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GOVERNOR'S OFFICE

4/13/01

April 13, 2001

The Governor's New Bedford, Cape and Islands Ferry Service Task Force submitted its report to the Governor today. We are pleased to provide you with a copy.

Rudolph Kass, Chair

Dan - Going ^{lunch}
as of 11 A.M.
But Gov will
have earlier

(R13)

REPORT OF THE GOVERNOR'S NEW BEDFORD, CAPE AND ISLANDS
FERRY SERVICE TASK FORCE

Your Excellency:

Executive Order No. 425, issued December 8, 2000, established the Governor's New Bedford, Cape and Island Ferry Service Task Force.¹ We have conducted public hearings on Nantucket, Martha's Vineyard, Cape Cod, and in New Bedford. In addition, we have studied the legislative history of the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority (the "SSA"); conducted many interviews; have studied operational data of the SSA; considered studies, memoranda, and letters of opinion from interested citizens and groups in the areas of concern; have examined regional traffic studies; and, of course, have deliberated the salient issues among ourselves. We now make our report.

Two fundamental sets of observations came to guide the Task Force in this report.

First. Establishment of the SSA in 1948 by the Legislature was a response to the failure of private carriers to provide reliable year-round service to Martha's Vineyard and Nantucket. We understand that the SSA is the transportation lifeline for the island communities. There are other options: air transportation and licensed private carriers; but the vessels of last resort upon which the islanders rely after September and before June are those of the SSA. Under its enabling statute, St. 1960, c. 701, the SSA is "to provide adequate transportation and necessities of life for the islands of Nantucket and Martha's Vineyard."² The SSA is to fulfill that mission

¹The members of the task force are: Rudolph Kass, chair; Arthur L. Desrocher; Daniel A. Flynn; Kevin O'Neil; Rita Pacheco; Antone G. Souza, Jr.; Paul F. Walsh; and *ex officio*: Rick Armstrong (for the Director of the Office of Economic Development); Maeve Vallely Bartlett (for the Secretary of the Executive Office of Environmental Affairs); Thomas S. Cahir (for the Secretary of the Executive Office of Transportation & Construction); and Peter Forman (for the Secretary of Administration & Finance).

²A public steamship authority was first established in 1948 by St. 1948, c. 544. Until the mid-1940's, the New York, New Haven & Hartford R.R. ran the island ferry service. When the railroad abandoned that service in the mid-1940's, a corporation formed for the purpose, Massachusetts Steamship Lines, undertook to provide it. In 1947, the principal vessel of that enterprise failed of Coast Guard certification. Massachusetts Steamship Lines lacked capital to sufficiently rebuild or replace the vessel, provoking the emergency that led to the formation of the SSA. As originally established, the SSA was The New Bedford, Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority. In 1959, the recommendations of a second legislative commission produced a new SSA statute that dropped a New Bedford member of the SSA and renamed the SSA as the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority. The reconstituted SSA dropped New Bedford as a port.

"without cost to the Commonwealth."

For the last 40 years, the SSA has provided reliable service to the island without running a deficit. Overall, the SSA has been responsibly run in the public interest. Its constituency recognizes that and supports the SSA; criticism from users - inevitable for any transportation system - most frequently concerns operational details. Tinkering with what has been a successful public authority needs, therefore, to be approached with reluctance and, certainly, with caution.

Second, The increased populations on the Cape and Islands, particularly in the summer season, present regional transportation problems with which the SSA, as a public authority, must deal. The residents of Hyannis and Wood's Hole and their community leaders are concerned to the point of anger that they are choked by more automobile traffic than they can handle, and that ferry bound traffic greatly aggravates those problems. Those communities agitate for the relief of pressure on their roads by directing some Islands-bound vehicles to an off-Cape port. New Bedford is well situated to perform that function.

1. Composition of the SSA. Although the executive order constituting the Task Force did not expressly ask it to consider the makeup of the SSA, the issue of representation is so powerful an element in the debate among the interested communities, that failing to deal with it in a report on ferry service to the Islands would be like staging Hamlet without Hamlet.

Under the 1960 legislation that reconfigured the SSA, the members of the Authority were drawn: one from Nantucket, one from Martha's Vineyard, and one from Falmouth. Were the SSA to run a deficit, Martha's Vineyard would have to pay for 50% of it, Nantucket 40%, and Falmouth 10%. From the time of the 1960 reconfiguration of the SSA, it has not run a deficit.

There has been a non-voting member from Barnstable since 1991. See St. 1991, c. 33, § 102. The non-voting status of the Barnstable member has poisoned the atmosphere in which the SSA and the people and public officials of Barnstable must co-exist. Issues that ought to be susceptible of rational and cooperative solution become instead occasions of rankling - for example, whether a street should be one-way, the location of parking areas, or the staging areas for trucks. Perhaps that ought not to be surprising in the state where "no taxation without representation" was a founding battle cry. People tolerate the decisions and inconveniences imposed by public authority better when they have a voice in them. For that reason, we recommend that the Barnstable member become a full voting member of the SSA. With the Barnstable member, thus, in parity with the Falmouth member, the Town Council of Barnstable should no longer have the power, conferred by St. 1993, c. 33, § 105, to disapprove acquisitions and capital improvements by the SSA in Barnstable.

As regional considerations press for pragmatic use of New Bedford as a supplementary off-Cape port, we recommend the addition of a voting New Bedford member to the SSA. Here again, a voice facilitates rational, business-like decision making - as opposed to high-decibel staking out of positions.

Although we think representation on the SSA from Barnstable and New Bedford will

promote the mission of the SSA, we recommend that voting control on the SSA be maintained by the Islands. It is the people of the Islands - particularly the year round residents - who need reliable ferry service provided as economically as possible. We have considered but rejected increasing the members to seven, so that the Islands would have four and the mainland ports would have three. As boards grow larger, however, they become more difficult to convene and generally less efficient. We recommend a board of five members, with the votes of the members weighted so that the Martha's Vineyard member's vote would weigh 30% of the whole, the Nantucket member's vote would weigh 25% of the whole, and each mainland member's vote would weigh 15% of the whole. On each vote, should the Island members vote together, they would constitute a controlling block of 55% of the whole; i.e., the Island members voting together would be a majority.

2. Share of a deficit. Participation in the governance of the SSA should carry with it responsibility for deficits should they occur. It is only reasonable that when the SSA members take steps that have economic consequences, that those consequences be shared by the participating regions. Responsibility for a deficit by the communities represented on the SSA has contributed to the avoidance of them. We recommend that the regions participate in deficits in the same proportion as their voting strengths, i.e.: Martha's Vineyard 30%, Nantucket 25%, Barnstable 15%, Falmouth 15%, and New Bedford 15%.

3. New Bedford as a relief port. Automobile traffic on Cape Cod during the summer season would be uncomfortably heavy even if there were no Island traffic at all. Nevertheless, traffic moves like a fluid and the final bit of load can plug the pipe. Particularly in Woods Hole and also in Hyannis there are surges of car and truck traffic that bring movement to a standstill, produce noise, and foul the humid summer atmosphere with exhaust fumes. The SSA recognizes this and has entered into an agreement with Barnstable to reduce the freight from the Hyannis terminal to Nantucket to the levels of 1997, with substantial progress toward that objective by 2003. As to Martha's Vineyard, the SSA has set a goal of bringing automobile traffic back to the volume of 1995; for Nantucket to the volume of 1996. We think, in the final analysis, that reduction of automobile traffic on, and, therefore, to the Islands can only be the product of planning decisions on the Islands.

Even if the SSA and the Executive Office of Transportation and Construction succeed in enticing some Island-bound travelers to off-Cape parking facilities or extending rail service to the Cape, we anticipate increasing demand for car reservations on ferries to the Islands. That has been the relentless pattern of the last three decades. The slope of the ascending graph may flatten, but it is unlikely to decrease.

Of the traffic to the Islands, between 45% and 50% of it comes from New York, Connecticut, central Massachusetts, and places other than north of the Cape. To the extent these travelers come by car, they drive near New Bedford. Sparing them the snail lines over the bridges to the Cape and on the roads to Hyannis and Woods Hole should be attractive.

We recommend, therefore, that the SSA plan for off-Cape service from New Bedford to the Islands. This will be alternate service. The fears of the islanders that they will be deprived of

access to shopping and medical care on the Cape are misplaced. We do not suggest, and the SSA has no plans for, the termination or even severe curtailment of service to Nantucket from Hyannis and to Martha's Vineyard from Woods Hole. Those runs are about one-fourth the mileage of runs through Quick's Hole from New Bedford.

Since the Task Force was convened, the SSA has announced it would run passenger service from New Bedford to Martha's Vineyard. It has acquired a vessel for that purpose. To make a New Bedford service effective, the city could greatly assist by working with the SSA to develop a passenger terminal and parking facilities in New Bedford. For the SSA, operating service to Martha's Vineyard and Nantucket from that port will involve acquisition of higher speed ferries with car carrying capacity. The SSA is engaged in preliminary financial analysis of the capital costs involved, the costs of operation (a fast ferry running to the Islands burns more fuel but can make many more runs in a day), and analysis of the demand. While New Bedford service for certain visitors to the Islands may be convenient and more pleasant, the SSA will have to keep rates roughly at parity with the rates from Woods Hole, even though the trip is longer. Were it otherwise, visitors may prefer to pay in inconvenience for the price of lower ferry costs at Woods Hole.

These are operational details, important to be sure, but details nonetheless. The Task Force does not purport to prescribe the timing or volume or fares of relief port service from New Bedford. Nor do we prescribe whether the supplementary service uses SSA vessels or vessels operated under SSA license. Finally, we do not prescribe that the SSA must carry freight from New Bedford. As a regional planning matter, that is desirable but the SSA is best equipped by experience and staffing to work out service that can pay its way. We repeat, the SSA has succeeded in providing safe and reliable service to the Islands without running a deficit and we do not wish to tamper with a machine that is not broken.

4. The freight pilot program. From May through October, 2000, the SSA has operated a pilot program of freight operation from New Bedford to Martha's Vineyard and return. The SSA invited proposals and let a contract for the service to Hvide Marine, Inc. For the first year of operation, the program was not a financial success. Occupancy never rose above 57% (during August). The SSA ran a loss of \$1,291,000 in operating the service. Those costs were borne, in the form of a surcharge, by users of the Woods Hole to Martha's Vineyard service. That said, the pilot program succeeded in removing approximately 1900 commercial vehicles from Woods Hole roads. There have been assertions that the SSA designed the pilot program to fail. We think that an unjust and facile charge. We are satisfied that the SSA has acted in good faith in conducting the pilot program.

Part of the difficulty of the service, as it turned out, was that a trucker who went out on the 5 a.m. ferry had a six-hour layover on Martha's Vineyard before being able to get a ferry back. Hvide offered to run an extra round trip per day without additional cost to the SSA (assuming, apparently, that the additional patronage revenue would carry the third trip) but the SSA, we think inflexibly, did not make that additional experiment. It also does not appear that reservations personnel at the SSA were alert to recommending diversion to truckers who were on standby basis at Woods Hole. Nor did the SSA make it clear that small commercial vehicles

were eligible for standby service on the New Bedford run.

The SSA proposes to run the pilot program another season, one hopes with modifications. It also appears that freight shipping habits do not change easily. Having the program available longer and on a schedule that allows a better turnaround may build patronage of the alternative service. Logically, it should be worth a freight carrier's while to avoid the heavy Cape traffic in high season. That assumes whole truck loads are bound for the Islands. In practice, a significant number of trucks that deliver goods to the Islands deliver as well to the Cape. Studies conducted for the SSA project an increase in freight traffic to the Islands at the rate of two percent a year. That is 20% over a decade. Those studies may not anticipate the future accurately. It is likely, however, that there will be some additional traffic. That traffic cannot move through Woods Hole and Hyannis without undue burden on those communities and the Cape in general.

Finally, on March 26, 2001, Seabulk International Inc. (formerly Hvide Marine) applied to the SSA for a license to run year round freight and passenger vehicle service (the latter on a no reservations, standby basis) to Martha's Vineyard and Nantucket. We do not purport to have analyzed the proposal in any detail. It shall be for the SSA to consider whether this may serve as a freight service experiment that could be conducted at no cost to the SSA.

5. Licensing. It is the SSA's responsibility to run year round freight and passenger service to the Islands. October through April are lean months, when the service runs at a loss. The Legislature foresaw that and conferred on the SSA the power to license vessels from Massachusetts ports.³ Were it otherwise, private operators could skim the cream off the fat summer season. We think the SSA must retain its licensing authority if it is to discharge its basic responsibility of providing year round service without deficits (or off-season rates) that would impose a hardship on the participating communities, particularly those on the Islands.

The SSA has in place a statement of policy relating to the licensing of private vessel service to the Islands. Within the broad criterion of public convenience and necessity, it considers: a) whether there is a demand for the additional service, i.e., is there demand for transportation from a new location or from an existing location; b) is the proposal a cream skimming operation, i.e., will it impair the fiscal soundness of the SSA's operation; c) recognition of the grandfather status of certain private carriers running service to the Island in 1973 (Hy-Line out of Hyannis and the Island Queen out of Falmouth)⁴; d) impact on the license applied for on traffic on the Islands; e) ability of the applicant to provide the service described in the application, e.g., is there an adequate landing site; f) physical impact of the service applied for on the affected communities.

³Vessels of less than 75 tons or that carry fewer than 40 passengers are exempt from the SSA licensing requirement. St. 1973, c. 942. All vessels that carry passengers must be certified by the Coast Guard.

⁴St. 1973. C. 942.

The Task Force considered whether there should be some sort of administrative review of SSA licensing decisions. We concluded that this would only encumber the procedure. Not only has the SSA established procedures for licensing, its statement of policy requires it to articulate in writing its reasons for grant or denial of a license, or the conditions placed on a license, in light of those policies. There would be no basis for overturning such a decision unless the SSA's findings and rulings showed that it had acted arbitrarily or capriciously. The remedy of a complaint in the nature of certiorari is already available to correct arbitrary and capricious conduct.

In the exercise of its discretion, we think the SSA should be generously disposed to applications for license amendments involving the upgrade of existing vessels (e.g., faster ones) that provide the same volume and level of service. If the request is to substitute a vessel that accommodates a wider range of service, e.g., a vessel that accommodates automobiles and freight trucks for a vessel that carried only passengers, the SSA may properly look to its financial interests.

6. Regional planning considerations. The SSA must be responsive to the regional planning objectives of all the affected communities, on the Islands and the mainland, to the extent those objectives can be harmonized, and always subject to the primary mission of the SSA to provide fiscally sound operation of reliable ferry service to the Islands. Reciprocally, the Task Force recognizes that the Island communities have taken steps to accommodate the Cape's planning needs.

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The Task Force shall file with you a draft of legislation for the reconfiguration of the SSA.

Respectfully submitted,

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