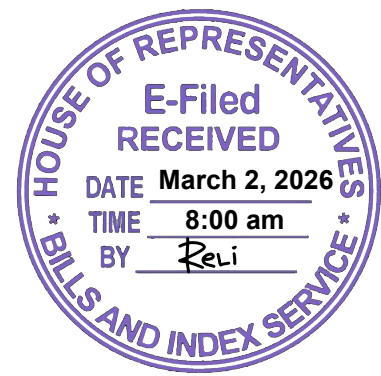


TWENTIETH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES

*Introduced by Representative Rufus B. Rodriguez and
Representative Maximo B. Rodriguez, Jr.*

House Bill No. 8174

EXPLANATORY NOTE

Pilotage service plays a critical role in supporting our seaports in the efficient delivery of goods and services in our country. The promotion of navigational safety and seamless movement of vessels in seaports through the guiding hands of harbor pilots are among the foundations of sound marine commerce and economic growth. In providing pilotage services, a symbiotic relationship is established such that whatever conduct, measures, practices or standards resorted to will have economic impact on the pricing of delivery of goods and services, and cost of doing business for seaport users. Seaports are classified as public utility under the Public Service Act (Section 4, PSA) and the interest of the general public should be paramount when harbor pilots and pilotage organizations perform their services.

Jurisprudentially, a harbor pilot should have a thorough knowledge of general and local regulations and physical conditions affecting the vessel in his charge and the waters for which he is licensed. He is not only held to the highest possible degree of skill and care but must also have and exercise the ordinary skill and care demanded by the circumstances and demonstrated by an expert in his profession. Under extraordinary circumstances, a harbor pilot must exercise extraordinary care.

During pilotage operations, a relationship is created between the vessel master and the harbor pilot which has unique dynamics that could potentially arise into a conflict. The harbor pilot directs the navigation of the vessel, while the vessel master maintains overall command and control. The flexibility of the harbor pilot largely depends on the circumstances where he renders pilotage services. There is a need, therefore, for the duties and liabilities between the harbor pilot and vessel master in certain situations to be clearly defined.

To date, harbor pilots render pilotage services under compulsory circumstances, or as may be required by port authorities. Nonetheless, abuse on exorbitant pilotage fees without regulator's approval, and requiring more than the necessary tugboats due to conflicting business interest in tug services, among other violations of port authority regulations, have been reported. Refusal to render pilotage services if shipping lines do not heed to harbor pilots' demands can hold berthing operations hostage. These unlawful actions by harbor pilots are adversely impacting the country's marine transportation, logistics and prices of goods and services in general. These pressing concerns are better addressed by a legislative policy, rather than administrative regulations, which are being shunned and set aside by harbor pilots and harbor pilots associations alike. A legislative policy will strengthen professionalism and require continuous check of a harbor pilot's competence and compliance with maritime laws, and port authority rules and regulations.

The proposed bill seeks to establish a unifying oversight body which will give all port authorities a level of flexibility in administratively supervising ports within their respective jurisdictions, while continuously improving the public standards required, and aligning with good international maritime practices.

It is worthy to note that the Philippine Ports Authority (PPA) currently has the power to control, regulate and supervise pilotage and the conduct of Harbor Pilots in any Port District (Section 6 Article IV, PD 857). Through such power, the PPA was able to issue and implement numerous measures technically detailed but limited only to ports within its Port District. To provide a unified regulatory framework for open harbor pilotage in the country, it is timely that PPA regulations and administrative orders are improved and mandatorily adopted as well by all port authorities.

In view of the foregoing, immediate passage of this bill is earnestly sought.


RUFUS B. RODRIGUEZ


MAXIMO B. RODRIGUEZ, JR.

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AN ACT

PROVIDING REGULATORY FRAMEWORK FOR OPEN HARBOR PILOTAGE IN THE COUNTRY

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled.

Sec. 1. Short Title. - This Act shall be known as the "Open Harbor Pilotage Services Act."

Sec. 2. Policy and Objectives. The State recognizes that Pilotage Services and Harbor Pilots play a vital role in the efficient operation of ports in ensuring the smooth flow of maritime commerce and safe transport of persons in avoiding maritime accidents, and in helping the marine environment. Pursuant thereto, the State shall adopt an open pilotage policy to regulate Pilotage Services that comply with international standards and supervise the professional conduct of Harbor Pilots to attain the following objectives:

- (a) To ensure effective and efficient delivery of Pilotage Services through its rationalization;
- (b) To ensure navigational safety at all times and protect port facilities, vessels, passengers and cargoes, particularly the safety of life and property at sea;
- (c) To encourage a healthy competitive environment among Harbor Pilots and/or Pilotage Organizations, as defined herein, that shall redound to the benefit of the shipping industry and passengers dependent on waterborne transport as well as cargo shippers and consignees without compromising maritime safety and the quality of service of Harbor Pilots whose expertise and experience are essential to the achievement of transport efficiency and profitability;
- (d) To professionalize the Pilotage Services and ensure a uniform minimum national standard of qualifications required skills, discipline and level of professionalism for Harbor Pilots who are accredited to conduct or provide Pilotage Services in any pilotage district or territorial jurisdiction by any Port Authority /Authority defined herein;
- (e) To avail of the latest developments in maritime technology with respect to vessel monitoring, ship to shore or ship to ship communications, vessel traffic management system, among others, and upgrade Pilotage Services at par with global standards; and
- (f) To protect the marine environment within the harbor limits of the ports.

Sec. 3. Scope. This Act shall apply to all Harbor Pilots and Pilotage Organizations or persons rendering Pilotage Services licensed by the Maritime Industry Authority (MARINA) and accredited by the Authorities such as but not limited to the Philippine Ports Authority (PPA), as

defined herein, to render such services in all ports, wharfs, or piers in the country, whether owned and managed by the government or private persons.

Sec. 4. Definition of Terms. As used in this Act:

- (a) Accreditation - refers to an official recognition, approval or permission granted by the Authorities, to a Harbor Pilot or Pilotage Organization to practice or provide Pilotage Services in a particular pilotage district for a prescribed period.
- (b) Authority/ies - refers to government offices, departments, entities, and government owned and controlled corporations (GOCCs) authorized by law to issue clearances, permits, accreditations to Harbor Pilots, including but not limited to the Port Authorities as defined herein.
- (c) Gross Income - refers to the total revenues received by the respective port authorities from billings assessed against ship owners or agents for pilotage and related services rendered, whether collected or not.
- (d) Harbor Pilot - refers to a duly licensed master mariner accredited by the Authorities to practice his profession, who is not part of the regular complement of the vessel, taken on board at a particular place, and tasked to safely, efficiently and effectively perform Pilotage Service within a specific Pilotage District. A Harbor Pilot may or may not be a member or a Pilotage Organization.
- (e) Pilotage Board - refers to the governing body tasked to exercise policy direction, regulate, control and supervise Pilotage Service and the conduct of Harbor Pilots in all Pilotage Districts in the country, in accordance with Sections 5 and 6 hereof.
- (f) Pilotage District - refers to the area of navigable waters requiring Pilotage Services, as defined herein, to enable vessels to navigate safely therein as recommended by the Port Authority having jurisdiction of the particular port within its limits.
- (g) Pilotage Exemption Certificate (PEC) - refers to the certificate or accreditation issued by the authorities indicating an exemption granted to a master of a vessel to pilot his own vessel in a particular port or Pilotage District.
- (h) Pilotage License - refers to the license issued by the MARINA to a master mariner to exercise his profession as a Harbor Pilot.
- (i) Pilotage Organization - refers to the voluntary association of Harbor Pilots duly registered with the Securities and Exchange Commission (SEC). No Pilotage Organization shall be considered as the sole or official association of Harbor Pilots in a particular port, Pilotage District or geographical area.
- (j) Pilotage Service/s - refers to the act/s of conducting, navigating or maneuvering a vessel to/from berth or anchorage, along channels, basins, rivers and estuaries, including all related activities thereof, or those services required by the relevant Authorities.
- (k) Port Authority/ies - refers to a body exercising regulatory supervision over particular ports which include the Philippine Ports Authority (PPA), Subic Bay Metropolitan Authority (SBMA), Cagayan Economic Zone Authority (CEZA), PHIVIDEC Industrial Authority (PIA) and other government port bodies or entities created under special charter that manage or operate their own port or regulate private ports within their jurisdiction.

(l) Tug Assistance - refers to the act of towing, pulling or pushing a vessel with the help of specialized watercraft or watercrafts with a single or combined capacity or at least 300 Brake Horse Power (BHP) to direct or control movement and enable the vessel to maneuver safely.

Sec. 5. Pilotage Board - A Pilotage Board is hereby created composed of government port authorities, bodies or entities with their own special charter mandated to administer or manage their own ports. The PPA, through its General Manager, shall serve as ex-officio Chairman of the Pilotage Board. The chief executive officers of the Cebu Port Authority (CPA), Authority of the Free Port Area of Bataan (AFAB), Bases Conversion Development Authority (BCDA), Subic Bay Metropolitan Authority (SBMA), Cagayan Economic Zone Authority (CEZA), PHIVIDEC Industrial Authority (PIA) and other government bodies or entities tasked to supervise Pilotage Services in the country shall sit as ex-officio members of the Pilotage Board. The PPA shall provide technical, legal, administrative, and secretariat support to the Pilotage Board.

Sec. 6. Powers, Duties and Functions. The Pilotage Board shall have the following powers, duties and functions:

(a) To promulgate and adopt, as administrative oversight, the minimum and standard rules and regulations necessary for the enforcement and administration of Pilotage Service and the conduct of Harbor Pilots in all Pilotage Districts in the country, which shall include, among others, the establishment of a pilotage safety trust fund, and policy direction of applicable administrative sanctions against erring Harbor Pilots;

(b) To create such committees or technical working groups to facilitate its work or duties, plans or programs;

(c) To conduct related studies and researches on the latest developments in maritime technology, maritime communications and vessel traffic systems, among others, for the continuing improvement of Pilotage Services and ship navigation within the harbor limits;

(d) To establish a comprehensive training program in coordination with the MARINA and Philippine Coast Guard (PCG) for applicants or new Harbor Pilots as well as a continuing advance training program for incumbent Harbor Pilots;

(e) To maintain a record of the history of the Pilotage Districts, its Harbor Pilots and records of maritime traffic and accidents, among others;

(f) To approve Pilotage Districts taking into consideration the volume of maritime traffic and other factors, and to determine the optimum number of Harbor Pilots within each Pilotage District, both upon the recommendation of the Port Authority exercising regulatory supervision over the port involved;

(g) To recommend adjustments on pilotage fees, rates and charges, without prejudice to proposals that may be initiated through the Port Authority pertaining to ports within such Port Authority's administrative jurisdiction;

(h) To conduct investigations on maritime accidents involving Harbor Pilots in connection with the conduct of Pilotage Services without prejudice to MARINA and PCG conducting their separate investigation within their jurisdictions; and

(i) To perform such other things as may be necessary, incidental or conducive to the functions of the Pilotage Board.

Sec. 7. Open Pilotage Policy. - There shall be an open pilotage policy in every Pilotage District in the country. Pilotage Service shall be provided directly by the Port Authority, or on a non-exclusive basis, through duly accredited Pilotage Organizations or a pool of duly accredited Harbor Pilots. The concerned Port Authority shall ensure that shipping companies, vessel owners or ship agents shall be able to freely choose from at least two (2) accredited Pilotage Organizations or a pool of qualified Harbor Pilots in every Pilotage District. Non-membership in a Pilotage Organization shall not be a bar for a duly accredited Harbor Pilot to render Pilotage Services in a Pilotage District. A Harbor Pilot may provide Pilotage Service in more than one (1) pilotage district: Provided, That he is duly qualified or accredited to render services therein.

Sec. 8. Compulsory Pilotage: Optional Pilotage under Certain Conditions. - As a general rule, pilotage in all Pilotage Districts shall be compulsory for all vessels of five hundred (500) gross tonnage and above when entering or leaving any Philippine port, whether owned by government or a private entity provided that the relevant Port Authority may modify the gross tonnage for compulsory pilotage based on the circumstances of its respective Pilotage District.

Pilotage for domestic vessels below five hundred (500) gross tonnage or liners regularly plying Philippine ports may be optional, unless pilotage in the port concerned is otherwise declared or required by a Port Authority concerned, or the Pilotage Board to be compulsory. Where a port has been declared or required by a Port Authority to be compulsory for domestic vessels, the master or captain of the same vessel may be allowed to pilot his own vessel if he has been plying or calling on the same port for at least sixty (60) times: Provided, That said master or captain has been issued a special accreditation or Pilotage Exemption Certificate (PEC) for the same vessel and for the specific port: Provided, further. That the concerned Port Authority or the Pilotage Board may require additional qualifications peculiar to the prevailing conditions in the port or port district with respect to navigability of the channel or fairway, sea current, presence of derelicts and other related conditions. The Port Authority concerned may, if necessary, exempt any vessel or class of vessels navigating in the pilotage district from availing of Pilotage Services, subject to such conditions as it may deem appropriate. In such a situation, the said Port Authority shall take into consideration the physical and navigational peculiarities of the port including its channels and fairways, the size, type and maneuvering capability of the vessel, the existence or navigational aids, the volume of vessel traffic and such other factors which may affect vessel movement and the level of risk for such navigation.

Sec. 9. Power to Prescribe Pilotage Tariff and Rates. -The Authorities shall, upon the recommendation of the Pilotage Board, have the power to prescribe and impose pilotage rates and charges for every Pilotage Service rendered in every Pilotage District, including any special service, if any. In no case shall the Authorities impose pilotage rates and charges for pilotage and special services without prior notice and public consultation. Pilotage rates and charges for every Pilotage Service rendered in every Pilotage District, including any special service, must be published on the website of the Authorities, as well as in a conspicuous place to be determined by the Port Authorities in each port covered by a Pilotage District. Any pilotage rate or charge imposed beyond the published rate shall be void. The pilotage fees and charges applicable to vessels existing upon the effectivity of this Act shall continue to apply until such time as new rates and charges are prescribed and imposed by the Authorities as may be necessary. In the rationalization or adjustment of pilotage rates, the Authorities shall require the Pilotage Organizations to submit their Audited Financial Statements for such period as may be needed for the proper evaluation of such rate rationalization or adjustment.

Sec. 10. Government Share. Whether the Pilotage Service is performed by a Pilotage Organization or individual accredited Harbor Pilot, the concerned Port Authority shall, in consideration of the grant or such privilege or authorities and for the use of the port facilities, be entitled to a government share of at least ten (10%) percent of the gross income derived from Pilotage Services whether billed/unbilled and collected/uncollected, be paid directly to

the Port Authority or entity where the Pilotage Service was rendered not later than the fifth day of the succeeding month when the Pilotage Service was rendered, exclusive of the Valued Added Tax (VAT) applicable: Provided. That nothing in this Act shall limit the concerned Port Authority or entity from adopting other modes or collection procedure.

Sec. 11. Accreditation Qualifications for a Harbor Pilot. -To be accredited and authorized to render Pilotage Service in a specific Pilotage District or port, a Harbor Pilot must have the following qualifications:

- a) A Filipino citizen;
- b) Not more than fifty-five (55) years old at time of application;
- c) Of sound physical and mental condition as well as of good moral character;
- d) Holder of a valid Pilotage License issued by MARINA;
- e) Holder of a valid Master Mariner license;
- f) Sufficient knowledge of the relevant issuances of the Port Authority concerned;
- g) Able to communicate fluently in English as determined by the Port Authority; and
- h) Such other relevant qualifications required by the Port Authority concerned.

An application for a Harbor Pilot accreditation must be filed with the Port Authority that has jurisdiction over the port or Pilotage District where the applicant desires to render Pilotage Services. The Pilotage Board shall promulgate a minimum uniform and nation-wide standard rules, regulations and procedures regarding qualifications, experience required, physical fitness and other documentary requirements for application for Harbor Pilots. The following criteria shall be considered in the evaluation of the applicant, among others: education, relevant trainings, age, length of service or experience as a ship captain or master of foreign or domestic vessels, length or service as a Harbor Pilot in other Pilotage Districts, and tonnage of vessels handled. An applicant must have no direct or indirect personal interest in any business or activity, nor directly or indirectly derive income from any tugboat operation or any other ancillary service within the jurisdiction of the Port Authority where the application for accreditation is filed. Violation of this prohibition shall be a ground for immediate cancelation of accreditation.

Sec. 12. Accreditation Term of a Harbor Pilot. The accreditation of a qualified Harbor Pilot shall have a term of five (5) years, which term may be renewable for the same period, until they reach the mandatory retirement age. The mandatory retirement age shall be seventy (70) years old for Harbor Pilots accredited prior to the effectivity of this Act, and sixty-five (65) years old for those accredited subsequent to the effectivity of this Act: Provided, that they shall undergo a revalidation process to be conducted by the MARINA in accordance with the International Convention on Standards or Training, Certification and Watchkeeping for Seafarers (STCW) every five (5) years thereafter.

Sec. 13. Duties, Responsibilities and Discipline of Harbor Pilots. -The rules, regulations and procedures promulgated by the Pilotage Board shall cover not only the control and supervision of Pilotage Service in the country but also the conduct, duties, responsibilities and discipline of Harbor Pilots. The Port Authorities may impose additional duties and responsibilities of Harbor Pilots rendering Pilotage Services in the respective Port Districts as long as they are consistent with rules, regulations and procedures promulgated by the Pilotage Board. All Harbor Pilots must, at all times, observe the terms and conditions set forth in the Pilotage License and accreditation. The Port Authority concerned may impose disciplinary action on the Harbor Pilots if the subject matter of the complaint or issue involves the Pilotage Services in the port of the accrediting Port Authority concerned, without prejudice to any review by the Pilotage Board, Provided that: implementation and execution of disciplinary action imposed by the Port Authority on the matter shall be subject to the rules, issuances and guidelines of the Port Authority concerned.

Sec. 14. Pilotage Organization. -The Harbor Pilots in a Pilotage District may organize themselves into a corporation, partnership or association which shall adopt its own rules or by-laws: Provided, That such rules or by-laws shall not contravene the rules and regulations promulgated by the Pilotage Board. In addition, such by-laws or rules shall be submitted to the Port Authority or entity where such Pilotage Organization operates, together with the record of such corporation, partnership or association, which shall contain, among others, the roster of its officers and members, details of the vessels serviced, marine accidents involved, marine protests filed and financial information on collection and expenditures.

Sec. 15. Tug Assistance: Compulsory Tug Assistance, When Required – Tug assistance shall be compulsory under the following circumstances:

- a) When the size or tonnage of the vessel, or the peculiar conditions in the port or channel, as may be determined by the Port Authority concerned or entity, requires tug assistance;
- b) During prevailing conditions in the port such as strong current, wind factor or inclement weather or any condition or situation affecting safe navigation;
- c) When the vessel is incapable or maneuvering itself;
- d) When the vessel opts to avail of tug assistance, even if under normal conditions tug assistance is not necessary: and
- e) Such other situations, as may be determined by the concerned Port Authorities.

Under normal conditions, any vessel may be allowed to maneuver in port without tug assistance. Nonetheless, the respective Port Authority shall determine when a vessel must be assisted by a tugboat or set of tugboats to ensure its safe navigation or maneuvering towards its desired berth or destination.

The master or ship captain, vessel owner or agent shall have a free choice of tugboat operators or in the selection or procurement of tugboats: Provided, That, it is the required minimum towing or pushing capacity. Considering the paramount consideration for pilotage and towage services is public convenience, pilots with existing accreditation, as well as members, employees and officers of Pilotage Organizations, including their relatives by consanguinity within the fourth civil degree, are prohibited from being stockholders, owners, officers, or employees of a towage company, or from holding any other interest in a towage company or tugboat operation, or from receiving any form of remuneration, directly or indirectly, from towage companies or the operation of tug boat services.

However, Harbor Pilots who operated tugboat services prior to the effectivity of this Act shall be given a period of two (2) years from such effectivity to divest themselves of such business interest.

Sec. 16. Liability for Damages. - In general, the master of the vessel retains the ultimate responsibility for the safety of the vessel, crew, passengers and cargoes. However, the individual Harbor Pilot, in case of pool of accredited Harbor Pilots, or the Pilotage Organization who provides Pilotage Service to a vessel on pilotage grounds, shall be responsible/liable for the damage caused to said vessel or to life or property due to his negligence, fault or failure in performing his duties as a Harbor Pilot, where such duties include but are not limited to being in charge of vessel navigation in terms of speed, course, observance of pilotage rules and regulations, and the like. The individual Harbor Pilot/Pilotage Organization concerned can only be absolved from liability if the accident is caused by negligence, fault or failure of the master of the vessel in performing his duties under the circumstances such as but not limited to providing suitable equipment and sufficient personnel, timely intervening when the Harbor Pilot is obviously incapacitated or incompetent, or by force majeure or natural calamities: Provided that extra diligence was exercised to prevent or minimize the damage.

In cases when the master of the vessel under pilotage has countermanded or overruled the command of the Harbor Pilot on board, any damage caused to the vessel or to life or property by reason of the fault or negligence of such master of the vessel shall be the

responsibility of the owner of the vessel concerned without prejudice to his recourse against the master of the vessel.

The Harbor Pilot and the master of the vessel shall be solidarily liable for damage caused to the vessel or to life or property by reason of their concurrent fault or negligence or non-performance of duties: Provided, That in case the owner of the vessel be made responsible, the same shall be without prejudice to lawful recourse against the master of the vessel, the Harbor Pilot or Pilotage Organization, as the case may be.

Sec. 17. Penalties. - Any violation of the provisions of this Act, including the charging of fees beyond the rates to be published pursuant to Section 9 hereof or the prohibition against conflict of interest under Section 15 hereof, the terms and conditions of the accreditation or Pilotage License, or the pertinent rules and regulations on pilotage by a pilot or Pilotage Organization shall, after due notice and hearing by the concerned Port Authority, be penalized by a fine of not less than One hundred thousand pesos (PhP 100,000.00) but not to exceed Five hundred thousand pesos (PhP 500,000.00) and suspension of the accreditation from three (3) to twelve (12) months, or cancellation thereof. The Port Authority concerned may also recommend to the MARINA the revocation of license of a Harbor Pilot who violates this Act.

Any violation committed by a tug-boat operator shall, after due notice and hearing by the MARINA, be administratively penalized by suspension of the certificate or public convenience or pertinent permit for not less than three (3) months but not more than twelve (12) months, or the cancellation thereof. Penalties shall be without prejudice to fines or penalties that may be imposed by the concerned Port Authority.

Sec. 18. Transitory Provisions. - Harbor Pilots duly authorized to render Pilotage Services prior to the effectivity and implementation of this Act shall continue to exercise their profession until they reach the mandatory retirement age, subject to revalidation requirement under Section 12 or this Act. They shall be given preference over new applicants as long as they have substantially complied with the requirements promulgated pursuant to this Act. All rules, regulations, administrative orders, circulars and related issuances on Pilotage Services promulgated by the different Port Authorities shall continue to apply until otherwise updated, repealed or modified by the Pilotage Board.

Sec. 19. Implementing Rules and Regulations. Following the effectivity of this Act, the Pilotage Board shall immediately convene and promulgate the necessary implementing rules and regulations of this Act within a period of ninety (90) days from its effectivity taking into consideration, and adopting as may be applicable, the existing issuances, rules and regulations of Port Authorities, including the PPA, insofar as consistent with this Act.

Sec. 20. Separability Clause. - If any part or provision of this Act is declared as unconstitutional or invalid by a court of competent authority, the remaining provisions which are not affected thereby shall continue to be in full force and effect.

Sec. 21. Repealing Clause. - Executive Order No. 1088 dated February 3, 1986, is hereby repealed. Other laws, decrees, issuances, rules and regulations, or any part thereof: which are inconsistent with or contrary to the provisions of this Act, are hereby repealed or modified accordingly.

Sec. 22. Effectivity. This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,