

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION
December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION
January 8, 1992 to March 31, 1992

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1992

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1992

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

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ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

superseded by the commission's final decision on the request. The commission may establish reasonable limits on the frequency of requests filed under this subsection.

See title page for effective date.

CHAPTER 772

H.P. 1550 - L.D. 2188

An Act to Extend the Reporting Date of the Commission to Study State Permitting and Reporting Requirements

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Legislature, in Public Law 1991, chapter 606, created the Commission to Study State Permitting and Reporting Requirements which was to submit a report to the Second Regular Session of the 115th Legislature by November 1, 1991; and

Whereas, an extension is needed by the commission to adequately report its findings; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. PL 1991, c. 606, Pt. D, §7 is amended to read:

Sec. D-7. Report. The commission shall submit its report, together with any necessary implementing legislation to the Second Regular Session of the 115th Legislature no later than ~~November 1~~ December 15, 1991.

Sec. 2. Retroactivity. Section 1 of this Act applies retroactively to November 1, 1991.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective March 30, 1992.

CHAPTER 773

H.P. 1627 - L.D. 2290

An Act to Open State Government to Public View

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

Sec. 1. 1 MRSA §402, sub-§1-A is enacted to read:

1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.

Sec. 2. 1 MRSA §402, sub-§3, ¶C, as amended by PL 1977, c. 696, §9, is further amended to read:

C. Records Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the biennium legislative session or sessions in which the proposal or report is papers or reports are prepared or considered or to which the paper or report is carried over;

See title page for effective date.

CHAPTER 774

H.P. 1643 - L.D. 2306

An Act to Ensure the Availability of Ferry Service in Casco Bay

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Casco Bay Island Transit District was created by the Legislature in 1981 as a community-based nonprofit organization to provide ferry services to several islands in Casco Bay previously served by Casco Bay Lines until its bankruptcy; and

Whereas, the Casco Bay Island Transit District has for a decade served the residents and visitors of Chebeague Island in Cumberland, Peaks Island, Great Diamond Island, Little Diamond Island, Long Island and Cliff Island in Portland with a variety of transit services for passengers, vehicles and freight in an efficient and cost-effective manner; and

Whereas, many of the services provided by Casco Bay Island Transit District cost more to deliver than they generate in revenue but are essential to meet the needs of the island communities of Casco Bay and the few transit services that generate more revenue than they cost are critically important to the fiscal health of the district because they make it financially possible to support the other essential services that would not otherwise be offered; and

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

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

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

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

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

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

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

3. Competing scheduled service. The commission may not grant an application for a certificate of public convenience and necessity in which the applicant seeks to offer a scheduled passenger, freight or vehicle transportation service currently offered by the Casco Bay Island Transit District if the principal difference in service proposed by the applicant is a proposed or potential reduced rate for that service, unless the applicant proves that the granting of that certificate will not have a significant adverse effect on the revenues of the district. This subsection does not apply to tour or charter service applications.

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

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

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

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

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

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

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

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

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

§5101-D. Unscheduled freight services

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

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

A. The service is for unscheduled transportation of a roll-on and roll-off vehicle, as defined by the

commission by rule, with a cargo weight in excess of 5 gross tons, excluding 4-wheel trucks and cars of 10 or less gross tons unless carried in conjunction with a roll-on and roll-off vehicle with a cargo weight in excess of 5 gross tons;

B. The vehicles transported:

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

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

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

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

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

B. The vehicles transported:

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

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

C. The freight carried in vehicles transported on any 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 per-

formed 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, not pursuant to any published or announced schedule and not as a part of a pattern of an operator in providing transportation at a regular or pre-set frequency.

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

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

§5101-F. Exemptions

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

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

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

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

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

§5110. Lapse of unused certificates

Any certificate issued pursuant to this chapter that has not been used by the holder during the 2-year period prior to the effective date of this section lapses on the effective date of this section. Any other certificate issued under this chapter, other than a certificate for the transportation of mail, that is not used within 2 years after the date of its issuance lapses 2 years after the date of its issuance. Any certificate issued prior to the effec-

tive date of this section for the transportation of mail that is not used within 5 years of the date of issuance lapses 5 years after the date of its issuance.

§5111. Repeal; report

1. Repeal. Section 5101-D is repealed on July 15, 1994. 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.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective March 30, 1992.

CHAPTER 775

H.P. 1683 - L.D. 2363

An Act Concerning Water Utilities

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, utilities need to obtain financing immediately in order to construct facilities to meet the requirements of the federal Safe Drinking Water Act in a timely manner; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,