

# A CITIZEN'S GUIDE TO UNDERSTANDING THE MASSACHUSETTS STEAMSHIP AUTHORITY ENABLING ACT

Russell Murphy, Research Professor of Law

February 2021

## INTRODUCTION

The Massachusetts Legislature created the Steamship Authority in 1960 as one of many “quasi-public” agencies in the Commonwealth. The SSA’s enabling legislation, the Enabling Act or Act, sets forth its powers and responsibilities in twenty separate sections. For many, the Act is cloaked in legal language that makes it difficult to understand. That in turn complicates public understanding of what the Authority does, and why. The purpose of this document is to demystify the Act by translating its language, section by section, into a form that citizens can understand. As much as possible, the tone is explanatory rather than critical.

## QUASI-PUBLIC AGENCIES

A definition of “quasi-public” agency is important to an understanding of the Act. These agencies, sometimes referred to as “quasi-public corporations” or “quasi-independent agencies”, are common across the United States and are the product of the post-WWII regulatory/administrative state. They “perform vital governmental functions, delivering essential services such as operating public buses and rail systems, delivering drinking water and managing public pensions...(they) are publically chartered bodies that perform some public function and are controlled by government-appointed boards.

They are not fully public because they operate independently of the legislative and executive branches and do not principally depend on state general funds for operation. They cannot be classified as private entities because they are governed by state appointees and are typically endowed with public powers to collect fees or other revenues, as well as to perform public functions.”

There are currently over 40 such agencies in Massachusetts. It is worth noting that the Steamship Authority was established during a flurry of legislative activity in the 1960s that created the University of Massachusetts Building Authority (1960), University of Lowell Building Authority (1961), State College Building Authority (1963), Massachusetts Bay Transportation Authority (MBTA 1964), Worcester Business Development Corporation (1965), and Massachusetts Housing Finance Authority (1968).

The rise of such entities is attributed to four factors:

- The need to bridge across local jurisdictions for new or expanded government operations.

- The desire to borrow money for projects outside of newly created debt limits or to take advantage of new financial instruments for borrowing more cheaply.

- The desire to circumvent corrupt or inefficient political machines, or to at least appear to create professional and ‘business-like’ operations outside of political influence.

- Urging by private companies for new quasi-public agencies that will partner or contract with their own planned investment opportunities. (MASSPIRG Report Spring 2010)

One commentator referred to these agencies' characteristics as "financial independence, insulation from a wide array of constituencies, a narrow functional focus, distance from elected officials, a dependence on user fees rather than on taxes, and an administrative structure devoid of many of the regulations and restrictions applicable to state and local line agencies." (Alberta Sbragia/MASSPIRG Report).

## THE ENABLING ACT FOR THE STEAMSHIP AUTHORITY.

This report will be most useful to readers who first consult the text of the Act. Please read each section in its entirety before reviewing the explanatory descriptions that follow. (I have opted not to reproduce the full text of each section before offering the "translation" that appears below. However, quoted language from the text is inserted to make descriptions as accurate as possible). The captions or headings for each section are my own, and are not part of the Act. They are designed to give the reader a general idea of the content of each section.

### Section 1. The Steamship Authority.

This section establishes an "Authority" referred to as the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority. (Referred to as Authority or SSA throughout this report). It specifies the purpose and mission of the Authority - to provide "adequate transportation of persons and necessities of life for the islands of Nantucket and Martha's Vineyard" - and gives power to this new agency to "purchase, construct, maintain and operate necessary vessels, docks, wharves, other vessels, equipment, furniture and supplies and to issue ... revenue bonds payable solely from revenues, or funds..." authorized by other sections of the Act.

## Section 2. A Quasi-public Agency.

Section 2 makes it clear that bonds issued under the provisions of the Act “shall not constitute a debt of the commonwealth, nor a pledge of the (full) faith and credit of the commonwealth”. Such bonds are payable solely from funds specified in the Act. All bonds shall state on their face that “the faith and credit of the commonwealth are not pledged to the payment of the principal or of the interest on such bonds”, and that “neither the Authority nor the commonwealth shall be obligated” to pay principal or interest except as provided in the Act.

This language establishes at the outset that the SSA is a quasi-public agency and is generally divorced from any direct funding from the State of Massachusetts.

## Section 3. Composition of the Authority and Voting: Who Does the Authority Represent?

The Steamship Authority is expressly defined in this section as a “public instrumentality”. Under the name Woods Hole, Martha’s Vineyard and Nantucket Steamship Authority it “may sue or be sued, plead and be impleaded (a procedural device to join the Authority into an existing law suit), (enter into a) contract or be contracted with, and shall have an official seal...”.

The remaining paragraphs in this section are crucial to an understanding of the operations of the Authority. Section 3. has been amended four times since its enactment, most recently in 2002. Section 3. structures the Authority as a policy-making body, defines its membership, designates who shall be the “chairman”, requires surety bonds for members of the Authority, and, most importantly, sets up a weighted voting system for all decisions made by the Authority.

The Authority is not an abstraction. Under this part of the Act, it is a “body corporate” that resembles a committee. It is helpful to think of it in these terms, a committee with a chair and rotating members appointed by towns or counties. (Please note that nowhere in this section is there a reference to whom – what interests – members represent. A fair construction of the Act is that members represent the interests of the Steamship Authority and NOT the communities from which they are appointed. This probably means ensuring that the Authority provides the services contemplated by the Act and remains solvent. However, two constraints can be found in the Act. Section 6 requires that the Authority exercise its powers “for the benefit of the people of the commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions”. In addition, it is in the nature of their appointment by public bodies, like select boards or councils, that represented communities have expectations about the nature of representation they will receive from members. This is a political restraint tied to appointment and reappointment. Members are fully subject to public criticism for their decisions.). Here are the specifics.

The Authority consists of five members, one each from the following communities, appointed for three year terms, and removable for “cause”: a resident from Dukes County appointed by the county commissioners; a resident of the county of Nantucket appointed by the county commissioners; a resident of the town of Barnstable appointed by the town council; a resident of the town of Falmouth appointed by the town selectman (now the Select Board); and a resident of the city of New Bedford appointed by the mayor with the approval of the city council.

The member from the town of Falmouth was the first chairman of the Authority. Thereafter, the chairmanship rotates every year in this

order: Nantucket member, then Barnstable, Dukes County, Falmouth and New Bedford. The current chair is the Falmouth member (2021). Members must elect a vice-chairman, secretary, and treasurer (who need not be a member of the Authority).

At the heart of SSA functioning is a system of voting that guarantees that control of all formal Authority decisions rests with the islands of Nantucket and Martha's Vineyard. "The votes of the members of the Authority shall be weighted" such that the votes of the members from Dukes County and Nantucket shall each be counted as 35% of the vote as a whole. If these two communities agree on a vote there is an iron clad 70% vote that settles the issue. Barnstable, Falmouth and New Bedford are given a vote that counts as 10% each. In the language of the Act, "(T)he votes of the county of Dukes County and Nantucket members, if cast on the same side of any motion placed before the Authority, shall pass or defeat that motion". A vote of greater than fifty percent (50%) of the weighted vote is necessary for any action taken by the Authority. Thus, at the end of the day, when Nantucket and Martha's Vineyard agree on a matter, the wishes, interests, or concerns of the other three communities represented on the Authority are, at least formally, not relevant.

Members of the Authority serve without compensation and are reimbursed for expenses incurred in the performance of their official duties. Reimbursement must come solely from funds provided under the Act.

#### Section 4. Express Powers of the Authority.

Section 4 contains a list of eleven specific powers conferred on the Authority. These powers are granted in permissive language, things that the Authority may do, but are not obligations on the Authority. They include power and authority to:

-Acquire, maintain, repair and operate a boat line.

-Issue bonds for the purpose of paying for replacements, new construction, acquisition of vessels and facilities required “to provide adequate service”. The total outstanding amount of these bonds may not exceed 75 million dollars. An unusual provision at the end of this subsection makes any “real estate owned or leased by the Authority in the towns of Bourne and Barnstable that sits on an aquifer from which drinking water is extracted...subject to applicable zoning ordinances and laws”.

-Set rates for fare and charges for service that are “adapted to insure sufficient income” to meet the costs of service. The rates so set are subject to disapproval by the Mass Department of Public utilities after a public hearing. The “cost of...service” that forms the basis for these rates is specified to include operating expenses; taxes; rentals; interest on all indebtedness of the Authority; interest and amortization on bonds or notes issued by the Authority; costs of depreciation of property and “obsolescence and losses in respect to property sold, destroyed or abandoned”; salaries, wages, pensions, and retirement allowances; and “all other expenditures and charges which are properly chargeable against income and surplus”.

Although not directly related to the setting of fares, another provision of Massachusetts law, Acts of 2003, chapter 55, section 11d, permits any city or town within the counties of Barnstable, Nantucket, Bristol, or the County of Dukes County to impose a fee of \$.50 per passenger per departing trip upon all passenger ferry boat trips. The Authority must collect these fees and remit them to the Commissioner of the Department of Revenue, who, in turn, distributes the funds to any city or town that chooses to impose such a fee. These embarkation fee revenues must be placed in a “special fund” which may be used

solely for the purpose of “mitigating” the impacts of SSA operations on such city or town. The fees amount to hundreds of thousands of dollars each year. Issues have been raised about the proper use of these monies by the receiving cities or towns.

-Adopt bylaws

-Acquire, hold and dispose of real and personal property, and lease or charter any of its vessels. This provision introduces for the first time the power of the Authority to license private carriers. Section 4 paragraph (e) lets the SSA “contract by license, lease, charter or other arrangement for the provision of excursion service by other persons to and from ...Martha’s Vineyard and Nantucket from any point on the mainland of the commonwealth, when it shall be deemed necessary or desirable” to do so. By the language of the Act, the SSA is not required to enter into such licenses.

-Enter into contracts and agreements necessary to the performance of its duties, and employ “consulting engineers, superintendents, managers, accounting experts, attorneys, such other employees and agents as may be necessary...and to fix their compensation”. These individuals or agents must be paid solely from the proceeds of bonds or from revenues of the operation of the steamship line. It would appear that this section authorizes the hiring of public relations firms.

-Receive and accept federal agency grants as well as contributions “from any source of either money, property, labor or other things of value...”. The Authority can be a “designated agency’ under federal law. (See Title 23 USC section 139 which makes such agencies subject to environmental review processes when receiving federal funds).

-Hire regular employees of the Authority existing prior to the creation of the new Authority under the Act and recognize seniority

and pension benefits enjoyed by such employees. (Grandfather in previous regular employees)

- Insure employees under the provisions of the Employment Security Act.

- Issue interest bearing or discounted notes for the same purposes as bonds. Notes are generally payable within three years from their dates. If bonds are issued for the same purposes as notes, proceeds from the bonds shall be used to repay the notes and interest thereon.

- Maintain the confidentiality of all information relating to specifically named customers using the Authority's reservations system including passenger names, home addresses, email addresses, telephone numbers, credit and account data, and the dates and times of their reservations and sailings. This information is not a public record. Consent must be obtained for the release of this information. (It has been noted that this provision makes it difficult to determine what kinds of persons and freight are being transported by the Authority).

## Section 5. Revenue Bonds and the Authority's Licensing Powers.

This section provides extensive power to issue bonds "for the purpose of paying for replacements and new construction or acquisition of vessels and other facilities required to provide adequate service". There are numerous technical requirements for the issuance of these bonds. (Please review the text on these matters).

What is most noteworthy about this section is the insertion of a final paragraph which has nothing to do with bond funding. After four very detailed paragraphs dealing with the requirements for operational notes and bonds, the legislature inserted a last paragraph on the

unrelated subject of licensing and permitting of non-Authority vessel transport between the islands and the mainland.

The language of the Act is critical to an understanding of the way the SSA has operated in recent times. “(N)o person shall operate a vessel for the carriage of vehicles or freight for hire or resale by water between the mainland and the island of Martha’s Vineyard or the island of Nantucket or between said islands unless licensed or permitted in writing to do so by the Authority”. The Superior Courts of Massachusetts are given jurisdiction (power) to enjoin or prevent any unlicensed transport. [The statute refers to a petition in equity as the mechanism for enforcing this restriction; the distinction between law (money damages) and equity (compelling a person to do, or stop doing, an act as required by law) is now abolished in Massachusetts. The SSA can simply file a complaint in a Superior Court demanding that unlicensed or unpermitted transport be stopped.]

The Enabling Act creates an unregulated monopoly. Under the voting system of Section 3 described above, Authority members from the islands control 70% of any vote. No private carrier of passengers, vehicles, or freight can compete with SSA vessels unless licensed or permitted by a majority vote of the Authority. Regardless of economic, environmental, efficiency or safety concerns, a decision not to use private carriers is unreviewable. The Act creates no oversight board or similar body to scrutinize the Authority’s exercise of the absolute licensing discretion conferred by its terms. The Authority referred to in the Act is the sole and exclusive governing body for the SSA. Its powers are limited only by the terms of the Act. Members are removable only for “cause”, which is not defined. Other than non-reappointment or resignation, the so-called “members” of the Authority have absolute control over its actions.

## Section 6. The Authority's Other Mandate. Tax-Free Status of the SSA

Section 6 may be an overlooked source of restraint on actions and decisions of the Authority. As a quasi-public agency, it should not be surprising that the Act requires that the “exercise of the powers granted (to the Authority) by this act will be in all respects for the benefit of the people of the commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions...” Whether or not this language was intended for this purpose, it could be construed to require attention to the environmental consequences of everything the SSA does. It certainly applies to economic consequences.

This section expressly recognizes that “the operation and maintenance of the steamship line by the Authority will constitute the performance of essential governmental functions...”. As a result, “the Authority shall not be required to pay any taxes or assessments upon any property acquired or used by the Authority under the provisions of this act or upon the income therefrom.”

Further, any bonds issued pursuant to the Act that result in income (including profits made on the sale thereof) “shall at all times be free from taxation within the commonwealth”.

The SSA exists and operates tax free. The Authority's real properties in Falmouth are valued at approximately \$19,000,000. It is fair to ask, what benefits does Falmouth receive in exchange for the loss of tax revenues on these properties?

Section 7.

Contains only clarifying language and provides no substantive powers or obligations.

#### Section 8. Trust Agreements.

This section allows for bonds or refunding bonds of the Authority to be “secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank...within the commonwealth.” The trust agreement “may pledge or assign the revenues to be received but shall not convey or mortgage the vessels, equipment or property” involved in creating the trust. Language protecting the rights of bondholders may be included in these agreements. Any bank or trust company in Massachusetts may act as a depository of the proceeds of the bonds or other revenues. Trust agreements may include a provision for a sinking fund for security of bondholders. Expenses incurred in carrying out these provisions may be treated as a cost of operating the steamship line.

#### Section 9. Permanent Funds for Authority Revenues. Deficiencies and Short Falls: Who Pays When the Authority Loses Money?

Section 9 requires that revenues derived from the operation of the steamship line be “set aside at regular intervals” according to a list of first to last priorities. In addition to this precise order, amounts and purposes are specified as follows.

(1). Operations Fund in an amount sufficient to pay the “cost of maintenance, repair and operation of the steamship line for the current month and the next ensuing month, and to maintain working capital for such purposes” in an amount not exceeding 1/36<sup>th</sup> of the operating budget for the then current fiscal year.

(2). Sinking Fund in a sufficient amount to pay interest on and for amortization and payment of principal on all bonds as they become due and payable.

(3). Replacement Fund if such is provided for in a resolution authorizing the issuance of bonds in an amount deemed necessary or advisable for “depreciation of property and for obsolescence and losses in respect to property sold , destroyed or abandoned, and for improvements to and acquisition of real and personal property”. Surplus amounts (“accumulated amounts not needed” for these purposes) may be transferred to the Sinking Fund above, to be used for the “purchase or redemption of bonds”.

(4). Reserve Fund that must be maintained at “a level equal to five per cent of the principal amount of all bonds outstanding or six hundred thousand dollars, whichever is greater”.

(5). Any other surplus funds - “all of the remaining revenues” – must revert to the Sinking Fund to be used “within a reasonable time for the purchase or redemption of bonds, or, in the Authority’s discretion, to be transferred to the replacement fund or to the capital improvement fund to be used for any purpose for which bonds may be issued”. (This is the only reference in this section to a “capital improvement fund”).

With these provisions as backdrop, Section 9 goes on to address the crucial question of what happens if the SSA has a bad year financially. The starting point is this sentence. “Whenever the income of the Authority is insufficient to meet the cost of the service, as defined in section four, the reserve fund shall be used as far as necessary to make up said deficiency”.

What happens if there are not sufficient funds in the Reserve Fund? The short answer is that the State of Massachusetts will cover the

deficiency. The process is straight forward. At the end of any calendar year in which “the amount remaining in the reserve fund shall be insufficient to meet the deficiency...the Authority shall notify the state treasurer of the amount of the deficiency, less the amount...in the reserve fund applicable thereto, and the commonwealth shall thereupon pay over to the Authority the amount so ascertained and the Authority shall apply the amount received...in payment of such deficiency”. If there is a delay in the payment of these funds from the State, “the Authority shall borrow such amount of money as may be necessary to...make all payments as they become due”.

The Act is thus clear that, while the Authority is independent of the State of Massachusetts for most purposes, it is still a sufficient agent of the State that it must be financially protected by State funds, at least initially upon suffering financial losses during a given calendar year. As will be seen below, this is a temporary bailout, since ultimately the SSA’s losses, and the State’s covering of the losses, is passed on to the communities that make up the Authority’s areas of service.

Skipping forward to that part of the system, Section 9 first allows the state treasurer to borrow “at any time...such sums of money as may be necessary to make...(deficiency) payments” to the Authority. These funds must be repaid after the State recoups its payments.

If Massachusetts is required to cover SSA deficiencies in a given calendar year, the Act in Section 9 empowers the State to make an assessment in the amount of a deficiency. “(Such amount, with interest or other charges incurred in borrowing the money for the purpose...shall be assessed on the towns of Barnstable, Falmouth and Nantucket and the city of New Bedford and the county of Dukes County, in the following proportions: 10 percent each on Barnstable, New Bedford and Falmouth, 35 percent on Nantucket and 35 per cent on the county of Dukes County.” It is noteworthy that these

percentage amounts are equal to each community's voting power in formal actions taken by the Authority under Section 3 above. The Enabling Act passes annual losses and deficiencies first through the State and then ultimately to these local communities.

The State of Massachusetts has a second, additional, obligation to cover situations in which the Authority cannot meet its financial commitments. "If at any time any principal or interest is due or about to become due on a bond or note issued or assumed by the Authority, and funds to pay the same are not available, the Authority shall certify to the state treasurer the amount required to meet such obligations, and the commonwealth shall thereupon pay over to the Authority the amounts so certified". Either the Authority or the holder of an unpaid bond or note can sue the State in Suffolk Superior Court to compel it to make such payments.

Independent of these provisions, Section 9 allows the SSA to temporarily borrow money and issue notes if it "has not sufficient cash to make payments required in the course of its management and operation of the steamship line and other properties under its control".

Lastly, what happens if in a calendar year the Authority enjoys a surplus? "If...the reserve fund shall exceed the amount established therefore, the Authority shall deposit such excess in the sinking fund, to be used within a reasonable time for the purchase or redemption of bonds outstanding". If there are none, the funds must be paid as reimbursement to the State for any amounts it has paid the Authority under this Section and "the commonwealth shall (then) thereupon distribute the amounts so received to the towns assessable for a deficiency...in proportion to the amounts for which they may be so assessed".

This entire system is subject to one very significant caveat. It does not apply to “amounts as may be appropriated by the general court” to cover losses or deficiencies in the SSA budget for any calendar year. The legislature is always free to provide funds for the Authority, or temporarily suspend operation of Act requirements, in a supplemental budget appropriation or other legislation. One effect of this provision is the potential to relieve the cities and towns from the assessments required by the Act. The SSA is a quasi-public agency and, as such, the State is always entitled to bail it out of poor financial conditions.

Section 9A. Additional Reimbursement to the Authority from the State.

Under this 1964 amendment, Section 9 is modified by authorizing the Authority and the State to enter into contracts whereby “the commonwealth agrees to reimburse the Authority for an amount equal to ninety per cent of the debt service on any bonds issued in respect of vessels, equipment or facility for mass transportation acquired after the establishment of the Massachusetts Bay Transportation Authority, less amounts available from revenues of any reserve fund or sinking fund for such debt service.”. The MBTA was established in 1964. These contracts must contain a provision that if the Section 9 Reserve Fund in any given year exceeds the amount established for it, then the excess amount paid to the commonwealth for distribution to the towns must be reduced by “any amount previously advanced by the commonwealth for purposes of ...(Section 9) and not otherwise repaid to it”.

Section 10. Revenues are Held as Trust Funds.

All moneys received by the Authority under the Act, whether proceeds from the sale of bonds or as revenues, are designated as trust funds to be held and applied only as provided in the Act. Any officer, agency, bank or trust company holding such funds must act as a trustee

thereof and apply them only for purposes set forth in the Act. 1983 Amendment.

#### Section 11. Revenue Bonds are Negotiable Securities.

Revenue bonds, bonds and refunding bonds issued pursuant to the Act are securities. Various entities such as insurance or trust companies or other holders may legally invest them. Revenue bonds may be legally deposited with and received by any state or municipal officer or agency or political subdivision of the State for any purpose authorized by law. 1983 Amendment.

#### Section 12. Bond Holders and Trustees May Sue to Enforce Rights.

This section states again the right of bond holders and trustees under trust agreements to “protect and enforce” any rights available under Massachusetts law, and “all duties required by the act” or Authority resolutions or trust agreements.. A concluding and somewhat unclear provision allows actions for “fixing, charging and collecting of tolls and charges for the use of the project”.

#### Section 13. Reports. Accountability.

The Authority is required to “make an annual report of its activities for the proceeding calendar year to the governor and the general court (the Massachusetts legislature). The report must be submitted on or before the first day of April in each year and must set forth “a complete operating and financial statement covering its operations during the year”. In addition, the State Auditor must “cause an audit of the books of the Authority” at least once per year. No date or deadline for such audit is stated. The audit must be “completely independent” of the Authority and is a public record.

## Section 14. The Port Council.

To the extent that there is any oversight of the acts and decisions of the Authority it is created in this section by the establishment of a Port Council, also referred to as “the board”. The precise power of this body is stated as “the power to review the annual budget of the Authority and advise the Authority members concerning any activities underway or proposed in any port community in which the Authority operates. The board shall have access to such books, records and files of the Authority as it may deem necessary and desirable...”.

The membership of the Council consists of seven appointees with staggered terms, one each from Falmouth, New Bedford, Barnstable, Oak Bluffs, Tisbury, Nantucket, and Fairhaven. Members serve without compensation but receive reimbursement for expenses necessarily incurred in their service on the board.

The Act is silent on what “review” and “advise” means. More importantly, it fails to specify what the Authority is required to do with the advice offered by the Council. In this sense it is difficult to measure the influence of the board’s nonbinding recommendations on actual decisions made by the Authority.

Section 15. Strikes and Labor Disputes. Conflicts of Interest. Competitive Bidding. Indemnification.

Strikes and other labor disputes that threaten disruption of “transportation of passengers on the steamship line” are subject to the provisions of Massachusetts laws that authorize government intervention to prevent the provision of essential public services.

Employees and agents of the Authority are legally precluded from having any interest in contracts of the Authority except ones involving

labor or wages. No member of the Authority may be an employee or have a financial interest in any entity that does business with the Authority.

Contracts for construction work or the purchase of equipment, supplies or materials for an amount of \$10,000 or more require the invitation of “proposals for the same” to be advertised in at least one newspaper in the towns of Falmouth, Nantucket, Barnstable, the city of New Bedford, and the county of Dukes County “once a week for at least two consecutive weeks”. This provision does not apply to “engineering or architectural work in connection with a proposed project. Also excepted are “cases of special emergency involving...health, convenience or safety...”.

Most importantly, every contract covered by this section “shall be awarded to the lowest responsible and eligible bidder” unless some other award is “in the public interest.”

Any member, officer or employee of the Authority may be indemnified for personal expense or damages from legal proceedings arising out of actions that are committed within the scope of his official duties or employment. These include civil rights claims under federal law. Claims must be handled by counsel to the Authority, retained counsel, or an attorney for an insurer defending the claim.

Section 15A. Schedules and Proposed Changes in Schedules. Public Hearings. Authority Report on Public Hearing.

This provision has proven to be an important one for communities impacted by SSA operations. It requires a public hearing whenever there is a “proposed schedule change” for passenger ferries or the transport of freight and other products to and from the islands. All proposed schedule changes must be posted and advertised in at least

one newspaper circulating in Falmouth, Nantucket, Barnstable, New Bedford and the county of Dukes County; such posting must be no later than 60 days prior to the effective date of the change. Those objecting to the schedule changes have 30 days from the posting and advertising to submit a petition requesting a public hearing on the changes. The petition must be signed by at least 50 persons “who are residents” of the communities listed above. The Authority then has 14 days from the receiving of the petition to “conduct a public hearing” at the town, city or county “wherever the greatest number of petitioners reside”.

The Authority must at least consider the testimony given at the public hearing. Then, at least 7 days prior to the effective date of the proposed changes, it must “issue a report either maintaining its original proposed schedule changes, or making modifications thereto, and explaining their reasons therefor.

There are no appeals or other administrative reviews of the Authority’s decision on schedules. Schedule changes in this section do not include changes caused by weather, equipment failure or emergency conditions.

Section 16. Predecessor to 1960 SSA. Required Service from Woods Hole to the Islands. The Power to Explore Other Mainland Ports Not Mentioned in the Act.

The predecessor Authority to the SSA created by the 1960 Act, the New Bedford, Woods Hole, Martha’s Vineyard and Nantucket Steamship Authority is abolished, and all of its assets become vested in the new Woods Hole, Martha’s Vineyard and Nantucket Steamship Authority. The same shall assume all of the indebtedness and liabilities of its predecessor. The new SSA takes over everything.

The important provision of this section is that “nothing contained in this act” shall require the new SSA to “provide ferry runs or such transportation of passengers, vehicles or freight to or from ..the mainland...to or from the islands...provided , however, ...ferry runs or such transportation SHALL (emphasis provided) be provided to and from the port of Woods Hole to and from the island of Martha’s Vineyard; provided further that ... ferry runs or such transportation SHALL (emphasis added) be provided to and from the mainland to and from the island of Nantucket...” Also, from April 1 to December 31 ferries must run to and from inner Lewis Bay, Barnstable, to and from the island of Nantucket. Woods Hole service to and from Martha’s Vineyard cannot be eliminated under the Act.

The final paragraph in this section contains an important discretionary power for the Authority. “The Authority may provide ferry runs or (other) transportation between any other port on the mainland, except the town of Fairhaven, and the islands when it shall be deemed necessary or desirable to serve the purposes of this act, land may acquire any business enterprise necessary or convenient for such purpose”. In other words, the Act contemplates the Authority developing mainland ports not mentioned specifically in the Act as may be necessary to provide the services specified in the Act. The Act does not limit new approaches by the Authority.

#### Section 17. Liberal Construction and Interpretation of the Act.

This section characterizes the Act as “necessary for the welfare of the commonwealth and its inhabitants” and, because of this, when questions of interpretation arise, it must be “liberally construed to effect the purposes thereof”. It should be noted that this language reinforces the critical language of Section 6 that all powers granted to the Authority must be exercised “for the benefit of the people of the commonwealth, for the increase of their commerce and prosperity, and

for the improvement of their health and living conditions.” It is for this reason that the Act should be interpreted broadly, or “liberally”, to achieve the overall welfare of the people of Massachusetts.

Sections 18, 19 and 20. Effective Date. Interpretive Standards.

These concluding sections are basically housekeeping. Section 18 makes all provisions of the Act “severable” which means that the invalidation of any one provision does not affect the legality or enforceability of all other provisions. This includes a court finding of unconstitutionality of a specific provision. The rest of the statute remains valid and in effect. Under Section 19, any conflict between the provisions of the new Act and previous legislation is resolved by the current statute being controlling. All previous laws that are inconsistent with the provisions of the Act are declared inapplicable. Finally, Section 20 makes the effective date of the new Enabling Act January 1, 1961.