

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 317

Introduced by Representative GAVINI "APOL" C. PANCHO

**AN ACT PROVIDING OPEN PILOTAGE SERVICES IN THE COUNTRY,
CREATING A PILOTAGE BOARD, ENHANCING THE POWERS OF THE
PHILIPPINE PORTS AUTHORITY AND OTHER PORT BODIES IN
REGULATING PILOTAGE SERVICES AND THE CONDUCT OF HARBOR
PILOTS**

EXPLANATORY NOTE

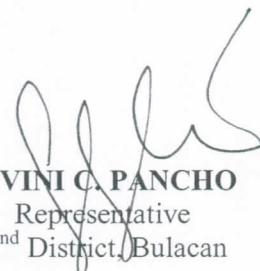
On 3 February 1986, about 3 weeks before the EDSA Revolution, the late President Ferdinand E. Marcos promulgated Executive Order No. 1088, entitled "Providing for Uniform and Modified Rates for Pilotage Services Rendered to Foreign and Coastwise Vessels in All Private and Government Ports". The executive issuance, among others, mandated that pilotage services shall be compulsory in all ports in the Philippines, whether in government or private ports. It was also interpreted that only Harbor Pilots who are affiliated or members of the United Harbor Pilots' Association of the Philippines or UHPAP may render pilotage services in the country.

Presently, there are only 111 Harbor Pilots in the entire country, which constitute a monopoly of the pilotage services to vessels calling on ports or pilotage district in the Philippines. Meanwhile, the country being an archipelago inevitably continues to develop as a maritime nation whose transport system and economy for the smooth flow of goods and passengers are mainly dependent on seaborne trade. Thus, there is a need to ensure, through legislation, the safe navigation of water borne commerce by adopting as a State policy the proper regulation of the pilotage services by the government. The conduct of pilotage service is also a vital function of maritime travel that directly affects the efficient operations of the port, the overall cost of transport and distribution of goods and the travelling public and even the protection to the marine environment.

For more than 40 years and even during the time of the Bureau of Customs, pilotage services were provided only by harbor pilots who are members of pilotage organizations, affiliated with the UHPAP. For decades too, there has been a nagging demand to liberalize pilotage service in the country, by allowing other individual harbor pilots or pilotage organizations to likewise render pilotage services, especially in critical or busy ports. This liberalization is expected to improve pilotage services, prevent maritime accidents and

regulate pilotage fees. The clamor has gained momentum once again following the recent passage of Republic Act No. 10667, entitled: "An Act Providing for a National Competition Policy, Prohibiting Anti-Competitive Agreements, Abuse of Dominant Position and Anti-Competitive Mergers and Acquisitions, Establishing the Philippine Competition Commission and Appropriating Funds therefor".

Truly, there is a need to revisit the monopolistic set up in the provision of pilotage services in the country, and this measure, once passed, should address this prevailing concern.



GAVINI C. PANCHO
Representative
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Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled.

Section 1. *Short Title.* – This Act shall be known as the “Open Pilotage Services Act.”

Sec. 2. *Policy and Objectives.* – It is hereby recognized by the State that pilotage service plays a vital role in the efficient operation of ports to ensure the smooth flow of maritime commerce and minimize if not avoid maritime accidents, affects the overall costs of transport and distribution of goods and the travelling public and helps in the protection of the marine environment. It is therefore the policy of the State to adopt an open pilotage set up for the country, upgrade the level of services and to regulate and closely supervise pilotage services and the conduct of harbor pilots in order to attain the following objectives:

- (a) To ensure effective and efficient delivery of pilotage services through the rationalization of pilotage services as well as regulation of pilotage fees and charges;
- (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 that shall redound to the benefit of the shipping industry, and passengers dependent on waterborne transport as well as cargo shippers and consignees but without compromising maritime safety and sacrificing the professional fees of harbor pilots

commensurate to the nature of their work, their highly qualified skills and required experience;

(d) To professionalize and upgrade the skills as well as the conduct and discipline of harbor pilots at par with international standards of other advanced maritime nations;

(e) To ensure a uniform or 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 of any government port body or entity;

(f) To protect the marine environment within the harbor limits of the ports; and

(g) 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.

Sec. 3. Scope. – This Act shall apply to all harbor pilots and pilotage organizations or persons rendering pilotage services licensed by the MARINA and accredited by the Authority in all ports 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 Authority to a harbor pilot or pilot organization to practice or provide harbor pilotage services in a particular pilotage district for a prescribed period.

(b) *Authority* refers to the Philippine Ports Authority (PPA) and other government port bodies, port authorities, or entities created under special charter that manage or operate their own port or regulate private ports within their jurisdiction.

(c) *Government* refers to any branch, office, instrumentality or agency of the Government, including the Authority or port body or entity defined in this Act.

(d) *Gross Income* - refers to the total gross billing assessed against the ship owner or agent for pilotage and related services rendered, whether collected or not.

(e) *Harbor Pilot* – refers to a duly licensed master mariner, accredited by the Authority 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 of a pilotage association.

(f) *MARINA* – refers to the Maritime Industry Authority created in 1974 pursuant to Presidential Decree No. 474, and recently designated as the single maritime administration

for the implementation of STCW in accordance with Republic Act No. 10635, tasked to integrate the development, promotion and regulation of the maritime industry.

(g) *PCG* refers to the Philippine Coast Guard as an agency created under Republic Act No. 9993.

(h) *Pilotage Board* refers to the governing body tasked to regulate, control and supervise pilotage service and the conduct of harbor pilots in all pilotage districts in the country.

(i) *Pilotage Exemption Certificate* refers to the certificate or accreditation issued by the Authority indicating an exemption granted to a master of a vessel to pilot his own vessel in a particular port or pilotage district.

(j) *Pilotage License* refers to the license issued by the MARINA to a master mariner to exercise his profession as a harbor pilot.

(k) *Pilotage Organization* refers to the voluntary association of harbor pilots duly registered with the Securities and Exchange Commission. No harbor pilotage organization shall be considered as the sole or official association of harbor pilots in a particular port, pilotage district or geographical area.

(l) *Pilotage Service* refers to the act of conducting, navigating or maneuvering a vessel to/from berth or anchorage, along channels, basins, rivers and estuaries, including all related activities thereof.

(m) *PPA* refers to the Philippine Ports Authority created pursuant to Presidential Decree No. 857, as amended, which is the national port body tasked to regulate all government ports as well as private ports in the country, except those which may otherwise belong to or fall within the jurisdiction of other special port bodies or entities of the government.

(n) *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 of at least 300 BHP to direct or control her movement and enable her to maneuver safely.

Sec. 5. *Pilotage Board* – A Pilotage Board is hereby created composing 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) and other bodies or entities similarly situated shall sit as

ex-officio members of the Pilotage Board. The PPA shall provide technical, legal, administrative, and secretariat support of 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 common and standard rules and regulations necessary for the enforcement and administration of pilotage service and the conduct of harbor pilots in all pilotage district in the country, which shall include, among others, the establishment of pilotage safety trust fund, 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 and ship navigation within the harbor limits;
- (d) To establish a comprehensive training program in coordination with MARINA and 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 determine the number of pilotage districts taking into consideration the volume of maritime traffic and other factors, to determine the optimum number of harbor pilots within each pilotage district;
- (g) To recommend adjustments in pilotage fees, rates and charges;
- (h) To conduct investigations on maritime accidents involving harbor pilots or in connection with the conduct of pilotage services without prejudice to MARINA and PCG's power to investigate on the part of relevant authorities to conduct their separate investigation within their jurisdictions; and
- (i) To do such other things as may be necessary, incidental or conducive to the functions of the Pilotage Board.

Sec. 7. Open Policy in Pilotage Services. – Pilotage service in the Philippines shall be provided directly by the Authority or on a non-exclusive basis through duly accredited pilotage organizations or pool of duly accredited harbor pilots. There shall be an open pilotage policy in every pilotage district and for the entire country. The 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 service in a pilotage district where he is duly authorized to serve. A harbor pilot may provide pilotage service in more than one (1) pilotage district provided 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 500 gross tonnage and above, when entering or leaving any Philippine port, whether owned by government or private.

Pilotage for domestic vessels below 500 gross tonnage or liners regularly plying Philippine ports may be optional, unless pilotage in the port concerned is otherwise declared or required by the Authority or the Pilotage Board to be compulsory. Where a port has been declared or required 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 as such; *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 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 Authority may, if it appears necessary, exempt any vessel or class of vessels while navigating in any pilotage district from being under pilotage service, subject to such conditions as it may deem appropriate. Under such situation, the 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 of navigational aids, the volume of vessel traffic and such other factors which may affect the risks of vessel movement.

Sec. 9. Power to Prescribe Pilotage Tariff and Rates. -The Authority 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 Authority 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 in the Authority's website, as well as in a conspicuous place to be

determined by the Authority 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 on 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 Authority as may be necessary. In the rationalization or adjustment of pilotage rates, the Authority shall require the pilot 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.* – Pilotage service is inherently vested in the Authority, which it may render on its own or otherwise. When the pilotage service is performed by a pilotage organization or individual harbor pilot, the Authority shall, in consideration of the grant of such privilege or authority and for the use of the port facilities, be entitled to a government share of at least (10%) percent of the gross income realized to be paid directly to the Authority or the proper port authority or entity where the pilotage service was rendered not later than the 5th day of the succeeding month when the pilotage service was rendered. Provided, That nothing in this Act shall limit the Authority or other port authorities or entities from adopting other modes of collection procedures, including requiring the shipping companies and their agents in retaining the corresponding government share and directly remitting the same to the Government.

Sec. 11. *Qualifications of a Harbor Pilot.* – To be accredited and authorized to render pilotage service in a specific pilotage district or particular port, an applicant for 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;
- and
- (d) A holder of a pilotage license issued by MARINA.

An application for a harbor pilot accreditation must be filed with the Authority that has jurisdiction over the port or pilotage district applied for. The Pilotage Board, shall promulgate 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, among others, shall be considered in the evaluation of the applicant: education, relevant trainings, age, length of service or experience as a ship captain or master of foreign or domestic vessels, length of service as a harbor pilot

in other pilotage districts, and tonnage of vessels handled. An applicant should have no conflict-of-interest in any business or activity, or derive income from any tugboat operation or other ancillary services required for or needed in any pilotage service.

Sec. 12. *Accreditation 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 sanctioned by MARINA in accordance with 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. All harbor pilots must, at all times, observe the terms and conditions set forth in the pilotage license and accreditation.

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 it shall not be in conflict with the rules and regulations promulgated by the Pilotage Board. Such by-laws or rules shall be submitted to the Authority or port body where such pilot organization operates, together with the record of the 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* – Under normal conditions, any vessel may be allowed to maneuver in port without tug assistance. The Authority, other port bodies or entities 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. However, tug assistance shall be compulsory under the following circumstances:

- (1) When the size or tonnage of the vessel, or the peculiar conditions in the port or channel as may be determined by the Authority, requires tug assistance;
- (2) During prevailing conditions in the port such as strong current, wind factor or inclement weather or any condition or situation affecting safe navigation;
- (3) When the vessel is incapable of maneuvering itself;

(4) When the vessel opts to avail of tug assistance, even if under normal conditions tug assistance is not necessary; and

(5) Such other situations, as may be determined by the Authority.

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 it is the required minimum towing or pushing capacity.

Considering pilotage and towage services are public utilities whose paramount consideration is public convenience; and in order to avoid even the mere appearance of conflict of interest; pilots with existing accreditation, as well as members, employees and officers of pilotage organizations, including their relatives by consanguinity and affinity within the fourth civil degree, are prohibited from being stockholders, owners, officers, or employees of a towage company, holding any other interest in a towage company or tug boats, or receiving any form or remuneration, directly or indirectly, from towage companies or the operation of tug boat services.

However, harbor pilots who are also operating tugboat services prior to the effectivity of this Act shall be given a period of two (2) years after such activity to comply as far as the requirement on divestment of interest is concerned.

Sec. 16. Penalties. - Any violation of the provisions of this Act, including the charging fees beyond the published rates under Section 9 or having a 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 Authority, be penalized by a fine of not less than One Hundred Thousand Pesos (PhP100,000.00) but not to exceed Five Hundred Thousand Pesos (PhP500,000.00) and suspension of the accreditation from three (3) to twelve (12) months, or cancellation thereof. The Authority may also recommend to the MARINA the revocation of license of a harbor pilot who acts in violation of this Act.

Violations by tug-boat operators shall, after due notice and hearing by MARINA, be administratively punishable by suspension of the certificate of public convenience from three (3) to twelve (12) months, or cancellation thereof.

Sec. 17. 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 of 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 Authority shall continue to apply until otherwise updated, repealed or modified by the Pilotage Board.

Sec. 18. *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.

Sec. 19. *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. 20. *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. 21. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved,