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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1643, L.D. 2306, Bill, "An Act to Ensure the Availability of Ferry Service in Casco Bay"

Amend the bill in the emergency preamble by striking out the 5th and 6th paragraphs (page 1, lines 27 to 38 in L.D.) and inserting in their place the following:

'Whereas, changes to the laws governing the regulation of ferries in Casco Bay are needed immediately to prevent uncertainties from undermining the ability of the district to sell new bonds or to pay off existing bonds and necessitating the expenditure of state money under the Maine Revised Statutes, Title 23, section 4403 to replace services now provided by the district; and'

Further amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting in its place the following:

'Sec. 1. 35-A MRSA §5101, as amended by PL 1987, c. 475, §2, is further amended to read:

§5101. Franchise of Casco Bay Island Transit District and others

No person, except for the Casco Bay Island Transit District, created by Private and Special Law 1981, chapter 22, may, directly, by lease or other arrangement transport passengers or property by vessel, for compensation, between the mainland of Cumberland County and Peaks Peaks Island, Great Diamond Island, Little Diamond Island, Long Island, Chebeague Island or Cliff Island, or between the islands mentioned in this paragraph section, without obtaining a certificate of public convenience and necessity from the commission authorizing the transportation. The district and any person who must obtain a

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2 certificate are ferries subject to the jurisdiction of the
3 commission with respect to the service which that requires
4 authority. The commission shall specify in the certificate the
5 business and operation of the ferry and shall attach to it at the
6 time of issuance and from time to time after issuance reasonable
7 terms, conditions and limitations as it determines necessary to
8 maintain adequate transportation to these islands. The Casco Bay
9 Island Transit District may assign or subcontract to another
10 person any service for which it has a franchise. Regularly
11 scheduled freight and passenger services are subject to the
12 requirements of sections 5101-A to 5101-C. Unscheduled freight,
13 tour, charter and taxi services are subject to the requirements
14 of sections 5101-D and 5101-E.

15 **Sec. 2. 35-A MRSA §§5101-A to 5101-F are enacted to read:**

16 **§5101-A. Allowance of cross-subsidization; legislative intent**

17
18 **1. Legislative intent.** The Legislature finds that the
19 provision of affordable year-round passenger, freight and vehicle
20 transportation to the islands served by the Casco Bay Island
21 Transit District is critical to the continued existence of these
22 island communities. It is the intent of the Legislature that the
23 regulation of rates for the district allow for reasonable
24 cross-subsidization of rates in order to preserve the
25 affordability of passenger, freight and vehicle transportation
26 for the year-round residents of the affected islands, the
27 financial viability of the district and the viability of the
28 island communities served by the district.

29
30 **2. Cross-subsidization.** In making decisions that require an
31 evaluation of the rates charged by the Casco Bay Island Transit
32 District, the commission shall allow reasonable
33 cross-subsidization of rates in order to preserve the
34 affordability of passenger and freight services for the
35 year-round residents of the affected islands, the financial
36 viability of the district and the viability of the island
37 communities served by the district. In allowing such
38 cross-subsidization, the commission shall attempt to minimize the
39 potential need for governmental operating subsidies for the
40 operations maintained by the district.

41
42 **3. Competing scheduled service.** The commission may not
43 grant an application for a certificate of public convenience and
44 necessity in which the applicant seeks to offer a scheduled
45 passenger, freight or vehicle transportation service currently
46 offered by the Casco Bay Island Transit District if the principal
47 difference in service proposed by the applicant is a proposed or
48 potential reduced rate for that service, unless the applicant

2 proves that the granting of that certificate will not have a
3 significant adverse affect on the revenues of the district. This
4 subsection does not apply to tour or charter service applications.

6 §5101-B. Inadequacies or deficiencies in service of Casco Bay
7 Island Transit District

8 1. Seasonal scheduled service. A certificate granted by the
9 commission for seasonal scheduled passenger, freight or vehicle
10 transportation services must be limited to the provision of
11 scheduled services found by the commission to cure any
12 inadequacies or deficiencies in existing scheduled services of
13 the Casco Bay Island Transit District.

14 2. Permanent certificates. An applicant for a permanent
15 certificate of public convenience and necessity for the provision
16 of scheduled passenger, freight or vehicle transportation service
17 who seeks such a certificate on the grounds that the service
18 provided by the Casco Bay Island Transit District is inadequate
19 or deficient has the burden of establishing the following.

20 A. The service of the district is inadequate or deficient
21 in the areas in which the applicant proposes to provide
22 service.

23 B. By written application to the board of directors of the
24 district, the applicant has identified the inadequacies and
25 deficiencies in the service of the district that the
26 applicant wishes to provide.

27 C. The district has failed substantially to cure these
28 inadequacies or deficiencies in its service within 60 days
29 after receipt of the written application of the applicant
30 that identifies the inadequacies or deficiencies.

31 3. Insufficiency of lower rates to establish deficiency. A
32 scheduled service provided by the Casco Bay Island Transit
33 District may not be found to be inadequate or deficient solely on
34 the basis that a seasonal service is proposed by an applicant to
35 be provided at a lower rate than the scheduled service offered by
36 the district. This subsection does not apply to any application
37 proposing to provide all scheduled passenger, freight and vehicle
38 transportation services currently offered by the district.

39 §5101-C. Preservation of financial viability of Casco Bay
40 Island Transit District

2 In reviewing an application for a certificate of public
3 convenience and necessity for the provision of scheduled
4 passenger, freight or vehicle transportation service under
5 section 5101, the commission shall consider the cumulative impact
6 of each application in conjunction with any other certificates
7 previously granted for ferry services in Casco Bay. The
8 commission may not grant a certificate for scheduled passenger,
9 freight or vehicle transportation service that is likely to have
10 a significant adverse impact on the rates that must be charged by
11 the Casco Bay Island Transit District, the capability of the
12 district to sell or repay bonds, the short-term or long-term
13 financial viability of the district, or the ability of the
14 district to retain a reasonable level of cross-subsidization,
15 taking into consideration the full range of services provided by
16 the district and the requirement that the district provide and
17 maintain reasonable and adequate service, rates and schedules to
18 the islands of Casco Bay as required by section 5103.

19 **§5101-D. Unscheduled freight services**

20 The commission shall issue a certificate of public
21 convenience and necessity to an applicant filing a tariff meeting
22 the following listed minimum conditions.

23 1. Mainland service. For service between mainland
24 Cumberland County and Long Island, Cliff Island, Little Diamond
25 Island, Great Diamond Island and Chebeague Island and service
26 between these islands:

27 A. The service is for unscheduled transportation of a
28 roll-on and roll-off vehicle, as defined by the commission
29 by rule, with a cargo weight in excess of 5 gross tons,
30 excluding 4-wheel trucks and cars of 10 or less gross tons
31 unless carried in conjunction with a roll-on and roll-off
32 vehicle with a cargo weight in excess of 5 gross tons;

33 B. The vehicles transported:

34 (1) Carry only commodities in bulk, construction
35 materials, or household goods, provided that the
36 household goods are carried in tractor trailers; or

37 (2) Are construction equipment or special purpose
38 vehicles, such as trash compactors and emergency
39 equipment. Freight transported in the vehicles may not
40 include food, beverages, perishables and wrapped or
41 boxed freight; and

42

2 C. Loading and unloading of vessels does not occur at
4 wharves or docks used by the Casco Bay Island Transit
6 District for its scheduled service.

8 2. Peaks Island service. For service between Peaks Island
10 and mainland Cumberland County and between Peaks Island and Long
12 Island, Cliff Island, Little Diamond Island, Great Diamond
14 Island, Chebeague Island or Bailey Island:

16 A. The service is for unscheduled transportation of a
18 roll-on and roll-off vehicle, as defined by the commission
20 by rule, with a cargo weight in excess of 5 gross tons,
22 excluding 4-wheel trucks and cars of 10 or less gross tons
24 unless carried in conjunction with a roll-on and roll-off
26 vehicle with a cargo weight in excess of 5 gross tons;

28 B. The vehicles transported:

30 (1) Carry only commodities in bulk, construction
32 materials, or household goods, provided that the
34 household goods are carried in tractor trailers; or

36 (2) Are construction equipment or special purpose
38 vehicles, such as trash compactors and emergency
40 equipment. Freight transported in the vehicles may not
42 include food, beverages, perishables, and wrapped or
44 boxed freight;

46 C. The freight carried in vehicles transported on any
48 single trip may consist of property of multiple owners only
if that property was originally sold by a single vendor who
is the owner of one of the vehicles transported on the trip
or if the freight contained in the vehicles transported on
the trip is for the performance or is related to the
performance of a single contract performed or to be
performed by the owner of one of the vehicles carried on the
trip; and

D. Loading and unloading of vehicles does not occur at any
wharf or dock used by the Casco Bay Island Transit District
for its scheduled service.

3. Statement of fees. The tariff includes the statement of
the hourly fee of the carrier and the minimum fee of the carrier,
which may not be less than one hour at the hourly fee.

For the purposes of this section, the term "unscheduled
transportation" means transportation that is provided on demand.

2 not pursuant to any published or announced schedule and not as a
3 part of a pattern of an operator in providing transportation at a
4 regular or preset frequency.

6 **§5101-E. Unscheduled tours, charters and water taxi services**

8 The commission shall adopt rules governing unscheduled
9 tours, charters and water taxi services.

10 **§5101-F. Exemptions**

12 Sections 5101-A to 5101-D do not apply to the operations of
13 any ferry service to the extent that those operations involve
14 service to Chebeague Island and to none of the other islands
15 served by the Casco Bay Island Transit District.

16 The Chebeague Transportation Company is not required to seek
17 or hold a certificate of public convenience and necessity under
18 section 5101 for ferry service between Chebeague Island and the
19 mainland of Cumberland County north of Tukeys Bridge.

22 **Sec. 3. 35-A MRSA §5102, sub-§2, as enacted by PL 1987, c.**
23 **475, §2, is amended to read:**

24 **2. Emergency.** Persons providing emergency transportation,
25 including transportation relating to emergency planning
26 activities, under this Title are not public utilities subject to
27 the jurisdiction of the commission.

30 **Sec. 4. 35-A MRSA §§5110 and 5111 are enacted to read:**

32 **§5110. Lapse of unused certificates**

34 Any certificate issued pursuant to this chapter that has not
35 been used by the holder during the 2-year period prior to the
36 effective date of this section lapses on the effective date of
37 this section. Any other certificate issued under this chapter,
38 other than a certificate for the transportation of mail, that is
39 not used within 2 years after the date of its issuance lapses 2
40 years after the date of its issuance. Any certificate issued
41 prior to the effective date of this section for the
42 transportation of mail that is not used within 5 years of the
43 date of issuance lapses 5 years after the date of its issuance.

44 **§5111. Repeal; report**

46 **1. Repeal.** Section 5101-D is repealed on July 15, 1994.
48 Any tariff or certificate issued by the commission under that

section terminates on that date, except that any carrier receiving a permit, or an expansion of an existing permit, under section 5101-D who has, prior to July 15, 1994, entered into a single project contract for the unscheduled transportation of freight may complete that contract provided that the contract is completed by November 15, 1994. The termination of any certificate granted under section 5101-D does not affect any other certificate previously issued and held by an operator at the time of the issuance of any certificate pursuant to that section.

2. Report. The commission, together with the Casco Bay Island Transit District and any other holder of a certificate of public convenience and necessity under this chapter authorized to transport unscheduled freight under section 5101-D who wishes to participate, shall prepare a report on whether section 5101-D should be continued. The report must include recommendations regarding the soundness of the policy embodied in that section and whether the provisions should be continued or modified. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over utility matters on or before January 1, 1994.'

Further amend the bill by inserting before the statement of fact the following:

FISCAL NOTE

The Public Utilities Commission will incur some minor additional administrative costs to adopt rules and in applying different standards than currently used in regulating the Casco Bay Island Transit District. These costs can be absorbed within the commission's existing budgeted resources.'

STATEMENT OF FACT

This amendment alters the emergency preamble of the bill.

This amendment also does the following:

1. Allows reasonable cross-subsidization in the rates of the Casco Bay Island Transit District, or CBITD;

2. Prevents the Public Utilities Commission from allowing any scheduled passenger, freight or vehicle transportation service offered by CBITD, other than tour and charter service, to be provided by any other entity if the principal difference between CBITD and the competitor is that the competitor will offer the service at a reduced rate, unless there will be no

2 significant adverse impact on CBITD. It prevents the commission
4 from permitting any competition of this type if the commission
6 determines that the competition will have a significant adverse
impact on CBITD's rates, its ability to sell or repay bonds, its
long-term financial viability or its ability to retain a
reasonable level of cross-subsidization in its rates;

8 3. Prevents the commission from permitting any entity from
10 providing seasonal scheduled passenger, freight or vehicle
12 transportation service that is provided by CBITD except to cure
inadequacies in CBITD's service. The fact that a competitor can
14 offer seasonal service at a lower rate does not establish an
inadequacy in CBITD's service;

16 4. Provides a temporary mechanism whereby certain types of
18 unscheduled freight services are permitted by the commission.
The standards for issuing permits under this mechanism are
20 specific to certain routes in Casco Bay. The standards include
22 minimum cargo weights, limitations on cargo types and
24 prohibitions on the use of CBITD's wharves and docks. This
mechanism is repealed on July 15, 1994. The commission, together
with interested parties, is required to submit a report on the
continuance of this mechanism to the Joint Standing Committee on
Utilities by January 1, 1994;

26 5. Allows the commission to adopt rules governing
28 unscheduled tours, charters and water taxi services;

30 6. Provides specific exemptions from the restrictions and
32 requirements imposed on regularly scheduled freight and passenger
34 services and unscheduled freight services for operations serving
Chebeague Island and none of the other islands served by CBITD.
It also exempts Chebeague Transportation Company from the
36 requirement of seeking a certificate of public convenience and
necessity to provide ferry service between Chebeague Island and
the mainland of Cumberland County north of Tukeys Bridge;

38 7. Expands the exclusion from commission jurisdiction for
40 emergency transportation to include transportation relating to
emergency planning activities;

42 8. Provides that unused certificates of public convenience
44 and necessity for the provision of ferry service lapse 2 years
46 after issuance, or on the effective date of this Act, whichever
is later. There is an exemption from this provision for
certificates relating to ferry transportation of mail; these
48 certificates lapse after 5 years of nonuse; and

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9. Adds a fiscal note.

Reported by the Committee on Utilities
Reproduced and distributed under the direction of the Clerk of the
House
3/11/92 (Filing No. H-1082)

COMMITTEE AMENDMENT