

MAINE STATE LEGISLATURE

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REPORT AND JOINT RECOMMENDATIONS
TO THE
114th MAINE LEGISLATURE
JOINT STANDING COMMITTEE ON UTILITIES
BY THE STAFFS OF THE
MAINE DEPARTMENT OF TRANSPORTATION
OFFICE OF THE PUBLIC ADVOCATE
AND
MAINE PUBLIC UTILITIES COMMISSION

REGARDING
TRANSPORTATION SERVICES IN CASCO BAY

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MARCH 1989

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I. INTRODUCTION AND LEGISLATIVE ISSUES

During the First Regular Session of the 113th Legislature, three state agencies with regulatory responsibilities regarding transportation services in Casco Bay were directed to "undertake a study of ferry service in Casco Bay and provide to the Governor and Legislature by January 1, 1989 their report presenting joint conclusions and recommendations, including legislative recommendations." (P.L. 1987, ch. 475) This legislation was signed by the Governor on June 26, 1987 and became effective ninety days thereafter. The three agencies directed to conduct the study are the Department of Transportation (DOT), the Office of the Public Advocate and the Public Utilities Commission (PUC). The legislative deadline was subsequently extended from January 1, 1989 to March 1, 1989.

The Legislature directed the three agencies to investigate seven related aspects of Casco Bay transportation services. Specifically, the Legislature asked the agencies to address the following issues:

- A. The possible effect on the annual revenues and service of the Casco Bay Island Transit District if the present regulation of entry for all ferry service in Casco Bay were replaced by the deregulation of unscheduled service, such as water taxis and on-demand

- freight service, while granting an exclusive franchise by law to the Casco Bay Island Transit District for scheduled passenger and freight service;
- B. Possible modes of continued regulation of entry for ferry service in Casco Bay, including regulation by the Public Utilities Commission, the Department of Transportation, the Casco Bay Island Transit District, the Cumberland County Commissioners, the City of Portland or other alternatives;
- C. The question of whether or not the daily year-round scheduled freight and passenger service in Casco Bay would require a General Fund subsidy and an estimate of the cost of such a subsidy under continued regulation of all ferry service and under deregulation of unscheduled service;
- D. The anticipated effect on the annual revenues of the Casco Bay Island Transit District of tour, charter and catering revenues. The study shall recommend a definition to clarify the authority granted by Private and Special Law 1981, chapter 22, to the District to engage in "incidental tour and charter service";
- E. The appropriate limits on the service which can be provided by other carriers, including unscheduled carriers and tour and charter operators, consistent with the franchise of the District;

- F. The anticipated effect on tourism-related revenues in the Portland area of additional tour, taxi and unscheduled service in Casco Bay; and
- G. The anticipated effect on state administration of piers and wharves from allowing additional carriers to use them for additional freight and passenger service.

II. BACKGROUND AND LEGISLATIVE HISTORY

The Casco Bay Region has a population of almost 200,000 in winter and at least twice that in summer. Included in the City of Portland, the State's largest city, are five public islands: Peaks Island, Great Diamond Island, Little Diamond Island, Cliff Island, and Long Island. Chebeague Island is in the Town of Cumberland. The Casco Bay Island Transit District (CBITD) is a quasi-municipal corporation organized to provide regular transportation service between Cumberland County's mainland and the six Islands mentioned above and between those islands. The Islands served by CBITD vary by population and distance from the mainland. Peaks Island is the closest to downtown Portland. Its year-round population is about 900, and its ferry slip is only 2.6 miles from CBITD's Portland wharf. Peaks' passengers make up about three-fourths of CBITD riders and over 80% of its daily commuters. The Diamond Islands, although about the same

distance from the mainland as Peaks, have more seasonal populations. In the winter, Great Diamond has only about 16 residents and Little Diamond has only about 11. Long Island, two to three miles past Peaks, has about 160 year-round residents. Chebeague Island has the largest land area and 400 year-round residents, but it is less dependent on CBITD than other Islands. Although it is eight miles from Portland's wharf, Chebeague is only a one-mile ferry ride from Cousins' Island* which is connected to the mainland by a bridge. Cliff Island, nine miles out into the bay, has about 110 year-round residents.

Service to Peaks, which takes about 20 minutes, is frequent throughout the year. Islanders can choose from about 110 trips per week. Service to the Diamonds is almost as frequent in summer but infrequent in winter. Service to Long is frequent in summer and infrequent - about 23 trips per week - in winter. Service to Cliff and Chebeague is less frequent in all seasons.

Over the three decades of ferry regulation in Casco Bay, the character of the Islands has changed. In the 1950's Peaks

* Currently, ferry service between Chebeague and Cousins' Island is being provided by Chebeague Transportation Company, a private entity that has not been subject to PUC jurisdiction.

was known as "Welfare Island," because of the high proportion of AFDC families who lived there. It became the sight of Portland's low-income housing projects. In the seventies the City removed these projects. Now housing costs have "increased dramatically on the Islands" according to the Greater Portland Council of Governments (COG). Home prices on Peaks average about \$100,000 and most buyers are purchasing them as second homes. The largest development underway in Casco Bay is on Great Diamond where an old fort is on its way to becoming luxury condominiums for seasonal residents. Planners at COG predict the Islands will continue to become primarily summer residences and that they will experience only slow growth in the future.

The Legislature set up a regulatory scheme governing transportation between the mainland of Cumberland County and certain Islands in Casco Bay by Private and Special Law of 1963, P. & S.L. 1963, ch. 174. At the time Bailey Island was among the regulated islands. Casco Bay Lines, a private corporation, was granted authority to provide all forms of transportation in Casco Bay. The law required all other carriers to obtain a certificate of public convenience and necessity from the PUC prior to providing passenger or property transportation services and made all such services subject to general PUC authority. The legislative intent at the time was to subject transportation services in Casco Bay to the same regulatory oversight that the

PUC exerted over trucks and buses on land. See, e.g., Legis. Rec. 1268, 2365 (1963). Since the adoption of the regulatory scheme in 1963, the Commission has granted seven permanent certificates for the provision of several limited transportation services.

The Casco Bay Island Transit District was created by the Legislature in 1981, P. & S.L. 1981, ch. 22, to acquire the assets and take over the services of the Casco Bay Lines, which had filed for bankruptcy. The District's purpose is to provide ferry service to the named islands in Casco Bay and it is authorized to do all things necessary to furnish waterborne public transportation in the area, including incidental tour and charter service.

Due to the District's status as a quasi-governmental entity, its charter specifically restricted PUC jurisdiction over the District's rates. The PUC had jurisdiction only upon written petition by ten customers. By Public Laws of 1985, the number of petitioning customers necessary for PUC jurisdiction was raised to fifty, P.L. 1985, ch. 481, § 101.

In the early 1980's, the Legislature removed all jurisdiction of the PUC over trucks and buses, P.L. 1981, ch. 469; P.L. 1983, ch. 234. The PUC's Transportation Division was, thus, disbanded. The regulation of water carriers in Casco Bay remained as the only transportation services over which the PUC has jurisdiction.

In 1987, the Legislature recodified Chapter 174 of the Private and Special Laws into the general public utilities statutes, 35-A M.R.S.A. §§ 5101-5109, and enacted several relatively minor substantive changes. These included removing Bailey Island* as one of the regulated islands, authorizing CBITD to sub-contract its regulated services to the private sector, specifying that CBITD may seek a court injunction of unauthorized transportation, and transferring regulation of radar requirements from the PUC to the DOT.**

The recent history of economic regulation of transportation in Casco Bay reveals a trend towards reduced regulatory oversight by the PUC and a greater degree of autonomy for CBITD. This is in contrast to the situation with privately-owned utilities where the PUC exercises broad authority over monopoly services. The CBITD continues to have a virtual monopoly over the services it offers. All other carriers must obtain a certificate of public convenience and necessity from the PUC, a process which can be time consuming and expensive, before providing any transportation services to the Casco Bay Islands.

* Bailey Island is connected to the mainland by a bridge and the District's service to the Island was in the nature of summer tours, rather than commuter transportation.

** All other safety jurisdiction over water carriers was transferred to the DOT by P.L. 1985, ch. 481.

The genesis of this legislative study was a PUC proposal in the First Regular Session of the 113th Legislature that all remaining regulatory oversight over transportation services in Casco Bay be removed. The underlying purpose of this study is to address categories of transportation services for which deregulation may be in the public interest and the effect of such deregulation on CBITD.

III. STUDY APPROACH

The Inter-Agency Study Group sought a broad range of opinions and reviewed numerous sources of information in arriving at the conclusions and recommendations which are outlined in this report to the Governor and the Legislature. To assist in the development of these recommendations, the Study Group hired Martin O'Connell Associates (MOA) to specifically study the issues raised in the 1987 study legislation. The work of the consultant was funded by the three agencies. Diverse input was achieved initially through a public meeting concerning the final consultant selection and discussions with numerous local and state agencies. These meetings and discussions were followed by meetings throughout the Islands and the City of Portland with various interested groups, in addition to a telephone survey of Island residents conducted by MOA. Other

sources of information considered included analyses performed by COG (see appendices) and a graduate student at the John F. Kennedy School of Government of Harvard University (see appendices) and District records filed with the three agencies.

A final draft of MOA's study was put out to public comment which provided interested persons further opportunity to participate. MOA's final report and the public comments are contained in the appendices. Through such broad participation, the Study Group concludes: that no one recommendation is a final solution in itself. Instead, the recommendations in this report provide an opportunity for a limited expansion of unregulated transportation services in the Casco Bay Area without causing major dislocation or inefficient usage of existing resources in Casco Bay, while continuing to monitor the situation to assess if further legislation in the future is in the public interest.

IV. CONCLUSIONS AND RECOMMENTATIONS

This section of the report is organized as responses to the seven issues listed in the legislation which initiated the study, and contains the Study Group's conclusions and legislative recommendations. Proposed legislation which implements the recommendations is included in the appendices.

- A. The possible effect on the annual revenues and service of the Casco Bay Island Transit District if the present regulation of entry for all ferry service in Casco Bay were replaced by the deregulation of unscheduled service, such as water taxis and on-demand freight service, while granting an exclusive franchise by law to the Casco Bay Island Transit District for scheduled passenger and freight service.

As a general rule, the free entry of competitors in a market can be expected to promote a greater diversity of services to consumers and to enhance efficiency which results in provision of services at a lower cost. Nevertheless, any deregulation of any transportation services in Casco Bay may have a negative effect upon CBITD's revenues. The recommendations presented in this report are balanced to have a minimal impact upon CBITD's operations, while still providing for more diverse and efficient services. The recommendations are transitional in nature. To ensure that CBITD operations are not significantly affected by the proposed legislative changes, the Study Group recommends that the Legislature review CBITD's performance and the competitive nature of ferry services in four years. If it is determined at that time that CBITD's financial integrity has not been significantly impacted, further deregulation can be pursued. If deregulation has resulted in

significant problems, the appropriate regulatory scheme should be re-examined.

1. Water Taxis - Unscheduled Passenger Service

Unscheduled or on-demand passenger transportation is an important service in the Casco Bay Area. A number of privately-owned entities have authority from the PUC to provide unscheduled passenger service in Casco Bay. In all cases, the unscheduled passenger services are on-demand water taxis allowed to carry a maximum of six passengers, along with carry-on baggage. The companies holding water taxi authority from the PUC are:

- Casco Bay Charters, Inc.;
- Lionel Plante Associates; and
- Long Island Charter and Support Services.*

Rates charged by the water taxis are levied either on a per-trip or per-hour basis, regardless of the number of passengers aboard. The current rates, which are from \$20.00 to \$40.00 per trip or hour, range between \$20.00 to \$40.00 per passenger with a single passenger aboard and from \$3.33 to \$6.66 per passenger when the full complement of six passengers is carried.

* Operates from May 1st to October 15th.

Due to several PUC decisions, water taxi service in Casco Bay is, to a large extent, effectively unregulated and competitive. See Francis X. Murphy d/b/a Long Island Charter and Support Services Inc., Re: Petition for Public Convenience and Necessity to Provide Charter Service in Casco Bay, Docket No. 85-182 (MPUC, March 13, 1986); Lionel Plante Associates, Re: Application for Public Convenience and Necessity, Docket No. 84-53 (May 7, 1984). The PUC has stated that the Transit District is the "lifeline" to the Islands and is the only entity for which protection from competition can be justified. The PUC found that water taxis supplement the District's service and do not directly compete with the District.* The PUC indicated that the water taxi service itself is competitive, suggesting there is little, if any, justification for denying entry to protect any existing water taxi from competition.

In recent years, only three entities requested water taxi authority from the PUC** and none have been denied. Due to its view of the competitive nature of water taxi service, the PUC

* CBITD does not operate a water taxi, although its Charter would allow for such service.

** A fourth request for water taxi authority is currently pending before the PUC, Docket No. 89-25.

has not actively regulated water taxi rates, although water taxis by law must file tariffs with the PUC.

Despite the PUC's view on the nature of water taxis, the application process requires certain procedures which can be time-consuming and expensive, especially if an interested party intervenes and opposes the application. As a result of unnecessary regulatory hurdles, the response of potential competitors to unmet customer demands is reduced.

The total revenues earned by existing water taxis is estimated to be less than \$50,000 per year, only a fraction of which can be considered revenues diverted from CBITD. Water taxis are a different category of service than the services provided by CBITD. Customers pay a premium for a tailored type of service which may well be essential for some people to be able to reside on the Islands.

The Study Group recommends that PUC jurisdiction over water taxi service be completely removed. It should be noted that the District itself is free to compete in providing water taxi services, using any competitive advantage it may have. The recommendation is that the deregulation of unscheduled passenger service be limited to on-demand water taxi service with a maximum six passenger per trip limit. Unscheduled passenger service with more than six passengers would remain as currently

regulated with regulatory authority required for all carriers other than CBITD.*

2. Unscheduled Freight Services

CBITD's Charter allows it to carry both scheduled and unscheduled freight between the mainland and the Casco Bay Islands it serves. Three other carriers currently have PUC authority to operate unscheduled freight services. The three carriers are as follows:

- General Marine Construction Corporation;
- Hillside Lumber Company, Inc.; and
- Lionel Plante Associates.

Authority for two of these carriers, Hillside and Plante, is limited to Roll-on/Roll-off (Ro/Ro) service to and from beaches. The authority limits these Ro/Ro operators, in the case of Peaks Island, to vehicles that cannot be handled on a CBITD vessel, and, in the case of the other Islands, to vehicles other than four wheel trucks and cars of ten or less gross tons. In providing the Ro/Ro services, one carrier uses a deck barge and the other a Landing Craft (LCM).

* The attached proposed legislation assumes that the PUC continues as the body with the remaining regulatory oversight in Casco Bay. However, in Section IV(B) of this report, the benefits and potential problems of transferring some or all of the PUC's jurisdiction to other bodies is discussed.

General Marine, the third unscheduled freight carrier with PUC authority, is limited to the transportation of heavy equipment and materials which requires the use of a deck barge equipped with a crane.

The authority granted by the PUC for unscheduled freight services to-date has been carefully designed to minimize competition with typical services provided by CBITD. For Peaks Island, other carriers are limited to vehicles that cannot be handled by CBITD. In general, these are vehicles weighing more than 56,000 pounds. For Islands other than Peaks, other carriers are specifically excluded from carrying four-wheel trucks or cars of ten gross tons or less, which are the type of vehicles that CBITD can generally carry to these Islands. The total revenues earned by these private freight operations is estimated to be less than \$50,000.

Since CBITD does provide unscheduled freight service, the deregulation of any type of unscheduled freight service has a potential to adversely impact CBITD. The likely effect upon CBITD, however, must be balanced against the potential benefits of increased variety services and economic efficiency that is expected with increased competition.

MOA concluded that the type of freight most likely to be diverted from CBITD in the event of deregulation includes loaded trucks, heavy equipment, cargoes moved in large volumes and the seasonal movement of autos to and from inner and down bay

Islands. Small-volume freight, whether moving on a regular or irregular basis, would not likely be attractive to unscheduled operators. The high cost of providing truckload shipment service on a dedicated unscheduled vessel, compared to the relatively low prices charged by CBITD, would most likely limit the attractiveness of such services to shippers of time-sensitive cargoes willing to pay the additional cost.

If a private freight carrier can provide service at a lower cost than CBITD, generally it should be encouraged to do so. Similarly, shippers willing to pay a premium for a more customized service than offered by CBITD should have such an opportunity. Private freight carriers can be expected to establish their own niches which supplements, rather than directly competes with CBITD's services. CBITD's franchise and access to capital and operating subsidies should give it a substantial competitive advantage in most types of freight service. Increased competition should motivate the District to be more cost-effective and responsive to customer demands. The regular operation of the District's new ferry, the Machigonne II, should allow CBITD to handle most freight and vehicular transportation requirements to Peaks Island in a timely and cost-effective manner. Thus, for Peaks Island, the potential for diversion of cargoes from CBITD is reduced, if not entirely eliminated. For other Islands, deregulation of unscheduled freight services may have some impact.

The results of MOA's analysis of CBITD's freight customers indicate that, in the event of deregulation, unscheduled freight services are unlikely to capture a significant share of the cargoes currently carried by CBITD. Time-sensitive cargoes probably represent a small portion of the market. The large shippers that account for the majority of CBITD's revenues tend to ship on a frequent basis during the month. Small shippers do not have the volume required to make the use of unscheduled services economic. Thus, the bulk of the cargo shipped is compatible with the regular daily service offered by CBITD and incompatible with the services offered by competing unscheduled freight carriers.

The Study Group recommends that PUC jurisdiction over unscheduled freight services be removed, thus deregulating this category of services. Due to the potential impact on CBITD's operations, this recommendation is made with caution. The proposed legislation contains a transitional provision which allows CBITD to petition the PUC for a finding that the deregulation of unscheduled freight is causing a potential for severe financial hardship. Upon such a finding, the Commission could resume regulatory authority over all freight services.

3. Franchise Exclusivity

The Study Group's proposed legislation retains regulatory oversight over scheduled transportation services in Casco Bay.

Enactment of the legislation would preserve CBITD's current status as the only provider of scheduled passenger and property service and unscheduled service for more than six passengers. CBITD's franchise, however, remains non-exclusive. As is the case under the current regulatory scheme, the PUC could grant authority to another carrier if the public convenience and necessity warrant additional services.

- B. Possible modes of continued regulation of entry for ferry service in Casco Bay, including regulation by the Public Utilities Commission, the Department of Transportation, the Casco Bay Island Transit District, the Cumberland County Commissioners, the City of Portland or other alternatives.

Six possible regulatory entities with various combinations of regulatory responsibilities were considered. These include regulation by:

- the Public Utilities Commission,
- the Maine Department of Transportation,
- the City of Portland,
- the Cumberland County Commissioners,
- the CBITD, or
- a special arbitrator.

Some of the potential benefits and problems with these alternatives are outlined below. The outline is not intended to be all inclusive.

PROS AND CONS OF SELECTED MODES OF
REGULATION FOR CASCO BAY FERRY SERVICES

Pros

Cons

Public Utilities Commission

- | | |
|---|--|
| --Some experience with Casco Bay regulatory issues. | --No ferry or transportation expertise. |
| --Mechanism in place for settling disputes. | --No technical expertise in maritime matters. |
| --Historic regulator of Casco Bay | --Is geographically distant from Casco Bay. |
| | --Casco Bay policy and disputes often of local nature. |

Maine Department of Transportation

- | | |
|---|---|
| --Experience with ferry systems operations (i.e., State Ferry Service). | --Is geographically distant from Casco Bay. |
| --Knowledge of maritime safety matters. | --No mechanism in place for settling disputes. |
| --General oversight concerning transportation matters. | --May require additional resources to regulate CBITD. |
| | --Regulation of CBITD might increase pressure for state subsidy to achieve parity with Maine State Ferry Service. |

City of Portland

- | | |
|---|--|
| --Experience with transit system and taxi operations. | --May be unwilling to regulate CBITD over concerns that financial commitment of City funds may ultimately be required. |
| --Mechanism in place to settle disputes. | --May require additional resources depending on level of regulation exercised by the City. |
| --Five of the six-Islands served by CBITD are within the City of Portland. | --Chebeague Island is not part of the City. |
| --Experience with Casco Bay matters, including maritime regulation and enforcement (i.e., Harbor Master and Harbor Commission). | |
| --Expertise in waterfront planning and administration (i.e., Portland Waterfront Department, Harbor Commission). | |
| --Most Casco Bay regulatory policy determinations revolve around local issues. | |
| --Allows for more integrated local planning of transportation, development, tourism, and waterfront issues. | |

Pros

Cons

Cumberland County Commissioners

- | | |
|--|---|
| --All Islands are part of Cumberland County. | --May need additional resources to develop regulatory scheme. |
| --Geographic proximity. | --Lack technical expertise. |
| | --May not be willing. |

CBITD

- | | |
|--|--|
| --Geographic proximity. | --Little incentive to encourage competition. |
| --Quasi-governmental entity with elected Board of Directors responsible to the public. | --No existing mechanism to settle disputes. |

Special Arbitrator

- | | |
|----------------------------------|---|
| --Geographic proximity. | --May not have ferry expertise. |
| --Trained in resolving disputes. | --May not integrate local needs. |
| | --Potential non-governmental entity making regulatory policy decisions. |

The governmental entity that appears most appropriate for general regulatory oversight is the City of Portland. Concerns over the possible need for additional resources which might be necessary if the City assumed regulatory oversight could be alleviated through mechanisms such as regulatory assessments and filing fees which currently fund portions of the PUC budget. Adoption of the regulatory scheme suggested in this report should reduce the burden of regulating entity. However, if the City assumes regulatory responsibilities, it should be free to decide the appropriate level and form of regulation. The

transfer of regulatory authority to the City should be unrelated and independent of any commitment by the City to subsidize CBITD. Finally, concerns of Chebeague Island residents over a transfer of regulatory responsibilities to the City of Portland should be unlikely to arise, since the Island is currently served by the unregulated operations of Chebeague Transportation Company.

However, the Study Group understands from City officials that the City is not interested in the legislative transfer of the PUC's current authority. As a last resort, it may be interested if PUC jurisdiction were to be totally removed leaving no regulatory body, thereby deregulating Casco Bay. The Study Group does not suggest that the PUC's regulatory oversight responsibilities be transferred to the City if it is unwilling.* The proposed legislation, therefore, assumes the PUC remains as a regulatory body.

* It should be noted that even without an explicit transfer of PUC authority, the City may have some oversight authority deriving from its own regulatory powers over transportation services within its borders. The removal of PUC jurisdiction over several categories of transportation services (water taxis, unscheduled freight, tours and charters) should not be interpreted as preempting or affecting in any way the City's authority to regulate such services pursuant to its own powers.

Regulatory oversight responsibilities can be divided into two broad categories: 1) economic regulation, and 2) enforcement. Economic regulation refers generally to oversight by a regulatory body of the economic activity of a monopoly or near-monopoly. This includes general investigative authority over the entity and ability to authorize competitors if the public interest can be better served. Under this report's proposed regulatory scheme, CBITD would remain as a virtual monopoly for several vital services. The PUC's general oversight over CBITD remains. The PUC could, for example, investigate any aspect of District operations or order a management audit. The PUC could also authorize other carriers if, for example, CBITD's provision of a certain service is inadequate.

The Study Group does not recommend transferring economic regulatory authority to CBITD with the result that the District would, essentially, regulate itself. There would be great potential for uneconomic consequences if CBITD is the only entity that could authorize competitors, due to its own incentives and ability to protect or subsidize its own operations.

The other broad category of regulation is enforcement. The PUC's experience can be divided into two types of enforcement regulation: 1) unauthorized transportation complaints, and

2) service quality complaints regarding authorized carriers. Unauthorized transportation allegations are almost always factual issues, revolving around whether a specific transportation actually occurred. Due to its geographic distance and lack of waterfront expertise, the PUC is a particularly inappropriate body for this type of regulation. Unauthorized transportation is explicitly a Class E crime, 35-A M.R.S.A. § 5107(2). The proposed legislation explicitly states that the PUC has complete discretion whether to investigate or act upon unauthorized transportation complaints. Such allegations would, thus, in the majority of cases, be handled in the same way as any other criminal or civil violation concerning activity in Casco Bay. Generally, the matter would be handled by the Harbor Master, City Police and the courts. The proposed legislation also explicitly authorizes CBITD to seek damages against unauthorized operators for lost revenues.*

Service quality complaints concern issues such as scheduling of trips, ferries arriving late, and inappropriate behavior by crew. CBITD is a governmental entity whose Board of Directors is, for the most part, elected by the users of the

* The PUC has never had authority to grant lost revenues or other damages. Jurisdiction over awarding past damages is in the courts.

ferry service. Service quality complaints should, at least in the first instance, be directed to CBITD's management or Board. The proposed legislation grants CBITD more autonomy in this area by requiring CBITD to put into place a written procedure for handling service quality complaints, and allowing for PUC intervention only if fifty consumers file a complaint after following the District's complaint procedure.*

Although not a proposed legislative recommendation, the trend of increasing autonomy of CBITD suggests a subsidiary future issue concerning the composition of the Board of Directors. CBITD's Board of 12 directors consists of ten representatives elected by voters from the Islands, one representative appointed by the City of Portland and one representative appointed by the Maine Department of Transportation. Eight of the ten elected representatives must be residents of or property owners on one of the six Islands. To-date, this format for CBITD management has ensured that the interests of the CBITD ridership will in most instances be the exclusive concern of the Board of Directors. While the interests of Casco Bay Islanders in safe, convenient and

* The fifty consumer threshold is consistent with the current requirement that fifty consumers must petition the PUC before a rate investigation can be commenced.

affordable service certainly should be a central consideration in the management of the District, it should not be the sole concern. The District is part of a regional transportation system, it competes for a share of regional transportation revenues and serves mainland, as well as Island, interests in affordable access to Casco Bay.

The Study Group believes that representation on the District's Board could be enhanced by accommodating viewpoints of communities and organizations not currently represented, such as other Cumberland County communities and other interests reflective of CBITD's broader regional community. A broader based representation would tend to enhance the Board's capabilities to review CBITD operations, improve service and capitalize on potential new sources of revenue which should emerge as the Portland Region itself grows. Possible sources for meaningful representation for affected mainland interests could include: Greater Portland Council of Governments; Municipalities such as South Portland, Cumberland and Yarmouth; Southern Maine Area Agency on Aging; Cumberland County Community Action Program; or at large representatives. In addition, a future examination of the composition of the District's Board should consider whether there should be limits on the number of consecutive terms elected members can serve.

- C. The question of whether or not the daily year-round scheduled freight and passenger service in Casco Bay would require a General Fund subsidy and an estimate of the cost of such a subsidy under continued regulation of all ferry service and under deregulation of unscheduled service.

Since its inception, CBITD has operated profitably. It should be recognized, however, that CBITD has historically received several forms of direct and indirect federal, state and local governmental subsidies. These include capital subsidies provided by the Federal Urban Mass Transportation Administration (UMTA) and administered by DOT, receipt of PACTS funds, tax exempt status, authority to issue tax exempt bonds, and currently exclusive use without charge of government-owned piers.

The District has raised passenger rates an average of eight percent per year since 1982. Since 1982, there has not been a discernable relationship between rate increases and ridership levels. The District has recently changed its ticket sales and collection procedures to reduce revenues lost from fare evaders. Furthermore, the District anticipates yearly cost savings of \$20,000 when it finally sells the car ferry Rebel, in addition to sales proceeds estimated at \$50,000. The new terminal and boat (Machigonne II) should have a positive impact on future ridership particularly in the summer months. The

Machigonne II, with its expanded capacity to transport vehicles, has already experienced higher vehicle traffic than the Rebel used to handle.

The COG's 1988 five-year projections of ridership growth appear conservative. Even if the COG projections prove to be accurate, clear evidence of the need for a general fund subsidy does not now exist.

This conclusion remains the same regardless of whether the current regulatory scheme continues or is replaced by the deregulatory provisions contained in the proposed legislation. As discussed in sections IV(A) and (D) of this report, the proposed deregulatory provisions are transitional in nature and designed to have a minimal impact on CBITD's operations. Concerns that deregulated competitors may operate to capture the profitable summer business needed by the District to subsidize its winter operations are difficult to substantiate. The main cross-subsidies may be from Peaks' riders to down-the-bay riders, not from summer to winter riders. Accounting records show profits only in the summer months. However, these records merely track the timing of cash flows. No attempt has been made to match expenses with associated revenues. Consequently, the records do not reveal profitability by season or service. For example, ferry maintenance costs are highest in the winter. The reason is not that winter service requires more repairs, but

that the reduced winter schedule provides more time to do the repairs. Depreciation expense for the ferries is spread evenly throughout the year even though the District has sized its boats to serve the peak summer market.

Regardless of whether the proposed deregulatory provisions are enacted, CBITD may face a precarious financial position in the event of a future rapid increase in fuel prices, because it does not have a significant surplus or retained earnings to draw on in times of crisis. MOA's analyses indicate that there is a strong correlation between consumer purchases of gasoline and CBITD's ridership. When gasoline purchases decline, so does CBITD's ridership. Since declines in gasoline purchases are driven primarily by increases in the price of gasoline, CBITD's fuel costs can be expected to increase at the same time that its ridership (and revenues) are declining.

In the long term, CBITD's need for a subsidy will depend on two factors - increases in the cost of providing service and increases in usage. CBITD's major operating costs are for shipboard and shoreside labor, fuel, terminal and vessel-related costs such as insurance and maintenance. Capital costs, which include payments on the bonds used to purchase Casco Bay Lines boats, as well as on bonds for the M/V Machigonne II also are a significant expense. Without changes in service, only a small percentage of costs are likely to be controllable by CBITD.

Costs that essentially are outside CBITD's control include crew costs, fuel, insurance and maintenance.

Recently the District has undergone a significant change in its underlying capital structure. The capital subsidies provided by UMTA to purchase the M/V Machigonne II and other capital equipment now account for approximately 80% of CBITD's equity capitalization. As of September 1988, the District had \$487,701 in restricted cash and \$302,792 in unrestricted cash. At the present time, the District is planning to use \$150,000 remaining from its Series "C" Bond Issue (currently held in a redemption account) to reduce some of its more expensive outstanding long-term debt.

In our opinion, the District does not require a general fund subsidy at this time.* MOA's study pointed out the District's sensitivity to fuel prices both from a revenue and an expense standpoint, and thus, the District's ability to withstand a downturn without a subsidy is of concern. However, the addition of the M/V Machigonne II provides the District with

* MOA's conclusion that operating subsidies are not now required was, due to time constraints, made on the basis of unaudited financial statements. The Study Group has reviewed the audited statements in conjunction with its conclusion that General Fund subsidies are not required at this time.

enhanced revenue capabilities which, in combination with a new ticketing system (obtained through another capital grant), will further provide the District with operating strength. These improvements combined with the District's current efforts to reduce long-term indebtedness and MOA's suggestion that the District implement economically justified summer and winter fares all combine to make it too early to judge the District's ability to withstand a downturn which may occur sometime in the future.

- D. The anticipated effect on the annual revenues of the Casco Bay Island Transit District of tour, charter and catering revenues. The study shall recommend a definition to clarify the authority granted by Private and Special Law 1981, chapter 22, to the District to engage in "incidental tour and charter service."

CBITD's tour, chartering and catering services are not currently regulated. Two issues have been raised relative to tour and charter operations in Casco Bay: 1) whether private tour operators be permitted to stop at the Islands as part of a tour or excursion package (e.g., for an island clambake); and 2) the proper interpretation of the restriction in CBITD's charter limiting it to only "incidental tour and charter service."

In 1986, the PUC issued an advisory ruling which found that tour operators who stop at an Island as part of and solely for the purpose of tours do not come under the PUC's jurisdiction. The PUC stated:

Operators of tour boats which offer round trip excursions in Casco Bay with stops at the named Islands for tour related activities, and which do not offer service to commuters or tourists who remain on the mainland or Island any longer than the regularly scheduled tour activity or excursion, and which pick up and drop off all passengers at the same point for a round trip excursion are not subject to Commission regulation.

Advisory Ruling, Longfellow Cruise Line's Request for Advisory Ruling on Whether Excursion Boat Operations Require Certificate of Public Convenience and Necessity, Docket No. 86-96 (MPUC, August 28, 1986)

Since 1986, it appears that tour operators have not taken advantage of the PUC's ruling to any significant extent. The impact of this ruling on CBITD's operations has likely been minimal.

One explanation for the small amount of this type of tour and charter activity by the private sector is that private boat operators are precluded from using the Islands' State-owned piers, which currently are reserved for the exclusive use of the

CBITD.* Tour boat operators currently can use private piers or wharves or the floats adjacent to the State piers to embark or disembark passengers on the Islands. The Maine Department of Transportation has indicated that it could allow other operators to use these piers as long as such use does not interfere with CBITD's operations, is consistent with its lease, and user fees are levied to recover the costs of additional maintenance. However, MDOT recommends continuation of its current policy of reserving the piers for the exclusive use of CBITD's ferries.

The proposed legislation explicitly adopts the PUC's 1986 advisory ruling. The provision of tours, such as sightseeing excursions, are inherently a private sector activity.** It is inappropriate for the government to subsidize tour and charter operations of a quasi-governmental entity, while protecting that entity from competition in the tour and charter business. The

* Originally, the Island piers used by the CBITD were owned by Casco Bay Lines. Prior to CBL's bankruptcy, the State of Maine agreed to take over ownership and necessary maintenance of these piers but agreed to allow CBL (CBITD's predecessor company) to continue to have exclusive use of them. The pier used by CBITD on Cliff Island is owned by the City of Portland.

** UMTA has rules restricting the use of UMTA funded buses and vans for tours and charters. The District's own charter restricts its operations to incidental tour and charter services.

business of CBITD is mass transit, not tour and charters. The Study Group does not believe CBITD should be prohibited from providing "incidental" tour and charter services consistent with its charter, only that CBITD should not be protected from private sector tour and charter competition. Legislative adoption of the PUC's 1986 ruling should continue to have little impact on CBITD. The ruling concerns only excursion tours involving Island stops, which is a small part of CBITD's business.

The second issue concerning tour and charter operations is the appropriate interpretation of CBITD's charter restriction to "incidental tour and charter service." In the past, tour boat operators have contended that CBITD should not be allowed to compete in tour and charter services because CBITD is subsidized by taxpayers. The argument is that the capital subsidies CBITD has received from UMTA, the PACTS funds it has received, tax exempt financing and MDOT's ownership and maintenance of the Island piers are all public funds. Since CBITD is receiving public funds, it has an unfair competitive advantage and should not be allowed to compete with private operators in the tour and charter segment of the market.

CBITD's charter explicitly allows it to engage in "incidental tour and charter service," but does not define the term. The PUC ruled in 1984 that CBITD's tour and charter

business was "incidental" since some tours were sold on normal commuter voyages and other tours and charters utilized a spare boat that was maintained by the District so that essential services could be continued if one of the other boats was unable to operate. The PUC did not, however, specifically define "incidental tour and charter service." See Order - Casco Bay Island Transit District, Docket Nos. 83-215, 83-249, 83-313 (MPUC March 26, 1984).

The primary factor that should be used to determine whether these services are "incidental" is not the percentage of CBITD's revenues they represent. Rather, the Study Group agrees with MOA that these services should be considered to be "incidental" as long as they utilize spare capacity, which CBITD must have if it is to maintain reliable service. CBITD should not be allowed to add additional vessels to its fleet to increase its ability to provide tour and charter services. The proposed legislation in this report amends the District's charter to incorporate this interpretation of "incidental." This interpretation of "incidental" should not only allow CBITD to offset the cost of maintaining a spare boat, but also should ensure that tour and charter revenues will remain "incidental" to CBITD's mission of providing regularly scheduled transportation services between the mainland and the Casco Bay Islands.

- E. The appropriate limits on the service which can be provided by other carriers, including unscheduled carriers and tour and charter operators, consistent with the franchise of the district.

The appropriate limits are outlined in response to study questions A and D.

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

The absence of any consistent and usable comprehensive data on tourism-related revenues for the Portland area has made it difficult to comment on the anticipated stimulation to regional economy resulting from additional tour, taxi and unscheduled service in Casco Bay. Adoption of this report's recommendation that tour operations be allowed to stop at the islands and that water taxi and unscheduled freight be open to competition should tend to stimulate economic growth and diversity in the area, including increased tourism-related revenue. The District's ridership and revenues may in turn benefit from increased growth. However, since such services do not currently exist to any large extent, it is difficult to predict the extent of future demand for such services.

- G. The anticipated effect on State administration of piers and wharves from allowing additional carriers to use them for additional freight and passenger service.

None of the regulatory changes recommended herein would have an impact on the State's administration of piers and wharves on the Casco Bay Islands. A potential change that would have an impact on the administration of the piers would be to allow private tour or on-demand boat operators to use the piers, which now are reserved for the sole use of CBITD. The use of these piers by other carriers could cause possible conflicts resulting in disruptions of CBITD's scheduled services.

Therefore, the Study Group does not recommend a change in MDOT's general policy of reserving use for CBITD.

V. CONCLUSION

The Study Group presents its study, along with its proposed legislation, with appreciation for this opportunity to pursue a more effective format for regulating transportation services in Casco Bay. The Study Group wishes to express its appreciation to all interested parties who have aided the study process through their participation. Finally, the Study Group looks forward to working with the Legislature regarding the legislative changes proposed in this study.