

# MAINE STATE LEGISLATURE

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(New Draft of H.P. 79, L.D. 82)  
(New Title)  
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1826

H.P. 1336 House of Representatives, June 11, 1987  
Reported by Representative RICHARD from the Committee on  
Utilities and printed under Joint Rule 2.  
EDWIN H. PERT, Clerk  
Original bill sponsored by Representative WILLEY of  
Hampden. Cosponsored by Representatives ALLEN of Washington  
and NICHOLSON of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Revise the Laws Concerning  
2 Transportation by Water in Casco Bay  
3 and to Study Related Issues.  
4

5 Be it enacted by the People of the State of Maine as  
6 follows:

7 Sec. 1. 23 MRSa §4406 is enacted to read:

8 §4406. Radar requirements on vessels operating in  
9 Casco Bay

10 1. Radar device required. Every person, firm or  
11 corporation engaged in the transport of 6 or more  
12 passengers by vessel, for compensation, between or  
13 among the islands of Casco Bay and the mainland,

1 shall provide an operable radar device on each vessel  
2 operated by the person or corporation which carries 6  
3 or more passengers and shall provide a person quali-  
4 fied to operate the radar device in accordance with  
5 all federal regulations relating to the operation of  
6 federally licensed passenger carrying vessels.

7 2. Standards; promulgation; enforcement; penal-  
8 ty. The Department of Transportation shall adopt  
9 rules relating to the use and installation of radar  
10 devices in the vessels referred to in section 4410.  
11 These rules shall include, but not be limited to, the  
12 specification of standards for the radar devices to  
13 be carried by the vessels and the qualifications of  
14 those persons responsible for the proper operation of  
15 the radar devices. Until those rules are adopted,  
16 the rules previously adopted by the Public Utilities  
17 Commission shall remain in effect.

18 Sec. 2. 35-A MRSA Pt. 5, as enacted by PL 1987,  
19 c. 141, §6, is amended to read:

20 PART 5

21 WATERBORNE TRANSPORTATION

22 CHAPTER 51

23 REGULATION OF FERRIES IN CASCO BAY

24 §5101. Franchise of Casco Bay Island Transit Dis-  
25 trict and others

26 No person, except for the Casco Bay Island Tran-  
27 sit District, created by Private and Special Law  
28 1981, chapter 22, may, directly, by lease or other  
29 arrangement transport passengers or property by ves-  
30 sel, for compensation, between the mainland of Cum-  
31 berland County and Peak's Island, Great Diamond Is-  
32 land, Little Diamond Island, Long Island, Chebeague  
33 Island, ~~Bailey Island~~ or Cliff Island, or between the  
34 islands, without obtaining a certificate of public  
35 convenience and necessity from the commission autho-  
36 rizing the transportation. ~~Any~~ The district and any  
37 person who must obtain a certificate ~~is a ferry~~ are  
38 ferries subject to the jurisdiction of the commission  
39 with respect to the service which requires authority.

1 The commission shall specify in the certificate the  
2 business and operation of the ferry and shall attach  
3 to it at the time of issuance and from time to time  
4 after issuance reasonable terms, conditions and limi-  
5 tations as it determines necessary to maintain ade-  
6 quate transportation to these islands. The Casco Bay  
7 Island Transit District may assign or subcontract to  
8 another person any service for which it has a fran-  
9 chise.

10 §5102. Application of this Title

11 ~~All ferries are subject to this Title and to the~~  
12 ~~orders and rules adopted and promulgated by the com-~~  
13 ~~missioner under the authority of this Title, provided~~  
14 ~~that ferries are not subject to the jurisdiction of~~  
15 ~~the commission with respect to safety.~~

16 1. Authority over ferries. All ferries are sub-  
17 ject to this Title and to the orders and rules  
18 adopted and promulgated by the commission under the  
19 authority of this Title, provided that ferries are  
20 not subject to the jurisdiction of the commission  
21 with respect to safety.

22 2. Emergency. Persons providing emergency  
23 transportation under this Title are not public utili-  
24 ties subject to the jurisdiction of the commission.

25 §5103. Service, rates and schedules

26 All ferries shall maintain reasonable and ade-  
27 quate service, rates and schedules to the islands of  
28 Casco Bay as set out in section 5101 under rules  
29 promulgated by the commission as to rates and  
30 schedules.

31 ~~1. Rates. The rates for transportation of prop-~~  
32 ~~erty established by the commission's rules shall be~~  
33 ~~comparable to rates established for the comparable~~  
34 ~~services of other authorized ferries in the State.~~

35 2. Schedules. The commission, when promulgating  
36 rules as to schedules, shall take into consideration  
37 the daily year-round service needs of the inhabitants  
38 of the islands of Casco Bay as set out in section  
39 5101.

1 §5104. Exceptions for ferries carrying commodities  
2 in bulk

3 Nothing in this chapter Part applies to the  
4 transportation of commodities in bulk. This excep-  
5 tion applies only in case of commodities in bulk  
6 which are loaded and carried without wrappers or con-  
7 tainers and received and delivered without transpor-  
8 tation mark or count, except that carriers of petro-  
9 leum fuels in bulk may also transport other products  
10 and accessories integral to the operation of motor  
11 vehicles and boats when they are included as part of  
12 the bulk shipment. The transporting transportation  
13 of a commodity in motor vehicles, whether commercial  
14 or privately owned, upon a vessel may not be con-  
15 strued as a bulk movement of those commodities.

16 §5105. Medical emergency

17 In the case of a medical emergency, transporta-  
18 tion may be ~~supplied by a~~ obtained from any person  
19 ~~who has not been issued a certificate of public con-~~  
20 ~~venience and necessity.~~

21 §5106. Temporary certificate of public convenience  
22 and necessity

23 Subject to the provisions of this chapter, the  
24 commission may issue a temporary certificate of pub-  
25 lic convenience and necessity to authorize other per-  
26 sons to better--serve-the-needs-of-the-residents-of  
27 provide services to the islands of Casco Bay as set  
28 out in section 5101, when persons authorized under  
29 section 5101 are unable to provide a needed service.  
30 The commission may attach reasonable terms, condi-  
31 tions and limitations to the temporary certificates.

32 §5107. Violation of this chapter; penalty

33 1. Offense. Whoever violates this chapter is  
34 guilty of unlawfully operating a ferry in Casco Bay.

35 2. Penalty. Unlawful operation of a ferry in  
36 Casco Bay is a Class E crime.

37 3. Civil remedy. In addition to any other reme-  
38 dy provided in this chapter for the enforcement of

1 this chapter for the enforcement of this chapter or  
2 any rule, order or decision of the commission issued  
3 with relation to the operation of a ferry covered by  
4 this chapter, the Superior Court has jurisdiction  
5 upon complaint filed by the commission or the Casco  
6 Bay Island Transit District to enjoin a person from  
7 committing an act prohibited by this chapter or pro-  
8 hibited by a rule, order or decision of the commis-  
9 sion in relation to the operation of transportation  
10 facilities in Casco Bay. It is the intention of the  
11 Legislature that the commission or the Casco Bay Is-  
12 land Transit District may seek an injunction under  
13 this section without first resorting to another form  
14 of administrative proceeding proceedings or court  
15 procedure procedures as a condition precedent to the  
16 granting of the injunction.

17 §5108. Radar requirements on vessels operating in  
18 Casco Bay

19 Every person subject to the rules of the commis-  
20 sion in conjunction with the transport of 6 or more  
21 passengers by vessel, for compensation, between or  
22 among the islands of Casco Bay and the mainland  
23 shall, after appropriate action by the commission  
24 acting pursuant to section 5109, provide an operable  
25 radar device on each vessel operated by the person  
26 which carries 6 or more passengers and shall provide  
27 a person qualified to operate the radar device in ac-  
28 cordance with all federal rules relating to the oper-  
29 ation of federally licensed passenger-carrying ves-  
30 sels.

31 §5109. Standards; promulgation; enforcement

32 1. Rules for use of radar devices; standards.  
33 The commission shall adopt rules relating to the use  
34 and installation of radar devices in the vessels re-  
35 ferred to in section 5108. These rules shall in-  
36 clude, but need not be limited to, the specification  
37 of standards for the radar devices and the qualifica-  
38 tions of those persons responsible for the proper op-  
39 eration of the radar devices.

40 2. Time for compliance. The commission, subse-  
41 quent to the promulgation of these standards, shall  
42 allow a reasonable time not to exceed 180 days for  
43 initial compliance.

1           3. ~~Enforcement; revocation of certificate of~~  
2 ~~public convenience and necessity. The commission may~~  
3 ~~enforce section 5108 and this section or any of the~~  
4 ~~rules promulgated under them in the same manner and~~  
5 ~~with the same effect as it may enforce this Title.~~

6           The commission may revoke the certificate of public  
7 convenience and necessity of any person who does not  
8 comply with the commission's order.

9           Sec. 3. P&SL 1981, c. 22, §1 is amended by adding  
10 at the end a new sentence to read:

11           The district shall provide reasonable daily,  
12 year-round passenger and freight service, in accordance  
13 with the Maine Revised Statutes, Title 35-A,  
14 chapter 51, to all the islands that comprise the district.  
15

16           Sec. 4. P&SL 1981, c. 22, §12, as amended by PL  
17 1985, c. 481, Pt. A, §101, is repealed and the following  
18 enacted in its place:

19           Sec. 12. Regulation.

20           1. Public Utilities Commission. Nothing in this  
21 chapter may be construed to exempt the district from  
22 regulation by the Public Utilities Commission. The  
23 district shall operate under all the restraints, responsibilities  
24 and privileges as have applied to Casco Bay Lines, provided that  
25 alterations to rates and tolls by the district shall go into effect  
26 after such public notice as the Public Utilities Commission  
27 shall by rule prescribe without further action by the  
28 Public Utilities Commission, unless 50 ratepayers request  
29 in writing an investigation of the alterations, in which case the  
30 investigation shall be conducted as prescribed in the Maine Revised  
31 Statutes, Title 35-A.  
32

33           2. Department of Transportation. The district  
34 shall maintain safe service in accordance with rules  
35 promulgated by the Department of Transportation concerning  
36 safety.

37           The district shall provide on each of its vessels an  
38 operable radar device and a person qualified to operate  
39 the radar device, in accordance with federal reg-

1 ulations and with state rules promulgated by the De-  
2 partment of Transportation under the Maine Revised  
3 Statutes, Title 23, section 4406.

4       **Sec. 5. State agency study and report to the**  
5 **Legislature.** The Department of Transportation, in  
6 cooperation with the Public Utilities Commission and  
7 the Public Advocate, shall undertake a study of ferry  
8 service in Casco Bay and provide to the Governor and  
9 Legislature by January 1, 1989, their report present-  
10 ing joint conclusions and recommendations, including  
11 legislative recommendations.

12       **1. Scope of study.** The study shall examine:

13       **A.** The possible effect on the annual revenues  
14 and service of the Casco Bay Island Transit Dis-  
15 trict if the present regulation of entry for all  
16 ferry service in Casco Bay were replaced by the  
17 deregulation of unscheduled service, such as wa-  
18 ter taxis and on-demand freight service, while  
19 granting an exclusive franchise by law to the  
20 Casco Bay Island Transit District for scheduled  
21 passenger and freight service;

22       **B.** Possible modes of continued regulation of en-  
23 try for ferry service in Casco Bay, including  
24 regulation by the Public Utilities Commission,  
25 the Department of Transportation, the Casco Bay  
26 Island Transit District, the Cumberland County  
27 Commissioners, the City of Portland or other al-  
28 ternatives;

29       **C.** The question of whether or not the daily  
30 year-round scheduled freight and passenger ser-  
31 vice in Casco Bay would require a General Fund  
32 subsidy and an estimate of the cost of such a  
33 subsidy under continued regulation of all ferry  
34 service and under deregulation of unscheduled  
35 service;

36       **D.** The anticipated effect on the annual revenues  
37 of the Casco Bay Island Transit District of tour,  
38 charter and catering revenues. The study shall  
39 recommend a definition to clarify the authority  
40 granted by Private and Special Law 1981, chapter  
41 22, to the district to engage in "incidental tour  
42 and charter service;"



1 E. The appropriate limits on the service which  
2 can be provided by other carriers, including  
3 unscheduled carriers and tour and charter opera-  
4 tors, consistent with the franchise of the dis-  
5 trict;

6 F. The anticipated effect on tourism-related  
7 revenues in the Portland area of additional tour,  
8 taxi and unscheduled service in Casco Bay; and

9 G. The anticipated effect on state administra-  
10 tion of piers and wharves from allowing addition-  
11 al carriers to use them for additional freight  
12 and passenger service.

13 2. **Membership of Inter-agency Study Group.** The  
14 Inter-agency Study Group shall consist of the follow-  
15 ing 3 members:

16 A. The Commissioner of Transportation, or his  
17 designee, who shall serve as chairman;

18 B. The Public Advocate or his designee; and

19 C. The Chairman of the Public Utilities Commis-  
20 sion or his designee.

21 3. **Information relevant to the completion of**  
22 **study.** Any person or agency who possesses a certifi-  
23 cate of public convenience and necessity from the  
24 Public Utilities Commission for the provision of  
25 freight or passenger service in Casco Bay shall com-  
26 ply with any reasonable request for information rele-  
27 vant to the completion of this study, shall make doc-  
28 uments and records available pursuant to such a re-  
29 quest and shall cooperate with the Department of  
30 Transportation, the Public Advocate and the Public  
31 Utilities Commission in their completion of the  
32 study. In support of this provision, the Public  
33 Utilities Commission may demand information with the  
34 full authority and under the conditions of the Maine  
35 Revised Statutes, Title 35-A.

36 4. **Legislative involvement.** The Joint Standing  
37 Committee on Utilities shall monitor the progress of  
38 the study, review the findings of the Inter-agency  
39 Study Group and make recommendations to the First

1 Regular Session of the 114th Legislature, including  
2 legislation if necessary.

3 STATEMENT OF FACT

4 The new draft does not deregulate transportation  
5 by water in Casco Bay. It does transfer regulation  
6 of radars from the Public Utilities Commission to the  
7 Department of Transportation and retains the present  
8 obligation of the Department of Transportation in the  
9 Maine Revised Statutes, Title 23, section 4403, to  
10 ensure continuation of ferry service to the Casco Bay  
11 Islands if the Public Utilities Commission determines  
12 that it cannot be feasibly provided otherwise. All  
13 ferries are public utilities and the term "ferry" is  
14 defined in Title 35-A, section 102. It grants a  
15 franchise by law to the Casco Bay Island Transit Dis-  
16 trict for transportation of passengers and freight,  
17 while other carriers must petition the Public Utili-  
18 ties Commission for rights to serve.

19 The new draft deletes Bailey Island from the list  
20 of regulated islands because the island is connected  
21 by a bridge to the mainland; it authorizes the dis-  
22 trict to subcontract; it maintains Public Utilities  
23 Commission jurisdiction over the district to hear ap-  
24 peals from customers relative to rates or service;  
25 and it grants the district authority to go directly  
26 to Superior Court with complaints of violation of  
27 this law.

28 The new draft also provides for a study of ferry  
29 service in Casco Bay by the Department of Transporta-  
30 tion, the Public Utilities Commission and the Public  
31 Advocate with a report by January 1, 1989. The de-  
32 partments can conduct the study within their existing  
33 budgets.

34

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