

## **HISTORIC EVENTS & FACTS INVOLVING CHAMPION AUTO FERRY & THE BRYSON FAMILY**

1. History of Champion Ferry Rates. (Exhibit A)
2. Lawsuit regarding Champion Auto Ferry claiming to be an interstate Water Carrier. (Exhibit B)
3. The first entire contract between Blue Water and Champion Auto Ferry that David Bryson did sign on October 1, 1997. (Exhibit C)
4. Clay Township Attorney letter regarding Champion's Auto Ferry's attempt to avoid regulation and avoid refusal to work with HITA. The Clay Township Attorney states we believe that Champion Auto Ferry's attempt to avoid the requirements of oversight by the Michigan Public Service Commission has been misguided and inappropriate. (Exhibit D)
5. February 19, 2013, Clay Township Attorney sends letter to Supervisor Artie Bryson regarding HITA, answering Artie's following questions – 1.) What is the legal status of HITA? 2.) Is HITA acting in accordance with the Articles of Incorporation? 3.) Can lack of activity result in DISSOLUTION of HITA? 4.) Would HITA have to agree to another transportation authority coming to Clay to regulate the Harsens Island Ferry? The last page states clearly HITA would have to consent to the Blue Water being involved in the oversight and regulation of the Harsens Island Ferry. (Exhibit E)
6. February 21, 2013. Chairman of HITA sends email to then, board member Ann Merle stating David Bryson is falsely claiming HITA of stopping the transfer of authority rights from HITA to Blue Water. It was the Clay Township Supervisor that threatened the lawsuit. The letter also claims Clay is trying to destroy HITA. (Exhibit F)
7. April 5, 2013 – email from Artie Bryson confirming he is glad HITA is on Board. Champion continues to claim HITA was the reason they have not received funding, but this is further proof they were on Board with the new agreement. (Exhibit G)
8. David Bryson did sign the agreement in 1997, but never did sign or agree to it in 2013. The framework from Blue Water is included here which we believe explains why. (Exhibit H)
9. June 14, 2013. Email to Artie Bryson regarding his request for ALL HITA board members to resign. (Exhibit I)
10. August 14, 2014, Bryson's throw a fund raiser for Dan Lauewers, who later introduces House Bill 4807, releasing Champion Auto Ferry from Michigan Public Service Commission control and regulation. (Exhibit J)
11. Legislative Analysis of House Bill 4807 – The apparent problem – this bill is understood to impact only Champion Auto Ferry. (Exhibit K)
12. December 2019 – Champion Ferry crashes into the only operable dock and island residents are stranded for days. The people ask for HITA to become active again. A new Board is appointed and starts working toward alternative transportation.
13. 2021 – The Clay Township Master Plan includes alternative intra-water transportation and is approved by the Clay Twp Board.
14. HITA receives a \$250,000 Grant.
15. April 28, 2022, HITA sends letter to Champion requesting to buy them out. (Exhibit L)
16. May 16, 2022, Champion replied telling HITA they would never sell to them. Then asked HITA to buy an airboat for them to store and maintain, also give them \$50,000 for a new engine, and again wrongly accused HITA of the lawsuit against Champion, when it was Clay Township that brought the lawsuit against Champion Auto Ferry. (Exhibit M)
17. August 26, 2022, HITA responded to Champion inviting them to a meeting, but Champion never responded. HITA explains in this letter that as a government entity they have a fiduciary duty to show the need to give State money to a private business. Again, Champion will not provide what is necessary to work together with HITA to receive Act 51 monies. (Exhibit N)
18. December 11, 2023, Champion again sends letter to HITA attempting to circumvent HITA involvement and again stating they don't want to work with HITA and their attorneys believe they do not have to. They have already acknowledged many times this is not the case. (Exhibit O)



## **EXHIBIT A**

### **HISTORY OF CHAMPION FERRY RATES** **OVER LAST 15 YEARS**

<b><u>YEAR</u></b>	<b><u>Book/20 rate Round trip</u></b>	<b><u>Single ticket round trip</u></b>	<b><u>*Diesel Price</u></b>
2007	\$4.50	\$5.00	\$2.80
2008	\$4.50	\$5.00	\$3.81
2009	\$5.00	\$6.00	\$2.69
2010	\$5.00	\$6.00	\$2.99
2011	\$5.00	\$6.00	\$3.85
2012	\$5.00	\$6.00	\$3.97
2013	\$6.00	\$8.00	\$3.92
2014	\$6.00	\$8.00	\$3.83
2015	\$6.00	\$8.00	\$2.71
2016	\$6.00	\$8.00	\$2.31
2017	\$6.00	\$8.00	\$2.65
2018	\$7.00	\$10.00	\$3.18
2019	\$7.00	\$10.00	\$3.06
2020	\$9.00	\$12.00	\$2.56
2021	\$9.00	\$12.00	\$3.28
2022	\$10.00	\$15.00	early to speculate

\*Diesel Prices are National Retail Prices per gallon

(Is the price of gas justification for rates raising? Compare 2010 & 2020!)

(What maintenance has been done?)

**(WHAT WILL BE OUR RATE IN ANOTHER FIVE YEARS?)**



Decided October 2, 1998, at 9:00 A.M.

## Champion's Auto Ferry, Inc v Public Service Commission

Opinion by Per Curiam. Before: Jansen, P.J., and Neff and O'Connell, JJ.

231 Mich App 699, 588 NW2d 153

**Published Michigan Court of Appeals Opinion**

**Docket No(s) 201174**

**Disposition: Affirmed.**

### Per Curiam.

Appellant Champion's Auto Ferry, Inc., (CAF) appeals as of right, MCL 462.26(1); MSA 22.45(1), from a January 15, 1997, opinion and order of the Public Service Commission (PSC) in Case No. T-1289, a decision made by the PSC under the water carrier act, MCL 460.201 et seq.; MSA 22.91 *et seq.* Initially, the claim of appeal also encompassed the PSC's contemporaneous ruling in Case No. T-1288, but that case has been settled, and that aspect of the appeal has been dismissed by stipulation of the parties effectuated by this Court's unpublished order of May 9, 1997. We affirm.

CAF operates boats that transport passengers, freight, and vehicles between the city of Algonac and Harsens Island. Algonac is located in St. Clair County, in Clay Township, and is bordered on the east and south by the St. Clair River, the middle of which constitutes the boundary between the United States and [Page 703] Canada. At the southerly portion of the city of Algonac, the river is divided into two channels by virtue of the existence of Harsens Island. The international border continues down the center of the south channel, which flows east and south of Harsens Island, while the north channel, which runs between Harsens Island and a portion of the St. Clair County mainland, is wholly within the United States. Both termini between which CAF boats operate are within the north channel of the St. Clair River. The length of the trip is approximately one-half mile.

At the outset, it should be noted that CAF contends, notwithstanding its voluntary adoption of nomenclature suggesting that it is a "ferry" service, that it is a "water carrier" and that it does not operate a "ferry service." The map reflects that CAF's dock in Algonac abuts state highway M-29; its Harsens Island dock abuts state highway M-154. In a strictly technical sense, a "ferry" is a continuation of the highway from one side of the water over which it passes to the other and is for transportation of passengers or travelers with their vehicles and such property as they may carry or have with them. *St Clair Co v Interstate Sand & Car Transfer Co*, 192 US 454, 466; 24 S Ct 300; 48 L Ed 518 (1904). CAF's operation certainly



seems to fit this definition, but the statute simply subjects to regulation by the PSC "any and all persons, firms and corporations engaged in the transportation of freight, passengers, or express, by water, wholly within this state." MCL 460.201; MSA 22.91. The statute thus elides any distinction between "ferries" and other forms of water transportation for regulatory purposes. Accordingly, the remainder of this opinion will refer to the service operated by CAF as a "ferry," [Page 704] although with no intent to prejudge any of the substantive issues raised.

CAF has operated this service since 1937. For the more than one thousand permanent residents of Harsens Island, as well as numerous cottage owners and other visitors, CAF's ferry service is the main link between Harsens Island and the mainland. There are no bridges or competing commercial ferries.

As this Court recited in a December 20, 1996, unpublished opinion addressing a PSC rate order governing CAF's operations, *Champion's Auto Ferry, Inc v Public Service Comm*, unpublished opinion per curiam of the Court of Appeals, issued December 20, 1996 (Docket Nos. 185048, 187124), from at least 1966 onward, CAF voluntarily submitted its operations to regulation by the PSC. In 1992, however, after David C. Bryson, whose grandfather founded CAF, acquired sole ownership of the stock of the company, creating debt on the books of the company by way of payment for the interests purchased, and without expending his own funds, immediately began a campaign to raise rates for the service provided. Several rate increases were allowed by the PSC, but others were rejected. When CAF appealed the PSC's rejection of rate increase requests in the prior appeal, this Court affirmed, finding that the rates established were reasonable rather than confiscatory, that the PSC had properly viewed CAF's operations with respect to their economic effect over a calendar year, rather than adjusting the rates on a seasonal basis, and further held that the PSC had not improperly interfered with management decisions in refusing to recognize the acquisition debt that Bryson had engendered, or a twenty-four percent sal- [Page 705] ary increase Bryson gave himself, in setting rates and charges. *Id.*

Shortly after that decision, on January 6, 1997, CAF announced in a letter to the PSC's Director of Motor Carrier Regulation that, because of its inability to obtain what it deemed reasonable rate relief, it planned to suspend operations in stages. CAF announced its intent, beginning January 15, 1997, at 6:00 A.M., to discontinue the sale of twenty-trip commuter discount ticket books. It proposed to suspend, commencing February 3, 1997, night ferry service between 10:00 P.M. and 6:00 A.M., then afternoon ferry service starting February 10, 1997, except for one afternoon trip to provide service for the school bus, and then on February 16, 1997, at 2:00 P.M., to terminate all ferry service between Algonac and Harsens Island.

That announcement, however, was rendered nugatory by the PSC's decision in the present case, T-1289, because by that decision CAF is required to give twelve months' notice of its intent to discontinue all or any part of its operations. Moreover, the PSC's decision requires CAF to provide service on a continuous basis from 6:00 A.M. to 8:30 A.M. and 4:30 to 6:30 P.M., quarter hourly service from 8:30 A.M. to 4:30 P.M. and 6:30 P.M. to 12:00 A.M., and not less than twice hourly service from 12:00 A.M. to 6:00 A.M. during winter hours, and continuous service from 6:00 A.M. to 12:00 A.M., and not less than thrice hourly service from 12:00 A.M. to 6:00 A.M. during summer hours, except where, through no fault of its



own, CAF is unable to meet that schedule. The order further requires that, to meet those service requirements, CAF maintain a fleet of at least three boats exclusively devoted to the Algonac- [Page 706] Harsens Island run. The PSC's order further mandates that CAF refund excess charges illegally collected, in violation of its then-existing PSC tariffs, by discounting various charges until an amount equal to the overcharge is expended by undercharges. This method involves slight adjustments to the tariffs and reflects the PSC's ancillary renunciation of any intent to seek criminal prosecution under MCL 460.206; MSA 22.96.

The overcharges resulted when, in 1995, CAF petitioned the Interstate Commerce Commission (ICC), which was subsequently abolished pursuant to the ICC Termination Act of 1995, PL 104-88, 109 Stat 803, for a certificate to operate interstate water-carrier service between Algonac and Harsens Island. Such a certificate was granted by the ICC. However, on subsequent petition by the PSC, Clay Township, and a Harsens Island homeowners' association, the ICC vacated the tariff previously approved and held that it was without jurisdiction to regulate CAF's service, which to the ICC appeared to be involved exclusively in intrastate commerce, and also that it independently lacked jurisdiction because CAF was operating a ferry service, which was outside the jurisdiction, as a general proposition, of the ICC. *Viking Starship, Inc. & Common Carrier Application*, 4 ICC2d 634, 636 (1988), *aff'd Cross-Sound Ferry Services, Inc v ICC*, 290 US App DC 39; 934 F2d 327 (1991); *Champion's Auto Ferry, Inc* (ICC No. WC 1548, decision of December 27, 1995). Subsequently, the Surface Transportation Board (STB) vacated any license that CAF had acquired from the ICC and discontinued CAF's effort to acquire such federal authority, ruling that the ICC Termination Act had abolished any federal regulatory function [Page 707] applicable to CAF. The STB noted that, in issuing a license and approving CAF's proposed tariffs,

[t]he ICC did not make a determination that CAF was actually performing interstate operations. If, as Michigan contends, CAF is not carrying traffic as a common carrier in interstate commerce, then CAF would not be protected by an interstate license, even if such a license were effective. Thus, ... even if the license were still in force, and the prior regulatory regime were still in place, any of CAF's activities that did not constitute transportation in interstate commerce would be outside the scope of the license and hence not protected by it. [*Champion's Auto Ferry, Inc* (STB No. WC 1548 [sub-No. 1C], decision issued February 22, 1996).]

It is on the basis of those federal administrative rulings that the PSC in this case concluded that, during the brief time frame when CAF was imposing charges pursuant to the now vacated federal tariffs, which were higher than the PSC-approved tariffs, CAF was illegally overcharging for its services and thus must provide refunds.

CAF presents eleven issues for our determination. All the issues were duly argued before both the administrative hearing officer and the PSC. The standard of review requires that a party aggrieved by a decision of the PSC show by clear and satisfactory evidence that the PSC's decision is unlawful or unreasonable. MCL 460.205; MSA 22.95, MCL 462.26(8); MSA 22.45(8). A decision is unlawful when it involves an erroneous interpretation or application of the law. *Attorney General v Public Service Comm*, 215 Mich App 356, 364; 546 NW2d 266 (1996). A decision is unreasonable when it is unsupported by the evidence. *Id.* The courts must give due deference to the PSC's administrative expertise and legislative discretion,



**EXHIBIT C**

**ENTIRE CONTRACT  
SIGNED BY DAVID BRYSON  
DATED IN OCTOBER 1997  
BETWEEN  
BLUE WATER  
TRANSPORTATION AND  
CHAMPION AUTO FERRY  
(WHICH WAS LATER DETERMINED TO BE  
MISGUIDED AND INAPPROPRIATE)**



OPERATIONS CONTRACT  
BETWEEN  
BLUE WATER AREA TRANSPORTATION COMMISSION  
AND  
CHAMPION AUTO FERRY, INC.

THIS CONTRACT is made and entered into as of and with an effective date of October 1, 1997 by and between the BLUE WATER AREA TRANSPORTATION COMMISSION ("BWATC"), an entity organized and existing under the provisions of the Urban Cooperation Act, P.A. 1967, Ex Session, No 7, as amended, hereinafter referred to as "BWATC" and CHAMPION AUTO FERRY, INC., a Michigan Profit Corporation, hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

WHEREAS, BWATC is an "Eligible Authority" as defined by 1951 P.A. 51, as amended, and is a provider in its own right as well as through contracts with qualified third party contractors of public transportation services in urbanized areas with a Michigan population less than or equal to 100,000 and in non-urbanized areas under Public Law 103.272, 49 U.S.C. 5311 and accordingly, BWATC is eligible to receive a grant of not less than 50% of BWATC'S eligible operating expenses for public transportation water ferry services as defined by the Michigan Department of Transportation ("MDOT") (hereinafter "Eligible Operating Expenses"); and

WHEREAS, BWATC may also be eligible to receive up to 100% funding reimbursement under the Transportation Equity Act for the 21st Century (TEA-21); and

WHEREAS, BWATC, pursuant to the provisions of its above-referenced enabling Act, has been empowered to acquire, plan, construct, operate and maintain public transportation systems and services and facilities and also contract with qualified third party contractor(s) to provide such public transportation services; and

WHEREAS, CONTRACTOR is a qualified third party contractor and is desirous of managing and operating certain public transportation services for persons in the St. Clair County area to utilize CONTRACTOR'S facilities, as described in Exhibit "A" ("Service Program"), attached hereto and made a part hereof; and

WHEREAS, the purpose of this Contract is to state the terms and conditions under which the Service Program will be performed by CONTRACTOR with the possible total or partial reimbursement of Eligible Operating Expenses to be made to CONTRACTOR through BWATC acting as an Eligible Authority under said 1951 P.A. 51, as amended.



HIT 10/10/00 10:10 AM

NOW, THEREFORE, in consideration of the mutual covenants, agreements and representations contained herein, the parties agree as follows:

**I. THE PROJECT**

The CONTRACTOR shall undertake, carry out and complete the public transportation services of the Service Program in accordance with the terms and conditions of this Contract, and as are more specifically described in Exhibit "A", attached hereto and made a part hereof, and in conformance with the Tariff Schedule and Terms as set forth in Exhibit "B" attached hereto and made a part hereof.

**II. TERM OF CONTRACT**

This Agreement shall become effective as of October 1, 1997 and shall remain in effect for a term of two(2) years, through September 30, 1999, subject to the termination provisions below, and further subject to mutually agreeable extensions hereof..

**III. INDEPENDENT CONTRACTOR**

The CONTRACTOR is an independent contractor and retains the right to exercise full control and supervision over it's employees and subcontractors, their compensation and discharge; and agrees to be solely responsible for all matters relating to payment of such employees and subcontractors, including compliance with social security, withholding and all other regulations governing such matters.

**IV. PERSONNEL AND OTHER ASSISTANCE**

The CONTRACTOR will furnish a Project Manager, who shall be selected and serve in that capacity with the consultation of BWATC, at the expense of the CONTRACTOR, and shall provide the active management of the public transportation system at the CONTRACTOR'S facilities.

**V. REVIEW AND APPROVAL OF SUBCONTRACTING**

The CONTRACTOR shall submit any proposal to subcontract any portion of the Service Program to BWATC for its review and approval. Third-party contracts to undertake any part of the work contemplated under this Contract and any amendments thereto shall be approved by BWATC, which approval shall not be unreasonably withheld, prior to the execution to the subcontract by the CONTRACTOR. Approval by BWATC of any subcontract shall not be construed to relieve the CONTRACTOR of any responsibility for the fulfillment of this Contract. The



CONTRACTOR shall not be required to submit and BWATC shall not review and approve CONTRACTORS labor and supplier contracts for work, services, or equipment that they normally perform or supply to the CONTRACTOR.

#### VI. PROJECT ACCOUNTS AND REPORTING

The CONTRACTOR shall timely report all required financial and operating data including the detail of Eligible Operating Expenses and/or proposed Eligible Operating Expenses to BWATC in such manner and at such times as prescribed in the "Michigan Department of Transportation Local Public Transit Revenue and Expense Manual" dated October 1, 1997 and all amendments thereto, hereinafter referred to as the "MANUAL", including future revisions of same, as well as in accordance with all federal/state regulations in so far as the MANUAL applies to the CONTRACTORS methods of operation. BWATC shall use its best efforts to assemble and summarize all such data and reports and assimilate same with other such data and reports under its jurisdiction and control and timely submit same to the Michigan Department of Transportation ("MDOT"). Should special reports, data or other information be required from time to time, BWATC agrees to provide the CONTRACTOR with as much notice as possible to respond to the request.

#### VII. MAINTENANCE OF RECORDS

\* In the event that BWATC is successful in obtaining a grant on behalf of the CONTRACTOR for operating funds and the CONTRACTOR accepts the funds, the CONTRACTOR shall keep time sheets and other personnel records, invoices, canceled and voided checks, journals, maintenance records, and all other supporting documents pertaining to the Service Program operation for three (3) years from the date of the final payment by BWATC under this Contract.

#### VIII. AUDIT OF ACCOUNTS AND RECORDS

→ In the event that BWATC is successful in obtaining a grant on behalf of the CONTRACTOR for operating funds and the CONTRACTOR accepts the funds, the CONTRACTOR shall have its own independent auditing firm ("CONTRACTOR'S AUDITORS"), perform a compiled audit in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, of the books and records of CONTRACTOR for any fiscal years ending September 30th, for which funds are received to ascertain CONTRACTOR'S Eligible Operating Expenses as defined in Public Act 51 of the Public Acts of 1951, as amended, and as further defined in the MANUAL; and, further, CONTRACTOR agrees to have said audit performed within 90 days of the close of the September



30th Fiscal Year which shall be on or before December 31, 1998 for the first Contract Year under this Contract; and CONTRACTOR shall require the CONTRACTOR'S AUDITORS to deliver by e-mail, fax, or otherwise the said audit results to BWATC'S auditors, Stewart Beauvais & Whipple, P.C. The CONTRACTOR shall also permit BWATC or said Stewart Beauvais & Whipple, P.C., or its authorized representative, to audit CONTRACTOR'S accounts and records pertinent to the reimbursement of operating funds to the Service Programs operations at any reasonable time during the life of this Contract and any reasonable time within (3) years from the date of final payment by BWATC under this Contract. Such audit may extend to the records or related entities and subcontractors to the extent necessary to verify charges to the Service Program.

#### IX. COMPLIANCE WITH LAWS

The CONTRACTOR and its subcontractor(s) shall in the performance of this Contract, comply with applicable state, federal and local statutes, ordinances and regulations, including, but not limited to the following:

- (A) Implementing and maintaining the drug and alcohol testing program required by the United States Coast Guard;
- (B) Timely obtaining and providing the audit reports and information required in Paragraph VIII, above, if required.
- (C) Collecting, maintaining and submitting to BWATC on an as needed basis, all reports and information on operations required by the MANUAL and other regulations.

#### X. NON-DISCRIMINATION

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, sex, age, handicap, religion, ancestry, marital status, national origin or place of birth. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment with out regard to their race, color, sex, age, handicap, religion, ancestry, marital status, national origin or place of birth. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection of training including apprenticeship. In connection with the performance of this Contract, the CONTRACTOR shall comply with the provisions of the State of Michigan "Prohibition of Discrimination in State



Contracts", as set forth in Appendix "A", attached hereto and made a part hereof. CONTRACTOR further covenants that it will comply with the Civil Rights Act of 1964 (78 Stat. 252) and the Michigan Civil Rights Acts of 1976 (Act No. 454, P.A. 1967) and will require similar covenants on the part of any consultant and/or subcontractor employed in the performance of this Contract.

#### XI. INTEREST OF MEMBERS OF CONGRESS

No member of or delegate of the Congress of the United States shall be permitted any share or part of this Contract or to any benefit arising therefrom.

#### XII. INTEREST OF PUBLIC OFFICIALS

No member, officer or employee of any public body, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or the benefits thereof.

#### XIII. INSURANCE

- (A) CONTRACTOR shall maintain statutory worker's compensation and/or Jones Act, employer's liability insurance for a minimum of \$1,000,000 for each of CONTRACTOR'S employees and require such insurance for all employees of any subcontractors.
- (B) CONTRACTOR shall maintain comprehensive general liability insurance with a limit not less than \$1,000,000, including contractual liability.
- (C) The specified insurance coverage shall be with an insurer rated "A", or better, by A.M. Best. The policies shall add BWATC as an "additional insured" and copies of the Certificates of such insurance shall be timely furnished to BWATC. Either the CONTRACTOR or the insurance carrier will give 30 days notice to BWATC prior to any cancellation or change in coverage.

#### XIV. INDEMNIFY AND SAVE HARMLESS

The CONTRACTOR shall indemnify, defend and save harmless BWATC, its officers, agents, employees, and Members of the Board of the Commission of BWATC from any and all liability claims, losses and damages, including costs and attorney fees, occurring or resulting from any act, omission, or chargeable to the CONTRACTOR, its officers, agents, employees, or subcontractors, arising under and pursuant to this Contract.



Subject to the limitations contained in Paragraph XXII of this CONTRACT, BWATC shall indemnify, defend and save harmless CONTRACTOR its officers, agents, employees, and Members of the Board of Directors of CONTRACTOR from any and all liability claims, losses and damages, including costs and attorney fees, occurring or resulting from any act, omission, or negligence of or chargeable to BWATC, its officers agents, employees, or subcontractors, arising under and pursuant to this Contract.

#### XV. SERVICE SCHEDULING AND INTERRUPTION

CONTRACTOR shall establish scheduling of service to be provided under the Service Program. The CONTRACTOR shall have authority to amend the scheduling in its reasonable discretion.

#### XVI. PASSENGER FARES AND OTHER REVENUE

The CONTRACTOR and BWATC agree that the service will be provided to the public exclusively through the collection of users fees. CONTRACTOR agrees to maintain it's fares to the public at a competitive price level as established by other competing water carriers in the area which are engaged in similar activities. If CONTRACTOR feels compelled to increase it's rates above the prevailing competitive level, it shall limit the volume weighted annual average of the aggregate of increases to not more than the change in the producers price index plus 5% using the effective date of the previous rate increase and the current competitive level as a base.

CONTRACTOR will give 30 days notice to BWATC of any rate or tariff change and will include the relevant competitive data or calculations for the BWATC file.

#### XVII. COMPENSATION TO CONTRACTOR FOR OPERATING COSTS

If BWATC is successful in obtaining a grant to partially offset the CONTRACTOR'S operating cost and if the CONTRACTOR agrees to accept the funds, the CONTRACTOR shall reduce the user fee fares to the public to compensate for the additional operating income.

#### XVIII. PAYMENT OF BWATC'S ADMINISTRATIVE COSTS

BWATC has and will continue to incur substantial administrative and staff as well as accounting, audit and legal expenses in BWATC'S capacity as an Eligible Authority and under this Operating Contract, including, but not limited to, assembling of all relevant data from third party participants such as CONTRACTOR; preparation, handling and processing of annual Operating Program Grant Application(s) with MDOT; reviewing and monitoring on a



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monthly, quarterly and annual basis, the Eligible Operating Expenses and Nonurban Costs of CONTRACTOR, BWATC, MDOT and other third party providers of public transportation services; monitoring of CONTRACTOR'S compliance with all federal and state regulations; reviewing and/or implementation of annual audit(s) of Eligible Operating Expenses and/or Nonurban Costs and supervision of any required financial adjustments; and attention to all other matters required under this Contract. As compensation for this work and expense CONTRACTOR shall pay BWATC the sum of Four Hundred (\$400.00) dollars per month. Notwithstanding anything to the contrary in this Contract, CONTRACTOR shall not be responsible for paying BWATC any of the compensation set forth in this Paragraph until such time as CONTRACTOR is paid (reimbursed) for its "not less than fifty (50%) percent of Eligible Operating Expenses" as set forth in this Contract whether on a monthly, quarterly or annual basis. Further, BWATC shall have a right of set-off and may first deduct the accumulated compensation owing from CONTRACTOR to BWATC, prior to BWATC remitting the balance to CONTRACTOR. All parties agree that the Four Hundred (\$400.00) Dollar per month compensation paid by CONTRACTOR to BWATC is not an Eligible Expense to CONTRACTOR.

#### XIX. TERMINATION OF CONTRACT BY LEGISLATIVE OR COURT ACTION

The Contract may be canceled with the mutual consent of both parties to this agreement upon either Legislative or Court action causing a termination of state and/or federal funds to BWATC.

#### XX. SUSPENSION OR TERMINATION ON CONTRACT

This agreement is non-cancelable and can not be terminated by either party except as specified in Article XXI. Further, BWATC or CONTRACTOR, may, at any time, only with cause or reason, suspend the Contract by thirty (30) days written notice to the other party, until such time as the event or condition resulting in such suspension has ceased or been corrected.

#### XXI. GENERAL CONDITIONS OF TERMINATION

- (A) This agreement shall automatically renew for additional one(1) year terms unless either party gives written notice of their intent to terminate the agreement.
- (B) The notice of intent to terminate the agreement shall be presented to the other party a minimum of 6 months prior to the expiration of the agreement.



- (C) Upon notification of termination of this contract, the CONTRACTOR shall not incur new obligations for the Eligible Operating Expense grant reimbursement program for the period after the effective date of termination.
- (D) Upon termination, the CONTRACTOR shall submit a final Eligible Operating Expense cost report, and other information requested by BWATC in accordance with Article VIII
- (E) Any notification of termination required hereunder shall be made only in writing and delivered by certified mail, return receipt requested, to the following party, as the case may be:

(1) If to BWATC:

BLUE WATER AREA TRANSPORTATION COMMISSION  
2021 Cleveland  
Port Huron, MI 48060

Attention: Mr. James Wilson, Transit Manager

(2) If to CONTRACTOR:

CHAMPION FERRY COMPANY  
3647 Pte. Tremble Rd.  
Algonac, MI 48001

Attention: Mr. David Bryson, President

## XXII. BWATC ACTS AS FACILITATOR AND NOT AS GUARANTOR

The parties here to understand and agree that in all its undertakings under this Contract that BWATC is acting as a facilitator to channel federal and state public transportation funds through BWATC to CONTRACTOR to obtain reimbursements for part of its CONTRACTOR'S Eligible Operating Expenses and/or Capital Equipment costs. CONTRACTOR is solely responsible for its own operating and capital budget to provide public transportation for persons utilizing its profit facilities in the St. Clair County area and CONTRACTOR is not relying upon BWATC to provide any of its operating or capital funds. Further, BWATC is not guaranteeing payment of any of the "not less than (50%) percent of Eligible Operating Expenses" and/or "Federal Transportation Equity Act for the 21st Century TEA-21 Funds" and in the event some or all of said federal or state funding does not materialize, regardless of the reason, CONTRACTOR hereby agrees to defend, indemnify and hold BWATC harmless from any and all claims, lawsuits, or other matters arising out of such failure of funding.



EXHIBIT A

SERVICE PROGRAM  
TO BE PROVIDED BY  
CHAMPION AUTO FERRY, INC.

CHAMPION AUTO FERRY, INC. (CHAMPION) agrees to provide a water carrier transportation service by transporting vehicles across the North Channel of the St. Clair River which is part of the navigable waters of the United States, for the express purpose of providing a vehicular transportation link between M-154 on Harsens Island, Michigan and M-29 on the mainland of Michigan.

CHAMPION agrees not to abandon or abate the service responsibility of maintaining a safe vehicular transportation link between the State highways M-154 and M-29.

CHAMPION agrees that it will maintain sufficient assets in place to adequately service the prevailing traffic requirements on a 24 hour a day basis.

CHAMPION agrees to operate the service 24 hours a day, every day of the year, except where weather conditions, water or ice conditions, mechanical failure, or the good judgment of CHAMPION'S management dictates that operations be suspended for the safety of the passengers.

CHAMPION agrees to post a Summer and Winter Operating Schedule which it may, at its own discretion, change from time to time, to adjust to local traffic conditions.



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**EXHIBIT B**

**CHAMPION'S AUTO FERRY, INC.**

**LOCAL TARIFF**

**NAMING**

**FARES, RATES, CHARGES, RULES AND REGULATIONS**

**FOR THE TRANSPORTATION OF**

**GENERAL COMMODITIES AND MOTOR VEHICLES**

**BETWEEN**

**HARSENS ISLAND AND ALGONAC, MICHIGAN**

---

**EFFECTIVE: October 1, 1998**  
**(6:00 a.m.)**

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**ISSUED BY:**

**David C. Bryson**  
**President**  
**CHAMPION'S AUTO FERRY, INC.**  
**3647 Pte. Tremble Road**  
**Algonac, Michigan 48001**



## CHAMPION'S AUTO FERRY, INC.

Schedule of rates, Fares and Charges  
Rates and Fares are in U.S. Dollars and Cents per Round Trip

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### General Commodities and Motor Vehicles Between Harsens Island, MI and Algonac, MI

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#### Automobiles and Other Single Wheel Vehicles:

Round Trip (including passengers) .....	\$ 5.00
One-Axle Trailers - Single Wheel .....	\$ 4.00
Each Additional Single Wheel Axle .....	\$ 4.00
Motorcycles, Snowmobiles, Motorized Bikes and Three-Wheel Vehicles (including driver) .....	\$ 2.00

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#### Commuter Discount Ticket Purchases for Automobiles:

20 Round Trips Valid For The 1998 Calender Year .....	\$ 75.00
20 Round Trips Valid For The 1999 Calender Year .....	\$ 80.00

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#### Trucks, Busses, and Trailers with Dual Wheels, Tractors and Large Wheeled Construction Equipment (with lading):

One Axle In Addition to Front Axle (2 axles) .....	\$ 10.00
Gasoline, Fuel Oil, Liquid Propane Trucks and Other Hazardous Materials (2 axles) (special trip required with no other public traffic on board) .....	\$ 22.00
Each Additional Axle (in excess of 2 axles) .....	\$ 10.00
Dual Wheel Pick-up Trucks .....	\$ 5.00
Algonac Community School Buses .....	1 Commuter Ticket

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The following will be transported free of charge:

Employees and their immediate families, State Police, Sheriffs, U.S. Border Patrol, DNR  
Officers and Clay Township Police Officers in marked cars on police business.



## **RULES AND REGULATIONS**

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At the end of the calendar year or upon the effective date of any increase or adjustment in the rates, fares and charges applicable to commuter discount tickets, new issues of such may be purchased from Champion's Auto Ferry, Inc. (which tickets shall be distinguishable from prior issues of commuter discount tickets by either color or imprint).

Commuter Discount Tickets shall be sold in lot sizes of 20 tickets per book. Tickets are valid only for the calendar year in which sold. Each ticket shall entitle the bearer to one round trip for an automobile or other vehicle of equal value.

Champion's Auto Ferry, Inc. will accept for transportation the most recent prior issue of commuter discount ticket for a period of 90 days after the effective date of the new issue tickets providing that the customer also pays in cash the difference between the current issue and the prior issue tickets.

For a period of 90 days after the effective date of new issue commuter discount tickets, prior issue tickets may be used as credit towards the purchase of a new book of commuter discount tickets. Credit will be rounded up to the nearest cent.

Upon 30 days written notice, no discount tickets will be sold to, or accepted from, customers who have an Accounts Payable account owed to Champion's Auto Ferry, Inc. which is in excess of 90 days old. -

A finance charge will be imposed on all Account Receivable Balances that are due over 30 days. This finance charge will be based on the ANNUAL PERCENTAGE RATE of 12%

Transportation of gasoline, fuel oil, liquid propane trucks and other vehicles carrying hazardous materials is subject to the schedule and safety requirements set by the U.S. Coast Guard.

Trucks exceeding 30 tons will only be transported at managements discretion and by appointment only.

Any equipment or vehicles requiring special handling or additional crew during loading or unloading will be subject to a flat rate of \$180 per hour.

Excursion trips outside the normal route will be subject to a flat rate charge of \$180 per hour and are made by appointment only.



## XXIII. COUNTERPARTS OR CONTRACT

This Contract may be executed in several counterparts, each of which shall be deemed to be an original.

## XXIV. SEVERABILITY AND INTENT

Should any part of this Contract be declared to be invalid, unconstitutional or beyond the authority of either party to enter into or carry out, such decision will not affect the validity of the remainder of this Contract, which will continue in full force and effect. This Contract is not intended to be a third-party beneficiary contract and confers no rights on anyone other than BWATC and the CONTRACTOR.

## XXV. ASSIGNMENT

This Contract shall not be assigned, transferred, hypothecated or pledged by either party without the prior written consent of the other party. However, this Contract shall be binding upon the successors or assigns, of the respective parties.

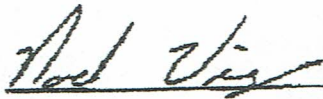
## XXVI. EFFECT

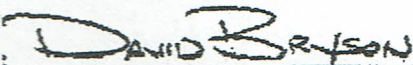
This Contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for CHAMPION AUTO FERRY, INC. and BLUE WATER AREA TRANSPORTATION COMMISSION.

This is the complete Agreement of the parties and may only be amended by a writing signed by both parties.

WITNESSES:

CHAMPION AUTO FERRY, INC.  
a Michigan Profit Corporation

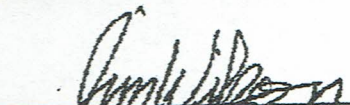


By:   
David Bryson, President

Dated: As of October 1, 1997

BLUE WATER AREA  
TRANSPORTATION COMMISSION



By:   
James Wilson,  
Transit Manager

Dated: As of October 1, 1997



**EXHIBIT D**

**1999 LETTER FROM THE  
CLAY TOWNSHIP ATTORNEY  
TO  
BLUE WATER  
TRANSPORTATION ATTORNEY  
EXPLAINING LAW SUIT  
AND ACHAMPIONS ATTEMPTS  
TO AVOID REGULATIONS  
(IT WAS NOT HITA THAT STOPPED CHAMPION  
FROM GETTING ACT 51 MONIES)**



**McIntosh, McColl, Carson,  
McNamee, Strickler & Rickel**

3024 COMMERCE DRIVE  
FORT GRATIOT, MI 48059

Telephone (810) 385-1500  
Fax (810) 385-5555

John C. McColl  
Robert W. Carson  
John B. McNamee  
Lee A. Strickler  
Nancy Bates Rickel  
James T. Downey, Jr.

Robert John McIntosh  
of Counsel

February 23, 1999

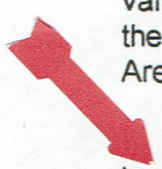
Norman D. Beauchamp  
Attorney at Law  
627 Fort Street  
Port Huron, MI 48060

**RE: CLAY TOWNSHIP vs. CHAMPION'S AUTO FERRY, INC.**

Dear Mr. Beauchamp:

I am in receipt of correspondence from attorney Richard Mosier on behalf of Champion's Auto Ferry, Inc. to your attention with a "cc" to James Wilson, the managing director of the Blue Water Area Transportation Commission, dated February 22, 1999. I thank you for forwarding this correspondence to my attention.

I am writing this letter to not only respond to certain statements made by attorney Mosier, which I believe are in absolute error, but also to summarize our understanding of various discussions held with respect to the various entities that have been involved with the alleged contract entered into between Champion's Auto Ferry, Inc. and the Blue Water Area Transportation Commission.




I start off this correspondence by clearly indicating that I am of the opinion, that based upon my conversations with you, that Jim Wilson acting on behalf of the Blue Water Area Transportation Commission, was involved in a good faith, single purpose effort to obtain public transportation funding for various local transportation operations within St. Clair County. I do not believe that the Blue Water Transportation Commission, at any time, was desirous, or attempting to supersede the jurisdictional authority of local governments and/or transportation authorities, nor replace the oversight operations of the Michigan Public Service Commission with respect to rate regulation of the Champion's Auto Ferry, Inc. We also believe the same to be true of the St. Clair County Board of Commissioners and their involvement authorizing any resolutions with respect to this matter. In fact, in our conversations, Don Dodge, the former county executive and current county commissioner, it has become abundantly clear that the County of St. Clair was only apprised of, and had an understanding that any authorization or resolution by their body was simply to facilitate public funding to various local transportation facilities and also did not involve superseding



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or interjection of a county organization over a local jurisdiction and/or the Michigan Public Service Commission involving the rate regulation or oversight of the Champion's Auto Ferry, Inc.



Unfortunately, the Champion's Auto Ferry, Inc. intentions herein do not appear to be singularly motivated for the purpose of public funding and a subsequent reduction of costs to their customers, but rather as a strategy in which to attempt to avoid regulation by the Michigan Public Service Commission and/or any legitimate local municipal government or authority with valid jurisdiction over the operation of ferry systems within the jurisdictional boundaries of Clay Township. Again, unfortunately, your agency did not have the background of Champion's Auto Ferry, Inc.'s attempt to avoid regulation by the Michigan Public Service Commission and was unaware of their seeking through this purported agreement with BWATC to avoid such regulation.

I am going to attempt in this correspondence to address several areas that I think need clarification, although we have discussed many of these topics in our conversations of the past eight weeks.

I have provided you previously with a copy of the Michigan Court of Appeals decision dated October 2, 1998, affirming the validity of the regulation by the Michigan Public Service Commission of the Champion's Auto Ferry, Inc. and affirming their January 15, 1997, opinion and order of the Michigan Public Service Commission in Case Number T-1289. That Court of Appeals opinion sets forth rather succinctly the chronological history of the litigation and the efforts by the Champion's Auto Ferry, Inc. to avoid regulation by the Michigan Public Service Commission over the past several years in a variety of actions not only involving the Michigan Public Service Commission, but the Interstate Commerce Commission, the Federal District Court, and the State Court. It is my understanding that Mr. Wilson and the Blue Water Area Transportation Commission were not aware of these legal proceedings and actions on behalf of Champion's Auto Ferry, Inc. challenging the validity of the jurisdictional authority of the Michigan Public Service Commission to regulate said operations. The significance of the lack of this information is that Mr. Wilson and the Blue Area Transportation Commission was not aware of any motivation that the Champion's Auto Ferry, Inc. might have had in seeking an alternative means by which to avoid the jurisdictional oversight of the Michigan Public Service Commission.



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In addition, this letter will confirm that the Blue Water Area Transportation Commission and Mr. Wilson were not aware that there had been the establishment of the Harsen's Island Transportation Authority by Clay Township which was validly adopted and incorporated in June of 1996. I have provided you with a copy of the incorporation documents with respect to the Harsen's Island Transportation Authority. That authority was organized and incorporated pursuant to Public Act of 196 of 1986 as amended. I address this specifically because of Mr. Mosier statement in his correspondence as follows:

I also have serious concerns regarding the legitimacy of the Harsen's Island Transportation Authority and frankly doubt it has any Act 51 powers. My review of Michigan statutory law reveals absolutely no authority upon which a township or a homeowners association may rely on exercising control of rates charged by a transportation provider.

I am at a loss to explain that statement given the specific provisions of Act 196 as set forth in MCLA 124.464 Sec. 14(b) and (c) as follows:

(b) Provide public transportation service and public transportation facilities within or without the boundaries of the public authority as provided in Act No. 51 of the Public Acts of 1951, being sections 247.651 to 247.674 of the Michigan Compiled Laws, except that a public authority may not provide public transportation service in an area within the boundaries of a member or a released or withdrawn member, other than an entity withdrawing under section 8(5), of another authority formed under this or any other act without the agreement and consent of the other authority.

(c) Acquire and hold, by purchase, lease, grant, gift, devise, land contract, installment purchase contract, bequest, condemnation, or other legal means, real and personal property, including franchises, easements, or rights of way on, under, or above any property within or without the boundaries of the public authority as provided in Act No. 51 of the Public Acts of 1951, and pay for the same from or pledge for the payment of thereof, revenue of the public authority. Subject to reasonable use, the public authority may use space and areas over, under, and upon the public streets and highways to carry out its duties.

Mr. Bryson, on behalf of Champion's Auto Ferry, Inc., is not only aware of the existence of the Harsen's Island Transportation Authority duly enacted under the provisions



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of Act 196, but had, in fact, been involved in negotiations with the Harsen's Island Transportation Authority over the potential sale to said authority. Mr. Bryson, without explanation, unilaterally broke off negotiations although information which has become known over the last several months may explain his sudden lack of interest in dealing with the local transportation authority.

We have provided you with correspondence between Mr. Bryson, dated May 20, 1997, from Champion's Auto Ferry, Inc. and responded to by the Michigan Public Service Commission on June 2, 1997, as to the potential for an exemption under the Michigan Public Service Commission if the ferry company were to enter into an agreement with a municipality. This evidently was occurring at or about the same time that Mr. Wilson was seeking initially to provide as a conduit for a state transportation fund for the transportation services provided to preschool children through the Economic Opportunity Committee of St. Clair County for disabled and mentally ill clientele through the St. Clair County Community Mental Health Services program and for the disabled clientele of the ARC of St. Clair County.

Pursuant to those ends, there was an agreement dated September 10, 1997, between the St. Clair County Board of Commissioners and the Blue Water Area Transportation Commission which clearly set forth the purpose of said agreement was that the Blue Water Area Transportation Commission could "act as a recipient of public transportation funds through Act 51." There are other relevant provisions to that agreement, but it is clear that the nature and purpose of the agreement was solely to facilitate the obtaining of state transportation funds and to use Blue Water Area Transportation Commission as a conduit for said funding requests. The agreement in writing clearly recognized in subparagraph 4 that the "agreement will not involve the transfer of any functions or responsibilities between St. Clair County and BWATC."

Your own correspondence to Jim Wilson dated September 3, 1997, clearly set forth that both you and Jim Wilson agreed that this proposed formal agreement between St. Clair County and Blue Water Area Transportation Commission patterned under Act 8 of the Public Acts of 1967 Intergovernmental Transfer of Function and Responsibilities did not seem appropriate. You clearly recognized that there was in fact no existing overlap of public transportation services between the two governmental entities and thus, there would be no actual transfer of function or responsibility for a proposed county wide transportation services as would be required and, in fact, the sole purpose of the Intergovernmental Transfer of Function and Responsibilities Act. The agreement was simply to satisfy a check list furnished by MDOT and thus, again, an attempt to fit the proverbial



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round peg into the square hole. Here again, we understand that the efforts were not an attempt to circumvent any applicable law, but simply to facilitate "BWATC becoming a conduit to bring more public funds into the county for county wide transportation services." It is our understanding that the county passed a joint resolution dated September 10, 1997, pursuant to the original agreement dated September 10, 1997.

Evidently, the issue with respect to Champion's Auto Ferry, Inc. remained dormant until the fall of 1998. After the Court of Appeals ruled on October 2, 1998, that the Michigan Public Service Commission did, in fact, act appropriately and had appropriate jurisdiction over the Champion's Auto Ferry, Inc. the agreement which had been passed by the joint resolution of the St. Clair County Board of Commissioners and the Blue Water Area Transportation Commission was requested to be modified adding additional parties including Champion's Auto Ferry, Inc. Despite these new parties being added, a decision was made not to require this amended agreement to go back for concurrent resolutions of the St. Clair County Board of Commissioners and the Board of Commissioners of the Blue Water Area Transportation Commission. This decision was made despite that paragraph 10 of the amended agreement required that this document in fact be approved by the concurrent resolutions of the St. Clair County Board of Commissioners and the Board of Commissioners of the Blue Water Area Transportation Commission. The signature by the executives of those two agencies and by their legal counsel is not sufficient to bind either the St. Clair County Board of Commissioners or the Board of Commissioners of the Blue Water Area Transportation Commission.

The Supreme Court in the State of Michigan made clear an often cited case of Utica Savings Bank vs. Village of Oak Park, 279 Mich 568 (1937), that:

It is fundamental that those dealing with public officials must take notice of their powers. Persons dealing with a municipal corporation through its officers must, at their peril, take notice of the authority of the particular officer to bind the corporation. If his act is beyond the limits of his authority, the municipality is not bound. Id. at 660-661

Despite the attempt to simply classify this amended agreement as a "clarification" there is no question that, in fact, amended an agreement adding new parties and in particular for the first time, a Michigan corporation, Champion's Auto Ferry, Inc. that unlike the other entities was not a non-profit corporation and further did not provide bus transportation as the other non-profit entities did but rather, the ferrying of the general population for profit. Further, none of the other non-profit corporations that served the



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special needs of the community were the subject of regulation by a state agency, nor involved in litigious attempts to avoid such regulation.

In addition, this amended agreement was executed some time in October of 1998, over one year after the concurrent resolution of the BWATC and the St. Clair County Board of Commissioners and further an attempt was made to make this agreement retroactive to the original joint resolution of the board, all without resubmission or approval by either the BWATC or the St. Clair County Board of Commissioners.

This back dated, (and without review or approval of the governing bodies), amended agreement is now the subject of much controversy. It is my understanding that the BWATC submitted a proforma contract which was to simply facilitate seeking funding from the MDOT. Evidently, Mr. Wilson from that point received a different proposed contractual agreement from Champion's Auto Ferry, Inc. with additional language submitted by Champion Auto Ferry, Inc.'s attorneys. Mr. Wilson, evidently, was not aware that the addition of language in the proposals by the Champion's Auto Ferry, Inc.'s attorneys was an attempt to circumvent the regulation of the corporation by the Michigan Public Service Commission and specifically with respect to paragraph 16 involving the oversight of rate regulation. In fact, you have represented quite consistently that it was the understanding of both Mr. Wilson and yourself that any rate regulation by the state agency, the Michigan Public Service Commission, would continue and that this agreement was simply for the purpose of facilitating the approval of public funding. As you are now well aware as a result of attorney Mosier's correspondence of February 22, 1999, that:

"These provisions of the contract reveal Champion's desire to extinguish MPSC's, jurisdiction over the rates it charges."

It has become rather abundantly clear that Mr. Wilson, despite his good intentions, was the unwitting accomplice to a hidden agenda by the Champion's Auto Ferry, Inc. to avoid rate regulation by the Michigan Public Service Commission. By this purported agreement they are attempting to circumvent the consequences of the appellate ruling of October 2, 1998, of which leave for reconsideration was denied on December 29, 1998.

Further, it is also clear that the Blue Water Area Transportation Commission members and the St. Clair County Board of Commissioners were never apprised, nor made aware, that as a result of the September 10, 1997, concurrent resolution that in October of 1998 a contract would be entered into through Mr. Wilson which would involve the oversight




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and rate regulation of a ferry operation in Clay Township. A review of the Blue Water Area Transportation Commission's "Second Restated Interlocal Agreement to Provide Bus Service in the Blue Water Area" authorizes no such activity, nor would the St. Clair County Board of Commissioners knowingly involve themselves in an agreement that would purport to have the BWATC contract for, and be responsible for the oversight and rate regulation of a ferry company in Clay Township, particularly in light of the fact that there is a local municipality and transportation authority located within the jurisdiction of which the ferry system operates.

It should not be lost upon yourself or the Blue Water Area Transportation Commission that the first official act of the Champion's Auto Ferry, Inc. under this purported agreement was to immediately and unilaterally raise the rates without notice to even the BWATC of said action. You should also be aware that it was only after the imminent threat of a legal action in the St. Clair County Circuit Court seeking a temporary restraining order of said action that the Champion's Auto Ferry, Inc. removed their threat of this unilateral and unwarranted action.



We believe that Champion's Auto Ferry, Inc.'s attempt to avoid the requirements of oversight by the Michigan Public Service Commission under the Water Carrier's Act, MCLA 460.201 has been misguided and inappropriate. The Blue Water Area Transportation Commission is not a municipality and the attempt to gerrymand an agreement with the Blue Water Area Transportation Commission and make it apply to the St. Clair County Board of Commissioners does not create a valid operating agreement which would allow an exemption under the Water Carrier's Act and the Michigan Public Service Commission oversight as required by said act. Further, an outside agency would not have authority to come within the jurisdictional boundaries of the Harsen's Island Transportation Authority, a duly enacted transportation authority under state law, and supersede its authority without the agreement and consent of said authority. (See previously cited MCLA 124.464 (b).

In addition, Article 7, Section 29 of the State Constitution specifically reserves to townships the right of reasonable control of highways and streets within their borders. The ferry system is part of that highway system within the jurisdictional boundaries of Clay Township. Neither the county Board of Commissioners or the Blue Water Area Transportation Commission, (a governmental agency between the City of Port Huron and the township of Fort Gratiot) has authority either statutorily or by the constitutional provisions of the State of Michigan to supersede the jurisdiction of the local unit of the government, Clay Township, and its duly enacted transportation authority. We recognize



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that it was not the intent, nor was it ever authorized by either the Blue Water Area Transportation Commission, nor through the St. Clair County Board of Commissioners, to in fact supersede the jurisdictional authority of Clay Township and its duly enacted transportation authority. However, it is the obvious position of the Champion's Auto Ferry, Inc. that that is exactly what they wish to have occurred by virtue of this purported agreement.

At this juncture, we have no alternative given the purported petition by the Champion's Auto Ferry, Inc. to the Michigan Public Service Commission to exempt them from oversight and regulation by said agency, but to file a declaratory action in the St. Clair County Circuit Court, naming all interested parties and challenging both the validity of this purported agreement and asserting the proper jurisdiction of both the township, the Harsen's Island Transportation Authority, and the Michigan Public Service Commission both under state and constitutional law. We believe that there is good cause for both the Blue Water Area Transportation Commission and the St. Clair County Board of Commissioners to rule this purported agreement to be null and void as this agreement was not properly enacted because of the lack of proper statutory authority, failure of a proper ratification by the duly authorized officials of either the Blue Water Area Transportation Commission and/or the St. Clair County Board of Commissioners, and further that the Blue Water Area Transportation Commission and the St. Clair County Board of Commissioners never authorized, nor agreed to the oversight or operation of a ferry system within the jurisdictional boundaries of Clay Township and, in fact, do not have the authority to supersede the local transportation authority without its consent.

At the very least, we would request that in light of these developments that both the St. Clair County Board of Commissioners and the Blue Water Area Transportation Commission exercise its right under the purported agreement of termination as it was clear that it was never the intent of either agency to be involved in the rate regulation and oversight of the Champion's Auto Ferry, Inc. in place of Michigan Public Service Commission or a duly enacted and authorized transportation authority within the jurisdictional boundaries of Clay Township.

In conclusion, we recognize that the intentions were good on behalf of the Blue Water Area Transportation Commission in attempting to make themselves available as a



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conduit for public funding of transportation systems. However, it cannot be overlooked that the unfortunate consequences have occurred.

Very truly yours,



John B. McNamee

JBM:mg

cc: Jon Manos, Clay Township Supervisor  
John J. Fannon, III, Harsens Island Transportation Authority  
Orlo McLane, Harsens Island St. Clair Flats Association  
David Gadaletto, State Attorney Generals Office  
Steven Heussner, Harsens Island Flat Association Attorney



**EXHIBIT E**

**FEBRUARY 19 2013**

**CLAY TWP SUPERVISOR**

**ARTIE BRYSON**

**HIRES TOWNSHIP ATTORNEY  
TO INVESTIGATE HITA'S POWER  
AND CONTROL OVER HIS  
BROTHERS BUSINESS  
CHAMPION AUTO FERRY**

**(What is the legal status of HITA? Can  
inactivity result in dissolution of HITA? Does  
HITA have to consent for Blue Water to give  
Champion Act 51 money ?, and more)**



**JOHN B. MCNAMEE, PC**

ATTORNEY AT LAW  
mcnameelaw@msn.com

1423 Pine Grove Avenue  
Port Huron, MI 48060

Telephone: (810) 982-2020  
Facsimile: (810) 982-5030

February 19, 2013

**VIA FACSIMILE (810) 794-1964**

Art Bryson, Supervisor  
Township of Clay  
4710 Pte. Tremble  
P.O. Box 429  
Clay Township, MI 48001

Re: Harsens Island Transportation Authority

Dear Supervisor Bryson:

This letter will confirm that you have requested that I review several issues with respect to the Harsens Island Transportation Authority. Pursuant to those discussions, I reviewed the following documents:

- A letter dated December 18, 2012 from acting HITA Chairman, Don Vershype, to the Clay Township Supervisor (the copy I received did not have the attachments referenced in the letter).
- Articles of Incorporation of the Harsens Island Transportation Authority dated April 15, 1997 adopted by Clay Township on June 2, 1997.
- Minutes from February 15, 2000 amending the Articles of Incorporation membership of the HITA dated February 15, 2000.
- By-Laws of the Board of Directors of the Harsens Island Transportation Authority.

In addition, I have reviewed file materials from a cause of action titled, *Township of Clay, a Michigan Municipal Corporation and the Harsens Island Transportation Authority, as an Incorporated Public Authority, Plaintiffs vs. Champions Auto Ferry, Inc., a Michigan Corporation, Blue Water Area Transportation Commission, a Michigan Administrative Agency and the Board of Commissioners of the County of St. Clair, a Michigan Municipal Corporation*, Case No. D-99-00781-CZ, and the corresponding file materials from that litigation and resolution in 1999.



I have also reviewed materials from 2010 that involved a proposed Interlocal Agreement between Detroit/Wayne County Port Authority and Clay Township.

I was contacted by legal counsel, Norman Beauchamp, for the Blue Water Transportation Authority and received correspondence regarding same. In addition, I was contacted by Don Verslype, the acting HITA Chairman, regarding his discussions with Jim Wilson of Blue Water Transportation Authority. This morning I had discussions with Norman Beauchamp and Jim Wilson.

Please be advised that I have reviewed in its entirety the Public Transportation Authority Act, Act 196 of 1986; MCL 124.451 et seq. which was the statutory authority provision in which the Harsens Island Transportation Authority was established and I have reviewed and researched Michigan law, both as to Court appellate decision and/or Attorney General opinions on the subject matter as well.

After completing this review, I am setting forth my opinion as follows:

Issue #1: What is the legal status of the Harsens Island Transportation Authority?



The Harsens Island Transportation Authority is a separate governmental agency by the Michigan Supreme Court in *Warda vs. City Council of City of Flushing*, (\_\_\_\_ Mich \_\_\_\_; 2005) wherein the Supreme Court stated:

**"For purposes of the statute, "governmental agency" is defined as "the state or a political subdivision." MCL 691.1401(d). "Political subdivision" is further defined:**

**"Political subdivision" means a municipal corporation, county, county road commission, district, metropolitan district, or transportation authority or a combination of 2 or more of these when acting jointly; a district or authority authorized by law or formed by 1 or more political subdivisions; or an agency, department, court, board, or council of a political subdivision." (MCL 691.1401(b))"**

The Harsens Island Transportation Authority was established in 1997 by Clay Township pursuant to Public Transportation Authority Act 196 of 1986 (MCL 124.451 et seq.). MCL 124.462 provides:

**"A public authority is a public benefit agency and instrumentality of the state with all the powers of a public corporation, to accomplish its purposes and to control, operate, administer and exercise the franchise of the public transportation system and public transportation facilities, if any."**



The powers of a public transportation authority are spelled out in MCL 124.463 and 124.464.



**Issue #2: Whether the Harsens Island Transportation Authority is acting in accordance with the Articles of Incorporation/Bylaws and/or the Public Transportation Authority Act?**

As the Clay Township Supervisor, you had requested the Township auditors, Plante Moran, to obtain copies of the HITA minutes, budget, financial statements, and their scheduled meetings for 2013.

In response to that correspondence, Don Verslype provided you with a letter dated December 18, 2012. In response, Mr. Verslype states:

**"I have received your letter on December 18<sup>th</sup> requesting information from the Harsens Island Transportation Authority (HITA). I am responding to your request, as acting chairman, only as a courtesy because we feel we are a State of Michigan entity as is Clay Township. As a State entity, we are not required to report to a local government entity under Michigan's Transportation Authority act 196; plus, we have not borrowed money from Clay Twp. so we do not need to provide any information to Plante Moran. They have a responsibility to audit transactions incurred by Clay Twp. officials, and since we have not borrowed or received any money from Clay Twp., we are not required to provide financial information to them."**

As set forth under Issue #1 above, Mr. Verslype is correct that the Harsens Island Transportation Authority is a separate governmental agency established by Clay Township pursuant to the Public Transportation Authority Act 196 of 1986. However, the Harsens Island Transportation Authority has reporting obligations imposed upon it by both the statutory provisions of MCL 124.471, as well as the terms of the "Articles of Incorporation" in which the Harsens Island Transportation Authority was established.

First, the Michigan Transportation Authority Act of 196, pursuant to MCL 124.471, provides that:

**"(a) Obtain an annual audit in accordance with sections 6 to 13 of Act No. 2 of the Public Acts of 1968, being sections 141.426 to 141.433 of the Michigan Compiled Laws. The audit shall also be in accordance with generally accepted governmental auditing standards as promulgated by the United States general accounting office and shall satisfy federal regulations relating to federal grant compliance audit requirements. A copy of the annual audit**



shall be filed with the state treasurer in accordance with section 4(2) of Act No. 2 of the Public Acts of 1968, being section 141.424 of the Michigan Compiled Laws and a copy shall be filed with the state transportation department in accordance with section 1h(2) of Act No. 51 of the Public Acts of 1951, being section 247.660h of the Michigan Compiled Laws.

(b) Prepare budgets and appropriations acts in accordance with sections 14, 15(1)(a) to 15(1)(g), 15(1)(i), 15(2), 16, 17, 18, and 19 of the Uniform Budget Act, Act No. 2 of the Public Acts of 1968, being sections 141.434 to 141.439 of the Michigan Compiled Laws.

(c) If ending a fiscal year in a deficit condition, file a financial plan to correct the deficit condition in the same manner as provided in section 21(2), of Act No. 140 of the Public Acts of 1971, being section 141.921 of the Michigan Compiled Laws. A copy of the financial plan shall also be filed with the state transportation department."

The term "shall" is a mandatory requirement. Although I understand the Harsens Island Transportation Authority does not utilize the various funding sources that are set forth within the Transportation Act, it does not alleviate that the requirement to furnish the State Treasurer with an annual audit be performed. An audit may be rather simple, given the circumstances of the Harsens Island Transportation Authority, but it does not alleviate HITA from performing that task. It is correct, however, that the audit is to be filed with the Secretary of State and is not required to be filed under the Transportation Act with the Township of Clay.

Thus, while Mr. Vershype is correct that the Michigan Transportation Authority Act 196 does not require that HITA report to the local government, the expressed terms and provisions of the Articles of Incorporation do in fact require such a report to be filed with Clay Township.

The Articles of Incorporation, pursuant to Paragraph 9, require that the HITA board do the following:

**"The board shall furnish an annual report to the governing body of participating members with respect to the operation, maintenance and financial condition of the authority."**

In my opinion, the HITA board is required to provide the requested copies of their "minutes, budget, financial statements, and their scheduled meetings for 2013" pursuant to Paragraph 9 of the Articles of Incorporation as stated above.



Issue #3: Whether the lack of activity and/or noncompliance with either requirements of the Michigan Transportation Authority Act and/or the Articles of Incorporation may result in the dissolution of the Harsens Island Transportation Authority by the Clay Township Board?



In 2000, the Harsens Island Transportation Authority passed a resolution amending Articles of Incorporation to change the method by which the Harsens Island Transportation Authority board members were appointed. I noted that that decision was made after an Attorney General Opinion No. 7003 dated December 23, 1998 which opined that township elected officials and/or trustees were precluded from serving on the transportation board under the provisions of the Incompatible Public Offices Act.

The amendment to the Articles of Incorporation called for the Harsens Island Transportation Authority board to be comprised of five members appointed by Clay Township. In addition, it provided:

"Representation on the authority board shall be two members appointed by the supervisor and approved by the Township Board, two members shall be chosen by the Harsens Island/St. Clair Flats Improvement Association and approved by the Township Board, one member appointed by the supervisor with the concurring approval of the Township Board and the Harsens Island/St. Clair Flats Improvement Association."

It is my understanding that the current composition of the Harsens Island Transportation Authority is not in accordance with the above-stated provisions. The issue has now been raised, that since the Harsens Island Transportation Authority board is not currently properly constituted with appointments in accordance with the above stated provisions, and that the Harsens Island Transportation Authority has failed to report as delineated in Issue #2 above, as to whether Clay Township has the authority to dissolve the Harsens Island Transportation Authority.

Coincidentally, the same Attorney General Opinion No. 7003 which required the Harsens Island Transportation Authority to amend its Articles of Incorporation to eliminate township officials from sitting on the public transportation authority is also the most germane Attorney General Opinion on the subject of whether or not a municipality may dissolve a public transportation authority established by said municipality. The opinion from the Attorney General that the dissolution of a transportation authority organized under the Public Transportation Authority Act requires an act of the legislature and may not be accomplished by the unilateral action of the municipality in which it was established is set forth below.

Your second question asks whether a public transportation authority may be dissolved by action of the city in which it was established.

Your second question requires analysis of two provisions in the Michigan Constitution. Const 1963, art 7, § 24, provides in pertinent part:



Subject to this constitution, any city or village may acquire, own or operate, within or without its corporate limits, public service facilities for supplying water, light, heat, power, sewage disposal and transportation to the municipality and the inhabitants thereof.

Any city or village . . . may operate transportation lines outside the municipality within such limits as may be prescribed by law.

(Emphasis added.)

Const 1963, art 7, § 27, provides as follows:

Notwithstanding any other provision of this constitution *the legislature may establish in metropolitan areas additional forms of government or authorities with powers, duties and jurisdictions as the legislature shall provide.* Wherever possible, such additional forms of government or authorities shall be designed to perform multipurpose functions rather than a single function.

(Emphasis added.)

Thus, under Const 1963, art 7, §§ 24 and 27, a public transportation authority possesses only those powers as granted by the Legislature. If the Legislature has not established a dissolution procedure, the transportation board involved in your question lacks authority to dissolve itself. This conclusion is consistent with *Cain v Brown*, 111 Mich 657, 661; 70 NW 337 (1897), where the Michigan Supreme Court held that a village, as a municipal corporation, may only be dissolved by legislative consent or by legislative provision:

*"Unless otherwise specifically provided by the legislature, the nature and constitution of our municipal corporations, as well as the purposes they are created to subserve, are such that they can only be dissolved by the legislature, or pursuant to legislative enactment. They may become inert or dormant, or their functions may be suspended, for want of officers or of inhabitants; but dissolved, when created by an act of the legislature, and once in existence, they cannot be, by reason of any default or abuse of the powers conferred, either on the part of the officers or inhabitants of the incorporated place. As they can exist only by legislative sanction, so they cannot be dissolved or cease to exist except by legislative consent or pursuant to legislative provision."*

(Emphasis added; citation omitted.)

Consistent with these constitutional provisions, the PTAA provides the statutory mechanism governing the formation and operation of a public transportation authority. In turn, the PTAA requires a transportation authority to adopt articles of incorporation. With respect to the dissolution of the transportation authority involved in your question, its articles of incorporation provide that:

The Authority may be dissolved in accordance with statutory provisions.

The Authority may not be dissolved . . . if such dissolution . . . would or could operate as an impairment of any authorized bond obligation.

There is, however, no provision within the PTAA which governs, or even alludes to, the dissolution of a public transportation authority. Rather, the only arguably relevant provision of the PTAA relates to the withdrawal or release of a municipality from a public transportation authority. Section 8. Since the transportation authority referenced in your question is comprised of only one member, its withdrawal from the authority might produce the appearance of dissolution. Such withdrawal, however, would not affect the existence of the authority's corporate entity. The PTAA does not provide for the dissolution of a public transportation authority.



Pursuant to PTAA sections 12 and 13, the transportation authority referenced in your question is an instrumentality of the state, in the form of a public corporation, rather than a traditional municipal corporation to which the *Cain* rule expressly applies. Courts in other states have applied a *Cain*-type rule to public corporations, generally, and to state instrumentalities. See, e.g., *Collins v Manhattan & Bronx Surface Transit Operating Authority*, 465 NE2d 811, 814 (NY App, 1984) (public corporations created by the state are subject to dissolution by the state); *Oakdale Irrigation Dist v Calaveras County Bd of Supervisors*, 283 P2d 732, 736 (Cal App, 1955) (the Legislature, absent constitutional restrictions, has absolute power over the organization and dissolution of a public corporation established as an agency of the state); and *State v Leahy*, 199 NW2d 713, 715 (Neb, 1972) (municipal corporations, as legislative creations, are subject to dissolution by legislative action).

Prior opinions of this office are in accord with the above cases. For example, OAG, 1985-1986, No 6411, p 444 (December 19, 1986), concluded that since a county hospital was a "type of municipal corporation," the *Cain* rule prohibited the county from dissolving the hospital. Similarly, in OAG, 1985-1986, No 6342, p 226 (February 6, 1986), the *Cain* rule was construed to prohibit the dissolution of a consolidated drainage district. In neither situation did the underlying statute establish a procedure to dissolve the public corporation.

It is my opinion, therefore, in answer to your second question, that the dissolution of a transportation authority organized under the Public Transportation Authority Act requires an act of the Legislature and may not be accomplished by the unilateral action of the city in which it was established.

In Attorney General Opinion No. 7039, issued a year later (1999), the Attorney General was again asked to render an opinion as to whether or not a township park commission may be dissolved by a township board. The Attorney General opined:

"The Legislature has not provided the authorization for, or the means of terminating the existence of a voter-established township park commission. Although not directly on point, the Michigan Supreme Court in *Cain v Brown*, 111 Mich 657, 661; 70 NW 337 (1897), quoted with approval the rule regarding dissolution of municipal corporations: "As they can exist only by legislative sanction, so they cannot be dissolved or cease to exist except by legislative consent or pursuant to legislative provision." This rule, being applicable to other types of public entities, has been applied to consolidated drain district; to county hospitals; and to local transportation authorities.

It is my opinion, therefore, in answer to your second question, that a voter-established township park commission may not be dissolved by resolution of the charter township board or by vote of the township electors following the township's incorporation as a charter township."

Attorney General Opinion No. 7039 was challenged in the Court of Appeals in *Risk v Lincoln Charter Township Board of Trustees*, 279 Mich App 389 (2008). In *Risk*, *supra*, the Court stated:

"Although Attorney General opinions are not binding on this Court, they can be persuasive authority."

*Lysogorski v. Bridgeport Charter Twp.*, 256 Mich.App. 297, 301, 662 N.W.2d 108 (2003); see also *Williams v.*



**Rochester Hills, 243 Mich.App. 539, 557, 625 N.W.2d 64 (2000). For the reasons set forth below, we find the logic of OAG 1999, No. 7039 to be persuasive."**

The Michigan Court of Appeals agreed with the prior Attorney General opinion and ultimately decided:

"The Legislature is presumed to be aware of all existing statutes when enacting new laws. *Walen v. Dep't of Corrections*, 443 Mich. 240, 248, 505 N.W.2d 519 (1993). As the above mentioned examples make clear, the Legislature unquestionably knows how to provide for both the establishment and dissolution of various commissions, board, and programs by the voters of local units of governments. In light of these statutes-all of which provide for both establishment and dissolution by popular vote-we must view as intentional the Legislature's failure to provide for the dissolution of township park commissions. *Grimes*, *supra* at 85 n. 43, 715 N.W.2d 275; *Farrington*, *supra* at 210, 501 N.W.2d 76. There is simply no statutory mechanism for dissolving a voter-established township park commission, and we may not read into the township parks act a provision that was not included by the Legislature. *AFSCME*, *supra* at 412, 662 N.W.2d 695.

As at least some members of our Supreme Court have observed, the township parks act contains both "the grant and limitation of a township's powers." *Burton Twp. v. Speck*, 378 Mich. 213, 229, 144 N.W.2d 347 (1966) (Adams, Jr., dissenting). Neither the township board nor the township electorate has been given the express or implied power to dissolve a voter-established township park commission. We therefore conclude that defendants acted beyond their authority when they placed before the township electors the question of dissolving the Lincoln Charter Township Park Commission. As observed by the Attorney General, it is for the Legislature "to authorize the dissolution of township park commissions"-it is not for the courts."

Perhaps the most relevant Court of Appeals' decision to the facts herein, is the ruling in the *City of Ecorse vs. Ecorse Brownfield Redevelopment Authority et al*, Docket No. 286386 (unpublished opinion, January 12, 2010). The issue the Court of Appeals addressed was whether or not the township had the authority to dissolve a brownfield development authority. The Court of Appeals adopted the rationale of the aforementioned cases and Attorney General's opinions as cited above by stating:

The provision of the Brownfield Act that addresses dissolution, MCL 125.2669, provides:  
"(1) An authority that completes the purposes for which it was organized shall be dissolved by



resolution of the governing body. Except as provided in subsection (2), the property and assets of the authority remaining after the satisfaction of the obligations of the authority shall belong to the municipality or to an agency or instrumentality designated by resolution of the municipality." In making its argument that the city council had no authority to dissolve defendant for reasons other than the completion of its purpose, defendant relies on *Risk v Lincoln Charter Twp Bd of Trs*, 279 Mich App 389, 398; 760 NW2d 510 (2008),<sup>3</sup> which in turn cited *Cain v Brown*, 111 Mich 657, 661; 70 NW 337 (1897), for the proposition that only the state legislature has the power to dissolve a brownfield authority.

*Risk* involved the dissolution of a township park commission and cited an opinion of the Attorney General, which addressed the same issue, finding: "Although not directly on point, the Michigan Supreme Court in *Cain* [ *supra* at 661], quoted with approval the rule regarding dissolution of municipal corporations: *As they can exist only by legislative sanction, so they cannot be dissolved or cease to exist except by legislative consent or pursuant to legislative provision.* This rule, being applicable to other types of public entities, has been applied to consolidated drain districts; to county hospitals; and to local transportation authorities" *Risk, supra* at 398, quoting OAG 1999-2000, No 7039, p 80 (December 9, 1999) (emphasis added). This Court noted that attorney general opinions are not binding, but found the quoted material to be persuasive. *Id.*

Observing that, "[t]he township parks act does not provide for the dissolution of a voter-established township park commission," and further, "certain other statutes explicitly provide for both the establishment and dissolution of various commissions, boards, and programs by the qualified electors of a local unit of government," this Court then concluded that, "[i]n light of these statutes - all of which provide for both establishment and dissolution by popular vote - we must view as intentional the Legislature's failure to provide for the dissolution of township park commissions. There is simply no statutory mechanism for dissolving a voter-established township park commission, and we may not read into the township parks act a provision that was not included by the Legislature." *Id.* at 400-404 (internal citations omitted).

Although *Risk* addresses a township park commission, as discussed above, the attorney general opinion cited with approval in *Risk* noted that the reasoning in *Cain* had previously been applied to a local transportation authority created pursuant to the Public Transportation Authority Act, MCL 124.451 *et seq.* The PTAA provides for the creation of a public transportation authorities by "[a] political subdivision or a combination of 2 or more political subdivisions," MCL 124.454(1), but contains no mention at all whatsoever of a method of dissolution. The opinion thus concluded, "the dissolution of a transportation authority organized under the Public Transportation Authority Act requires an act of the Legislature and may not be accomplished by the unilateral action of the city in which it was established." OAG, 1997-1998, No 7003, p 214, 216-218 (December 23, 1998). In the case at bar, the relevant statute gives a governing body the power to create a brown field authority and the power to dissolve the authority when it has completed the purposes for which it was created; it provides no other grounds for dissolution.<sup>4</sup> Because this Court has found *Cain's* reasoning persuasive beyond application to a municipal corporation, we conclude that, pursuant to the Brownfield Act, the city council did not have the power to dissolve defendant for any "rational basis."



In addition, the township argued that the defendant brownfield development authority had failed to implement the provisions of the act and had engaged in wrongful activity and, therefore, could not fulfill its purpose requiring dissolution.

The Court of Appeals ruled that dissolution, for the reasons that are cited previously, was not an option or a sanction that could be exercised unilaterally by the township board. The Court of Appeals ruled:

"Finally, should members of defendant be engaged in wrongdoing or otherwise not fulfill their duties, MCL 125.2655(6) provides that "[a]fter notice and an opportunity to be heard, a member of the board appointed under subsection (1)(e) may be removed before the expiration of his or her term for cause by the governing body. Removal of a member is subject to review by the circuit court." Additionally, pursuant to MCL 125.2670, "[t]he state tax commission may institute proceedings to compel enforcement of the requirements of this act." Thus, nowhere does the Brownfield Act say that a governing body can dissolve a brownfield authority based on a faulty plan, failure to amend a plan, or wrongdoing by a member of the authority. "[P]rovisions not included by the Legislature should not be included by the courts." *Polkton*, supra at 103. As noted, the statute provides only one reason for dissolution – the completion of the authority's purpose, and therefore, pursuant to *Risk*, the city council did not have the power to dissolve defendant."

Thus, in my opinion, the options available to Clay Township do not involve dissolution of the Harsens Island Transportation Authority by the Township Board. Rather, the remedies available to Clay Township are to determine whether or not appointments have been made to HITA properly in accordance with the Articles of Incorporation under subsection (2) and if not, to see that the appointments are made in accordance with the necessary provisions of paragraph (2). Only those persons who are properly appointed pursuant to those provisions would then sit and act as duly appointed members of the Harsens Island Transportation Authority.

Secondly, should a member or members of the Harsens Island Transportation Authority not act in accordance with the statutory requirements of the Public Transportation Authority Act and/or the Articles of Incorporation of the Harsens Island Transportation Authority, their removal from the HITA board would be permissible for good cause, pursuant to Paragraph (4) of the Articles of Incorporation.



Issue #4: Whether or not the Harsens Island Transportation Authority would have to agree to another transportation authority coming into Clay Township to "regulate" the Harsens Island Ferry?

MCL 124.464(b) provides:

"(b) Provide public transportation service and public transportation facilities within or without the boundaries of the public authority as provided in Act No. 51 of the Public Acts of 1951, being sections 247.651 to 247.674 of the Michigan Compiled Laws, except that a public authority may not provide public transportation service in an area within the boundaries of a member or a released or withdrawn member, other than an entity withdrawing under section 8(5), of another authority formed under this or any other act without the agreement and consent of the other authority."

That above provision is the authority for paragraph 28 in the prior lawsuit filed in the St. Clair County Circuit Court in 1998 which stated:

"Further, an outside agency such as the Blue Water Area Transportation Commission that does have the authority to come within the jurisdictional boundaries of the Harsens Island Transportation Authority, a duly enacted transportation authority under the Public Act 196 of 1986, as amended, and it supersedes said authority without the agreement and consent of said transportation authority pursuant to MCL 124.464(b)."

In 2010, Clay Township was also considering an "Interlocal Agreement between Detroit/Wayne County Port Authority and Clay Township" to allow for the emergency ice/airboat service within Clay Township. At that time, the Harsens Island Transportation Authority adopted a resolution on August 26, 2010 consenting to said agreement for that limited purpose.

I did a further review to see whether or not any developments, either in case law and/or amendments to the statutory provisions cited above had changed from those prior matters. My review indicates that there has been no change. It is still my legal opinion that the Harsens Island Transportation Authority would have to consent to any agreement involving the Blue Water Transportation Authority exercising jurisdiction over matters of public transportation within the current jurisdiction of the Harsens Island Transportation Authority.



### Recommendations

I believe the first order of business for the Clay Township Board, as to the issues raised, is to commence proceedings to see that the Harsens Island Transportation Authority is composed of members appointed in accordance with the Amended Paragraph 2 of the Articles of Incorporation. Once that is accomplished, I believe the Harsens Island Transportation Authority should provide the requested information to Clay Township pursuant to paragraph (9), as well as file their audit statement with the Secretary of State pursuant to State Public Transportation Act.

Finally, absent voluntary dissolution by the Harsens Island Transportation Authority, the Harsens Island Transportation Authority would have to consent to the Blue Water Transportation Authority being involved in the oversight and regulation of the Harsens Island Ferry.

I am assuming, for purposes of this opinion that the Michigan Public Service Commission would have the same attitude as it did in 1999, which was that if a duly authorized local transportation authority would come in and provide the oversight and regulation needed for the Harsens Island Ferry, then the Michigan Public Service Commission would withdraw from their current oversight and cede regulation to said local authority.

Finally, Norman Beauchamp and Jim Dunn of Blue Water Transportation Authority and Don Verslype, the acting HITA Chairman, have asked for copies of this correspondence. I advised them that that decision would have to be decided by you. If you advise me to go ahead and disseminate that information, I will forward them copies as well. If you have any questions whatsoever, please advise.

Very truly yours,

John B. McNamee,  
Clay Township Attorney

JBM:lm



**EXHIBIT F**

Subject: Harsens Island Issues and HITA  
From: dorothy verslype (donjeanv@yahoo.com)  
To: amerle@guelphtool.com;  
Date: Thursday, February 21, 2013 11:01 AM

Ann

I heard about David Bryson's speech at the Sunday meeting and I have a comment to make. In 1999, he said it was Jon Manos and HITA that stopped the transfer of transportation authority rights from HITA to the Blue Water Transportation Authority (BWTa). He did not give you the rest of the story. It was Clay Twp. (Jon was the Supervisor) and the Association that threatened a law suit to stop the transfer. Jon found a clause in the BWTa contract that could allow David to opt out of the contract after the transfer of rate control from the MPSC to BWTa was completed. This, we knew, was going to be a rubber stamp for David to raise rates when ever he wanted to. BWTa was not going to go to court and spend money to stop it. I have been in telephone conversations with the Chairman of the BWTa concerning another possible transfer or consolidation of transportation authorities. After I told him why we rejected the first contract, the Chairman said that contract was drawn up hastily and not fully thought out. I told him before HITA would review a new contract, it must be iron clad that BWTa takes over control of the ferry company and they would apply for subsidies. He said BWTa could apply for subsidies in May which is the last time they can apply for amended subsidies. I can't list all of the particulars here; but, HITA also wanted a seat on their board and any contract must be ratified by HITA and at the very least the Association due to time constraints. I also talked to John McNamee, the Clay Twp. lawyer, and told him the same thing. Right now he is investigating HITA's articles of incorporation and by-laws to see if we are legal. All the problems Clay has regarding water system bond issues looming and they are trying to destroy HITA. That is the Island's last resort.

David made a statement that the bridge would never be built. Why am I going to do the lead in to a presentation the bridge company is making to be presented on Algonac's public TV station for May or June's showing. John Fannon did the introduction last year; however, the President of the bridge company did not like the whole presentation so he asked for a whole new one. Concerning the bridge ice flow problems; the bridge design takes into account ice flow problems and because it is now a draw bridge, the Coast Guard's height problem is satisfied.

I thought I would give you the rest of the story concerning the bridge issues and Mr. Bryson's little speech in the meetng. My telephone number in Florida is 727-595-8784.

Don



# EXHIBIT G

Subject: Re: HITA's Agreement Letter to BWAT

From: Artie Bryson Clay Township (supervisor@claytownship.org)

To: donjeanv@yahoo.com;

Date: Friday, April 5, 2013 8:46 AM

EMAIL PROOF FROM ARTIE

THAT HITA WAS ON BOARD

THEY DID PUT IT IN WRITING!!!

WHY DOES ARTIE CONTINUE TO CLAIM

THEY DID NOT AND THE AGREEMENT'S

FAILING WAS HITA'S FAULT???

No need to fire her yet. LOL

Yes, I had the Twp review the BWAT docs and proposed framework, he did not have any issues with it. Since right now I have a large suite going on with Algonac (which I think after 4 years of legal fees, I have a good settlement for the township in place and avoid a 40k court battle) I didn't want him to spend a lot of time on it. After John M reviewed all the docs, we had an at length conversation with Norm Beauchamp, BWAT's attorney and John & myself were satisfied.

I'm glad HITA is on board. I want to put this to rest so I can move onto many more things to improve our township and Island. We were busy last night putting out a fire in the marsh across from Weavers. Almost lost Joanne's house, we had to wet it down big time to save it. The marsh burnt from Voakes Rd to the Airport. No structures were lost except DuMars old junk pile that probably is still burning.

Hope Spring actually comes soon and the river rises a couple feet...

From: dorothy verslype

Sent: Thursday, April 04, 2013 5:16 PM

To: supervisor@claytownship.org

Subject: HITA's Agreement Letter to BWAT

Artie

I am sorry that your copy did not go through concerning HITA's adoption of BWAT's contractual management of Champions. I have received emails from all of the other HITA board members, and they emailed me with their approval. If BWAT accepts the latest changes to the approval letter, we are off and running. Some of my emails from Harsens Island residents are asking whether our township attorney has reviewed the proposed contractual agreement with BWAT. They are also asking whether the Association's attorney has reviewed the contract. By the way, BWAT keeps sending me responses to my concern in the letter I sent to them. I know all about what is in their guidelines. I just wanted them to know that it is a concern not a show stopper.

;Again, I am sorry the email to you did not go through. I have two names in our directory. One is supervisor and that is correct and the other is Artie Bryson and that one is wrong. I told my secretary, Jean, to eliminate the bad address; however, she hasn't. I guess I will have to fire her. We just spent four hours at Bubba Gump's Shrimp Shack ( Florida) for my daughter's 50 th birthday, and we were not eating shrimp.

Don



## **EXHIBIT H**

### **PROPOSED FRAMEWORK FOR BLUE WATER AREA TRANSIT'S (BWAT) INVOLVEMENT WITH THE HARSEN'S ISLAND FERRY (HIF)**

- BWAT involvement must be initiated by the written request and support of the Boards of Clay Township, Harsens Island Homeowners Assn., St. Clair County and the Harsens's Island Transportation Authority.
- BWAT involvement is contingent on BWAT receiving State funding of 50% of ferry operating costs and replacing the Michigan Public Service Commission (MPSC) as the public body for overseeing the HIF.
- BWAT will contract with Champion Auto Ferry (CAF) for 30 to 50 years to operate the HIF for agreed upon cost plus a negotiated reasonable profit.
- CAF and BWAT shall agree in advance on a cost allocation plan to determine the cost of operating the Harsens's Island Ferry. Said cost allocation plan shall include the following parameters, limitations, definitions and understandings:

(Jim Wilson to complete upon receipt of information requested from CAF).

- CAF will operate and maintain the HIF assets in the same low cost, efficient manner that they have been operated for the last 15 years.
- All Fares collected by CAF shall be credited against BWAT's obligation to CAF under the Operations Agreement.
- Future fare changes shall be determined by BWAT. BWAT will hold a public hearing before any fare increase or reduction in service.
- If possible BWAT will not increase the HIF fare as proposed for January 2014.
- Surplus funds from the fares and State funding shall be used for capital improvements for the HIF and to postpone future fare increase. However, BWAT shall be reimbursed for its overhead, accounting, auditing, legal, and other services rendered to facilitate its oversight and involvement with the HIF.
- BWAT is a public body and subject to the Open Meetings Act.
- BWAT's contract with CAF will give BWAT the same rights and control of CAF as the MPSC currently has.



- CAF will immediately provide BWAT with a description of all assets currently used or useable in the Harsens's Island Ferry business including, but not limited to, the legal description of all real property, vessel description; details of all other assets; easements, rights of way, restrictions, mortgages, leases, licenses, easements, security agreements, financing statement and all other documents affecting title to said assets.
- CAF initially shall retain title to all of the assets, used or useable for the Harsens's Island Ferry business. In the event CAF goes out of business and/or David Bryson determined to sell the CAF and/or its assets, then BWAT shall have an option to acquire said business assets for fair market value.
- New or replacement assets acquired by or through BWAT, utilizing State and/or Federal Funding, in whole or in part, will be titled in BWAT and CAF shall be permitted to use said BWAT assets, as part of the overall Operations Agreement. BWAT and CAF will use their best efforts to secure Federal Capital Grants and funding to benefit HIF and Ferry customers.
- No funds collected for providing bus service in the Port Huron area shall be used for the Harsens's Island Ferry Service.
- No funds collected for the Harsens's Island Ferry service shall be used for other purposes.
- CAF agrees to comply with all applicable laws, rules and regulations.
- CAF and the MPSC agree in writing that CAF will automatically resubmit to MPSC Control if for any reason the arrangement with BWAT ends.
- BWAT is the only Transportation Authority that is eligible to receive Federal and State funding for such as the Harsens's Island Ferry Service, in St. Clair County.
- CAF will provide BWAT access to its books and records upon request.
- CAF will have certified financial statements prepared annually by a Certified Public Accountant, approved by BWAT, and submit them to BWAT within 120 days of the end of CAF's fiscal year.
- CAF will agree to implement any additional internal controls requested from time to time by BWAT.



- The Operations Agreement between BWAT and CAF will contain other terms and conditions, normal and usual for contracts between a public agency and a private company for similar operations.
- Time is of the essence in this matter. Accordingly, the requests and support from the designated Boards, must be received as soon as possible; the information required from CAF to BWAT must be submitted forthwith; the agreements with the MPSC must be timely obtained; the Operations Agreement, including the cost allocation plan, between BWAT and CAF must be timely agreed on principle; prior to May, 2013. BWAT must be able to submit its revised budget to the State of Michigan that includes the agreed on 50% designated HIF operating funds to be reimbursed, under Act 51 of 1951 to BWAT by the State, to the end that said operating fund reimbursement is included in BWAT's appropriation for the fiscal year beginning October 1, 2013; and, the Operations Agreement between BWAT and CAF can then be executed.



# Comments on BWAT framework about ferry

BWAT is an independent public agency, with support from state, federal and local government.

They lost about (\$7,000,000) for years 2009 and 2010 from operations before support from the Federal, State and Local governments. Expenses to townships for example was for 2010 were Marysville \$168,821, Port Huron \$288,096 what would be Clay?

Comments or questions by bullet point after reading proposed framework.

1. What if any representation or power would any of groups have. Member of commission?
2. How much is BWAT receiving today from state (35%) based on what allowable expenses and who determines eligible expenses. BWAT is only in business because of funds received from the various governments including local.
3. Who determines costs and % profit, using what financial statements? CAB has no usable statements per MPSC staff.
4. Without this agreement nothing can be determined and this framework is useless.
5. Who says this is true certainly not with what has been provided by CAF. All you have is CAF statements with some very questionable expenses for staff and family benefits.
6. What this means is scary without knowing details of obligations, agreement and how verification can be determined.
7. Means what, just have hearing and do whatever they want.
8. Based on what nothing useful to use from CAF.
9. We see what has happened in past nothing, who determines surplus. What the BWAT expenses could be unlimited. What is budget, etc
10. Means just that meetings are open but how, when and input is not determined.
11. As we have currently seen with MPSC this means nothing when they ignore their staffs recommendations.
12. Who will determine value and what about liabilities. Asset depreciated, etc
13. Who will determine market value for option, presently nothing has ever been provided to anyone that had interest in buying including HITA.
14. Will assets be include in sale price of business if sold. Some grants require matching funds from townships. How many of these grants are given to private companies without any valid financial statements and would they be separate from BWAT current. Simply put BWAT is a losing operation without its grants from federal, state and local support.
15. Does that mean only the \$278,081 in fares in 2010 or include taxes collected from the communities being serviced.
16. What are funds and source of funds?
17. We certainly hope so. Whose laws state, township, etc.?
18. How could it be ended and by who and what would go with it. Assets?
19. Maybe now for only St. Clair county but HITA could also qualify.
20. The past records according to MPSC are not usable so only future might be usable.
21. Would be after 2012 or 2013 since non currently usable.
22. That will be a first since CAF has ignored what MPSC has suggested in past. Cash flow, counts
23. Everyone says CAF is unique, Need to see operations agreement?
24. Hard to imagine anything can be accomplished without valid audited statements for at least the last 3 years. Use of CAF date is very questionable!





# EXHIBIT I

June 14, 2013

Artie Bryson  
Supervisor Clay Township  
4710 Pte. Tremble Rd.  
Clay Twp., MI 48001

To: Artie Bryson

 The board members of the Harsens Island Transportation Authority (HITA) received a package from Clay Twp. on Thursday (June 13<sup>th</sup>) asking for the resignation of all HITA board members. We, the HITA board members, are requesting that an amicable solution to your request for replacing the existing board members be considered. We would also like a copy of Clay Township's meeting minutes highlighting the reason for and who supported the action to replace all of the HITA board members. 

The HITA board, after individual polling, agreed that the three board member's whose term of office will possibly be completed in 2013 will not seek reelection. Please check your files to see which HITA board members are completing their term of office in 2013. I don't have that information at my disposal. The three board members plus John Fannon's replacement means four of the five board members will be replaced which is almost a complete overhaul of the HITA board. One board member should stay on to give the HITA board continuity, and provide valuable information for on-going discussions and negotiations with the Bridge Company. HITA has signed a legal letter of understanding that requires HITA to work closely with the Bridge Company, and it also supports the completion of a possible binding contract between the Bridge Company and HITA. The association between the Bridge Company and HITA supports the State's requirement that progress was made by HITA toward the goals set forth in their Articles of Incorporation.

The approach to replace four HITA board members is legal and provides for an orderly solution for Clay Township and HITA's issues. The Association is required to provide three candidates and Clay Township should select one candidate for HITA's board and Clay Township's final approval. Neither Clay Township nor HITA needs to have another controversial subject to arouse Island passions.

If this approach is preferable to the two alternatives mentioned in your letter, please call me (810-748-3345) or email me ([donjeanv@yahoo.com](mailto:donjeanv@yahoo.com)).

Sincerely

Leonard Verlinden  
Vice Chairman

Don Verslype  
Acting Chairman

Dave Martin  
HITA Board Member

Frank Schonoover  
HITA Board Member

c laytwpltr4



**EXHIBIT J**

*Rinaldo and Sheron Acciavatti  
Peter and Carol Beauregard  
Supervisor Artie and Cheryl Bryson  
Bob and Susan Bryson  
Todd and Heidi Chartier  
Honorable Jud Gilbert  
Steven and Meladee Tuzinowski  
Michigan Townships Association  
in support of*

**DAN LAUWERS**

**STATE REPRESENTATIVE**

**THURSDAY, AUGUST 14, 2014**

*at the island home of*

**ARTIE AND CHERYL BRYSON  
3556 S. CHANNEL DR.  
HARSENS ISLAND, MI 48028**

**6:00 – 8:00 PM**

**\$200 PER PERSON/COUPLE  
HOST COMMITTEE**

**\$75 PER PERSON**

**PLEASE MAIL YOUR PERSONAL CHECKS & RSVP TO**

**CTE DAN LAUWERS  
12401 Speaker Rd. Brockway, MI 48097**

*For more information, please contact Jill Lander  
at 734-221-1234 or jlander@ctelaw.com*



## Legislative Analysis

### RATE APPROVAL OF CARRIERS BY WATER BY MICHIGAN STATE POLICE

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

House Bill 4807 as enacted  
Public Act 240 of 2017  
Sponsor: Rep. Dan Lauwers

Analysis available at  
<http://www.legislature.mi.gov>

House Committee: Transportation and Infrastructure  
Senate Committee: Transportation  
Complete to 1-28-18

**BRIEF SUMMARY:** House Bill 4807 would amend the Carriers by Water Act to codify existing oversight by the Michigan Department of State Police (MSP) and to describe the process whereby the MSP would approve or reject rates, fares, charges, or tariffs for carriers by water who primarily transport vehicles between two state highways.

**FISCAL IMPACT:** The bill would have an indeterminate, yet likely minor, fiscal impact on the MSP. The bill could create minor administrative costs for the Regulatory and Credentialing Section, within the Commercial Vehicle Enforcement Division, resulting from the requirement to compare and set the rates, fares, charges, or tariffs of carriers by water that transport motor vehicles directly between two highways. The Commercial Vehicle Regulation line item within the MSP budget, which supports the Regulatory and Credentialing Section, is funded primarily through motor carrier fees, which are unlikely to be affected by this bill.

#### **THE APPARENT PROBLEM:**

This bill is understood to impact only Champion's Auto Ferry, which runs between Algonac and Harsen's Island. The proposed provision regarding rate approval would apply only to carriers that primarily transport vehicles directly between two state highways. According to committee testimony, the two Michigan ferry services that fall under that description are Champion's Auto Ferry and the ferry companies serving Mackinac Island. The Act currently states that pricing oversight by the MSP does not apply when a ferry company is operating within a municipality under an agreement with that municipality; the Mackinac Island ferries fall under that provision.

According to committee testimony, the proposed legislation would replace the existing metric for assessing rate increases—which applies to utilities—with a reasonableness standard that would more accurately reflect the function of the ferry service.

#### **THE CONTENT OF THE BILL:**

As written, the Act currently requires several administrative tasks of the Public Utilities Commission (PUC) regarding carriers by water, including reviewing and, when necessary,



setting new rates, fares, charges, and tariffs; examining and auditing the carriers' accounts; making all necessary rules and regulations; and investigating complaints against carriers.

However, the Public Utilities Commission no longer exists,<sup>1</sup> and the MSP has been administering the program since 2015.<sup>2</sup> The bill would reflect that practice in statute.

Additionally, the bill would require the MSP to make a decision on all filed rates, fares, and charges within 30 days after the date they are filed.

The bill would also add a section to the Act describing the considerations in determining reasonable rates for carriers primarily transporting vehicles between two state highways. The section would not apply to a carrier by water that is operating within a municipality under an agreement with that municipality. The section would provide that the MSP would compare a proposed rate, fare, charge, or tariff to those charged by comparable carriers by water. The MSP would determine the reasonable after-tax profit based on the most recent data from the federal Bureau of Labor Statistics for NAICS 483114 (the North American Industry Classification System section number for Coastal and Great Lakes Passenger Transportation).

If the rate is lower than those charged by comparable carriers, the MSP would automatically approve the rate and may not audit that carrier. If the rate is more than those charged by comparable carriers, the MSP may approve the rate if, based on justification submitted by the carrier, it finds the rate reasonable. If the MSP determines that the rate is not reasonable, the bill would require the MSP to meet with the carrier and explain the reasons for that determination within 15 days.

Finally, the bill would provide that any carrier by water that meets the criteria of this new section would be considered an instrumentality of the state. (An instrumentality is an organization created by or pursuant to state statute and operated for public purposes.)

The bill would take effect 90 days after enactment.

MCL 460.201 et seq. and proposed MCL 460.207

Legislative Analyst: Jenny McInerney  
Fiscal Analyst: Kent Dell

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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<sup>1</sup> It was abolished in 1939, with its duties transferred to the Michigan Public Service Commission (MPSC), which falls under the authority of the Michigan Department of Licensing and Regulatory Affairs (LARA).

<sup>2</sup> Executive Order 10 of 2015 transferred authority for the Carriers by Water Act, as well as the Motor Carrier Act and Motor Carrier Safety Act, from MPSC/LARA to the MSP.

[https://www.michigan.gov/documents/snyder/EO\\_2015-10\\_484513\\_7.pdf](https://www.michigan.gov/documents/snyder/EO_2015-10_484513_7.pdf)





Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383

Fax: (517) 373-1986

House Bill 4807 (Substitute H-1 as passed by the House)  
Sponsor: Representative Dan Lauwers  
House Committee: Transportation and Infrastructure  
Senate Committee: Transportation

Date Completed: 12-6-17

**CONTENT**

The bill would amend Public Act 246 of 1921, which regulates the service, rates, fares, and charges of water carriers in Michigan, to do the following:

- Codify the requirement that the Department of State Police fulfill the duties of the Michigan Public Service Commission under the Act.
- Require the Department to make a decision on all filed rates, fares, and charges within 30 days after they were filed.
- Require the Department to automatically approve a proposed rate, fare, charge, or tariff of a carrier by water that primarily transported vehicles between two State highways, if the rate, fare, charge, or tariff were less than the amount charged by comparable carriers.

(Although the Act refers to the Michigan Public Utilities Commission, that entity was abolished and its functions were transferred to the Public Service Commission by statute.)

Under the Act, the rates, fares, and charges filed with the Commission by a person engaged in the transportation of freight, passengers, or express, by water, wholly within the State, remain in effect until superseded by other schedules filed by the carrier with the Commission. Upon request or upon its own motion, the Commission may suspend the operation of any filed rate, fare, charge, or tariff for up to 30 days. The Commission then must give the carrier immediate notice of the suspension and, within 10 days, set a hearing date not later than 20 days from the date of the suspension. After the hearing, the Commission must set the rate, fare, charge, or tariff in the matter complained of, and that rate, fare, charge, or tariff must continue in force until superseded as provided by law.

The Commission may examine and audit all books, accounts, records, and papers of a carrier by water.

The Commission is required to make all necessary rules and regulations governing its investigations of the affairs of carriers by water.

If a complaint is made to the Commission against any rate, fare, charge, or tariff of any carrier by water within Michigan, or against any rule or regulation of a carrier, or against a carrier's neglect, failure, or refusal to make, observe, or perform any rate, fare, charge, or tariff, or any rule or regulation, the Commission must investigate the matter, and may require the carrier to observe that rate, fare, charge, or tariff, and any rule or regulation. A carrier by water is entitled to reasonable notice and an opportunity to be heard on an investigation



before the Commission establishes or imposes any rate, fare, charge, or tariff, or any rule or regulation, and if something is established or imposed, the carrier by water must obey it.

A carrier by water may appeal any order or decision made by the Commission prescribing or affecting any rate, fare, charge, or tariff, or any rule or regulation of any carrier by water within Michigan, in the same manner as provided by law for the appeal of orders.

Any person, firm, or corporation violating the Act, or any order of the Commission made under it, is subject to a fine of up to \$100 for each violation. Any officer or director of any corporation violating the Act, or any Commission order, may be fined up to \$100 for each violation, or jailed for up to three months, or both.

The bill would replace references to the Commission in these provisions with references to the Department of State Police.

The bill also would require the Department to make a decision on all filed rates, fares, and charges within 30 days after they were filed.

In addition, the Department would have to compare the proposed rate, fare, charge, or tariff of any carrier by water that primarily transported vehicles directly between two State highways to the rates, fares, charges, or tariffs charged by comparable carriers by water. The Department would have to automatically approve any proposed rate, fare, charge, or tariff of any such carrier that was less than the rates, fares, charges, or tariffs charged by comparable carriers by water.

The Department could not audit any carrier by water whose proposed rate, fare, charge, or tariff was less than those charged by comparable carriers by water.

The Department could approve a proposed rate, fare, charge, or tariff of any carrier by water that primarily transported vehicles directly between two State highways that was more than the rates, fares, charges, or tariffs charged by comparable carriers by water if, based on justification submitted by the carrier, the Department found the rate, fare, charge, or tariff reasonable. If the Department determined that the rate, fare, charge, or tariff was not reasonable, it would have to meet with the carrier within 15 days after the determination and explain the reasons for its determination. Any carrier by water that met the criteria of these provisions would be deemed an instrumentality of the State.

The bill would take effect 90 days after it was enacted.

MCL 460.201-460.206

### **BACKGROUND**

Under the Public Service Commission law, when reference is or has been made in any law to the Michigan Public Utilities Commission, that reference must be construed to mean the Michigan Public Service Commission. As noted above, the Public Utilities Commission was abolished and its duties were transferred to the Public Service Commission.

Executive Order 2015-10 transferred the authority, powers, duties, functions, records, personnel, property, unspent balances of appropriations, and allocations or other funds of the Public Service Commission under Public Act 246 of 1921 to the Department of State Police, among other things.

Legislative Analyst: Drew Krogulecki



### **FISCAL IMPACT**

The bill would have a minimal fiscal impact on the Department of State Police's Commercial Vehicle Enforcement Division, adding minor administrative costs that could be covered by existing appropriations, which are primarily funded through motor carrier fees.

Fiscal Analyst: Bruce Baker

SASIS1718\4807sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.



Act No. 240  
Public Acts of 2017  
Approved by the Governor  
December 20, 2017  
Filed with the Secretary of State  
December 21, 2017  
EFFECTIVE DATE: March 21, 2018

**STATE OF MICHIGAN  
99TH LEGISLATURE  
REGULAR SESSION OF 2017**

Introduced by Rep. Lauwers

**ENROLLED HOUSE BILL No. 4807**

AN ACT to amend 1921 PA 246, entitled "An act to regulate the service, rates, fares and charges of carriers by water within this state," by amending sections 1, 2, 3, 4, 5, and 6 (MCL 460.201, 460.202, 460.203, 460.204, 460.205, and 460.206) and by adding section 7.

*The People of the State of Michigan enact:*

Sec. 1. Any persons, firms, and corporations engaged in the transportation of freight, passengers, or express, by water, wholly within this state, shall, within 30 days after this act takes effect, make and file, in the form prescribed, its schedule of rates, fares, and charges for the carrying of freight, passengers, and express. The filed rates, fares, and charges continue in force until superseded by other schedules filed with the department of state police as provided in this section. The department of state police shall make a decision on all filed rates, fares, and charges within 30 days after the rates, fares, and charges are filed. The department of state police may, either upon request or upon its own motion, suspend the operation of any filed rate, fare, charge, or tariff for a period not exceeding 30 days. If a filed rate, fare, charge, or tariff is suspended by the department of state police, the department shall give the interested carrier immediate notice of the suspension and shall, within 10 days from the date of the suspension, set a hearing date not more than 20 days from the date of the suspension. The department of state police shall give notice of the hearing date to the carrier and to other interested persons. After the hearing, the department of state police shall set the rate, fare, charge, or tariff in the matter complained of, and that rate, fare, charge, or tariff continues to be the legal rate, fare, charge, or tariff in force until superseded as provided by law. Any ferry company operating within any municipality under an agreement with that municipality is not affected either as to fares or as to operation by this act.

Sec. 2. Except as otherwise provided in section 7, the department of state police may examine and audit any and all books, accounts, records, and papers of a carrier by water. A carrier by water shall furnish to the department of state police, its proper officers, and employees, any and all data in relation to its investment, income, operating expenses, and other statistical data as the department may require.

Sec. 3. The department of state police is authorized, empowered, and directed to make all necessary rules and regulations governing its investigations of the affairs of carriers by water and to prescribe the form of all reports required from those carriers.

Sec. 4. If any complaint is made to the department of state police by any person, firm, or corporation against any rate, fare, charge, or tariff of any carrier by water within this state, or against any rule or regulation of a carrier by water or against the neglect, failure, or refusal of a carrier by water to make, observe, or perform any rate, fare, charge, or tariff, or any rule or regulation, the department of state police shall investigate the matter, and the department may regulate the performance or observance of any rate, fare, charge, or tariff, and any rule or regulation, and may require the carrier to observe the rate, fare, charge, or tariff and any rule or regulation. A carrier by water is in all cases



entitled to reasonable notice and an opportunity to be heard on an investigation before any rate, fare, charge, or tariff, or any rule or regulation is prescribed, established, or imposed by the department of state police as provided in this section, and if any rate, fare, charge, or tariff, or any rule or regulation is prescribed, established, or imposed by the department of state police, the carrier by water shall observe and obey the same.

Sec. 5. A carrier by water may appeal any order or decision made by the department of state police prescribing or affecting any rate, fare, charge, or tariff, or any rule or regulation of any carrier by water within this state, in the same manner as is now provided by law for the appeal of orders under section 26 of 1909 PA 300, MCL 462.26.

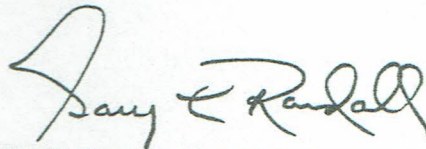
Sec. 6. Any person, firm, or corporation violating any of the provisions of this act, or any order of the department of state police made pursuant to this act, shall be punished by a fine of not more than \$100.00 for each violation. Any officer or director of any corporation violating the provisions of this act, or any of the orders of the department of state police made pursuant to this act, shall be punished by a fine of not more than \$100.00 for each violation, or by imprisonment in the county jail for not more than 3 months, or by both fine and punishment, in the discretion of the court.

Sec. 7. (1) The department of state police shall compare the proposed rate, fare, charge, or tariff of any carrier by water that primarily transports vehicles directly between 2 state highways to the rates, fares, charges, or tariffs charged by comparable carriers by water. The department of state police shall automatically approve any proposed rate, fare, charge, or tariff of any carrier by water that primarily transports vehicles directly between 2 state highways that is less than the rates, fares, charges, or tariffs charged by comparable carriers by water. The department of state police shall not audit any carrier by water whose proposed rate, fare, charge, or tariff is less than the rates, fares, charges, or tariffs charged by comparable carriers by water. The department of state police may approve a proposed rate, fare, charge, or tariff of any carrier by water that primarily transports vehicles directly between 2 state highways that is more than the rates, fares, charges, or tariffs charged by comparable carriers by water if, based on justification submitted by the carrier by water, the department of state police finds the rate, fare, charge, or tariff is reasonable. If the department of state police determines that a rate, fare, charge, or tariff is not reasonable, the department of state police shall, within 15 days after that determination, meet with the carrier by water and explain the reasons for its determination. Any carrier by water that meets the criteria of this section is deemed an instrumentality of the state.

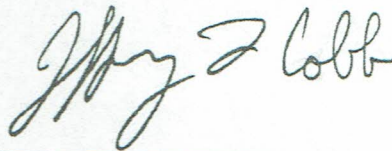
(2) This section does not apply to a carrier by water that is operating within any municipality under an agreement with that municipality.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved.....

.....  
Governor



## **EXHIBIT L**

Mr. David Bryson  
Champion's Auto Ferry  
3647 Pointe Tremble Rd.  
Algonac, MI 48001

Dear Sir,

I am writing on behalf of the Harsens Island Transit Authority (HITA). As you know HITA is vested with the responsibility of securing safe and affordable transportation to and from Harsens Island. Historically, HITA and Bluewater Transit Authority (BTA) has twice attempted to negotiate a cooperative joint agreement with you to operate Champion's Auto Ferry. For whatever reason a cooperative agreement has not been reached.

Accordingly, HITA is now investigating alternative transportation options. Perhaps, you would entertain selling Champion's Auto Ferry to HITA for a reasonable price. If, indeed, you would consider selling, please let me know within (10) ten business days what you believe would be an acceptable and reasonable price. If I do not hear from you, I will assume you are not interested and HITA will obviously explore other options.

Sincerely



## EXHIBIT M

# CHAMPION'S AUTO FERRY

3647 Pte. Tremble Rd. • Algonac, MI 48001 • (810) 748-3757



May 16, 2022

Sharp Law Firm, PLLC  
43260 Garfield, Suite 280  
Clinton Township, MI 48039

Attn: Gary Gendernalik

Subject: Harsens Island Transportation Authority Letter

Dear Sir:

This responds to your letter dated April 28, 2022 in which the Harsens Island Transportation Authority (HITA) is requesting to purchase Champion's Auto Ferry (Champion). At this time, it is our opinion that no one either on the HITA board, or currently employed by HITA has the necessary skill set, qualifications, or experience to successfully operate the ferry to Harsens Island. As such, we cannot in good conscience sell the business to HITA as we place the safety of our passengers, the reliability of service to our customers, and our reputation, ahead of our own financial gain. I am reminded of what recently happened to the Arnold Line ferry service to Mackinaw Island. However, I would like to provide you with a counter-proposal for the HITA board's consideration.

Item 1. Recently, you were again approached by the township to get involved in funding a U.S. Coast Guard certified air boat to provide transportation and emergency services to the island during periods when ice conditions force the ferry to suspend operations. The plan would be for Champion to provide the design specifications of the boat and contract with a suitable manufacturer. We would store, maintain, and operate the unit in times of need. In the past, you have rejected any request for this equipment and most recently, you have just ignored the township's request. We ask that you reconsider your refusal to get involved in this needy project. Your YES or NO answer is required at your next meeting in order to obtain U.S. Coast Guard plan approval and reserve future manufacturing production space.

Item 2. With the exception of one prototype engine currently installed in the ferryboat "Middle Channel", all of Champion's vessels are powered by Detroit Diesel model 6-71 engines. The design of these engines dates back to World War 2. Unfortunately, this model of engine, as well as new engine blocks, cylinder heads, and other essential parts, have been out of production for several decades. While we have been able to source used parts, this supply is limited. In addition, with the current supply chain issues the country is experiencing, we are now having difficulty sourcing general repair parts. For example, Detroit Diesel only has seven fuel injectors for our engines in the entire country (each engine requires six) and will not provide a schedule as to if/when they expect to produce more injectors.



# CHAMPION'S AUTO FERRY



3647 Pte. Tremble Rd. • Algonac, MI 48001 • (810) 748-3757

Most of our engines see 4,000 to 5,000 hours of operating time per year. This is equivalent to driving your car 200,000 to 300,000 miles annually

Champion is now starting the process of implementing a permanent solution by replacing the existing engines in the "Middle Channel" and "South Channel" with modern, fuel efficient, environmentally clean engines. Champion would like to propose that HITA utilize a portion of the funds that they have currently received from the State of Michigan to offset the purchase cost of another new modern engine for the Middle Channel. The estimated total cost to HITA would be in the neighborhood of \$50,000. Champion will provide all labor to install the engine along with any ancillary equipment that may be required.

Please note that this is a "shovel ready" project. The design of the vessel repower project has been approved by the Coast Guard, and has already been successfully implemented as a "prototype" on one end of the "Middle Channel". The replacement of the engines onboard the "Middle Channel" and "South Channel" will not only dramatically improve the reliability of the ferry service to and from Harsens Island, but will also aid in the reduction of fuel consumption and air pollution in our area. This is due to the fact that we are transitioning from an EPA Tier 0 engine to a modern, computer-controlled EPA Tier 3 engine. This will significantly reduce the amount of particulate matter and nitrogen oxides that our vessels produce on a daily basis.

Should the HITA board approve the use of their funds for this project, it will allow Champion to redirect its existing funds towards the design and purchase of a new ferry boat. This will further increase the safety and reliability of the ferry service to Harsens Island. Please advise Champion of HITA's decision on this matter by June 17, 2022 in order for Champion to place the order with the engine manufacturer. This time line requirement is due to the fact that the engine manufacturer is raising the prices for all of their engines by 5% on July 1st of this year.

Item 3. In the past, Champion had applied to the Blue Water Area Transportation Commission (BWATC) to obtain subsidy funding for our direct operating costs in an arrangement similar to the Beaver Island, Drummond Island, and Sugar Island ferries. This program is provided through Act 51 (road tax) funding which, by law, can only be administered in St. Clair County by the BWATC transit authority. HITA is not, and can never become eligible to directly receive these funds. In the past, HITA threatened legal action against the Blue Water Area Transportation Commission because the proposed agreement also included the transfer of control over the ferry rates from the Michigan Public Service Commission to BWATC, so the deal was canceled.

Now the Michigan Public Service Commission no longer controls the ferry prices. If Champion were to again apply to BWATC for subsidy funding to offset rising costs and prevent the necessity of raising commuter ticket prices, would HITA once again attempt to interfere? The Blue Water Area Transportation Commission will not entertain getting involved with



# CHAMPION'S AUTO FERRY

3647 Pte. Tremble Rd. • Algonac, MI 48001 • (810) 748-3757



Champion unless it first gets written assurances (or at least meeting minutes) from HITA that it will not oppose this effort. Champion's preliminary talks with BWATC are stalled pending your positive or negative commitment.

We specifically ask that the items contained in this letter be placed on the agenda of your next board meeting as action items to be discussed and voted on. If your organization is indeed committed to the betterment of Harsens Island and the preservation of the "island way of life", then the decisions on the projects that we have itemized should be routine and positive. We look forward to discussing the particulars and details of any of these itemized projects once you decide which, if any, of these items you wish to pursue.

Sincerely,

Jacob Bryson, P.E.  
Vice President

cc: Harold Bain ([hbain@dmc.org](mailto:hbain@dmc.org))



## **EXHIBIT N**

August 26, 2022

Mr. David Bryson  
Champion Auto Ferry  
3647 Pte Tremble Dr.  
Algonac, MI 48001

Re: Board presentation

Dear Mr. Bryson:

As you know Harsens Island Transportation Authority "HITA" has agreed to place you on as a speaker at our next meeting and for this reason we again, reviewed your letter of May 16, 2022.

As a governmental unit, HITA has a fiduciary duty to the citizens of Clay Township to secure safe, reliable and affordable transportation to and from Harsens Island. HITA is mindful of the past history of the Blue Water Transportation Commission "BWTC" and Champion Auto Ferry "CAF". Drawing your attention to a letter dated February 23, 1999 which was drafted by Clay Township Attorney, John McNamee on behalf of Clay Township, Mr. McNamee details a breakdown between BWTC and CAF in an attempt to secure Act 51 funding for CAF at that time. The letter speaks for itself. Regardless of who was to blame for this breakdown, an Agreement was never reached. Lastly, again, in 2013 BWTC tried to partner with you and operate the ferry as a public-private partnership and no agreement was reached.

Today, HITA still seeks to partner with any private company to secure safe, affordable and reliable transportation for the citizens of Clay Township to and from Harsens Island. HITA has no intention to delegate this responsibility to BWTC or anyone else. For this reason, any partnership must clearly spell out each party's rights and responsibilities. HITA will absolutely NOT enter into a Partnership Agreement without retaining transportation rate control and other meaningful control over passage on or off the island, whether that be with the Detroit International Bridge Company "DIBC" or any other entity.

Until now the DIBC has failed to put in writing or even negotiate with HITA anything with respect to the issue of ownership, or rate control and HITA will never sign an agreement with them unless it is clearly stated in an agreement what rates will be charged to cross the bridge.

HITA would breach its fiduciary duty if it simply secured State or Federal funding for a private business without advising the public its reason for doing so. No governmental unit can provide public funds to a private businessman without an Agreement that the Governmental Unit will receive some benefit for its exchange.



HITA does not know what CAF receives in gross profit or pays in expenses. HITA does not know whether you, as owner, make \$1,000,000.00 a year or \$1.00 a year in net income. It would be fool hardy for HITA, not to know the total gross profit you earn and a breakdown of expenses incurred by CAF before seeking funding on your behalf and agreeing to terms in a Partnership Agreement. HITA does not even know the carrier numbers for auto and other vehicles or the number of crossing the ferries make every year. Accordingly, if you are interested in seriously negotiating a partnership wherein HITA acquires and provides government funding to you and you run the ferry system with HITA oversight on rates and crossings, please submit your last five corporate tax returns to HITA in the next ten days as well as ferry carrier figures identifying the number of vehicles CAF has carried the last three years. We would also request disclosure of salaries paid to all employees for the past three years. Please don't hesitate to provide any information that you believe would benefit HITA in making a determination how to best help you as a partner.

It is only fair to tell you and the DIBC that HITA is exploring the possibility of starting and running a ferry system as a joint public-private partnership with another company. Our efforts forward will be directed to the most advantageous option available to our citizens.

Very Truly Yours,

Harsens Island Transportation Authority Board





3647 Pte. Tremble Rd. • Algonac, MI 48001 • (810) 748-3757

## EXHIBIT 0

December 11, 2023

Harsens Island Transportation Authority  
P.O. Box 28007  
Harsens Island, Michigan 48028

Subject: Potential Operating Agreement between Champion's Auto Ferry, Inc. and the Blue Water Transportation Authority

Sirs,

In an effort to stabilize ferry rates by continuing to seek state funding (such as the Act 51 subsidy), Champion's Auto Ferry (Champion) would like to pursue the process of negotiating an operating agreement with the Blue Water Area Transportation Authority (BWATA), who is the only public body authorized to receive these funds. Should Champion's efforts be successful in obtaining a satisfactory operating agreement with BWATA, it would eliminate the need for future ferry rate increases for years to come.

This agreement would also dispense with the need for the Harsens Island Transportation Authority (HITA) to seek a large millage to fund the construction of an additional ferry service. In addition to keeping the island's property tax rates at their current level, this operating agreement would also bring state tax revenues back to the island. All of these factors would greatly benefit the island's residents, visitors, and businesses as a whole.

Even though BWATA has, so far, insisted that HITA agree and support this potential relationship, Champion and its lawyers are of the opinion that it is not a requirement for HITA to give its consent due to HITA's geographic boundaries. However, Champion would like to provide HITA with the opportunity to support this potential Champion-BWATA partnership in an effort to minimize the time required to begin negotiations, as well as to eliminate the need for further legal action.

Below is the framework that Champion will propose to the BWATA as a starting point for our negotiations:

1. Champion would submit direct operating expenses to BWATA for reimbursement under Act 51.





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2. All expenses submitted for reimbursement under Act 51 would first be audited by a 3<sup>rd</sup> party accounting firm in accordance with MDOT and GAAP standards.
3. Champion understands that any operating agreement would include a 50% discount for customers 65 years or older, as well as customers with disabilities, riding during non-peak hours as set forth in Act 51.
4. Approval of Champion's future fares will remain with the Michigan State Police. Alternatively, if BWATA does seek to become the approving body for Champion's fares, the evaluation and approval of any future fare requests shall mirror the process identified in MCL460.207.

If an operating agreement can be reached between Champion and BWATA, this would forestall future rate increases for the foreseeable future (years) and bring stability to the transportation costs for the island's residents and visitors, which I believe is one of your stated core objectives. I would request that the HITA board put this matter on the agenda for their upcoming January 13, 2024 meeting and vote on an appropriate resolution so that your decision can be relied upon.

Thank you for your consideration in the above matter.

Sincerely,

Jacob Bryson  
Vice President



**LAST**  
**COMMUNICATION**  
**WITH CHAMPION**  
**DURING MEETING**

**CONTRACT OFFERING  
TO WORK WITH HITA**



**OPERATIONS CONTRACT  
BETWEEN  
BLUE WATER AREA TRANSPORTATION COMMISSION,  
HARSENS ISLAND TRANSPORTATION AUTHORITY,  
AND  
CHAMPION'S AUTO FERRY, INC.**

THIS CONTRACT is made and entered into as of and with an effective date of December 16, 2023, by and between the **BLUE WATER AREA TRANSPORTATION COMMISSION ("BWATC")**, an entity organized and existing under the provisions of the Urban Cooperation Act P.A. 1967, Ex Session, No. 7, as amended, hereinafter referred to as "**BWATC**", **HARSENS ISLAND TRANSPORTATION AUTHORITY ("HITA")** an entity organized under public Act 196 of 1986 referred to as "**HITA**" and "**CHAMPION'S**" hereinafter referred to as the "**CONTRACTOR**."

WITNESSETH:

WHEREAS **BWATC** is an "Eligible Authority" as defined by 1951 P.A. 51, as amended, and is a provider in its own right as well as through contracts with qualified third-party contractors of public transportation services in urbanized areas with a Michigan population less than or equal to 100,000 and non-urbanized areas under Public Law 103.272, 49 U.S.C. 5311 and accordingly, **BWATC** is eligible to receive a grant of not less than 50% of **BWATC'S** eligible operating expenses for public transportation water ferry services as defined by the Michigan Department of Transportation ("MDOT") (hereinafter "Eligible Operating Expenses"); and

WHEREAS, **BWATC** may also be eligible to receive up to 100% funding reimbursement under the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) and

WHEREAS, **BWATC**, pursuant to the provisions of its above-referenced enabling Act, has been empowered to acquire, plan, construct, operate, and maintain public transportation systems and services and facilities and also contract with qualified third-party contractor(s) to provide such public transportation services; and

WHEREAS, **CONTRACTOR** is a qualified third-party contractor and is desirous of managing and operating certain public transportation services for persons in the St. Clair County area to utilize **CONTRACTOR'S** facilities, as described in Exhibit "A" ("Service Program"), attached hereto and made a part hereof; and

WHEREAS, the purpose of this Contract is to state the terms and conditions under which **CONTRACTOR** will perform the Service Program with the possible total or partial reimbursement of Eligible Operating Expenses to be made to **CONTRACTOR** through **BWATC** acting as an Eligible Authority under said 1951 P.A. 51, as amended.

WHEREAS, **Harsens Island Transportation Authority ("HITA")** is the governing Transportation Authority for Harsens Island, Michigan under Public Act 196 of 1986.



NOW, THEREFORE, in consideration of the mutual covenants, agreements, and representations contained herein, **BTWAC, HITA, and CHAMPION** agree as follows:

1. **HITA**, through **BTWAC**, shall acquire Act 51 money and distribute it to **CHAMPION**.
2. **CHAMPION** shall operate the Ferry Service in its present form and manner, and Jacob Bryson shall remain owner/operator, although payment of ferry passage charges shall be collected by debit/credit card or contract filling or bypass scanning.
3. **HITA** shall administer all financial responsibilities of the service, including accounting for all income and paying all expenses.
4. **HITA** shall pay the owner-operator a salary of \$200,000.00 annually and provide health care insurance for the owner-operator and his family.
5. **HITA** shall reduce the rate based upon carrying, round trip, 330,000 cars per year by dividing Act 51 money and subtracting salary and benefits costs of owner-operator upon signing this agreement.
6. **HITA** shall reduce the rate to \$5.75 per car if **HITA** receives \$1,600,000.00 of Act 51 recovery or a pro rated amount thereof.
7. Ferry rates shall be set by **HITA** at its August meeting every year.
8. Upon termination of this Agreement, for any reason, all property (real and personal), whether attached as a fixture or used as ferry replacement parts, shall remain the property of **HITA**,
9. **HITA** shall have approval authority over any sale or transfer of Champion's ownership or personal property.
10. In the event Contractor shall desire to transfer of ownership of Contractor's company or interest partially or fully HITA shall have a first right of refusal to purchase said company or ownership interest

BLUE WATER AREA TRANSPORTATION  
COMMISSION

BY: \_\_\_\_\_

\_\_\_\_\_  
JACOB BRYSON for Champion's

Its: \_\_\_\_\_

HARSENS ISLAND TRANSPORTATION AUTHORITY

By: \_\_\_\_\_



Its: \_\_\_\_\_

#### **EXHIBIT A**

##### **SERVICE PROGRAM TO BE PROVIDED BY CHAMPION AUTO FERRY, INC**

**CHAMPION AUTO FERRY, INC. (CHAMPION)** agrees to provide a water carrier transportation service by transporting vehicles across the North Channel of the St. Clair River, which is part of the navigable waters of the United States, for the express purpose of providing a vehicular transportation link between M-154 on Harsens Island, Michigan, and M-29 on the mainland of Michigan.

**CHAMPION** agrees not to abandon or diminish the service responsibility of maintaining a safe vehicular transportation link between the State highway M-154 and M-29.

**CHAMPION** agrees that it will maintain sufficient assets in place to adequately service the prevailing traffic requirements on a 24-hour-a-day basis.

**CHAMPION** agrees to operate the service 24 hours a day, every day of the year, except where weather conditions, water or ice conditions, mechanical failure, or the good judgment of **CHAMPIONS** management dictates that operations be suspended for the safety of the passengers.

**CHAMPION** agrees to post a Summer and Winter Operating Schedule, which may, at its own discretion, change from time to time to adjust to local traffic conditions.