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Via FedEx

May 22, 2018

Michele Lumbert, Clerk
Kennebec County Superior Court
1 Court Street, Suite 101
Augusta, ME 04330

Re: Inhabitants of Town of Islesboro, et al v. Maine Department of Transportation
Docket No. AUGSC CV 18-

Dear Michele:

Enclosed for filing in the above-captioned matter, please find Petitioners' Complaint for Declaratory Judgment and Petition for Review of Final Agency Action with supporting Exhibits, the Civil Summary Sheet and a check for $150 to cover the filing fee for this action.

Please feel free to contact me if you have any questions or need additional information.

Thank you.

Sincerely,

Marcia

Marcia Libby

enclosures

05/22/18
53 **CLERK OF COURT**

BERNSTEIN SHUR
CHECK NO.: 142216

DATE	INVOICE NUMBER	ACCOUNT#	DESCRIPTION	MATTER #	AMOUNT
05-22-18	05222018			005132-00010 MEC	150.00
				TOTAL:	150.00

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

52-7258
2112

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BERNSTEIN SHUR
100 Middle Street
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NORWAY SAVINGS BANK
PORTLAND, ME 04101

DATE 05/22/18

NET AMOUNT $150.00

PAY ONE HUNDRED FIFTY AND 00/100 DOLLARS

TO THE ORDER OF CLERK OF COURT

TWO SIGNATURES REQUIRED ON AMOUNTS OVER $500.00

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.

⑈142216⑈ ⑆211274515⑆ 870 212587 3⑈

SUMMARY SHEET

This summary sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the Maine Rules of Court or by law. This form is required for the use of the Clerk of Court for the purpose of initiating or updating the civil docket. (SEE INSTRUCTIONS ON REVERSE).

I. County of Filing or District Court Jurisdiction: **Kennebec County Superior**

II. CAUSE OF ACTION (Cite the primary civil statutes under which you are filing, if any). *Pro se* plaintiffs: If unsure, leave blank.

5 M.R.S.A. § 8002, 5 M.R.S.A. § 8052, 5 M.R.S.A. § 8056, 5 M.R.S.A. § 8056, 5 M.R.S.A. § 8058, 5 M.R.S.A. §11001, 5 M.R.S.A. § 11004, 14 M.R.S.A. § 5954, 23 M.R.S.A. § 4401,

III. NATURE OF FILING

- ☒ Initial Complaint
- ☐ Third-Party Complaint
- ☐ Cross-Claim or Counterclaim
- ☐ **If Reinstated or Reopened case, give original Docket Number** _____
  (If filing a second or subsequent Money Judgment Disclosure, give docket number of first disclosure)

IV. ☒ TITLE TO REAL ESTATE IS INVOLVED

V. MOST DEFINITIVE NATURE OF ACTION (Place an X in one box only) ***Pro se* Plaintiffs: If unsure, leave blank**

GENERAL CIVIL (CV)

Personal Injury Tort
- ☐ Property Negligence
- ☐ Auto Negligence
- ☐ Medical Malpractice
- ☐ Product Liability
- ☐ Assault/Battery
- ☐ Domestic Torts
- ☐ Other Negligence
- ☐ Other Personal Injury Tort

Non-Personal Injury Tort
- ☐ Libel/Defamation
- ☐ Auto Negligence
- ☐ Other Negligence
- ☐ Other Non-Personal Injury Tort

Contract
- ☐ Contract

Declaratory/Equitable Relief
- ☐ General Injunctive Relief
- ☐ Declaratory Judgment
- ☐ Other Equitable Relief

Constitutional/Civil Rights
- ☐ Constitutional/Civil Rights

Statutory Actions
- ☐ Unfair Trade Practices
- ☐ Freedom of Access
- ☐ Other Statutory Actions

Miscellaneous Civil
- ☐ Drug Forfeitures
- ☐ Other Forfeitures/Property Libels
- ☐ Land Use Enforcement (80K)
- ☐ Administrative Warrant
- ☐ HIV Testing
- ☐ Arbitration Awards
- ☐ Appointment of Receiver
- ☐ Shareholders' Derivative Actions
- ☐ Foreign Depositions
- ☐ Pre-action Discovery
- ☐ Common Law Habeas Corpus
- ☐ Prisoner Transfers
- ☐ Foreign Judgment
- ☐ Minor Settlements
- ☐ Other Civil

CHILD PROTECTIVE CUSTODY (PC)

- ☐ Non-DHS Protective Custody

SPECIAL ACTIONS (SA)

Money Judgments
- ☐ Money Judgments Request for Disclosure

REAL ESTATE (RE)

Title Actions
- ☐ Quiet Title
- ☐ Eminent Domain
- ☐ Easements
- ☐ Boundaries

Foreclosure
- ☐ Foreclosure for non-pmt (ADR exempt)
- ☐ Foreclosure – Other

Trespass
- ☐ Trespass

Miscellaneous Real Estate
- ☐ Equitable Remedies
- ☐ Mechanics Liens
- ☐ Partition
- ☐ Adverse Possession
- ☐ Nuisance
- ☐ Abandoned Road
- ☐ Other Real Estate

APPEALS (AP) (To be filed in Superior Court) (ADR exempt)

☐ Governmental Body (80B) ☒ Administrative Agency (80C) ☐ Other Appeals

VI. M.R.Civ.P. 16B Alternative Dispute Resolution (ADR):

☐ I certify that pursuant to M.R.Civ.P. 16B(b), this case is exempt from a required ADR process because:

- ☒ It falls within an exemption listed above (i.e. an appeal or an action for non-payment of a note in a secured transaction).
- ☐ The plaintiff or defendant is incarcerated in a local, state or federal facility.
- ☐ The parties have participated in a statutory pre-litigation screening process with _____ (name of neutral) on _____ (date).
- ☐ The parties have participated in a formal ADR process with _____ (name of neutral) on _____ (date).
- ☐ This is a Personal Injury action in which the plaintiff's likely damages will not exceed $30,000, and the plaintiff requests an exemption from ADR.

VII. (a) ☒ **PLAINTIFFS (Name & Address including county)**
or ☐ **Third-Party,** ☐ **Counterclaim or Cross-Claim Plaintiffs**
☐ The plaintiff is a prisoner in a local, state or federal facility.

Town of Isleboro
150 Main Road
Islesboro, ME 04848
(Waldo County)

Gabriel Pendleton
203 McCorison Ln
Islesboro, ME 04848
(Waldo County)

Philip T. Seymour
104 Dunn Ln
Islesboro, ME 04848
(Waldo County)

Paul C. Hatch, Jr.
254 Hatch Ln
Islesboro, ME 04848
(Waldo County)

Craig R. Olson
113 Derby Rd
Islesboro, ME 04848
(Waldo County)

(b) Attorneys (Name, Bar Number, Firm Name, Address, Telephone Number)

Mary E. Costigan, Esq., Bar No. 9281
David A. Soley, Esq., Bar No. 6799
Bernstein Shur
100 Middle Street, PO Box 9729
Portland, Maine 04104-5029
207-774-1200

VIII. **(a)** ☒ **DEFENDANTS (Name & Address including county)**
and/or ☐ **Third-Party,** ☐ **Counterclaim or** ☐ **Cross-Claim Defendants**
☐ The defendant is a prisoner in a local, state or federal facility.

Maine Department of Transportation
16 State House Station
Augusta, ME 04333
(Kennebec County)

Attorneys (Name, Bar Number, Firm Name, Address, Telephone Number) (if known)

Toni L. Kemmerle, Esq., Bar No. 8672
Maine Department of Transportation – Legal Services
16 State House Station
Augusta, ME 04333
207-624-3020

If all counsel listed do NOT represent all defendant(s) specify who the listed attorney(s) represent.

IX. RELATED CASE(S)
IF ANY

Judge/Justice _____ Docket Number _____

Date: May , 2018

Mary E. Costigan, Esq., Bar No. 9281
Name of Lead Attorney of Record or Pro Se Party

Signature of Attorney or Pro Se Party

cc:

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AUGSC AP 18-

INHABITANTS OF THE TOWN OF ISLESBORO, a Waldo County municipality organized and existing under the laws of the State of Maine,

and

GABRIEL PENDLETON, an individual residing in the Town of Islesboro, County of Waldo and State of Maine,

and

PHILIP T. SEYMOUR, an individual residing in the Town of Islesboro, County of Waldo and State of Maine,

and

PAUL C. HATCH, JR., an individual residing in the Town of Islesboro, County of Waldo and State of Maine,

and

CRAIG R. OLSON, an individual residing in the Town of Islesboro, County of Waldo and State of Maine,

Plaintiffs,

v.

MAINE DEPARTMENT OF TRANSPORTATION, a governmental agency of the State of Maine responsible for the regulation and maintenance of all statewide modes of travel,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT AND PETITION FOR REVIEW OF FINAL AGENCY ACTION

Petitioners, the Inhabitants of the Town of Islesboro, Gabriel Pendleton, Philip T. Seymour, Paul C. Hatch, Jr., and Craig R. Olson, by and through their attorneys, submit this Complaint for Declaratory Judgment and Petition for Review of a final agency action regarding the improper adoption of a new rate structure for the Maine State Ferry Service by the Maine Department of Transportation.

INTRODUCTION

1. The Petitioners challenge the Maine Department of Transportation for improperly, unfairly, arbitrarily, wrongfully, and unconstitutionally raising ferry rates to the point that many long-term island residents and businesses can no longer afford to live or do business on Islesboro. The rate increase is also irrational in that all ferry users are being charged a high, flat fee regardless of whether a user is taking a short, three-mile trip or a long twenty-three mile excursion.

2. The Petitioners are seeking relief for violations of the Administrative Procedure Act and for violations of due process rights guaranteed by the Maine Constitution.

3. The Petitioners ask this Court to (1) declare Tariff No. 8 void and of no legal effect; (2) declare that Tariff No. 8 is an arbitrary, capricious and unfair approximation of the Islesboro ferry's cost to the government and benefit to ferry users, constituting an illegal taxation without representation; (3) declare that Maine Department of Transportation is required to follow the rulemaking process under the Administrative Procedure Act when adopting rates for the Maine State Ferry Service; (4) declare that enactment of Tariff No. 8 violates Petitioners' due process and equal protection rights guaranteed by the United States and Maine Constitutions; and (5) reverse the decision of Maine Department of Transportation to adopt Tariff No. 8 based on a showing that the adoption of Tariff No. 8 was made upon unlawful procedure, was unsupported by substantial evidence in the record, and was arbitrary and capricious and an abuse of

discretion.

PARTIES AND JURISDICTION

4. Plaintiff the Inhabitants of the Town of Islesboro (the "Town") is a Waldo County municipality organized and existing under the laws of the State of Maine, with its principal place of business in the Town of Islesboro, County of Waldo and State of Maine.

5. Gabriel Pendleton is an individual residing in the Town of Islesboro, County of Waldo and State of Maine for thirty-five years. Mr. Pendleton, who was born and raised in Islesboro, is the manager of Pendleton Yacht Yard in Islesboro and a member of the Islesboro Board of Selectmen. The Yacht Yard uses the ferry on a daily basis to transport supplies and to tow boats. The new rate structure under Tariff No. 8 will greatly increase Mr. Pendleton's cost of doing business by causing parts and materials from the mainland to cost more, thus making the Yacht Yard less competitive with the many boat yards on the mainland. Mr. Pendleton attended the January 29, 2018 public hearing and provided written comments on the proposed rate structure.

6. Philip T. Seymour is an individual residing in the Town of Islesboro, County of Waldo and State of Maine for more than 15 years. Mr. Seymour and his wife are retired and live on a fixed income. Last year they spent $1,330 in ferry tolls for travel to the mainland for doctor's appointments and to pick up medications and groceries. The same number of trips on the ferry under Tariff No. 8 will cost $2,900 in tolls, representing a significant portion of the Seymours' income. Mr. Seymour attended the January 29, 2018 public hearing and provided written comments on the proposed rate structure.

7. Paul C. Hatch, Jr. is an individual who has resided in the Town of Islesboro, County of Waldo and State of Maine for his entire life of 62 years. Mr. Hatch owns a business called Paul C. Hatch Construction, located in Islesboro and employs five to eight people

throughout the year in Islesboro. The trucks for his company travel on the ferry each day. Tariff No. 8 increases Mr. Hatch's cost of using the ferry from $66,240 per year to $99,072. The impact of the new ferry rate structure on his business is significant and may include laying off employees, cutting back or shutting down. Mr. Hatch attended the January 29, 2018 public hearing and provided written comments on the proposed rate structure.

8. Craig R. Olson (together with the Town, Gabriel Pendleton Philip Seymour, and Paul C. Hatch, the "Petitioners") is an individual residing in the Town of Islesboro, County of Waldo and State of Maine for about 17 years. Mr. Olson owns a business in Islesboro called "Artisan Books and Bindery." He frequently travels on the ferry to attend events on the mainland in connection with his daughter's school and for business. The cost to travel to the mainland in a vehicle will more than double from $19.25 to $41.00, impacting his ability to attend school events and greatly increasing the cost of doing business. Mr. Olson attended the January 29, 2018 public hearing.

9. Defendant Maine Department of Transportation ("MDOT") is a governmental agency of the State of Maine responsible for the regulation and maintenance of all statewide modes of travel, with a principal office in the City of Augusta, County of Kennebec and State of Maine.

10. Petitioners seek a declaratory judgment finding that MDOT violated the Administrative Procedure Act and that MDOT's ferry tax is illegal, and a Court Review of MDOT's April 13, 2018 final agency action amending the rate structure for the Maine State Ferry Service and adopting Tariff No. 8, established pursuant to 23 M.R.S.A. § 4401.

11. This Court has jurisdiction to hear this appeal pursuant to 5 M.R.S.A. § 8058, M.R. Civ. P. 80C and 5 M.R.S.A. § 11001 *et seq.*, and venue is proper in this Court pursuant to 5 M.R.S.A. § 11002.

FACTS AND PROCEDURAL HISTORY

12. MDOT, pursuant to 23 M.R.S.A. § 4401, is required to provide ferry service for North Haven, Vinalhaven, Islesboro, Matinicus Isle, Swan's Island and Frenchboro and is required to establish tolls for the use of the ferry. This service is known as the Maine State Ferry Service ("MSFS").

13. In 2016, the Maine State Legislature tasked MDOT with adopting rules that would, among other things "include procedures to modernize customer services, including but not limited to, passenger wait lines, slot times and seasonal rates. The procedures must be developed with the goal of improving customer service and identifying opportunities for increased revenue." (See Resolve 86, attached hereto as **Exhibit A**)

14. In 2017, the MSFS Advisory Board (the "Advisory Board") held a series of meetings to develop rules pursuant to the Resolve, including the establishment of a new tolling structure.

15. The Advisory Board considered a number of different rate structures, as shown on **Exhibit B** attached hereto, but did not consider the flat rate that was ultimately adopted by MDOT.

16. In November of 2017, the Advisory Board recommended two rate structures to MDOT for consideration: 1) a structure that charged different rates for in-state and out-of-state residents; and 2) an across-the-board increase for all tickets.

17. By electronic mail dated November 9, 2017, MDOT informed the Advisory Board that the MDOT Commissioner had selected the in-state / out-of-state rate structure.

18. MDOT held public hearings on the Islands in January and February of 2018 to receive public comments about the proposed in-state / out-of-state rate structure, with the written comment period closing in early March 2018.

19. The public hearing in Islesboro was held on January 29, 2018. As shown on the Public Hearing Notice (attached hereto as **Exhibit C**), the rate structure presented by MDOT for public comment was the proposal to modify the rates and to charge different rates for in-state residents and out-of-state residents.

20. The MDOT-proposed rate structure presented for public comment in January 2018 raised the cost of an adult round trip ticket to Islesboro for Maine residents from $5.50 to $7.00 and for non-residents from $10.00 to $14.00. The vehicle ticket was proposed to change from $13.75 to $16.00 for Maine residents and from $27.50 to $30.00 for non-residents.

21. Representatives from the Town attended the January 29, 2018 public hearing and the Town provided written comments following the public hearing (Attached hereto as **Exhibit D**).

22. In its comments, the Town summarized information regarding the costs to run the ferries, demonstrating that the Islesboro ticket sales under the then-current rate structure generated enough revenue to cover approximately 66% of the cost to run the vessel. The Town also expressed concern regarding the disproportionate increases in rates, with Islesboro tickets receiving a larger percentage increase that the other ferries in almost all categories.

23. Gabriel Pendleton, Paul Hatch, Philip Seymour, Craig Olson and numerous other Islesboro residents also attended the January 29, 2018 public hearing and provided written comments to MDOT regarding the proposal presented at that time.

24. Following the January and February 2018 hearings, MDOT did not hold any additional public hearings or put any alternate proposals out for public comment.

25. On April 6, 2018, MDOT issued a recommended decision (the "Recommended Decision") (Attached hereto as **Exhibit E**), including the proposed Tariff No. 8.

26. The new rate structure in the Recommended Decision and Tariff No. 8 was a flat

rate structure that was substantially different from the proposed rate structure presented and discussed at the January 29, 2018 public hearing.

27. The rate structure in Tariff No. 8 does not distinguish between residents and non-residents, nor does it distinguish between any of the islands. It sets a flat rate for use of any ferry to reach any island, regardless whether a passenger is traveling three miles to Islesboro or twenty-three miles to Matinicus Isle.

28. The rate structure in Tariff No. 8 doubled the Island Rate[1] of an adult round trip toll for Islesboro from $5.50 to $11.00. The Island Rate for a vehicle toll spiked from $13.75 to $30.00.

29. The rate structure in Tariff No. 8 disproportionately increases the tolls for travel to Islesboro by a greater percentage than any of the other islands.

30. MDOT did not hold any public hearings on the rate structure that was ultimately adopted, even though the adopted rate structure was substantially different than the proposed rate structure.

31. According to the Recommended Decision, the flat rate structure in Tariff No. 8 resulted from internal staff discussions at MDOT.

32. MDOT did not issue a written statement in accordance with 5 M.R.S.A. § 8052.

33. On April 13, 2018, Commissioner David Bernhardt (the "Commissioner") approved the Recommended Decision. *See* **Exhibit E**.

34. The Town received a copy of the decision on April 23, 2018.

35. Tariff No. 8 became effective on May 21, 2018, only thirty-eight days after the decision was signed by the Commissioner and less than one month after the decision was received by the Town.

---

[1] Prior to Tariff No. 8, the rate structure had lower prices for tickets purchased on Islesboro than tickets purchased on the mainland.

36. The Attorney General did not approve the new rate structure prior to adoption.

37. Pursuant to 5 M.R.S.A. § 11004, the Town submitted a request to MDOT to stay its April 13, 2018 Decision and Tariff No. 8. Attached hereto as **Exhibit F** is a true and accurate copy of the Town's request to stay.

38. MDOT denied the stay request on May 17, 2018 and moved forward with the rate change on May 21st. Attached hereto as **Exhibit G** is a true and accurate copy of MDOT's denial.

COUNT I
Declaratory Judgment on Administrative Procedures Act/Due Process Violations (14 M.R.S.A. § 5954 and 5 M.R.S.A. § 8058)

39. Petitioners repeat and restate the allegations set forth above in paragraph 1 through 38 as if set forth in full herein.

40. MDOT was required, pursuant to 5 M.R.S.A. § 8052(5)(A), to adopt a written statement explaining the factual and policy basis for the rule, listing the names of persons whose comments were received, and addressing the specific comments and concerns raised.

41. MDOT did not adopt a written statement regarding the Tariff No. 8 rulemaking, but instead issued a proposed decision that did not comply with 5 M.R.S.A. § 8052(5)(A).

42. 5 M.R.S.A. § 8052(5)(B) prohibits MDOT from adopting a rule unless the adopted rule is consistent with the terms of the proposed rule, and requires MDOT to request comments from the public when a rule it intends to adopt is substantially different from the proposed rule.

43. Tariff No. 8 is substantially different than the proposed rate structure presented at the public hearings and issued to the public for comment.

44. MDOT did not request comments from the public on Tariff No. 8 prior to adoption.

45. 5 M.R.S.A. § 8052(7) requires MDOT to obtain approval from the Attorney General as to form and legality of an adopted rule prior to the rule taking effect.

46. 5 M.R.S.A. § 8053-A requires MDOT to submit a fact sheet to the legislature at the time of giving notice of a rulemaking and requires MDOT to provide a copy of adopted rules to the Secretary of State.

47. Upon information and belief, MDOT did not provide a fact sheet to the legislature and MDOT did not provide a copy of Tariff No. 8 to the Secretary of State.

48. 5 M.R.S.A. § 8056 requires MDOT to submit rules to the Attorney General for approval as to form and legality and file the rule with the Secretary of State.

49. Upon information and belief MDOT has not submitted Tariff No. 8 to the Attorney General for approval and has not filed Tariff No. 8 with the Secretary of State.

50. Pursuant to 5 M.R.S.A. § 8057, Tariff No. 8 is void and of no legal effect because it was adopted in a manner inconsistent with section 8052(5A), 8052(7), and 8056.

51. Pursuant to 5 M.R.S.A. § 8058, MDOT's failure to request comments from the public prior to adopting a rule that was substantially different than the proposed rule is a substantial error, related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if the error had not occurred.

52. MDOT's adoption of Tariff No. 8 is arbitrary, capricious, and an abuse of discretion because it was the conclusion of internal staff discussions and was completely unrelated to any rate structure that was reviewed by the Advisory Board and the public.

53. MDOT's adoption of Tariff No. 8 is arbitrary, capricious, and an abuse of discretion because the flat rate structure is inequitable, irrational and unsupported by the evidence in the record.

54. MDOT's egregious violation of the Administrative Procedure Act establishes a violation of Petitioners' procedural due process rights guaranteed by the Fourteenth Amendment to the United States Constitution, and the Maine Constitution, art. 1, § 6-A.

COUNT II
Declaratory Judgment on Illegal Taxation
(14 M.R.S.A. § 5954 and Me. Const. art. IV, § 9)

55. Petitioners repeat and restate the allegations in paragraphs 1 through 54 as if set forth in full herein.

56. Tariff No. 8 is not a fair approximation of the cost to the government of the Islesboro ferry service, or the benefit users receive through the Islesboro ferry service.

57. Tariff No. 8 is a revenue-raising device that is not calculated with a fair approximation of the costs to the government and the benefit to the individual of the services provided and therefore constitutes a tax on Petitioners.

58. The Maine Constitution, art. 4, § 9, requires that all taxes be initiated by the Maine House of Representatives.

59. MDOT acted independently to establish Tariff No. 8 without consent or authority from any branch of the Maine House of Representatives.

60. MDOT's imposition of an illegal tax on Petitioners constitutes a violation of the Legislature's exclusive authority to initiate bills for raising revenue, and an illegal taxation without representation.

COUNT III
Declaratory Judgment on Equal Protections Violations
(14 M.R.S.A. § 5954, U.S. Const., amend. XIV and Me. Const. art. I, § 6-A)

61. Petitioners repeat and restate the allegations in paragraphs 1 through 60 as if set forth in full herein.

62. The Fourteenth Amendment to the United States Constitution and the Maine Constitution, article I, § 6-A, guarantee equal protection under the law.

63. MDOT's Tariff No. 8 illegally targets residents of Islesboro for higher tax increases than residents of other islands receiving ferry service.

64. MDOT's differentiated taxation of Islesboro residents' ferry usage establishes an impermissible violation of Petitioners' equal protection rights under the United States and Maine constitutions.

COUNT IV
Review of Final Agency Action
(M.R. Civ. P. 80C and 5 M.R.S.A. § 11001 *et seq.*)

65. Petitioners repeat and restate the allegations in paragraphs 1 through 64 as if set forth in full herein.

66. Although somewhat difficult to discern, MDOT seemingly utilized an adjudicatory process in the adoption of Tariff No. 8.

67. MDOT's use of the adjudicatory process under the Administrative Procedure Act (A.P.A) was in error; MDOT was required to follow the rulemaking process in the A.P.A. to adopt Tariff No. 8.

68. The adoption of Tariff No. 8 was not a proceeding before an agency in which the legal rights, duties or privileges of specific persons are required by constitutional law or statute to be determined after an opportunity for hearing (5 M.R.S.A. § 8002(1)) .

69. Tariff No. 8 is a regulation, standard, code, statement of policy, or other agency guideline or statement of general applicability, including the amendment, suspension or repeal of any prior rule, that is or is intended to be judicially enforceable and implements, interprets or makes specific the law administered by the agency, or describes the procedures or practices of the agency (5 M.R.S.A. § 8002(9)).

70. The adoption of Tariff No. 8 was made upon unlawful procedure, was unsupported by substantial evidence in the record, and was arbitrary and capricious and an abuse of discretion.

WHEREFORE, Petitioners respectfully request that the Court:

1. Declare Tariff No. 8 illegal, void and of no legal effect;

2. Declare that Tariff No. 8 is an arbitrary, capricious and unfair approximation of the Islesboro ferry's cost to the government and benefit to ferry users, constituting an illegal taxation without representation.

3. Declare that MDOT is required to follow the rulemaking process under the A.P.A. when adopting rates for the Maine State Ferry Service;

4. Declare that enactment of Tariff No. 8 violates Petitioners' equal protection and due process rights guaranteed by the United States and Maine constitutions

5. Reverse the decision of MDOT to adopt Tariff No. 8 based on a showing that the adoption of Tariff No. 8 was made upon unlawful procedure, was unsupported by substantial evidence in the record, and was arbitrary and capricious and an abuse of discretion; and

6. Award Petitioners their costs and attorneys' fees and such other relief the Court deems just and proper.

DATED at Portland, Maine this 22nd day of May 2018.

Mary E. Costigan, Esq., Bar No. 9281
David A. Soley, Esq., Bar No. 6799
James G. Monteleone, Bar No. 5827

Bernstein Shur
100 Middle Street; PO Box 9729
Portland, Maine 04104
207-774-1200

Attorneys for Petitioners
Inhabitants of the Town of Islesboro, Gabriel

Pendleton, Philip T. Seymour, Paul C. Hatch, Jr., and Craig R. Olson.

GOVERNOR'S VETO OVERRIDDEN

APRIL 29, 2016

CHAPTER

86

RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND SIXTEEN

S.P. 566 - L.D. 1468

Resolve, To Improve the Safety of Ferries in the State

Sec. 1. Peer review assessment; operations and safety. Resolved: That the Department of Transportation shall execute a peer review assessment of Maine State Ferry Service processes to evaluate safety procedures and marine operations of the Maine State Ferry Service. For purposes of this resolve, "Maine State Ferry Service" has the same meaning as in the Maine Revised Statutes, Title 23, section 4401. The peer review assessment must include an examination of the recommendations in the report titled "Maine State Ferry Service, MaineDOT, Operational Safety Assessment (OSA) Report," dated April 4, 2008 and written by Safety Management Systems, LLC. The peer review assessment must include, at a minimum, comments relating to:

1. Appropriate staffing levels for vessels operated by the Maine State Ferry Service;

2. An adequate minimum mandatory training level for each position within the Maine State Ferry Service; and

3. Standard operating procedures relating to crew stations and duties while in port and at sea and decisions regarding passengers who fall overboard, firefighting, extreme weather conditions, abandoning ship and other emergency procedures; and be it further

Sec. 2. Operational changes relating to Maine State Ferry Service. Resolved: That, by June 1, 2017, the Department of Transportation shall adopt rules relating to the Maine State Ferry Service in accordance with this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules must:

1. Require all vessels operating for the Maine State Ferry Service to be outfitted with a lockbox for medical samples. The rules must provide for the transport of medical diagnostic samples, including, but not limited to, allowing medical personnel access to the lockbox;

2. Include procedures to modernize customer services, including, but not limited to, passenger wait lines, slot times and seasonal rates. The procedures must be developed

with the goal of improving customer service and identifying opportunities for increased revenue; and

3. Implement a standardized process to improve training of Maine State Ferry Service employees. The rules must require that, to the extent it is practicable, vessel crew training be accomplished before reporting for duty, including, but not limited to, familiarization with the vessel the crew member will be working on. Vessel crew training must include, but is not limited to, the location and operation of emergency equipment and firefighting equipment and vessel-specific procedures, overboard drills and duty stations in port and at sea. The training may be accomplished by the port captain except for training that must be accomplished while the vessel is under way. Training under this subsection must satisfy the applicable federal regulations for ferry boats and ferry service training protocols; and be it further

Sec. 3. Report. Resolved: That, no later than February 1, 2017, the Department of Transportation shall submit a report with the results of the peer review assessment under section 1 and a progress report on its rules developed pursuant to section 2 to the joint standing committee of the Legislature having jurisdiction over transportation matters. The joint standing committee of the Legislature having jurisdiction over transportation matters may submit a bill to the First Regular Session of the 128th Legislature related to the reports; and be it further

Sec. 4. Appropriations and allocations. Resolved: That the following appropriations and allocations are made.

TRANSPORTATION, DEPARTMENT OF

Multimodal - Island Ferry Service Z016

Initiative: Provides allocations to conduct a peer review of the Maine State Ferry Service and to outfit all Maine State Ferry Service vessels with lockboxes for medical samples.

HIGHWAY FUND	**2015-16**	**2016-17**
Personal Services	$0	$5,000
All Other	$0	$1,500
HIGHWAY FUND TOTAL	$0	$6,500

ISLAND FERRY SERVICES FUND	**2015-16**	**2016-17**
Personal Services	$0	$10,000
All Other	$0	$3,000
ISLAND FERRY SERVICES FUND TOTAL	$0	$13,000

MSFS FARE ADJUSTMENTS

8/3/2017

	TAB	CALCULATOR	Yield Revenue In-Season	Yield Revenue Off-Season	Pax Reduced	Simple	Upward Trend	Notes
Current Ticket Structure	1	$1,456,057	60%	60%				
Current Ticket Structure with no One Ways with Increase CALCULATOR	1.5	$6,316,493						
Joe Stone's Ticket Submission	1.5.2 Joe's Submission	$5,135,779			No	No	No?	1) Cited OW 2) Increased B-to 3) Islesboro disproportionate increase 3) Imbalance of Islands vs Mainland is likely 4) Islesboro commuter rate $11 & $29
Joe Stone's Ticket Prices with No One Ways	1.5.2 Joe's Sub. One Ways	$5,136,568			No	No	No?	Same as above except removed OW
5 Mos Seasonal all Islands-Lower In Season	2	$5,215,888	63%	37%	Yes	Yes	Yes	
Flat Rate Single Tier		$5,217,510			Yes	Yes	No	
In-State/OOS	8	$5,204,859			Yes	Yes	Yes	1) Have owners 2) Puts burden on CRA's

Calculator 1.5- with increase

VINALHAVEN, NORTH HAVEN, SWANS ISLAND

	Mainland Current VINAL	Mainland Current French	Mainland Proposed	Island Current VINAL	Island Current French	Island Proposed
Adult RT	$17.50	$11.25	$19.00	$9.75	$11.25	$11.00
Child RT	$8.50	$6.25	$10.00	$5.25	$6.25	$6.75
Veh RT	$49.50	$32.25	$51.00	$27.25	$32.25	$29.00
Trk OW F	$3.00	$2.75	$5.00	$2.50	$2.75	$4.75
Trk RT F	$4.00	$3.75	$5.00	$3.40	$3.75	$4.75
Adult Bk	$16.50	$17.25	$16.50	$16.50	$17.25	$16.50
Child Bk	$9.50	$9.25	$9.50	$9.50	$9.25	$9.50
Reserv	$8.00	$8.00	$12.00	$8.00	$8.00	$12.00
Commute	$39.00	$0.00	$0.00	$39.00	$0.00	$46.00
Adult Exc	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00
Child Exc	$5.00	$5.00	$5.00	$5.00	$5.00	$5.00

ISLESBORO

	Mainland Current	Mainland Proposed	Island Current	Island Proposed
Adult RT	$10.00	$11.50	$5.50	$7.25
Child RT	$4.75	$6.25	$3.50	$5.00
Veh RT	$27.50	$29.00	$13.75	$15.50
Trk OW FT	$2.00	$3.25	$1.70	$2.75
Trk RT FT	$2.25	$3.25	$1.75	$2.75
Adult Bk RT	$8.50	$8.50	$8.50	$8.50
Child Bk RT	$5.50	$5.50	$5.50	$5.50
Reserv	$12.00	$12.00	$12.00	$12.00
Commuter	$22.00	$0.00	$22.00	$29.00
Adult Excursi	$6.00	$6.00	$6.00	$6.00
Child Excursi	$3.00	$3.00	$3.00	$3.00

MATINICUS

	Current	Proposed	Current	Proposed
Adult RT	$33.00	$18.00		
Child RT	$17.00	$20.00		
Veh RT	$86.00	$50.00		
Trk OW FT	$5.50	$9.00		
Trk RT FT	$6.75	$9.00		
Adult Bk RT	$20.00	$20.00		
Child Bk RT	$10.00	$10.00		
Reserv	$0.00	$0.00		
Commuter	$0.00	$0.00		
Adult Excursion				
Child Excursion				

FRENCHBORO

	Current	Proposed
Adult RT	$11.25	$12.75
Child RT	$6.25	$7.25
Veh RT	$32.25	$34.00
Trk OW FT	$2.75	$4.75
Trk RT FT	$3.75	$4.75
Adult Bk RT	$17.25	$17.25
Child Bk RT	$9.25	$9.25
Reserv	$9.00	$12.00
Commuter	$0.00	$0.00
Adult Excursion	$10.00	$10.00
Child Excursion	$5.00	$5.00

Calculator 1.6.2 Joe Stone's with No One Ways

VINALHAVEN, NORTH HAVEN, SWANS ISLAND

	Mainland Current VINAL	Mainland Current French	Mainland Proposed	Island Current VINAL	Island Current French	Island Proposed
Adult RT	$17.50	$11.25	$18.75	$9.75	$11.25	$11.00
Child RT	$8.50	$6.25	$9.50	$5.25	$6.25	$6.25
Veh RT	$49.50	$32.25	$51.00	$27.25	$32.25	$28.75
Trk OW F	$3.00	$2.75	$4.25	$2.50	$2.75	$3.75
Trk RT F	$4.00	$3.75	$5.25	$3.40	$3.75	$4.65
Adult Bk	$16.50	$17.25	$17.75	$16.50	$17.25	$17.75
Child Bk	$9.50	$9.25	$9.60	$9.50	$9.25	$9.60
Reserv	$9.00	$8.00	$8.60	$8.00	$9.00	$8.60
Commute	$39.00	$0.00	$44.00	$39.00	$0.00	$44.00
Adult Exc	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00
Child Exc	$5.00	$5.00	$5.00	$5.00	$5.00	$5.00

ISLESBORO

	Mainland Current	Mainland Proposed	Island Current	Island Proposed
Adult RT	$10.00	$11.50	$5.50	$7.00
Child RT	$4.75	$6.25	$3.50	$5.00
Veh RT	$27.50	$29.50	$13.75	$15.75
Trk OW FT	$2.00	$3.50	$1.70	$3.20
Trk RT FT	$2.25	$3.75	$1.75	$3.25
Adult Bk RT	$8.50	$9.75	$8.50	$9.75
Child Bk RT	$5.50	$5.60	$5.50	$5.60
Reserv	$12.00	$12.00	$12.00	$12.00
Commuter	$22.00	$27.00	$22.00	$27.00
Adult Excursi	$6.00	$6.00	$6.00	$6.00
Child Excursi	$3.00	$3.00	$3.00	$3.00

MATINICUS

	Current	Proposed	Current	Proposed
Adult RT	$33.00	$33.00		
Child RT	$17.00	$17.00		
Veh RT	$86.00	$86.00		
Trk OW FT	$5.50	$5.50		
Trk RT FT	$6.75	$6.75		
Adult Bk RT	$20.00	$20.00		
Child Bk RT	$10.00	$10.00		
Reserv	$0.00	$8.00		
Commuter	$0.00	$0.00		
Adult Excurs	$0.00	$0.00		
Child Excurs	$0.00	$0.00		

FRENCHBORO

	Current	Proposed
Adult RT	$11.25	$12.50
Child RT	$6.25	$7.25
Veh RT	$32.25	$33.75
Trk OW FT	$2.75	$5.00
Trk RT FT	$3.75	$5.00
Adult Bk RT	$17.25	$18.50
Child Bk RT	$9.25	$9.25
Reserv	$9.00	$8.50
Commuter	$0.00	$0.00
Adult Excursion	$10.00	$10.00
Child Excursion	$5.00	$5.00

Calculator 3-5 Mos

VINALHAVEN, NORTH HAVEN, SWANS ISLAND & FRENCHBORO

	In-Season Current VINAL	In-Season Current French	In-Season Proposed	Off Season Current VINAL	Off Season Current French	Off Season Proposed
Adult RT	$17.50	$11.25	$13.00	$9.75	$11.25	$10.00
Child RT	$8.50	$6.25	$10.00	$5.25	$6.25	$6.00
Veh RT	$49.50	$32.25	$40.00	$27.25	$32.25	$28.00
Trk OW F	$3.00	$2.75	$4.75	$2.50	$2.75	$4.75
Trk RT F	$4.00	$3.75	$4.75	$3.40	$3.75	$4.75
Adult Bk	$16.50	$17.25	$16.50	$16.50	$17.25	$16.50
Child Bk	$9.50	$9.25	$9.60	$9.50	$9.25	$9.60
Reserv	$8.00	$8.00	$12.00	$8.00	$8.00	$12.00
Commute	$39.00	$0.00	$48.00	$39.00	$0.00	$40.00
Adult Exc	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00
Child Exc	$5.00	$5.00	$10.00	$5.00	$5.00	$5.00

ISLESBORO

	In-Season Current	In-Season Proposed	Off Season Current	Off Season Proposed
Adult RT	$10.00	$9.00	$5.50	$6.00
Child RT	$4.75	$6.00	$3.50	$4.00
Veh RT	$27.50	$26.00	$13.75	$14.00
Trk OW FT	$2.00	$2.75	$1.70	$2.75
Trk RT FT	$2.25	$2.75	$1.75	$2.75
Adult Bk RT	$8.50	$8.50	$8.50	$8.50
Child Bk RT	$5.60	$5.60	$5.50	$5.60
Reserv	$12.00	$12.00	$12.00	$12.00
Commuter	$22.00	$32.00	$22.00	$24.00
Adult Excursi	$6.00	$6.00	$6.00	$6.00
Child Excursi	$3.00	$3.00	$3.00	$3.00

MATINICUS

	In-Season Current	In-Season Proposed	Off Season Current	Off Season Proposed
Adult RT	$33.00	$38.00	$33.00	$38.00
Child RT	$17.00	$20.00	$17.00	$20.00
Veh RT	$86.00	$90.00	$86.00	$90.00
Trk OW FT	$5.50	$9.00	$5.60	$9.00
Trk RT FT	$6.75	$9.00	$6.75	$9.00
Adult Bk RT	$20.00	$20.00	$20.00	$20.00
Child Bk RT	$10.00	$10.00	$10.00	$10.00
Reserv	$0.00	$0.00	$0.00	$0.00
Commuter	$0.00	$0.00	$0.00	$0.00
Adult Excurs	$0.00	$0.00	$0.00	$0.00
Child Excurs	$0.00	$0.00	$0.00	$0.00

Calculator 7-Flat Single Tier

VINALHAVEN, NORTH HAVEN, SWANS ISLAND & FRENCHBORO

	In-Season Current VINAL	In-Season Current French	In-Season Proposed	Off Season Current VINAL	Off Season Current French	Off Season Proposed
Adult RT	$17.50	$11.25	$12.75	$9.75	$11.25	$12.75
Child RT	$8.50	$6.25	$6.00	$5.25	$6.25	$6.00
Veh RT	$49.50	$32.25	$33.00	$27.25	$32.25	$33.00
Trk OW F	$3.00	$2.75	$4.75	$2.50	$2.75	$4.75
Trk RT F	$4.00	$3.75	$4.75	$3.40	$3.75	$4.75
Adult Bk	$16.50	$17.25	$16.50	$16.50	$17.25	$16.50
Child Bk	$9.50	$9.25	$9.50	$9.50	$9.25	$9.50
Reserv	$8.00	$8.00	$12.00	$8.00	$8.00	$12.00
Commute	$39.00	$0.00	$51.00	$39.00	$0.00	$51.00
Adult Exc	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00
Child Exc	$5.00	$5.00	$5.00	$5.00	$5.00	$5.00

ISLESBORO

	In-Season Current	In-Season Proposed	Off Season Current	Off Season Proposed
Adult RT	$10.00	$8.50	$5.50	$8.50
Child RT	$4.75	$4.25	$3.50	$4.25
Veh RT	$27.50	$19.50	$13.75	$19.50
Trk OW FT	$2.00	$3.00	$1.70	$3.00
Trk RT FT	$2.25	$3.00	$1.75	$3.00
Adult Bk RT	$8.50	$8.50	$8.50	$8.50
Child Bk RT	$5.50	$5.50	$5.50	$5.50
Reserv	$12.00	$12.00	$12.00	$12.00
Commuter	$22.00	$33.00	$22.00	$33.00
Adult Excursi	$6.00	$6.00	$6.00	$6.00
Child Excursi	$3.00	$3.00	$3.00	$3.00

MATINICUS

	In-Season Current	In-Season Proposed	Off Season Current	Off Season Proposed
Adult RT	$33.00	$38.00	$33.00	$38.00
Child RT	$17.00	$20.00	$17.00	$20.00
Veh RT	$86.00	$90.00	$86.00	$90.00
Trk OW FT	$5.50	$8.00	$5.50	$8.00
Trk RT FT	$6.75	$8.00	$6.75	$8.00
Adult Bk RT	$20.00	$20.00	$20.00	$20.00
Child Bk RT	$10.00	$10.00	$10.00	$10.00
Reserv	$0.00	$0.00	$0.00	$0.00
Commuter	$0.00	$0.00	$0.00	$0.00
Adult Excurs	$0.00	$0.00	$0.00	$0.00
Child Excurs	$0.00	$0.00	$0.00	$0.00

Calculator 8-In State/OOS

VINALHAVEN, NORTH HAVEN, SWANS ISLAND & FRENCHBORO

	OOS Current VINAL	OOS Current French	OOS Proposed	In-State Current VINAL	In-State Current French	In-State Proposed
Adult RT	$17.50	$11.25	$17.00	$9.75	$11.25	$12.00
Child RT	$8.50	$6.25	$12.50	$5.25	$6.25	$7.50
Veh RT	$49.50	$32.25	$40.00	$27.25	$32.25	$30.00
Trk OW F	$3.00	$2.75	$4.75	$2.50	$2.75	$4.75
Trk RT F	$4.00	$3.75	$4.75	$3.40	$3.75	$4.75
Adult Bk	$16.50	$17.25	$16.50	$16.50	$17.25	$16.50
Child Bk	$9.50	$9.25	$9.60	$9.50	$9.25	$9.60
Reserv	$8.00	$8.00	$12.00	$8.00	$8.00	$12.00
Commute	$39.00	$0.00	$0.00	$39.00	$0.00	$48.00
Adult Exc	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00
Child Exc	$5.00	$5.00	$5.00	$5.00	$5.00	$5.00

ISLESBORO

	OOS Current	OOS Proposed	In-State Current	In-State Proposed
Adult RT	$10.00	$12.50	$5.50	$7.50
Child RT	$4.75	$11.00	$3.50	$6.00
Veh RT	$27.50	$27.00	$13.75	$17.00
Trk OW FT	$2.00	$2.75	$1.70	$2.75
Trk RT FT	$2.25	$2.75	$1.75	$2.75
Adult Bk RT	$8.50	$8.50	$8.50	$8.60
Child Bk RT	$5.50	$5.50	$5.50	$5.60
Reserv	$12.00	$12.00	$12.00	$12.00
Commuter	$22.00	$0.00	$22.00	$38.00
Adult Excursi	$6.00	$6.00	$6.00	$6.00
Child Excursi	$3.00	$3.00	$3.00	$3.00

MATINICUS

	OOS Current	OOS Proposed	In-State Current	In-State Proposed
Adult RT	$33.00	$40.00	$33.00	$40.00
Child RT	$17.00	$20.00	$17.00	$20.00
Veh RT	$86.00	$90.00	$86.00	$90.00
Trk OW FT	$5.50	$10.00	$5.50	$10.00
Trk RT FT	$6.75	$10.00	$6.75	$10.00
Adult Bk RT	$20.00	$20.00	$20.00	$20.00
Child Bk RT	$10.00	$10.00	$10.00	$10.00
Reserv	$0.00	$0.00	$0.00	$0.00
Commuter	$0.00	$0.00	$0.00	$0.00
Adult Excurs	$0.00	$0.00	$0.00	$0.00
Child Excurs	$0.00	$0.00	$0.00	$0.00

EXHIBIT B

tabbies

MAINE DEPARTMENT OF TRANSPORTATION
NOTICE OF PUBLIC HEARING
FOR PROPOSED RATE ADJUSTMENT FOR ALL ROUTES
SERVED BY THE MAINE STATE FERRY SERVICE

Pursuant to 23 M.R.S.A. Sections 4401 and 4404 and Title 5, M.R.S.A. Sections 8001, et. seq., the Division of Multimodal Operations within the Bureau of Maintenance and Operations of the Maine Department of Transportation will conduct public hearings to receive comments about a proposed change in the rate structure for all routes served by the Maine State Ferry Service. If approved by the Department of Transportation, the increase will become effective March 28, 2018.

Three public hearings to take evidence on the proposed ferry rate increases will be held as follows:

1. **VINALHAVEN, 6:00 p.m. on Tuesday, January 23, 2018 at the Vinalhaven School located at 22 Arcola Lane, Vinalhaven, Maine, for comments pertaining to Vinalhaven, North Haven and Matinicus fares.**

2. **ISLESBORO, 6:00 p.m. on Monday, January 29, 2018 at the Islesboro Central School located at 159 Alumni Drive, Islesboro, Maine for comments pertaining to Islesboro fares.**

3. **SWAN'S ISLAND, 6:30 p.m. on Tuesday January 30, 2018 at the Swan's Island School located at 116 Rose Hill Road, Swan's Island, Maine pertaining to Swan's Island and Frenchboro fares. There will be a vessel between Frenchboro and Swan's Island before and after the hearing for Frenchboro residents.**

Interested parties and the public are invited to attend these hearings to present oral and written comments. **There will be a vessel returning to the mainland after each hearing.** Any person who seeks formal intervener status in the proceeding shall notify James Billings, Esq. at the Legal Division, Maine Department of Transportation, 16 State House Station, Augusta, ME 04333-0016, Telephone (207) 624-3020, TTY Users dial Maine Relay 711, in writing by January 16, 2017. Any person who is unable to attend a public hearing can submit written comment to the same address by January 30, 2018.

In accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, the Maine Department of Transportation will make all reasonable efforts to accommodate disabled persons wishing to attend the hearing. Arrangements for such accommodations may be made through Mark Higgins, Ferry Service Manager, by telephone at (207) 596-5428 or by writing to Mr. Higgins at the address below:

Maine State Ferry Service
P.O. Box 645
517A Main Street
Rockland, ME 04841-0645

EXHIBIT
tabbies
C

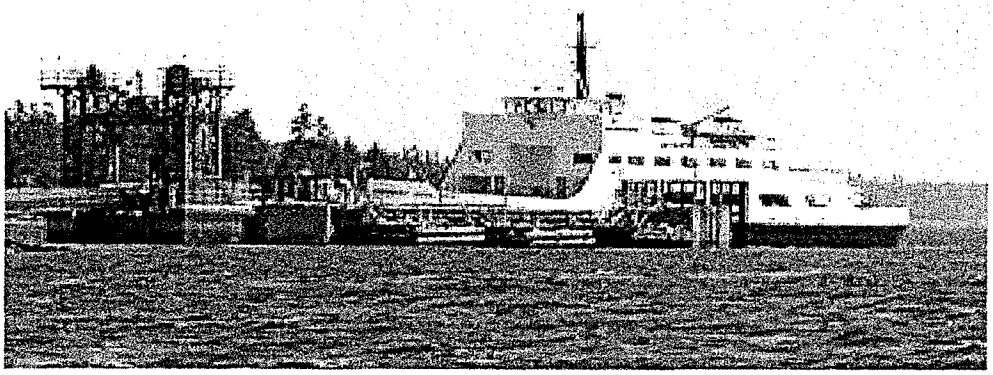
MSFS FARE SELECTED TICKET STRUCTURE
11/2/2017

	2020 REVENUE ESTIMATES
Current Ticket Structure	$4,456,067
SELECTED SCENARIO-Maine Resident Discount	$5,194,309

VINALHAVEN, NORTH HAVEN, SWANS ISLAND & FRENCHBORO	Out of State			In-State		
	Current-VNH,SI	Current-French	Proposed	Current-VNH,SI	Current-French	Proposed
Adult RT	$17.50	$11.25	$19.00	$9.75	$11.25	$12.00
Child RT	$8.50	$6.25	$13.00	$5.25	$5.25	$7.00
Veh RT	$49.50	$32.25	$44.00	$27.25	$32.25	$29.00
Trk O.W.F	$3.00	$2.75	$4.75	$2.50	$2.75	$4.75
Trk RT.F	$4.00	$3.75	$4.75	$3.40	$3.75	$4.75
Adult Blk	$16.50	$17.25	$16.50	$16.50	$17.25	$16.50
Child Blk	$9.50	$9.25	$9.50	$9.50	$9.25	$9.50
Reserv	$8.00	$8.00	$10.00	$8.00	$8.00	$10.00
Commute	$39.00	$0.00	$0.00	$39.00	$0.00	$48.00
Adult Exc	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00
Child Exc	$5.00	$5.00	$5.00	$5.00	$5.00	$5.00

ISLESBORO	Out of State		In-State	
	Current	Proposed	Current	Proposed
Adult RT	$10.00	$14.00	$5.50	$7.00
Child RT	$4.75	$11.00	$3.50	$5.00
Veh RT	$27.50	$30.00	$13.75	$16.00
Trk O.W.FT	$2.00	$3.00	$1.70	$3.00
Trk RT.FT	$2.25	$3.00	$1.75	$3.00
Adult Blk RT	$8.50	$8.50	$8.50	$8.50
Child Blk RT	$5.50	$5.50	$5.50	$5.50
Reserv	$12.00	$12.00	$12.00	$12.00
Commuter	$22.00	$0.00	$22.00	$28.00
Adult Excursi	$6.00	$6.00	$6.00	$6.00
Child Excursi	$3.00	$3.00	$3.00	$3.00

MATINICUS	Out of State		In-State	
	Current	Proposed	Current	Proposed
Adult RT	$33.00	$35.00		
Child RT	$17.00	$18.00		
Veh RT	$86.00	$88.00		
Trk O.W.FT	$5.50	$8.00		
Trk RT.FT	$6.75	$8.00		
Adult Blk RT	$20.00	$20.00		
Child Blk RT	$10.00	$10.00		
Reserv	$0.00	$0.00		
Commuter	$0.00	$0.00		
Adult Excurs	$0.00	$0.00		
Child Excurs	$0.00	$0.00		



DOT Public Hearing

On the Proposed Rate Increases

January 29, 2018 GHK CENTER at 6pm

Selected Scenario: Maine Resident Discount

(*Currently beginning trip in Lincolnville*)

	Out of State		**In-State/Res.**	
Islesboro	Current	**Proposed**	Current	**Proposed**
Adult RT	**$10.00**	**$14.00**	**$5.50**	**$7.00**
Child RT	**$4.75**	**$11.00**	**$3.50**	**$5.00**
Vehicle RT	**$27.50**	**$30.00**	**$13.75**	**$16.00**
Trk OW FT	**$2.00**	**$3.00**	**$1.70**	**$3.00**
Trk RT FT	**$2.25**	**$3.00**	**$1.75**	**$3.00**
Adult Bike RT	**$8.50**	**$8.50**	**$8.50**	**$8.50**
Child Bike RT	**$5.50**	**$5.50**	**$5.50**	**$5.50**
Reservation	**$12.00**	**$12.00**	**$12.00**	**$12.00**
Commuter	**$22.00**	**$0.00**	**$22.00**	**$28.00**
Adult Excur.	**$6.00**	**$6.00**	**$6.00**	**$6.00**
Child Excur.	**$3.00**	**$3.00**	**$3.00**	**$3.00**

This version: 2020 revenue estimates $5,194,309

W: Public Hearing on ferry rates 1 29 18

TOWN OF ISLESBORO
P.O. Box 76 • 150 Main Road • Islesboro, Maine 04848
(207) 734-2253 • Fax (207) 734-8394

Janet R. Anderson
Town Manager

February 5, 2018

Commissioner David Bernhardt
Department of Transportation
State House Station #16
Augusta, Maine 04330

Dear Commissioner Bernhardt,

The Islesboro Select Board is writing to request a delay in implementing the proposed ferry rate increase. After attending the informational meeting on January 29th it is apparent to both the Select Board and the Islesboro Community that additional consideration is needed before finalizing a rate increase and implementing a plan.

First, it was surprising that the MSFS delegation claimed to not know the relationship between the cost to run each boat and the revenue generated by each boat. This information is necessary to make an informed decision about rate changes. The following is a chart showing how much revenue from each ferry contributes to its annual cost. The chart was derived from information provided by the Maine State Ferry Service to the Islesboro Select Board.[1]

	Expense %	Expense Cost	Revenue	Rev as a % of Cost
Islesboro	20%	$1,970,000	$1,300,000	65.99%
Swans/Frenchboro	20%	$1,970,000	$900,000	45.69%
Vinalhaven	40%	$3,940,000	$1,500,000	38.07%
North Haven	20%	$1,970,000	$700,000	35.53%
Misc Revenue			$350,000	

As shown above, Islesboro generates enough revenue to cover approximately 66% of the cost to run its vessel. This is by far the largest percentage of the various ferries and Islesboro is the only island which funds more than 50% of the cost with its revenue. Despite this, the proposed rate increases disproportionately raise Islesboro's rates. The following chart shows the percentage increase in ticket prices for various tickets on various islands. This table is based on the increase of island originated tickets and does not consider mainland originated tickets/out of state tickets.

[1] We note that these numbers are not exact because there are many expenses which are not tied to a particular vessel and would encourage the MSFS fine tune accounting practices so that costs and revenues reflect individual vessels and more informed decisions on business operations can be made in the future.

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	Islesboro	N&V/Haven	Matinicus	Swans/Frenchboro
Adult	27.27%	23.08%	6.06%	6.67%
Child	42.86%	33.33%	5.88%	12%
Vehicle	16.36%	6.42%	2.32%	5.43%
Truck OW/ft	76.47%	90%	45.45%	72.72%

Almost across the board Islesboro is paying the largest percentage increase on tickets. This strikes the Select Board and the community as patently unfair and unreasonable given that Islesboro is already providing a larger percentage of the cost of running its ferry than every other island. In essence, Islesboro is already subsidizing other ferries and now is being asked to bear the brunt of a rate increase.

Another concern that should be considered is that the demand for Islesboro's ferry is more elastic than the other ferries. We are geographically close to Lincolnville and there is already an active water taxi operating out of Islesboro. Because of this, a large increase on Islesboro's rates may result in a noticeable reduction in usage of the ferry as residents turn to private vessels, the water taxi, or simply stay home. This would undermine the very purpose of the rate increase and must be considered as a part of any well-thought plan intended to meet the state's target.

The State's proposal to charge different rates for in state and out of state customers will lead to unnecessary confusion and frustration during the ticketing and boarding process. There will be many times when Maine residents forget IDs and will be very frustrated to have to pay the increased rate. Customers will be able to game the system by having a resident drive their car over while the non-resident is just a passenger. A resident could by a ticket and give it to a non-resident so that you really need someone checking IDs when passengers are getting on a boat—leading to gridlock if the crew sends back a vehicle for new ticketing when twenty cars are behind them in line. These are just a few scenarios which will cause problems and it is likely that this proposed change will not facilitate automated ticketing because it will require so much oversight by attendants.

The most equitable plan would be to increase rates across the board for all tickets on all islands by the percentage needed to meet the budget shortfall. This amount should be slightly more than the exact percentage to account for the fact that some people will not be able to afford to ride the ferry as much with increased rates. This additional increase should be rounded up to make tickets be even numbers to facilitate making change for the attendants. Alternatively, charging less in the winter and more in the summer would eliminate many of the problems associated with checking customer identification and facilitate online ticketing in the future.

Lastly, we are concerned that an increase on the cost of child tickets would make it more difficult for young families to afford living on Islesboro. In an era where fewer and fewer families are moving to the island an increase in cost will continue to fuel the downward trend in the island population. Tickets for things like dentists, orthodontists, doctors, music lessons, extracurricular activities, etc. really add up for a family when living in a place where everything is already more expensive.

In summary, we are aware that the budget shortfall needs to be addressed but feel that the current proposal is unequitable and does not facilitate the stated goal of moving toward online ticketing. This proposal will also cause frustration and delays at the ticket booth and likely will not meet the revenue target. We urge Maine DOT to delay a final decision on the pricing increase to ensure that the increases will be equitable, facilitate e-ticketing, and actually achieve the revenue target.

Archibald L. Gillies | Sandra L. Oliver | Hanna E. Kerr | Gabriel I. Pendleton | Jay T. Zlotkowski

Islesboro Select Board

cc: Senator Michael Thibodeau
Rep. Owen Casas
James Billings, Esq., MDOT
Rick Dubois, Dir., Multimodal Operations
Mark Higgins, Mgr., MSFS
Maggy Willcox, Islesboro Island News

RECOMMENDED DECISION

SUBJECT: MSFS RATE CHANGES

DATE: APRIL 6, 2018

BACKGROUND

23 M.R.S.A. § 4401 provides that "It is the duty of the Department of Transportation to operate a ferry route or routes between the mainland and towns of North Haven, Vinalhaven, Islesboro, Matinicus Isle and Swan's Island for the purpose of transporting vehicles, freight and passengers to and from these towns, and the department may operate the ferry route or routes to and from Frenchboro." This section of the revised statutes goes on to designate the ferry routes collectively as the "Maine State Ferry Service."

Historically, operating costs of the Maine State Ferry Service (MSFS) were funded through a state taxpayer subsidy from the General Fund of somewhere near 50%, with the remaining half generated though user fares and other fees. In 2005, the Legislature established the Marine Highway account (23 M.R.S.A. § 4210-C) and shifted the 50% subsidy payment to be from the Highway Fund. Section 2 of the enabling statute specifically provides the purpose of the account is "to provide support to the Maine State Ferry Service...because ferries are an integral part of the highway system and carry motor vehicles and are the only methods of vehicular transportation available to and from the island..."

Over the years, MaineDOT and MSFS leadership negotiated the user rates needed to meet the 50% user fee portion of the operating budget with the Maine State Ferry Advisory Board, established in 23 M.R.S.A. § 4301. Ticket prices and subsequent fare increases varied greatly over the years – from island to island, and from mainland to island ticket sales.

About two decades ago, a discounted island rate ticket was implemented, with the intent to mitigate increasing costs for year-round island residents. However, even

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during peak summer months, up to 80% of MSFS ticket sales are generated at the island terminals (indicating widespread exploitation of the current ticket system originally created to help sustain year-round island communities).

The last rate increase was done in 2009 and was the fifth increase in the six-year period prior. At that time, rates were raised on the existing island/mainland structure. After the 2009 rate increase, MSFS worked to contain its operating budget to prevent rate increases, in large part by implementing efficiencies and with the good fortune of decreased fuel costs over several years.

The complexities and variations in rates that have evolved over the years are difficult to understand. The large volume of ticket sales at the island terminals versus the mainland terminals also indicates the intent of the island discount ticket is not being met. Furthermore, the operational burden to maintain the current rate structure does not satisfy the long-term goals of the MaineDOT and MSFS in operating a safe, efficient, and technologically advanced service for all customers.

Attached to this recommended decision are the new rate sheet, tariff no. 8, and rate data. Approval of this recommended decision by the Commissioner shall constitute final agency action.

DEPARTMENT GOALS

When the Department started looking at how to raise an additional $700k in ticket sales necessary to meet MSFS operating projections, it set several goals, including:

1. Collection of the necessary revenue;
2. Creation of a rate structure that simplifies the ticketing system (to produce more efficiencies in the system in future years, specifically moving towards advanced technology use and online ticketing options); and
3. Based on input from the state legislative delegation representing the island communities, maximizing revenue collected during the peak season to minimize rate increases on year-round residents.

COMMENTS

The Department held public hearings to receive comments about the proposed changes to the ferry rates as follows: January 23 on Vinalhaven (with video links with Matinicus and North Haven); January 29 on Islesboro; and February 20 on Swan's (with notice to Frenchboro to attend). We had previously noticed hearings on Swan's for January 30, but we were stormed out, and we had to re-notice the hearings, which explains the 3-week delay.

I presided as hearings officer, and Mark Higgins spoke for the proposed changes at each hearing, to set out the reasons for the changes. We then asked for other speakers to comment in favor of the proposed rate changes, and there was not a single person on any of the 3 separate hearing dates that spoke in favor of the proposal.

We next took comments from those opposed to the proposed changes, and finally, we took comments from those who were neither for nor against, per se, but who wanted to be heard on the issue. We have transcripts from each hearing, and I have reviewed those and classified the general point of the comments regarding the proposed fare structure.

From Vinalhaven/North Haven/Matinicus: 3 speakers commented that the child rate is too high; 7 commented that the truck rate is too high, and that increases in the truck rate trickle down to everyone because the islanders are dependent on trucks to bring everything to the islands (including fuel); 8 spoke against the resident/non-resident distinction (the general tenor of these comments is that it is unfair, likely to cause a rift, or is counter to promoting tourism); 4 spoke against decreasing the nonresident car rate from the mainland car rate while trying to increase revenue; 2 spoke against continuing the excursion tickets; 4 spoke of considering other sources of revenue (selling ads, increase weekend daily parking fees, or charging a much higher price for bikes, which many islanders see as a nuisance on their roads); 9 commented that the resident/non-resident distinction was too complex to implement (these comments included a good deal of resistance to having to show identification, but also pointed out that doing so would slow the boarding process down significantly); 3 commented that we should just increase the existing fee structure by a uniform percentage across the board; 3 commented that Islesboro doesn't pay enough; and 1 commented that there was a disproportionate increase for islanders.

From Islesboro: 2 speakers commented that the child rate is too high; 11 commented that the truck rate is too high, and that increases in the truck rate trickle down to everyone because the islanders are dependent on trucks to bring everything to the islands (including fuel); 5 spoke against the resident/non-resident distinction (the general tenor of these comments is that it is unfair, likely to cause a rift, or is counter to promoting tourism); 3 spoke of considering other sources of revenue (selling ads, increase weekend daily parking fees, or charging a much higher price for bikes, which many islanders see as a nuisance on their roads); 7 commented that the resident/non-resident distinction was too complex to implement (these comments included a good deal of resistance to having to show identification, but also pointed out that doing so would slow the boarding process down significantly); 1 commented that we should just increase the existing fee structure by a uniform percentage across the board; 7 commented that Islesboro

pays too much (this appears to be based on some data that suggests that Islesboro comes the closest to covering its operational costs, approximately 66%); 2 spoke in favor of a commuter type discount for frequent users; and 1 spoke in favor of having a seasonal rate structure where more is charged in the peak season.

From Swan's: 6 spoke against the resident/non-resident distinction (the general tenor of these comments is that it is unfair, likely to cause a rift, or is counter to promoting tourism); 4 commented that the resident/non-resident distinction was too complex to implement (these comments included a good deal of resistance to having to show identification, but also pointed out that doing so would slow the boarding process down significantly); 4 commented that we should just increase the existing fee structure by a uniform percentage across the board; 2 spoke in favor of a commuter type discount for frequent users; and 1 spoke in favor of each of the ideas of a means test for fare rates and that the reservation rate was increasing too much (although this person was admittedly using an outdated rate chart and didn't know it only went to $10).

In addition to the comments at the public hearings, I also have about an inch and a half stack of written comments. Based on the weather-related delay in holding the Swan's Island public hearing, the written comment period was held open until March 2, 2018 (ten days after the Swan's hearing on February 20). I've reviewed these written submissions, and overall, they reflect similar concerns as the oral comments presented at the public hearings.

Based on all of this, as well as identifying our organizational goal of simplifying the fare structure, the Department personnel involved in the fare decision met and had extensive discussions. Based on the public input, all were in agreement that the resident/non-resident fee structure should be abandoned. Also, there was general agreement to greatly simplify the fare structure by having one rate for any trip that can be used on any ferry. There was some concern that this places a large portion of the increase on Islesboro, but it was pointed out that: Islesboro receives a subsidy from the ferry service that none of the other communities does: school children from the mainland get free passage back and forth to the charter school and school functions; they have the largest vessel; and they have the most trips offered each day. Even after increasing rates to equalize across the service, Islesboro's rates remain in line with other rates for similar service on Casco Bay (for example, Peak's Island when the extra charges for baggage are included).

FINDINGS

1. The old ferry service rate structure is antiquated, and it needs an overhaul.
2. Keeping truck rates as low as possible benefits not only the businesses who utilize the ferry service to transport large trucks, but also benefits all island

residents whose goods and services must come from the mainland (including oil deliveries, construction equipment, and groceries).

3. Gamesmanship to avoid paying the mainland ticket price is rampant—people "in the know" simply buy tickets on the island side at a discount and use them. This was originally implemented to try and give year-round residents a discount, which was also one of the primary reasons for the previously proposed (and now rejected) resident/non-resident structure. It has been so eroded that it no longer justifies the operational effort it requires.
4. The islanders see themselves as a community and they do not want island residents who are not year-round Maine residents to be treated differently than other islanders.
5. Operationally, moving to a flat rate is the best system for efficiency and simplicity (both for sales and boarding), and it is the best at achieving stated goals.
6. A flat rate will make online sales a reality much sooner, bringing us into the 21st century.
7. Online sales and simplified ticketing and pricing will allow the ferry service to better track and accumulate data on ferry usage patterns.
8. The ferry service is part of the overall statewide highway system. The ferry service is akin to a regional traffic collector for the state highway system.
9. Each ferry route is not a separate entity—it's one ferry service.
10. Viewing what percentage of its operating costs that any one ferry route generates ignores capital costs that DOT pays.
11. We do not charge residents a higher per gallon gas tax who live near expensive bridges, or who live in towns that get more snow, or need more road maintenance. Those costs are spread out statewide through the highway fund and the taxes that fund it. We see the ferry service in the same light. The old system of distinguishing fares based on the island route is out dated.
12. Moving to a flat rate will make future increases more straightforward, and makes the ferry service and DOT more flexible in dealing with the volatility of fuel costs.
13. Getting rid of the excursion tickets is in the best interest of the ferry service and is in the interest of fairness.
14. A commuter discount deserves further analysis and study, but the Department will move forward with the rate change without a commuter discount at this time. Although there is some support for a commuter discount, that is typically seen for a business model where repeat and frequent customers are given an incentive to continue to use a product or service. That rationale does not apply in a situation where 50% of the operating costs of the organization are paid by a subsidy apart from user

fees. That is, it does not make immediate organizational sense to give a volume discount where the user is not even covering costs of operation.

15. Commuter discounts may be warranted where the commuter pass actually reduces overhead or increases operational efficiency, such as monthly laminated passes that can be reloaded electronically or online or yearly passes that could be paid up front.
16. There are many outstanding tickets sold under prior rates. The treatment of those tickets shall be as set forth in tariff no. 8, item 1.

CONCLUSIONS/RECOMMENDATIONS

The attached rate structure and tariff no. 8 best achieve the goals for the MSFS and the Department, are in the best interest of the MSFS and the Department and the people of Maine, and shall be implemented effective May 21, 2018.

April 6, 2018

James A. Billings, Hearing Officer and Chief Counsel, MaineDOT

✓ APPROVED ___DENIED

___APPROVED AS MODIFIED: _____

April 13, 2018

David Bernhardt, Commissioner, MaineDOT

MAINE STATE FERRY SERVICE TARIFF NO. 8 RATES EFFECTIVE MAY 21, 2018:

Adult Round-Trip Passenger	$ 11.00
Child Round-Trip Passenger	$ 5.50
Vehicle, Less Than 20ft, Round-Trip (Includes Ticket for Driver)	$ 30.00
Truck One-Way Per Foot	$ 2.50
Truck Round-Trip Per Foot	$ 2.50
Adult Bike Round-Trip	$ 20.00
Child Bike Round-Trip	$ 10.00
Reservations	$ 15.00

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Mary E. Costigan
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May 11, 2018

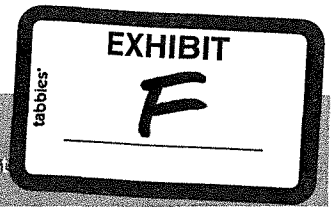
Commissioner David Bernhardt
Maine Department of Transportation
16 State House Station
Augusta, ME 04333-0016

RE: REQUEST FOR STAY of Maine State Ferry Service Tariff No. 8

Dear Commissioner Bernhardt:

I am writing on behalf of the Town of Islesboro, pursuant to 5 M.R.S. § 11004, to request a stay of the Maine Department of Transportation's April 13, 2018 decision to change the rate structure for the Maine State Ferry Service and adopt Tariff No. 8. As explained below, the Town and its residents will suffer irreparable injury if the proposed tariff goes into effect on May 21, 2018 as planned; there is a strong likelihood that the Town will succeed on the merits of an appeal the Town intends to file next week; and there will be no substantial harm to the general public if the decision were stayed pending the appeal. We therefore request that the decision be stayed pending the appeal. Alternatively, at a minimum the implementation of the tariff should be delayed for at least ninety days to allow ample time for further discussions of a fair and equitable rate structure.

Beginning with the Town's likelihood of success on the merits in its appeal, the decision adopted by the Department in April clearly violated the Administrative Procedure Act (the "APA") and is therefore invalid. Pursuant to 23 M.R.S. § 4404, the Department is required to adopt rates for the use of the Maine State Ferry Service in a manner consistent with the APA. Significant to this case, the APA states that "a rule may not be adopted unless the adopted rule is consistent with the terms of the proposed rule, except to the extent that the agency determines that it is necessary to address concerns raised in comments about the proposed rule, or specific findings are made supporting changes to the proposed rule." In addition, the Department is required by the APA to request comments from the public concerning the changes from the proposed rule if a rule that the agency intends to adopt is substantially different from the proposed rule.



The rate structure adopted by the Department in Tariff No. 8 is substantially different from the rate structure proposed by the Department that was the subject of the public hearings and comment. The rate structure that was proposed by the Department for public comment was a structure that established different rates for in-state and out-of-state residents. The rate structure that was adopted by the Department does not at all resemble the proposed structure. Rather, it is a flat rate structure that was not provided to the public for comment prior to adoption as required by the APA.

The substantial difference from the proposed structure to the final adopted rate structure was not only recognized by the Department in the decision, but discussed at length. In fact, there is an entire paragraph in the decision that discusses what the Department staff thought about the new structure, even going so far as to hypothesize impacts on Islesboro without the Town's input.[1] There is no discussion about what the public thought about the new structure because they were never given the opportunity to comment on it. That is a clear violation of the APA and thus there is a very high likelihood of success on the merits in the Town's appeal of the decision.

The Town and its residents will suffer irreparable injury if the proposed tariff goes into effect on May 21, 2018. This rate structure will have a debilitating impact on the island community that will force many residents to move off of the island, could cause the schools to close and could ultimately cause Islesboro to cease being a year-round community.

One example of the impact of the new rate structure is the increase in cost for a family to go to the mainland. The cost of a family with two children to go to the mainland will increase from $26.25 to $52.00. This cost will be added to every doctor's appointment, grocery trip, music lessons, banking, etc. The dramatic increase in cost will also push out many of the residents who are on fixed incomes as they will no longer be able to afford to pay the ferry fare to attend off-island doctor's appointments.

This rate structure will also raise the cost of goods and services on the island and will significantly increase the cost of doing business on Islesboro. Necessities like food and heating oil will be too costly for many residents to afford, particularly when added to the cost of transportation. Many contractors and workers come across the ferry every day to work on Islesboro. With walk on rates doubled and vehicles tickets up approximately 120% this will result in a significant cost for all business on Islesboro. This additional cost will affect every employee and every contractor both from Islesboro and the surrounding area as the cost to move people and material has more than doubled with only a month notice.

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[1] Notably, in the summary of the staff discussions, the rationale for the larger burden on Isleboro was that Islesboro students get free passage on the ferry. However, Tariff No. 8 includes free passage for all students from all islands.

Finally, there will be no substantial harm to the general public if the decision were stayed pending the appeal. As stated in the decision, the last rate increase was in 2009. Delaying implementation of the new rate structure until the appeal is heard or until a more equitable rate increase is adopted will not result in harm to the general public. The irony of the proposed rate structure that also predicted an increase in ridership is that it likely will not result in increased revenue for the Department due to a resulting decrease in ridership. Thus, any harm to the public in the form of a temporary loss of potential revenue is insubstantial.

For the above stated reasons, the Town requests that the Department stay the implementation of Tariff No. 8 pending the Town's appeal.

As noted above, the Town is always willing to resolve this matter outside of an appeal and would be open to a stay of implementation for a period of ninety days while the Department and the Town discuss a fair and equitable solution.

Thank you for your attention to this matter. Due to the impending implementation date of May 21st, the Town requests a prompt reply.

Sincerely,

Mary E. Costigan

cc: Janet Anderson, Town Manager
Toni Kemmerle, Esq.

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

MAY 21 2018

Paul R. LePage
GOVERNOR

David Bernhardt
COMMISSIONER

Mary Costigan, Esq.
Bernstein, Shur, Sawyer & Nelson
P.O. Box 9729
Portland, ME 04104-5029

May 17, 2018

Dear Ms. Costigan:

The Commissioner has asked me to respond to your May 11, 2018 letter regarding Tariff 8 and the rates for the Maine State Ferry Service. For the reasons set forth below, your request for a stay is denied, and the new rates will become effective Monday, May 21, 2018.

Suffice it to say that I disagree with your assessment of your chances of success on the merits of any appeal. Leaving aside those arguments about the merits of any appeal, the request for a stay is denied primarily because there has not been a showing of irreparable harm where rates for services are the issue. This is a classic case for money damages rather than injunctive relief: if you are successful on appeal anyone who has overpaid for a ticket could be refunded any difference in fare. It seems highly unlikely that anyone on Islesboro is going to undergo irreparable injury for paying a few dollars more per ferry ticket while this case is pending for a matter of months.

In addition, you give short shrift to the public interest in getting the rates finalized and implemented promptly. Any stay or change in the rates at this point affects every other type of rate, the other islands, the citizens of Maine, and other users of the overall ferry system.

Finally, there seems to be some confusion about further discussions about rates. The rates were set by the Commissioner's decision after a fair and thorough public process. That decision is final agency action. It would be completely inappropriate to now engage in closed door meetings with interested parties, while representatives from the other islands are excluded, in order to come up with a new rate that Islesboro deems a "fair and equitable solution".

For all these reasons, your request for a stay pending appeal is denied.

Respectfully,

Jim

Jim Billings
Chief Counsel, Maine Department of Transportation

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