Harbors and Navigation Code is repealed.

SEC. 16. Chapter 6 (commencing with Section 1250) is added to Division 5 of the Harbors and Navigation Code, to read:

CHAPTER 6. PILOTAGE TARIFF DETERMINATION AND PROCEDURES

Article 1. Establishment of Pilotage Tariff

1250. Pursuant to the requirements of this chapter, the board shall adopt, and cause to be published, a pilotage tariff that establishes fair, just, reasonable, and sufficient rates for the provision of a safe, competent, reliable, and efficient pilotage service.

1251. (a) The adopted pilotage tariff shall be determined by a formula whereby a revenue requirement is equal to the sum of pilot costs and expenses plus the product of target net income per pilot and the number of pilots.

(b) In determining target net income per pilot, all of the following factors shall be considered:

(1) The professional skills and experience required of a state-licensed pilot and the difficulty, risk, and lifestyle commitment of providing piloting services, as well as associated activities in support of the pilotage operation.

(2) Evidence of compensation for comparable maritime professions, including individuals in other state-regulated pilotage associations, at a minimum considering evidence of the compensation and benefits.

(3) Evidence of the economic and market conditions existing both locally and within the region of any pilotage association used for the purpose of comparison.

(4) Consumer price index and employment cost index.

(5) Individual amounts paid to pilots since the last rate order, or as directed.

(6) Any other factor deemed relevant to the determination of target net income per pilot.

(c) In determining the number of pilots, all of the following factors shall be considered:

(1) The number of licensed pilots determined by a hearing pursuant to Sections 1170.1 and 1170.2.

(2) The number of licensed pilots at the time of the rate hearing.

(3) Any projected changes in the number of licensed pilots.

(4) Any other factor deemed relevant to the determination of the number of pilots.

(d) In determining pilot costs and expenses, all of the following factors shall be considered:

(1) All costs of providing pilotage service.

(2) Any projected changes in the cost of providing pilotage service.

(3) The amount of activity, including number of vessels, size of vessels by gross registered tonnage, length, and draft.

(4) Any recent or projected changes in the amount of vessel activity.

(5) Producer price index and employment cost index.

(6) Total gross and net revenue since the last rate order, including sources of revenue by tariff category.

(7) Any other factor deemed relevant to the cost of the provision of pilotage service.

(e) For purposes of this section, the following definitions apply:

(1) "Number of pilots" means the number of pilots to be used in the formula to determine the revenue requirement.

(2) "Pilot costs and expenses" means all costs and expenses incurred by all pilots collectively in the provision of all pilotage services to be used in the formula to determine the revenue requirement.

(3) "Target net income per pilot" means an individual pilot's income, including compensation and benefits, to be used in the formula to determine the revenue requirement.

1252. (a) The adopted pilotage tariff may include as part of the tariff for pilotage services the reasonable costs for the setting of tariff rates under

this chapter of the Office of Administrative Hearings. Those moneys generated by the tariff for the purpose of allocation to the Office of Administrative Hearings pursuant to this section shall be paid into the Board of Pilot Commissioners' Special Fund and are hereby continuously appropriated, notwithstanding Section 13340 of the Government Code and without regard to fiscal year, to the board to allocate to the Office of Administrative Hearings.

(b) The costs of the board in implementing this chapter shall only be funded from revenues generated by the board operations surcharge pursuant to Section 1159.2 and continuously appropriated from the Board of Pilot Commissioners' Special Fund pursuant to Section 1159.

1253. A petition that is submitted on the basis of a notice of intent to petition filed less than 18 months after the effective date of a pilotage tariff adopted pursuant to Section 1278 is untimely. However, if a petition is filed as a joint petition of at least two of the parties to the previous pilotage tariff hearing process and no other new intervenors present themselves in opposition to the joint petition, the petition shall be timely regardless of the effective date of the previously adopted pilotage tariff.

1254. (a) The pilotage rates imposed pursuant to Chapter 5 (commencing with Section 1190) shall be subject to adjustment under this chapter.

(b) The pilotage rates imposed pursuant to Chapter 5 (commencing with Section 1190) shall remain in effect and be deemed pilotage tariffs set pursuant to this chapter until the rates are adjusted pursuant to this chapter.

Article 2. General Provisions

1255. (a) The administrative adjudication provisions of the Administrative Procedure Act contained in Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply to an adjudicative proceeding required to be conducted under this chapter, unless the requirements of this chapter relating to the proceeding provide otherwise.

(b) If there is any inconsistency between the provisions of this chapter and Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the provisions of this chapter shall control.

1256. For purposes of this chapter, the following definitions apply:

(a) "Executive director" means the executive director of the board.

(b) "Intervenor" means a person with a substantial interest or representing those with a substantial interest in the pilotage tariff other than the original petitioner that an administrative law judge permits to appear and participate as a party in the rate proceeding.

(c) "Party" means either of the following:

(1) A person participating in the rate proceeding as a petitioner or intervenor.

(2) A person participating in a prepetition process as a petitioner or stakeholder.

(d) "Person" means any individual, partnership, corporation, association, governmental agency, or public or private organization.

(e) "Petitioner" means a person with a substantial interest or representing those with a substantial interest in the pilotage tariff who has filed a petition or who intends to file a petition with the board for the publication of a pilotage tariff under this chapter.

(f) "Stakeholder" means any person with a substantial interest or representing those with a substantial interest in the pilotage tariff regardless of whether the person is participating as a petitioner or intervenor.

(g) "Substantial interest in the pilotage tariff" means any direct or indirect financial interest in the rates and tariffs charged for pilotage services.

(h) "Tariff" means the schedule of rates, fees, and charges applied to the provision of pilotage services as published by the board pursuant to this chapter.

Article 3. Prepetition Procedures

1260. (a) Any person intending to petition to request a change in pilotage rates shall file a notice of intent to petition with the board, with a copy served to interested stakeholders including any association of board-licensed pilots, any association representing the interests of vessel owners or operators, and any other person that participated in the most recent past rate proceedings as a party.

(b) The notice of intent to petition shall contain an explanation of the proposed change, including a description of each change of a rate or inclusion of a new cost item not previously included in the current pilotage tariff.

1261. Upon receipt of a notice of intent to petition, the executive director shall do all of the following:

(a) Schedule an item for the next regular meeting of the board for the purposes of providing notice to the public and interested stakeholders and for the executive director to publish the notice of intent to petition into the record.

(b) Notify the director of the Office of Administrative Hearings of the notice of intent to petition and request the assignment of an administrative law judge pursuant to Section 11370.3 of the Government Code to the board for the purpose of administering a hearing on any subsequently filed petition.

(c) Notify the petitioner of any stakeholder who has communicated a request to participate in prepetition meetings to the executive director prior to the notice requirement deadline established pursuant to subdivision (a) of Section 1262.

1262. (a) Within 20 days of publication of the notice of intent to petition at a duly noticed meeting of the board, the filing petitioner shall provide a

notice of a proposed meeting schedule to all interested stakeholders for the purposes of holding a meeting or series of prepetition meetings for the purposes described in this section.

(b) Within 45 days of provision of service of a copy of the notice of intent to petition or the reading of the notice of intent to petition at a duly noticed meeting of the board, whichever is earlier, the filing petitioner shall hold at least one meeting with all interested stakeholders.

(c) All parties shall make a good faith effort to schedule as many meetings as reasonably necessary to achieve the purpose of the meetings during the notice of intent to petition period.

(d) The purpose of the meetings during the notice of intent to petition period shall be to clarify the issues presented in the notice of intent to petition, to explore means of narrowing and simplifying the issues as much as possible, and to consider areas of substantive agreement and substantive disagreement.

(e) All parties shall identify the potential for joint stipulations, joint petition, or partial stipulation on issues and joint petition during prepetition meetings.

(f) Interested parties may choose amongst themselves to arrange meetings at their own discretion and cost, including arrangements for mediators or alternative dispute resolution processes if desired.

(g) The prepetition meetings required pursuant to this section are not public meetings. Public notice of these meetings is not required other than as described in this section.

(h) Members of the board or staff of the board shall not attend any prepetition meetings held pursuant to this section.

Article 4. Petitions

1265. (a) Any person with a substantial interest in the pilotage tariff may file a petition with the board.

(b) A petitioner filing a petition with the board is a moving party and bears the burden of the preponderance of the evidence in the proceedings as described in this chapter.

(c) A counterpetitioner responding to a petition is a moving party and bears the burden of the preponderance of the evidence in the proceedings as described in this chapter.

1266. (a) Provided that the requirements of Sections 1260 and 1262 have been complied with by the petitioner, a petition filing is in order after 90 days of provision of service of a copy of the notice of intent to petition or the reading of the notice of intent to petition at a duly noticed meeting of the board, whichever is earlier.

(b) There is no obligation on a petitioner to file a petition under this chapter after the completion of the prepetition meeting process.

(c) If stakeholder participants in prepetition meetings stipulate that prepetition meetings are continuing, there is no limitation on the time to file a petition after the filing of a notice of intent to petition.

(d) If no petition is filed within 180 days of the filing of the notice of intent to petition, or if no stipulation is presented to the board under subdivision (c), a petition is no longer in order and a new notice of intent to petition shall be filed prior to a subsequent petition filing pursuant to Section 1260.

1267. (a) A petition filed under this chapter shall include all of the following components:

(1) (A) A signed submission by the petitioner identifying the petitioner, including the names and contact information of the person requesting the tariff revision and the basis of the petitioner's substantial interest in the pilotage tariff.

(B) If the petition is a joint submission by multiple parties, the petition shall be identified as a joint submission on the filing and include a signed submission by each of the joint petitioners, including the names and contact information of each of the persons requesting the tariff revision and the bases of each of the petitioners' substantial interests in the pilotage tariff.

(2) A request for a hearing, including a proposed hearing date and calendar.

(3) A copy of the proposed tariff, along with a copy of the proposed changes to the tariff in a format in which strikethroughs indicate the material to be deleted or replaced and underlining indicates the material to be inserted.

(4) Testimony in support of the petition, including a description of why or how the existing tariff is not fair, just, reasonable, or sufficient, along with all exhibits and information to demonstrate a need for the tariff revision and addressing the criteria for tariff revisions as set forth in Section 1251.

(5) A copy of any joint stipulations, partial stipulations, or any other agreements to narrow or simplify issues reached during prepetition meetings pursuant to Section 1262.

(b) A petition filed under this chapter may include any of the following:

(1) A copy of a proposed order.

(2) Any other information required by the board by regulation or by previous order.

(c) A petitioner shall file with the board one paper copy and one electronic copy of all petition documents, including testimony and exhibits that the petitioner intends to present as the petitioner's direct case. An electronic copy of all filed material shall be filed in a format identified by the board, if the board elects to require a specified filing format.

(d) A petitioner shall provide electronic notification and access to an electronic copy of all filed material to every stakeholder or interested party who requested to participate in prepetition meetings pursuant to Section 1262.

1268. Upon receipt of a petition, the executive director shall do all of the following:

(a) Schedule an item for the next regular meeting of the board for the purposes of providing notice to the public and for the executive director to publish the signed submission and request for a hearing on the petition into the record.

(b) Provide all copies of all filed materials to the administrative law judge assigned upon the request of the board pursuant to Section 1261 for the purpose of administering the hearing on the petition.

(c) Provide notification to the petitioner and to every stakeholder who requested to participate in prepetition meetings pursuant to Section 1262 of all of the following:

(1) The name and contact information of the administrative law judge assigned to administer the hearing on the petition.

(2) The official date of the filing of the petition with the board.

(3) The requirement of interested stakeholders to file a request to intervene within 20 calendar days of petition filing pursuant to Section 1269.

1269. (a) Any stakeholder with a substantial interest in the pilotage tariff may file a written request to intervene in a petition proceeding under this chapter.

(b) A request to intervene shall include all of the following:

(1) A signed request identifying the proposed intervenor, including the names and contact information of the person requesting the intervention.

(2) The proposed intervenor's substantial interest in the pilotage tariff.

(3) The position of the party in the proceeding.

(4) A response to the petitioner's proposed hearing date and calendar.

(c) A written request to intervene shall be considered timely if it is received by the administrative law judge within 20 calendar days of petition filing.

(d) Intervention shall not broaden the issues in the proceeding, except to the limited extent that an issue is raised in a counterpetition, nor shall intervention unreasonably delay the hearing or unfairly prejudice the other parties.

1270. (a) Any intervening party, or proposed intervening party, shall file an answer, counterpetition, or response within 30 calendar days of petition filing. For good cause shown, the administrative law judge may extend the time for filing an answer, counterpetition, or response for a period not to exceed an additional 20 days.

(b) The answers filed by intervenors, whether counterpetitions or responses, shall address the factors specified in this chapter and all related issues raised in the petition.

1271. (a) The administrative law judge shall hold an initial petition management conference to set a hearing date, establish a complete petition calendar, rule on requests to intervene, and address any other timely or appropriate business presented by the parties.

(b) (1) In order to make a more effective use of hearing time in formal proceedings and to expedite the orderly conduct and disposition of the proceedings, the administrative law judge shall set a date in the complete petition calendar for at least one prehearing conference between the parties.

The parties attending a prehearing conference shall consider, but not be limited to the consideration of, all of the following:

(A) Simplifying and clarifying the issues and eliminating irrelevant or immaterial issues.

(B) Obtaining stipulations as to facts, authenticity of documents, admissibility of evidence, and other evidentiary matters.

(C) The use of other aids to the orderly conduct and disposition of the proceeding as may be possible.

(2) This section does not preclude any party from calling or holding off-calendar conferences by agreement or stipulation. If a conference is called before the hearing, or if the hearing is recessed for a conference, and the conference yields an outcome of substance, the administrative law judge shall state on the record the results of the conference.

(c) The administrative law judge shall set dates in the complete petition calendar for the parties to conclude all discovery and data requests, respond to discovery and data requests, and lodge any objections to discovery or discovery responses by another party.

(d) (1) The administrative law judge shall set dates in the complete petition calendar for the parties to file proposed written testimony, witness lists, and proposed exhibits with the administrative law judge on a date before the hearing, reserving rights of cross-examination at the hearing.

(2) Any objections to the prefiled testimony, witnesses, or proposed exhibits shall be lodged with the administrative law judge at a prehearing date set in the complete petition calendar, and shall be resolved by the administrative law judge at the commencement of the hearing.

(3) When a party fails to file any written testimony, witness list, or proposed exhibit for the rate hearing, or objections to the prefiled testimony, witnesses, or proposed exhibits for the rate hearing, within the time specified by the complete petition calendar, the late filing may be accepted if the administrative law judge determines that there was good cause for failure to file within the required time. For purposes of this section, "good cause" exists when a failure to file arises from an excusable mistake, surprise, excusable neglect, or reasonable reliance on the statement of the administrative law judge, or from fraud, misrepresentation, or other misconduct by a party participating in the proceeding.

(e) The administrative law judge shall set a date in the complete petition calendar for the parties to file proposed stipulations, agreements, or other reports resulting from a prehearing conference on a date before the hearing.

(f) The administrative law judge shall set the hearing for a date and time most convenient to the parties concerned.

(g) The administrative law judge shall set dates in the complete petition calendar for the parties to file posthearing briefs and reply briefs.

(h) (1) For all petitions contested by an intervenor, the complete petition calendar shall require a final order and tariff to be published no later than 240 days from the date of petition filing established pursuant to Section 1268 if there is no rereferral under Section 1279.

(2) For all petitions that are either uncontested by an intervenor or a joint submission that is not subject to any further requests to intervene by a party opposed to the petition, the complete petition calendar shall require that an expedited hearing date is set and a final order and tariff are published no later than 120 days from the date of petition filing established pursuant to Section 1268 if there is no rereferral under Section 1279.

(i) This section does not prohibit an administrative law judge from revising by order the hearing date or other components of the complete petition calendar at the discretion of the administrative law judge in response to a motion by a party or upon stipulation of the parties at any time after the initial order setting the complete petition calendar.

1272. (a) During the public hearing on the petition, the administrative law judge retains the discretion to direct additional briefing or presentation of evidence by the parties posthearing. All parties have the right to respond at the hearing and in writing posthearing to a direction by the administrative law judge for additional briefing or presentation of evidence, regardless of to which party the additional briefing or presentation of evidence are directed.

(b) During the public hearing on the petition, the executive director shall be in attendance and available to the administrative law judge. The administrative law judge retains the discretion to consult with the executive director in public during the public hearing. All parties have the right to respond at the hearing and in writing posthearing to a consultation by the administrative law judge with the executive director.

1273. (a) At the conclusion of the public hearing on the petition and until the issuance of the tentative order and tariff, the administrative law judge may submit bench interrogatories and discovery requests to a party or parties. All parties have the right to respond to posthearing bench interrogatories and discovery requests, regardless of to which party the interrogatories or discovery requests are directed.

(b) The administrative law judge may set consultations or develop bench interrogatories or discovery requests for the executive director. All parties may attend all posthearing bench consultations and respond independently and, in addition, all parties have the right to respond to posthearing bench interrogatories and discovery requests that are directed to the executive director.

1274. Except as otherwise permitted with respect to the executive director's responses to bench requests pursuant to Section 1273, members of the board and board staff shall not engage in ex parte communications regarding the pilotage tariff, pilotage rates, or issues that are the subject of a pilotage tariff petition with any party, stakeholder, member of the public, or other board member during the period beginning with the request by the executive director for assignment of an administrative law judge until the time that any potential for a related board hearing on the petition has concluded.

Article 5. Orders

1275. (a) The administrative law judge shall issue a tentative order and tariff inclusive of the findings of law and findings of fact necessary to support the tentative order and tariff.

(b) The tentative order and tariff shall be based on the formulaic rate approach and factors described in Section 1251 and include specific findings with respect to each formula factor.

(c) The tentative order and tariff shall set both a publication date for the final order and tariff and an effective date for the tariff of no later than 30 days after the publication date if there is no further board action pursuant to Section 1278.

(d) All parties shall receive electronic service of the tentative order and tariff and included findings.

1276. (a) Upon receipt of a tentative order and tariff from an administrative law judge, the executive director shall provide board members, parties, and the public with notice of the issuance of the tentative order and tariff and included findings, and the publication date and effective date established by the tentative order and tariff by publication on the board's internet website, and to advise board members and the public of their right to request that the executive director agendize the tentative order and tariff at the next regular meeting of the board between the issuance of the tentative order and tariff and the publication date pursuant to this section.

(b) In the 10 calendar days following the notice of the issuance of the tentative order and tariff by the executive director pursuant to subdivision (a), board members, parties, and members of the public have the right to request that the tentative order and tariff be agendized for consideration at the next regular monthly meeting of the board.

1277. If no request for the tentative order and tariff to be agendized is received by the executive director within 10 calendar days of the notice provided pursuant to Section 1276, the tentative order and tariff are final as a matter of law. The executive director shall cause to be published a final order and tariff inclusive of findings on the publication date specified by the tentative order and tariff on the board's internet website. The executive director shall further submit the final tariff to the Office of Administrative Law for publication in the California Regulatory Notice Register. If the effective date is not included in the tentative order and tariff or is defective for any reason, the final tariff shall be deemed to be effective upon publication in the California Regulatory Notice Register.

1278. (a) If a request for the tentative order and tariff to be agendized is received by the executive director within 10 calendar days of the notice provided pursuant to Section 1276, the tentative order and tariff shall be agendized for the next regular monthly meeting of the board.

(b) (1) If the next regular monthly meeting of the board is 10 or more calendar days from the receipt of the request to agendize the tentative order and tariff, the board shall notice the hearing pursuant to Section 11125 of the Government Code.

(2) If the next regular meeting is less than 10 calendar days from the receipt of the request to agendaize the tentative order and tariff, the board shall notice the hearing pursuant to Section 11125.3 of the Government Code.

(c) Upon consideration of the tentative order and tariff at the next regular monthly meeting of the board, the board shall hold a public hearing in accordance with all of the following:

(1) The executive director shall summarize and present the tentative order and tariff.

(2) Parties to the petition proceeding shall be provided with the opportunity to comment on the tentative order and tariff. All comments by the parties shall be recorded in board minutes and may include any of the following:

(A) A stipulation agreed to by all parties that includes a request for technical changes to the tentative order and tariff with a precise copy of the technical changes requested and a justification for each proposed technical change.

(B) A request by an individual party that includes a request for technical changes to the tentative order and tariff with a precise copy of the technical changes requested and a justification for each proposed technical change.

(C) A request by an individual party that includes a request for the tentative order and tariff to be rereferred to the administrative law judge for further proceedings pursuant to Section 1279, including the specific items and issues sought to be briefed and reviewed upon rereferral and a justification for each item and issue sought to be briefed and reviewed upon rereferral.

(3) The public shall be provided with the opportunity to comment on the tentative order and tariff and all public comments shall be recorded in board minutes.

(4) The Transportation Agency shall be provided with the opportunity to comment on the tentative order and tariff and all comments by the agency shall be recorded in board minutes.

(d) Upon conclusion of the public hearing, the members of the board shall be required to take one of the following actions:

(1) Accept the tentative order and tariff.

(2) Accept the tentative order and tariff as proposed to be revised pursuant to the technical change stipulations presented by the parties pursuant to subparagraph (A) of paragraph (2) of subdivision (c).

(3) Reject the tentative order and tariff, provided that the board agrees to a basis for rejecting the tentative order and tariff and the basis for the rejection is documented.

(4) Rerefer the tentative order and tariff back to the administrative law judge for further proceedings pursuant to Section 1279, provided that the board agrees to a basis for rereferring the tentative order and tariff as presented by a party as a request for a technical change pursuant to subparagraph (B) of paragraph (2) of subdivision (c) or as a request for

rereferral pursuant to subparagraph (C) of paragraph (2) of subdivision (c) and the basis for rereferral is documented.

(5) Take no action.

(e) (1) If the board accepts the tentative order and tariff or takes no action pursuant to paragraph (1), (2), or (5) of subdivision (d), the tentative order and tariff are deemed to be final as a matter of law. The executive director shall cause to be published a final order and tariff inclusive of findings on the publication date specified by the tentative order and tariff or on an alternative date as set by the board. The executive director shall further submit the final tariff to the Office of Administrative Law for publication in the California Regulatory Notice Register with an effective date of 30 days after the board hearing.

(2) If the board rejects the tentative order and tariff pursuant to paragraph (3) of subdivision (d), the petition is deemed rejected as a matter of law. The executive director shall cause to be published a formal notice of rejection on the board's internet website inclusive of the documentation of the basis for rejection. The executive director shall further submit the formal notice of rejection to the Office of Administrative Law for publication in the California Regulatory Notice Register.

(3) If the board opts to rerefer the tentative order and tariff to the administrative law judge pursuant to paragraph (4) of subdivision (d), the executive director shall provide all copies of all hearing materials to the administrative law judge for the purpose of administering an additional hearing on the petition pursuant to Section 1279.

(f) The board action required by subdivision (d) shall be taken before the publication date set by the administrative law judge.

(g) For purposes of this section, a "technical change" is a change to the language of the tentative order and tariff that does not result in a change to, and is consistent with, the findings or conclusions of the tentative order and tariff as issued by the administrative law judge pursuant to Section 1275.

1279. (a) If the board opts to rerefer a tentative order and tariff to the administrative law judge pursuant to Section 1278, the further review of the petition by the administrative law judge shall be conducted pursuant to this section.

(b) (1) Upon receipt of the board hearing materials from the executive director, the administrative law judge shall by order set a deadline for the parties to submit a proposed calendar for supplemental briefing.

(2) The calendar shall be limited to briefing on the basis of the existing evidence in the record and no additional discovery or data requests shall be allowed by the parties.

(3) The substantive scope of the briefing shall be limited to issues raised by the party requesting a rereferral before the board and affirmed by the board in its adopted basis for rereferral.

(c) The calendar set by the administrative law judge shall be to support a determination upon the briefing alone and no additional public hearing shall be scheduled.

(d) The calendar for briefing and for the issuance of a reviewed tentative order and tariff is to be determined by the administrative law judge.

(e) The administrative law judge has the discretion to issue a reviewed tentative order and tariff to the board. The reviewed tentative order and tariff may be revised as requested by a party.

(f) A reviewed tentative order and tariff issued under this section shall be consistent with the requirements of Section 1275.

(g) Upon receipt of a reviewed tentative order and tariff, the board shall proceed in a manner consistent with Sections 1276, 1277, and 1278, with the exception that the board shall not take any action on a reviewed tentative order pursuant to paragraph (2) or (4) of subdivision (d) of Section 1278.

Article 6. Administrative Provisions

1280. (a) The board shall authorize a pilot to establish a catastrophic event memorandum account and to record in that account the costs of maintaining, restoring, repairing, or replacing the provision of pilotage services to customers due to a catastrophic event.

(b) The costs, including capital costs, recorded in a catastrophic event memorandum account shall only be recovered through the catastrophic event surcharge following the submission of an application by an affected pilot, the board finding the reasonableness of the costs identified in a catastrophic event memorandum account, and approval by the board of a definitive and exact amount of costs authorized to recover. The board may adjust the total amount of costs to be recovered to reflect any associated savings to ongoing operations or other pilot capital costs as a result from the expense of pilot costs associated with those identified in a catastrophic event memorandum account.

(c) The board shall hold a proceeding in response to a pilot application to recover costs associated with catastrophic events, including a hearing conducted pursuant to Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

(d) The catastrophic event surcharge shall only be billed on the first day of the fiscal quarter after final approval by the board of an application of an affected pilot, and upon a separate action by the board at a following meeting to set a reasonable time and rate of recovery recommended by the finance committee of the board. The finance committee recommendation shall take into consideration any impact that the catastrophic event may have had on pilot customers and may reduce or extend the terms of the surcharge imposition as appropriate.

(e) The moneys collected under a catastrophic event surcharge shall be used only to recover the costs approved in the pilot catastrophic event memorandum account in the manner established by the board.

(f) At the recommendation of the finance committee, the board may adjust the surcharge amount established pursuant to Section 1190.3 as necessary to efficiently administer the recovery of costs of the catastrophic

event memorandum account, with adjustments to take effect only on the first day of the fiscal quarter following adjustment of the surcharge.

(g) Information regarding moneys remitted to an affected pilot and moneys collected from the surcharge pursuant to Section 1190.3, as well as information regarding moneys spent as catastrophic event memorandum account costs, shall be made available to the board or its finance committee in a regular format upon request by the board or its finance committee. The information shall additionally be made available to the public upon request to the board.

(h) The board shall adopt, by regulation, the process for approving the recovery of catastrophic event costs, including, but not limited to, the form and information it shall require in an application for the recovery of costs related to a catastrophic event and the format for the catastrophic event memorandum account reports acceptable to the board.

(i) For purposes of this section, “catastrophic event surcharge” means the catastrophic event surcharge established pursuant to Section 1190.3.

1281. Pilots may submit to the board annually a copy of an audit of the financial record of pilotage operations for the prior year. The pilot audited financial document shall be a public record.

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to assist in the facilitation of the safe movement of vessels and expedite maritime commerce on the navigational channels of Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun and the Sacramento-San Joaquin River systems, and to respond in part to the adoption of the commercial harbor craft regulation that includes accelerated and aggressive targets for the reduction of diesel particulate matter emissions that have been identified by the state to be an air toxic contaminant and to the COVID-19 pandemic’s induced supply chain crisis and its related impacts on the pilotage system, it is necessary for this act to take effect immediately.