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To The General Court
Of The Special Commission
Concerning State And County Buildings

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VOLUME 8
VOLUME 8

SYSTEMS ISSUES AND FINDINGS:
THE SYSTEM OF PUBLIC CONSTRUCTION IN MASSACHUSETTS
(conclusion)

CAMPAIGN FINANCE

DETECTING AND PREVENTING FRAUD

PILOTING THE LEGISLATION

THE SPECIAL COMMISSION IN COURT
# Table of Contents

**SYSTEMS ISSUES AND FINDINGS:**

**THE SYSTEM OF PUBLIC CONSTRUCTION IN MASSACHUSETTS**

*(conclusion)*

## CONSTRUCTION BIDDING

**THE FORMAL SYSTEM OF CONSTRUCTION BIDDING**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparations for Bidding</td>
<td>284</td>
</tr>
<tr>
<td>Prevailing Wages</td>
<td>234</td>
</tr>
<tr>
<td>Advertising</td>
<td>285</td>
</tr>
<tr>
<td>Competitive Bidding on Building Contracts</td>
<td>285</td>
</tr>
<tr>
<td>Plans and Specifications</td>
<td>286</td>
</tr>
<tr>
<td>Filing of Sub-bids</td>
<td>287</td>
</tr>
<tr>
<td>General Bids</td>
<td>288</td>
</tr>
<tr>
<td>Selection of the General Contractor</td>
<td></td>
</tr>
</tbody>
</table>

## SUBCONTRACTOR SELECTION

**The Evidence**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>289</td>
</tr>
<tr>
<td>The Quality of Sub-Contractors' Work</td>
<td>290</td>
</tr>
<tr>
<td>The Evaluation of Sub-Contractors' Work and Its Effect on Contract Awards</td>
<td>292</td>
</tr>
<tr>
<td>Sub-bidding Improprieties: Shopping, Peddling and Rigging</td>
<td>297</td>
</tr>
<tr>
<td>Bid Shopping</td>
<td>297</td>
</tr>
<tr>
<td>A State Prison</td>
<td>301</td>
</tr>
<tr>
<td>A Community College</td>
<td>304</td>
</tr>
<tr>
<td>A State College</td>
<td>305</td>
</tr>
<tr>
<td>A School for the Retarded</td>
<td>307</td>
</tr>
<tr>
<td>Bid Rigging</td>
<td>306</td>
</tr>
<tr>
<td>MCI Concord Project P61-1 #4</td>
<td>303</td>
</tr>
<tr>
<td>MCI Concord Project P61-1 #9A</td>
<td>309</td>
</tr>
<tr>
<td>MCI Concord Project P61-1 #9C</td>
<td>309</td>
</tr>
<tr>
<td>Worcester County Jail</td>
<td>312</td>
</tr>
<tr>
<td>Administration</td>
<td></td>
</tr>
<tr>
<td>Restrictive Effects of Filed Sub-bidding on Design:</td>
<td></td>
</tr>
<tr>
<td>Architectural Technology</td>
<td>316</td>
</tr>
<tr>
<td>Accessibility to &quot;New&quot; Sub-Contractors</td>
<td>319</td>
</tr>
<tr>
<td>Cost</td>
<td>323</td>
</tr>
</tbody>
</table>

**What the Evidence Shows**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quality</td>
<td>329</td>
</tr>
<tr>
<td>Integrity</td>
<td>329</td>
</tr>
<tr>
<td>Administration</td>
<td>330</td>
</tr>
<tr>
<td>Accessibility</td>
<td>330</td>
</tr>
<tr>
<td>Cost</td>
<td>331</td>
</tr>
</tbody>
</table>

**A New Sub-Contractor Selection System**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quality of Work</td>
<td>331</td>
</tr>
<tr>
<td>Cost</td>
<td>332</td>
</tr>
<tr>
<td>Administration</td>
<td>332</td>
</tr>
<tr>
<td>Integrity</td>
<td>333</td>
</tr>
<tr>
<td>Accessibility</td>
<td>333</td>
</tr>
<tr>
<td>Alternatives</td>
<td>334</td>
</tr>
<tr>
<td>Recommendations</td>
<td>341</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>------</td>
</tr>
<tr>
<td>CONTRACTOR QUALIFICATIONS</td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>343</td>
</tr>
<tr>
<td>Legislative Solutions and Suggestions for Implementation</td>
<td>347</td>
</tr>
<tr>
<td>Prequalification</td>
<td>347</td>
</tr>
<tr>
<td>Debarment</td>
<td>352</td>
</tr>
<tr>
<td>IMPROPER USE OF ALTERNATES AND UNIT PRICES</td>
<td>355</td>
</tr>
<tr>
<td>Alternates</td>
<td>355</td>
</tr>
<tr>
<td>Discussion of the Problem</td>
<td>355</td>
</tr>
<tr>
<td>Legislative Solution</td>
<td>356</td>
</tr>
<tr>
<td>Unit Prices</td>
<td>357</td>
</tr>
<tr>
<td>Discussion of the Problem</td>
<td>357</td>
</tr>
<tr>
<td>Proposed Solutions</td>
<td>358</td>
</tr>
<tr>
<td>ACCESS TO PUBLIC CONTRACTS</td>
<td>360</td>
</tr>
<tr>
<td>Contracting Opportunities for Minority and Women-Owned Businesses</td>
<td>360</td>
</tr>
<tr>
<td>Introduction</td>
<td>360</td>
</tr>
<tr>
<td>Federal Government</td>
<td>363</td>
</tr>
<tr>
<td>Problems with the Bureau of Building Construction</td>
<td>365</td>
</tr>
<tr>
<td>Legislative Solutions and Suggestions for Implementation</td>
<td>366</td>
</tr>
<tr>
<td>Certification of Minority and Women-Owned Businesses</td>
<td>368</td>
</tr>
<tr>
<td>Enforcement</td>
<td>368</td>
</tr>
<tr>
<td>Ability to Waive the Set-Aside Requirement in Cases of Hardship</td>
<td>369</td>
</tr>
<tr>
<td>Central Register Listing Contracting Opportunities</td>
<td>369</td>
</tr>
<tr>
<td>The Legislation</td>
<td>369</td>
</tr>
<tr>
<td>Background of the Legislation</td>
<td>370</td>
</tr>
<tr>
<td>PROJECT MANAGEMENT</td>
<td>372</td>
</tr>
<tr>
<td>Introduction</td>
<td>372</td>
</tr>
<tr>
<td>The Formal System of Project Management</td>
<td></td>
</tr>
<tr>
<td>Execution of the Contract</td>
<td>372</td>
</tr>
<tr>
<td>Construction Phase</td>
<td>373</td>
</tr>
<tr>
<td>The Clerk-of-the-Works</td>
<td>374</td>
</tr>
<tr>
<td>Change Orders</td>
<td>375</td>
</tr>
<tr>
<td>Certificate of Use and Occupancy</td>
<td>375</td>
</tr>
<tr>
<td>Certificate of Substantial Completion</td>
<td>375</td>
</tr>
<tr>
<td>Certificate of Final Inspection, Release and Acceptance</td>
<td>375</td>
</tr>
<tr>
<td>Payments to the General Contractor</td>
<td>376</td>
</tr>
<tr>
<td>Payments to the Sub-Contractors</td>
<td>376</td>
</tr>
<tr>
<td>Problems in Project Management</td>
<td>377</td>
</tr>
<tr>
<td>Construction Supervision on BBC Projects</td>
<td>377</td>
</tr>
<tr>
<td>The Role of the Designer</td>
<td>378</td>
</tr>
<tr>
<td>The Clerk of the Works</td>
<td>379</td>
</tr>
<tr>
<td>The Role of the BBC Project Engineers and Inspectors</td>
<td>380</td>
</tr>
<tr>
<td>Construction Supervision on DCA Projects</td>
<td>381</td>
</tr>
<tr>
<td>Case Studies of Inadequate Project Management</td>
<td>381</td>
</tr>
<tr>
<td>Cape Cod Community College</td>
<td>382</td>
</tr>
<tr>
<td>McCarthy Apartments</td>
<td>383</td>
</tr>
<tr>
<td>Cost Controls</td>
<td>383</td>
</tr>
<tr>
<td>Statistics on Cost Overruns</td>
<td>383</td>
</tr>
<tr>
<td>Concealed Overruns</td>
<td>384</td>
</tr>
<tr>
<td>Failure to Monitor Change Orders</td>
<td>385</td>
</tr>
<tr>
<td>Pricing of Change Orders</td>
<td>386</td>
</tr>
<tr>
<td>Approvals of Change Orders</td>
<td>387</td>
</tr>
<tr>
<td>Other Sources of Financial Waste</td>
<td>387</td>
</tr>
<tr>
<td>Costs Due to Delay</td>
<td>387</td>
</tr>
<tr>
<td>Fraud as a Source of Cost Overruns</td>
<td>389</td>
</tr>
</tbody>
</table>
Delay
Delay on BBC Projects 389
Failure to Penalize Contractors for Delay 389
Delay Caused by Change Order Process 390
Delay Caused by Construction Disputes 391

Legislative Solutions and Suggestions for Implementation 393

Construction Supervision
Project Managers 393
Resident Engineers 394
Implications of the New Legislation 395
Elimination of Waiver of Jurisdiction 396

Cost Control
Cost Estimating 396
Change Orders 397
Authority to Order Changes 397
Constructive Changes in the Work 399
Pricing of Change Orders 399
Unchanged Work -- Consequential Work 401

Time Control
Recommended Contractual Provisions 402
Dispute Resolution 402

BUILDING MAINTENANCE AND REPAIR 406

Introduction 406

Problems of Maintenance and Repair
Maintenance Operations 406
Repair Operations 407
Funding 408
Maintenance and Repair Personnel 411
Results of Poor Maintenance and Repair 412
Maintenance and Repair of the Government Center 414
Energy Conservation 416

Solutions to Maintenance and Repair Problems 417

RECORD KEEPING 422

Introduction 422

Problems in Record Keeping
The Comptroller 424
The Bureau of Building Construction 424
Record Keeping Criteria 424
Maintenance of Files 425
Contract Documents 426
Record Storage 427
Using Agencies 427
Other Administering Agencies 428
Private Vendors 429

The Framework of Responsibility for Record Keeping 430
Those Keeping and Using Records 430
Supervision of Record Keeping and Standards 432
The Nature and Cause of Record Keeping Problems 432

Solutions 433
The Records of Public Agencies 433
Recommendations Concerning Private Vendors 436

RECOMMENDED BUDGET 439

The Division of Capital Planning and Operations:
Cost Analysis 439
## CAMPAIGN FINANCE

### Introduction

### I. FINDINGS ON THE EFFECT OF PRIVATE MONEY ON GOVERNMENT DECISION-MAKING

#### A. Summary of Findings from Specific Investigations

- Policies Concerning Disposition of Contracts
- Quid Pro Quo Agreements
- Fundraising Activities as Means of Exercising Influence
- Influence in Areas other than Contract Awards

#### B. Summary of Conclusions from the Commission's Review of Campaign Finance Reports

#### C. Analysis of Data from Commission's Review of Campaign Fundraising Reports

### II. FINDINGS ON THE FAILURE OF THE EXISTING SYSTEM TO ENFORCE CAMPAIGN FINANCE LAWS

#### A. Violations of Provisions for Reporting Contributions

- Concealed Corporate Contributions
- Inadequacy of Existing Disclosure Reports

#### B. Role of the Office of Campaign and Political Finance

- Deficiencies of the Office as a Record Keeping Agency
- Failure of the Office to Perform Auditing and Investigative Functions
- Failure of the Office to Perform its Advisory Role
- Lack of Accountability of Office

### III. SUMMARY OF RECOMMENDATIONS FOR RESTRICTING LARGE CAMPAIGN CONTRIBUTIONS AND PARTIAL PUBLIC FINANCING OF POLITICAL CAMPAIGNS

#### Analysis of Effectiveness of Improved System of Public Financing of Campaigns

- Principal Findings
- Analysis Supporting Principal Findings
- Fiscally Responsible Proposal
- Adequate Funding
- Sufficient Monies from the Tax Check-Off
- Triggering Mechanism: Making the Public Financing Proposal Fiscally Sound
- Other Elements of an Effective Public Financing System
IV. SUMMARY OF RECOMMENDATIONS FOR DEALING WITH REPORTING, DISCLOSURE AND ENFORCEMENT

A. Proposals Concerning Campaign and Political Finance Commission
   - Campaign and Political Finance Commission
   - Investigative Responsibilities
   - Penalties
   - Annual Reporting

B. Proposals for Improved Record Keeping and Reporting
   - Retention of Records
   - Reports by Legislative Candidates
   - Reports by Persons Doing Business with Public Agencies
   - Definition of Political Committees
   - Permissible Campaign Expenditures

SUPPLEMENT A: DETAILED SUMMARY OF CAMPAIGN CONTRIBUTIONS TO AND EXPENDITURES BY CANDIDATES FOR STATEWIDE OFFICES IN 1978 and Calculation of Effects of Proposed Public Finance System on Contributions to Candidates for Statewide Offices
   - Election for Governor
   - Election for Lieutenant Governor
   - Election for Attorney General
   - Election for Secretary of the Commonwealth
   - Election for Treasurer
   - Election for Auditor

SUPPLEMENT B: CALCULATION OF EFFECTS OF PROPOSED PUBLIC FINANCE SYSTEM ON CONTRIBUTIONS TO CANDIDATES FOR LEGISLATIVE OFFICES
   - 1978 State Representative Election
   - 1978 State Senate Election
   - 1978 State Representative Election: Democrats
     - Republicans
     - Independents
   - Qualifying Candidates for 1978 Election for State Representative
   - 1978 State Senate Election: Democrats
     - Republicans
     - Independents
   - Qualifying Candidates for 1978 Election for State Senate

SUPPLEMENT C: DETAILED DESCRIPTION OF TRIGGERING MECHANISM

SUPPLEMENT D: 1978 General Election for the House of Representatives; Outcome by Money Spent
DETECTING AND PREVENTING FRAUD

THE OFFICE OF INSPECTOR GENERAL

Introduction
Problems in Detection and Prevention
Limitations on the Role of the State Auditor
Limitations in Prosecutors' Roles
Solutions
  The Federal Model
  Key Characteristics
Recommendations and Legislation
  Jurisdiction
  Independence
  Subpoena Powers
  Referrals

ENFORCEMENT STATUTES

The Need for New Laws
The New Statutes
  False Statements
  Economic Extortion

PILOTING THE LEGISLATION

ORGANIZATION: DEVELOPING AND DRAFTING LEGISLATIVE PROPOSALS -- PRESENTING A CASE TO THE GENERAL COURT

ASSUMPTIONS AND GOALS

  Legislative Action
  Timing a Legislative Campaign
  Active or Passive Agent

DEVELOPMENT OF PROPOSALS AS A POLITICAL PROCESS

  The Basics: Getting Information and Help
  Planning Backward and Forming Coalition
  Timing a Compromise
  Drafting Completeness and Accuracy
THE LEGISLATIVE PROCESS

Leadership Structure 108
Ritual 108
Rumors 109
Sponsorship 109
The Written and Spoken Work in the Legislature 110
Identifying the Votes 111
Dividing the Work 112
Cards and Letters 112
Staff Back-Up 112
Committee Mark-Up 113

FLOOR ACTION 114
Roll Call Votes 114
Timetable 115
Honey or Vinegar 116
Conference Committee 117
Third Reading 117
The Governor's Signature 118
Prospects for 1981 118

NEWS MEDIA 119
One Voice 119
Press Secretary 120
Timing 120
Monitoring News Coverage 121
Forms of News Issuance 121
The Interview 122
The Press Conference 123
The Background Story 123
Leaks 123
Public Hearings 124
Information Provided 126
The Final Report 126
Performance of the Media 127

THE SPECIAL COMMISSION IN COURT

WARD v. PEABODY 133

PUBLIC HEARINGS: KELLY, THISSEN, DOE and GREENE 138
Ward v. Kelly; Ward v. Thissen 138
Doe v. Ward 141
In the Matter of Harold Greene 142
Daniel J. Burke 143

OTHER CASES 145
David B. Coletti 145
Impounded Cases 146
Ward v. Manzi 147

CONCLUSION 148
CONSTRUCTION BIDDING

This section of the "Systems" Chapter deals with issues of construction bidding. It opens with a section describing the "formal" system of construction bidding, that is, the laws and the methods and procedures purported to be those required by statute or regulation during the period covered by the Commission's work. There follow sections dealing with the realities of sub-contractor selection, contractor qualifications and access to public contracts during this period. Each of these sections concludes with a statement and discussion of the Commission's recommendations regarding these issues.

THE FORMAL SYSTEM OF CONSTRUCTION BIDDING

Preparations for Bidding

Upon approval of working plans and specifications, the designer was instructed to submit reproducible plans and specifications and two sets of black and white prints of the reproducibles. These reproducibles were then forwarded by the BBC Plan Examining Section to the BBC Bid Section, along with a memorandum including bid deposits filled out by the Plan Examiner, using estimates provided by the designer, with the reproducibles.

Prevailing Wages

At the same time, the BBC requested from the Department of Labor and Industries the prevailing wage rates of those employed on the project. Those rates had to be incorporated into the provisions of the construction contract. Such inclusion was mandated by G.L.c. 149 s. 27 which provided:

Prior to awarding a contract for the construction of public works, said public official [i.e., BBC director] . . . shall submit to the commissioner a list of the jobs on which mechanics and apprentices, teamsters, chauffeurs and laborers are to be employed, and shall request the commissioner (of Labor and Industries) to determine the rate of wages to be paid on each job . . . . Said schedule shall be made a part of the contract for said works and shall continue to be the minimum rate or rates of wages for said employees during the life of the contract . . . . The aforesaid rates of wages in the schedule of wage rates shall include payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans . . . .

"Construction" within the meaning of the above provision included:

"additions to and alterations of public works, the installation of resilient flooring in, and the painting of, public buildings and public works; certain work done preliminary to the construction of public works, namely, soil explorations, test borings and demolition of structures incidental to site clearance."
Appeal from a wage determination or classification of an employee had to be made by contractors, unions, or awarding officials to the associate commissioners for public hearing. Contractors, sub-contractors and public bodies (such as the BBC) were required to keep records of employees on the job, including occupational class, hours, and wages. Copies were furnished to the Commissioner. There were criminal penalties for violation of the prevailing wage law, sec. 27.4

Advertising

The BBC then requested authorization from the Commissioner of Administration to advertise pursuant to the provisions of G.L.c. 29, s. 8A. That section provided:

No officer...shall award any contract for the construction, reconstruction, alteration, repair or development at public expense of any building...unless a notice inviting proposals therefor have been posted, not less than one week prior to the time specified in such notice for the opening of said proposals, in a conspicuous place on or near the premises of such officers, and shall have remained posted until the time so specified, and if the amount involved therein is in excess of ($5000), unless such a notice shall also have been published at least once not less than two weeks prior to the time so specified, and at such other times prior thereto, if any, as the commissioner of administration shall direct, in such newspapers or trade periodicals as said commissioner, having regard to the locality of the work involved in such contract, shall prescribe...

Chapter 149 s. 44D provided that the awarding authority must prescribe one place for filing bids, in the notice-inviting bids, which in this case would have been the BBC offices. However, "in cases of special emergencies involving the health and safety of the people and their property" such publication might be omitted.

After the Commissioner of Administration authorized the BBC to advertise in specific publications (perhaps with concurrence by the Budget Bureau), the BBC bid section established dates for receipt of general and sub-bids. There was no precise specification of which or how much advertising was required. Rather, G.L.c. 7 s. 42 provided:

Following final approval of such plans and specifications, the director [of BBC] shall advertise in a reasonable number of newspapers for proposals for performance of the work of the project; except that the commissioner [of Administration] may direct that the purchase of any materials, original equipment or original furnishings for the project shall be made under the provisions of sections 22 to 26, inclusive [of the state purchasing statutes].

Notice to publications specified publication date.

Competitive-Bidding-on-Building-Contracts

Construction contracts and subcontracts for buildings estimated to cost $5,000 or more were governed by c. 149 s. 44A through 44L if the awarding authority was any agency of the Commonwealth or if they cost $2,000 or more in
the case of a governmental unit of the Commonwealth. The precise definition
included buildings built by counties, authorities, municipalities, and virtually
every public entity other than the Massachusetts Bay Transit Authority.
Buildings incident to other types of projects, such as roads, water treatment
facilities and transportation facilities, were included in this statute and had
to be bid accordingly.

Plans and Specifications

The BBC sent the reproducible plans and specifications to the blueprinter so
that copies would be available to potential bidders. This was done pursuant to
the requirements of c. 149 s. 44A which required that:

The awarding authority shall prepare for bidding purposes a
sufficient number of sets of plans and specifications so that
there will be available...two complete sets of specifications
and plans which have not been mechanically reduced, for each
general bidder requesting the same and one complete set of
specifications and plans drawn on a scale not less than (1/8)
inch to one foot except site plans and which have not been
mechanically reduced, for each sub-bidder requesting the same.

Filing of Sub-bids

The specifications for every contract subject to the provisions of c. 149 s.
44A were required to incorporate provisions detailed in s. 44C of the chapter.
These included an itemized list of seventeen sub-contract categories of work. If
the estimated cost of any one of these items exceeded $1,000 (or if there was any
other subcontract category estimated to exceed $1,000, and for which the awarding
authority wanted filed sub-bids,) then separate specifications had to be prepared
showing all work to be done by a sub-contractor in that category. Sub-bids for
these contracts were required to be submitted directly to the awarding authority
by the sub-bidders. The seventeen categories were: Heating, Ventilating and Air
Conditioning; Electrical; Plumbing; Masonry; Roofing and Flashing; Waterproofing,
Oamo-roofing and Caulking; Metal Windows; Miscellaneous and Ornamental Iron;
Marble; Tile; Terrazzo; Resilient Flooring; Acoustical Tile; Glass and Glazing;
Painting; Lathing and Plastering; Elevators.

There was a prescribed form for sub-bids to be furnished by the awarding
authority (in this case, the BBC). Each sub-bid was to be accompanied by a
bid-deposit in the form of a bond or cash, as provided in s. 44B, in an amount
not less than 5% of the value for the proposed work.

Sub-bidders were required to state their proposed price for all work shown in
the corresponding category of the specifications. Sub-bidders were also required
to state whether their bid could be used by any general bidder, was restricted to
use by one general bidder, or was restricted from use by particular general
bidders. Only one bid price could be stated by each sub-bidder.

The precise procedure for filing sub-bids was outlined in s. 44H. It
provided that the sub-bid was to be filed with the awarding authority not less than four days before the date fixed by the awarding authority for opening the general bids. General contractors might file sub-bids. However, sec. 44J restricted such filings to those general contractors who could show that they customarily performed the sub-contract category listed, with their own employees, and that they were qualified to perform such work.

Within two days of the filing of sub-bids, the awarding authority was required to reject all bids not accompanied by a bid deposit or which otherwise failed to conform to the statute, which were not on a form completely filled in, were incomplete, conditional, or obscure, or which contained unauthorized additions. Sub-bidders might request withdrawal of their bid because of clerical error in filing the bid.

The awarding authority had the right to reject sub-bids from bidders whom it determined did not customarily perform work in the sub-contract category in which they bid. It might reject all sub-bids if less than three bids for a particular sub-contractor were received and the prices were not reasonable for acceptance without further competition.

**General Bids**

Not later than the second day prior to the date fixed for opening general bids, the awarding authority mailed to every person on record as having taken a set of plans and specifications a list of sub-bidders, arranged by sub-contract category, giving their names, addresses, and bid prices. In cases where no sub-bid had been filed for a particular sub-contract category or where all sub-bids for a particular sub-contract category had been rejected, the awarding authority had to provide an addendum to the list of sub-bidders stating the allowance to be included by the general bidder for that particular category.

The general bids were furnished to the awarding authority on a form prescribed by statute. The bid had to be accompanied by a bid deposit in an amount equal to not less than 5% of the value of the proposed work.

The general bids were required to be opened "forthwith;" they might be rejected if the awarding authority determined that the bid was improperly submitted the bidder was not competent to perform the work, or fewer than three bids were received. In addition, the awarding authority had the right to reject any or all general bids if it is in the "public interest" to do so. The contract award had to be made within thirty days after the opening of general bids - otherwise the bids were not binding on the contractor.

(*)Recently the BBC instituted a procedure whereby the general bidder submits a completed questionnaire concerning its financial condition and past projects at the time of bid submission.*)
Selection of the General Contractor

Until recently, the BBC furnished a form to the apparent low bidder describing his experience and resources and reviewing his qualifications as described on the form. This was done pursuant to Sec. 44A, paragraph 2, which provided that "(e)ssential information in regard to such qualifications shall be submitted in such form as the awarding authority shall require." In 1980 the BBC had begun requiring submission of the form with the bid.

The selection was required to be for the "lowest eligible and responsible bidder". This requirement was further defined by sec. 44A as involving the bidder whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary to the faithful performance of the work and who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.

The determination of the "lowest" bidder was thus based entirely on the total bid submitted by each general bidder. The components of the general bid -- the prices for "filed" sub-contract work (item 2 on the bid form) and those for the portion of the work performed by the general contractor itself or the sub-contractors chosen directly by the general contractor -- were not considered in reviewing general bids, except as to form.

Substitution of a new sub-contractor for one already listed on the general bid form in the filed sub-contract categories was permitted under a variety of circumstances. If a listed sub-contractor withdrew its bid, the general contractor would be required to select the lowest sub-bidder from among those on the list presented to the general contractor by the awarding authority to which the general contractor made no objection. If no other sub-contractor were available to the lowest bidding general contractor -- because all other sub-bids in the category were restricted to preclude their use by that general contractor -- then that general contractor was no longer eligible for the contract award. If the Department of Labor and Industries determined that a sub-bid used by the lowest bidding general contractor had to be rejected, then again a substitution would have been required.

The general contractor was then required to accept the next lowest filed sub-bidder "against whose standing and ability he made no objection." Since a recent Court ruling the general contractor has had to do more than state that it had an objection; it was required to offer some showing of the basis for its objection and the objection had to be deemed not arbitrary.

When the identity of the lowest general bidder and its filed sub-contractors were known, the BBC prepared a memo of the Director's recommendation based on this standard to A&F. A&F then returned the so-called Memo of Approval approving the recommendation of the Director or instructing the BBC to take other action or furnish additional information.
THE EVIDENCE

Introduction

The Commission's investigation and study of the laws and procedures used to select construction sub-contractors have resulted in the recommendation of a major change in the way sub-contractors are selected for public building projects. The evidence found by the Commission is clear and convincing in showing that the present law -- the filed sub-bidding system -- fails to serve the best interests of the public and fails to achieve its ostensible purposes.

The analysis required to determine the effectiveness of the sub-contractor selection law is similar to one for the selection of virtually any type of vendor to provide services or goods (construction being a combination of both) to the government. The paramount consideration must be the quality of goods or services provided: do they meet the specifications established and a reasonable standard of workmanship? The next consideration is cost: does the selection system provide the quality of services or goods desired at the lowest available price? The examination of the selection system requires looking at how that system affects the behavior of the participants -- government and vendors -- outside their performance of the contract: does the selection law allow or lend itself to the corruption of the participants? Does it allow advantage to those who break the law? Does it lead logical private businesspersons to conclude that their ability to get a contract is not based on their performance, reputation, and competitive pricing? Does it require the government and the vendors to go through procedures so intricate that the public is supporting an unnecessary bureaucracy. Finally, have private business people turned the field over to a select few who, with their attorneys, can master the labyrinth?

Studying sub-contracting requires examining the law by one other criterion: does the law encourage or allow business relations between the prime contractor and the sub-contractor which work to the detriment of the public in terms of quality, cost, integrity, or administration? Part of this criterion is the issue of bid peddling and bid shopping explained below. In many, if not most, private markets, businesses compete by trying to do one of two things: make a better product, or produce for a lower price. Businesses consistently try to learn
their competitors' prices and to match or undercut them. Indeed, agreements or mechanisms to prevent price competition violate long-standing anti-trust laws.

In the construction business, despite the acknowledged fact that this process takes place all the time, there is a level of price competition that is nominally condemned by some as unethical, even if it too is commonplace. This form of price competition is bid shopping and peddling.

The Commission recognizes that some forms of price competition can be unethical and work to the harm of the public awarding authority. (Our reasoning is presented below, under the "Alternatives" heading of this section.) The Commission therefore undertook to determine how well the present sub-contractor selection law prevents bid shopping and bid peddling. The issue is of heightened importance because the filed sub-bidding law takes the form which it does largely in an effort to prevent bid shopping and peddling.

The presentation of the evidence comes under six subheadings:

- Quality of Sub-contracting Work
- Bid Shopping and Peddling
- Bid Rigging
- Accessibility of Sub-contracts
- Architectural Technology
- Cost

**The Quality of Sub-contractors' Work**

The Special Commission's technical investigation of state and county buildings (described in detail in Volume V) presents findings directly related to the work of sub-contractors. The construction defects discovered and documented by that investigation are almost entirely in building systems constructed by sub-contractors, and the vast majority of major defects are in systems constructed by filed sub-contractors.

In his testimony, Dr. John Woollett, Professor of Architectural Technology at the Harvard School of Design and special consultant to the Commission, summarized his findings:

In short, the majority of the Commonwealth's buildings built over the last ten years are in deplorable condition as a result of the current system of public construction. Of the fifteen hundred buildings, fifty-two percent reported significant defects. Of the buildings visited by our construction technicians, sixty-five percent were observed to have buildings with major defects. Defects like external walls falling down, heating systems that don't heat, structural defects that threaten safety, playing fields that don't drain, external enclosures systems, external walls and roofs that have such enormous cracks in them that it makes energy conservation impossible, buildings that are potential firetraps, electrical systems that fail, roofs that continually leak... Our investigations show that the state and county system of public buildings produces such buildings as a rule and not the exception.

Reference to the distribution of defects by category of work (presented in Volume 6 of this report) reveals which subtrade construction typically is found to be defective. The table below highlights these findings. (It should be noted that "Designer Error" separately accounts for only 13% of all defects found.)
Table 1: Sub-contract Categories Most Commonly Defective

<table>
<thead>
<tr>
<th>Sub-contract Category</th>
<th>% of Visited Facilities with Defects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concrete</td>
<td>17%</td>
</tr>
<tr>
<td>Structural Metal</td>
<td>6%</td>
</tr>
<tr>
<td>Masonry*</td>
<td>32%</td>
</tr>
<tr>
<td>Roofing and Flashing*</td>
<td>41%</td>
</tr>
<tr>
<td>Metal Windows*</td>
<td>16%</td>
</tr>
<tr>
<td>Waterproofing &amp; Caulking*</td>
<td>3%</td>
</tr>
<tr>
<td>Plumbing*</td>
<td>11%</td>
</tr>
<tr>
<td>HVAC (heating, ventilating and air conditioning)*</td>
<td>25%</td>
</tr>
<tr>
<td>Electrical*</td>
<td>8%</td>
</tr>
</tbody>
</table>

*Indicates Filled Sub-contractor

Source: See Volume V.

Under questioning by Commissioner Burke, Dr. Woollett emphasized that it would be a serious error to suppose that these findings are applicable only to the buildings audited, but rather that the investigation shows these construction problems to be typical of the entire public building stock.20

Evidence was also presented questioning the quality of construction, particularly by sub-contractors, on specific projects. The review in greatest depth was of the Melrose Public Housing Authority's McCarthy Apartments. (The evidence showed both design and construction failures, however, this section restates only the testimony in regard to the quality of work by sub-contractors.) It will be recalled that the estimated repair cost for the $4 million structure is set at $4 million as well. Extensive defects, inferior workmanship, or substitutions of inferior materials were found in the plumbing, carpeting, tile, masonry, roofing, and fire alarm systems.21

In addition, according to the testimony of Leslie Brown, representing the architectural firm which was retained by the Melrose Authority to investigate defects in these buildings, the tile installed on the floors by the tiling sub-contractor was of an inferior quality to the tile specified and far more readily subject to cracks and breakage. The tiling sub-contractor was also a filed sub-contractor.

Commissioner Walter J. McCarthy undertook research on the construction of a set of buildings found to be defective by the technical investigation supervised by Dr. Woollett.
These findings indicated that building failures occurred at points in the construction which were sensitive design features. These points had two characteristics: (1) the points were crucial to facility integrity or performance, and (2) they were points of contact between two or more sub-contract categories. Examples of these types of problems can be cited from the Melrose Housing Project in which failure occurred where precast concrete slabs rested on masonry walls and required grouting and reinforcing bars for structural stability, and where masonry walls required structural grouting and reinforcement. In the same Melrose facility problems occurred where plumbing pipes were installed running up hill. In this case, the excavation and backfill work was done by one sub-contractor under so-called item 1 (general contractor) work, whereas the plumbing pipes were installed by the plumbing filed sub-bidder. Another example of this type of problem was the situation at the Haverhill Parking Garage where the structural concrete required both mild steel reinforcement and post tensioning, each done by separate contractors. Another illustrative example is the University of Massachusetts Amherst Library building where failure of the masonry curtain wall occurred at a point where concrete work (Division 1 work), the masonry sub-bidder work, the roofing and flashing filed sub-bidders work (a special section of flashing in the masonry), the caulking, waterproofing and dampproofing sub-bidder work, and material requirements from the ferrous metals vendor came together at critical structural points in the building. As one examines each of the situations noted above, when failure occurs, who is at fault?

As noted further in this report, it is the responsibility of the architect to define the work in item 1 as well as that in each filed sub-bid category. This must be done so that there are neither "gaps" between the work requirements which would leave parts of the work out of the project, nor can there be "over laps" since this would cause both confusion and additional costs due to the duplication of work by more than one contractor. Further confusion results for the general contractor since the burden falls upon this party to try to fill in the "gaps," and eliminate the "over laps". The resulting effort by the general contractor requires that he endeavor to create order from what is obviously confusion. Both the problems of the architect and the description of the resulting problems for the general contractor are discussed in more detail later in this report.

**The Evaluation of Sub-contractor's Work and Its Effect on Contract Awards**

The extent and magnitude of inferior quality performance by filed sub-contractors leads to the issue of whether the quality of sub-contractors' performance is considered in the sub-contractor selection system, where such responsibility lies. Also in question is whether there exists any correlation
between the repetition of bad work and the repetition of contract awards to individual sub-contractors. The evidence shows that during the selection of sub-contractors for a current project the responsibility for considering a sub-contractor's past performance is split between the awarding authority and the general contractor. While the Bureau of Building Construction (BBC), for one, denies any responsibility in this area, the general contractors are in no position to exercise discretion in selecting among filed sub-contractors and have almost no incentive to do so. The evidence also shows that despite the defective sub-contract work found to permeate state and country buildings, a small group of sub-contractors in each trade repeatedly performs filed sub-trade work on public projects.

William Tibbets is the Supervisor of Administrative Services at the BBC and as such is responsible for the bidding procedure. He has been employed at the BBC or its predecessor agencies for 25 years. In testimony before the Commission, he described the filed sub-bidding procedure and the division of responsibility for reviewing sub-contractors' qualifications. Tibbets stated that the BBC reviews sub-bids only for, "conformance with the statutory procedure that the forms are properly filled out, that all of the provisions of the statute with respect to that form are correct".22 This review is accomplished in a twenty-four hour period for all sub-bids received in connection with a single contract. When asked about the thoroughness of the BBC's review of sub-bidders' credentials and past performance, Tibbets responded this way:

We open them at noontime and as a general rule we have reviewed them by the following noontime...We are operating on the assumption when we receive a filed sub-bid initially, again initially because we have that short time frame in order to make an evaluation, what we see is what we get...What is the statutory responsibility placed upon an awarding authority with respect to sub-bids? Certainly we can't be expected to receive on a major project 150 different sub-bids and in a period of time between then and when we must by statute file a sub-bid list do a thorough investigation and determine each one of these sub-bidders. I suggest to you, sir, that's the responsibility of the general contractor.

The sub-bid statute may be subject to a different interpretation. In pertinent part,23 it states:

In initiating sub-bids in connection with such a contract, the awarding authority shall reserve the right to reject any sub-bid...if it determines that such sub-bid does not represent the sub-bid of a person competent to perform the work as specified...

Evidently, a general contractor who read this statute would be mistaken to think it meant that the BBC exercises this right before distributing the list of filed subcontractors.

Passing the responsibility for reviewing subcontractors' qualifications over to the general bidders raises the question of whether a general bidder is at
liberty to reject a sub-bidder whose qualifications are doubtful, even if that sub-bidder is lowest. Tibbets pointed out, correctly, that the law does not require a general bidder to use the lowest filed sub-bidder in each category. Instead, the general bidder may choose any unrestricted filed sub-bidder and, "take his chances on being low general bidder." In reality, a general bidder is probably throwing away any chance of winning the contract if he uses sub-bidders whose filed bids are not the lowest of those dutifully listed by the awarding authority. Every general bidder must assume that there will be at least one other general bidder who will use the sub-contractor with the lowest bid, regardless of the quality of that sub-contractor's past performance. Tibbets agreed that, in his many years with the BBC, the number of times any general contractor did use a sub-bidder other than the lowest one available was "insignificant."

The only factor which would impell a general contractor to exercise the right to reject a low bidding sub-contractor whose past performance was incompetent or inferior would be if the general contractor's ability to win future awards would be damaged by a sub-contractor's poor performance. As stated by John Kennedy (Project Manager for Walsh Bros., Inc., construction firm) in testimony before the Commission regarding the selection of contractors by private sector corporations:

...Now, we are all in this market, obviously, to make money. That's the prime concern, but it's not this project money so much as the project years from now or the project five years from now money. Our volume is based on our reputation, so we have to constantly perform that project, okay, in a very businesslike manner, and without letting the quality go downhill, so that we just make a "killing" on that project, and let the quality go where it may, so that quality is rated constantly.

Volume is not based on reputation as far as the Commonwealth is concerned. According to William Tibbett's testimony, the BBC in the last 25 years had always given the contract to the general contract whose bid was lowest.

Q. ...In the time that you have been with the Bureau has the general contractor ever been denied the right to bid or has a low bidder ever been denied the awarding of a contract because of the quality, presumably the poor quality of their performance on previous projects, either for the state or a private owner?
A. To my knowledge, and it's very vague, some seven or eight years ago we suggested to a bidder that he not bid, and he didn't. But, as a general rule and my knowledge, no, the answer is we have not, we have not precluded anybody from bidding, and I know of no incident where a contract was not awarded to the lowest responsible and eligible bidder except if that bid did not comply with the statute.
To summarize, the BBC (the largest single awarding authority) regards it as the general contractor's responsibility to decide whether to use a sub-bidder whose past performance is poor. The BBC historically accepts the lowest available general bidder, regardless of past performance of that general bidder or the sub-contractors nominally under the general's supervision. General contractors feel compelled to use the lowest available filed sub-bidder knowing that they will not be held accountable for performance. General contractors must use the lowest priced filed sub-bidders if they hope to win the general contract. In effect, this means that the state ignores the poor past performance of both sub-contractors and general contractors and in practice ensures that general contractors will select the filed sub-bider whose bid is lowest of those available.

The next step in this examination would be to determine the number of sub-contractors to perform state or county work (in a given period) and the number of projects and dollar volume of work they did. The relevance of this evidence is that it sheds light on whether the filed sub-bid law and the absence or diffusion of responsibility for rejecting incompetent sub-contractors results in the same set of sub-contractors repeatedly doing public work. If performance is inferior, as has been shown, and if selection of sub-contractors is based solely on low bid price and not at all on past performance, as has been shown, then it stands to reason that unscrupulous sub-contractors would become aware of these facts. Such sub-contractors would realize that they can consistently win contracts on public projects by bidding low and performing in less time or with a lesser quantity or quality of materials than would be needed to properly perform the specified work. When reputation and past performance don't count, only professional pride and honesty prevent this strategy from being used.

The evidence on the distribution of sub-contract work shows that it is indeed concentrated in most trades among a handful of sub-contractors who specialize in public work. The complete findings of the Commission in this regard are presented in Volume V. It is worthwhile reviewing the highlights of these findings and correlating them with the evidence of inferior workmanship and construction defects.
Of the eight most prevalent construction defects found by the Commission's technical investigation, only one is not a filed sub-trade, and another may or may not be. The remaining six, all filed sub-trades, show a high concentration of work among a few sub-contractors, as shown in the table below.

<table>
<thead>
<tr>
<th>Category of Defect</th>
<th># of &quot;Leading&quot; Firms</th>
<th>% of Sub-contracts Receiving this Trade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Masonry</td>
<td>14</td>
<td>36%</td>
</tr>
<tr>
<td>Roofing &amp; Flashing</td>
<td>3</td>
<td>48%</td>
</tr>
<tr>
<td>Metal Windows</td>
<td>4</td>
<td>56%</td>
</tr>
<tr>
<td>Plumbing</td>
<td>13</td>
<td>38%</td>
</tr>
<tr>
<td>HVAC</td>
<td>13</td>
<td>28%</td>
</tr>
<tr>
<td>Electrical</td>
<td>20</td>
<td>39%</td>
</tr>
</tbody>
</table>

Source: See Tables, Volume 6.

The shoddy workmanship in specific buildings likewise correlates with high concentrations of contracts and dollar volume in a few sub-contractors; for example, the six sub-trade areas showing major defects in the Melrose Housing Authority case. In plumbing, electrical, masonry, and roofing trades - all filed sub-trades - the concentrations are noted in the table above; in tile, four...
sub-contractors received forty-one percent of the sub-contracts; in flooring, three sub-contractors held sixty-five percent of the sub-contracts. The roofing sub-contractor who did work on the Melrose projects also did thirteen major state roofing projects between 1968 and 1977, and five of these thirteen roofs have had serious leaks, which in some cases were apparent even before the buildings were occupied.

**Sub-Bidding-Improprieties: Shopping, Peddling and Rigging**

Filed sub-bidding is a rarely used bidding technique, Massachusetts and Connecticut being the only government jurisdictions to employ it. Neither the federal government nor private industry employ filed sub-bidding. Cutting through all the rhetoric of its proponents, the system is designed with one purpose in mind: to prevent bid shopping and bid peddling. Thus, the filed sub-bid system can be understood and evaluated by how effectively it prevents shopping and peddling. This section presents evidence on this question and in addition on how susceptible filed sub-bidding is to bid rigging.

**Bid Shopping**

The Massachusetts filed sub-bid law is designed to prevent negotiation between a sub-contractor and a general contractor about the sub-contractor's price. Bid shopping is generally regarded as an attempt by a general contractor to use a real or fictitious sub-contractor's price as leverage to negotiate a lower price from another sub-contractor. This sometimes results in an unreasonably low price. Bid peddling is an attempt by a sub-contractor to learn other sub-contractors' prices after their bids have been submitted to a general contractor and drastically to undercut the competition, often without actually calculating the cost of the work involved.

An example of bid shopping and the difference between bid shopping and negotiation are offered in this testimony by John Kennedy:26

...if we have a sub at $100,000. and one at 110,000 and the one at 110,000 is the one we prefer to use, this negotiation, we'll call him up and say listen, there is a price out on the market of $100,000 that we had to carry in order to get the job and that's accepted, the sub would say sure, I understand that. Now, we would like to have you do the job, what's the closest to 100,000 you can do the job for us, think about it. So, he will call back and he will say well, I can't do it for 100,000 but I can do it for 102,000. Is that good enough. You say gee, I would like to see you do it for 100,000, but we really want you so we'll give you 102,000. That's negotiations. Bid shopping is if you have a price of 100,000, that's your lowest one at the time and you call up every sub to bid the job and some never bid the job and say I want to buy this job for 60,000, I know you can do it for 60,000, can you do it and you go around. One guy says 70, the lowest price you have first round, so you call back everyone and say it is 70 and you call everybody back and say I still want to do the job for 60, and you get 65, you go through the whole thing again, so you get a $100,000 job at 65, 68, something like that.

In the private sector, where there are no laws or regulations to prevent either negotiation, bid shopping, or bid peddling, two market factors keep in check the tendency by general contractors unfairly to maximize profits: first,
the importance of reputation in contractor selection, and second, sub-contractor's counter-strategies in bidding.

As to the first factor, reputation, Kennedy's testimony again explained the point:27

Q. Is bid shopping in your opinion an unfair trade practice or is it an unwise practice?

A. I would say whatever certain people do, it's a way of doing business. I think it's unwise because if that person is going to do it (a $100,000 job) for 70, he's either going to do a lousy job to be quite blunt, or extend the life of your contract and we found the quicker you get the job done, the more money you make, the happier the owner is and so on. It costs us considerable amounts of money per week to run a project, and if we have to kick some clown around, it doesn't take long to dissipate $30,000 on a project. So, you have to--I will have to say in my opinion it's unwise based on our circumstances to do that. If there is no accountability to the general contractor in the future for what he does on today's project, and he finds he will make money himself to do it, I would say that the system would allow him to do it, therefore he might want to do it depending on the type of business operation he is.

As shown above, the implementation of the public bidding law has been such that there is no accountability in public work, and therefore the incentive and opportunity to maximize profits using bid shopping does exist in public work. In this sense, bid shopping is made more possible by the filed sub-bid law.

The second counterbalance to bid shopping is the bidding strategy of sub-contractors. The best available evidence on this is found in an M.I.T. graduate thesis "Subcontractor Bidding Strategy" by Thomas F. Gilbane, Jr.28 Among this study's many findings are data giving empirical support to the common sense notion that if a general contractor is known to bid shop, sub-contractors react by bidding high to that general contractor, thereby raising the starting point from which they expect to be bargained down. The findings are that among subcontractors overall, 67% quote different prices to different general contractors on bid day.29 Several factors cause the sub-contractors to do this, but "reputation for bid shopping" was the most important factor causing sub-contractors to raise their prices to an individual general contractor.30

As to bid peddling, fully 83% of sub-contractors attempt to find out the prices that other sub-contractors quoted from the unsuccessful general contractors after the general bids are opened.31 It is therefore not clear from the data to what degree sub-contractors vary their prices in expectation of bid peddling by other sub-contractors.

The sub-contractor's strategy in the private sector, then, is to pre-empt the known bid shopper by quoting a higher price to him. The filed sub-bid law
prevents this strategy from being used by requiring that a filed sub-contractor's
filed bid price is available to any general contractor not expressly excluded by
the sub-contractor. If the filed sub-bid law does prevent any bid peddling or
bid shopping, then it stands to reason that a pre-emptive strategy is not
necessary. (But, as noted below under "Cost," there may be many other legitimate
reasons for a sub-contractor to quote different prices to different general
contractors.) If bid shopping or peddling were possible despite the filed
sub-bid law, then sub-contractors would have either or both of two strategies
open to them: they could exclude known bid shoppers from using their bid, or
they could raise their bid to build a cushion into it against the possibility of
some shopping. Although the first strategy - restricting a general from using
the bid - is frequently used (and again, there are many reasons for doing so), it
must be recalled that restricting the bid also means that the sub-contractor
definitely will not get a contract if the excluded general wins the general
contract. The common tendency to vary bid prices and to try to discover other
sub-contractors' prices which Gilbaine found in the private sector shows that
most sub-contractors do not have one fixed price at which they will perform a
contract, regardless of any other factor. In other words, sub-contractors may be
willing to negotiate.

The next important question is: can bid shopping or peddling occur despite
the filed sub-bid law? The answer is yes. The possibility is theoretically
there. As William Tibbets testified, bid shopping can happen:32

Let me say this, we have a file price which is a legal
document filed with us, if a general contractor in effect wants
to pay a sub-contractor less than the file amount and he's
willing to accept that, we would have no way of knowing it, and
two, no way of policing it.

This point is illustrated by a number of cases. The best known example is
recorded in the case of Interstate Engineering Corp. vs. City of Fitchburg &
Others.33 In this case, a defendant sub-contractor (Limbach) was competing
with Interstate (plaintiff) for piping sub-contractor work. Piping
sub-contracting was divided into two portions: the interior piping was made a
filed sub-bid (Ch. 149, sec. 44C allows the awarding authority the right to add
any number of filed sub-bid categories), but the exterior piping was to be bid as
part of the general contractor's item 1 work, to be performed by the general
contractor or to be sub-contracted out but not through a filed sub-bid. Limbach
filed an interior piping sub-bid of $3,124,000 that (it appears from the court's
decision) was not restricted to any general contractor. Limbach then called up a
prospective general bidder, Westcott, and offered a price on the exterior (not
filed sub-bid part) piping. Westcott said it wanted the same company to perform
the interior and exterior piping, despite their being divided up by the filed
sub-bid system. The next day, the day before general bids were due, Limbach
offered to do the exterior piping for $76,000 for Westcott if Westcott won the
general contract and used Limbach's filed sub-bid, which was not lowest, but
second lowest. (Limbach agreed that his filed sub-bid remained available under
any circumstances.) Westcott agreed. Westcott's general bid was lowest, and it
did use Limbach as the filed sub-contractor for interior piping. (Limbach also
offered the same arrangement to the other general bidder not planning to do his
own piping.)

Litigation ensued because the lowest filed sub-bidder for interior piping
protested. The judge in the first court found that "the estimated cost of the
exterior piping work...would substantially exceed $76,000 (Limbach's contract
price with Westcott)."

In other words, Limbach had been bid peddling, although evidently not to any
severe extent. While its filed sub-bid on interior work stood and was available
as stated to any general contractor, Limbach negotiated an arrangement with the
general contractor so that Limbach's total price, interior and exterior, was
competitive. It must be noted that the lowest filed sub-bidder, Interstate, had
the general contractor at a bargaining disadvantage. Interstate could demand an
uncompetitive price for the exterior work even though they filed the lowest
sub-bid because Interstate won the interior filed sub-bid and the general
contractor wanted the same company to do all the piping in this sewage treatment
plant. The inefficiency and coordination problems created by having two piping
sub-contractors on the same project presumably represents a cost to the general
contractor, one that the lowest filed sub-bidder on part of the work could
exploit. It also must be noted that it is the filed sub-bid law itself which
creates this situation, here requiring separate sub-bids on work that the general
contractor clearly determined should have been bid together as one contract and
one bid. It is only the filed sub-bid law that casts any appearance of
impropriety on the arrangement between the general contractor and Limbach, which
under other circumstances would be a normal, indeed sensible agreement.

The Massachusetts Supreme Judicial Court in this case felt bound by the
provisions of the filed sub-bid law, prohibiting this type of agreement, termed a
"variance." In finding for the plaintiff, Interstate, and against Limbach, the
Court noted, "Through such prohibition, (the filed sub-bid law) fosters
competition among sub-bidders at the time of initial filing (of sub-bids) and
helps assure that no general contractor will receive an advantage over its
competitors." The Commission can find no quarrel with the Court's interpretation
of the filed sub-bid law as it stands. This case is offered as evidence that bid
peddling and shopping can and do occur; that rather than eliminating the possibility, the filed sub-bid law in fact may increase the need and practicality of this type of arrangement, and that public policy and the public interest may not be best served by the existing statute. We further question the wisdom of a statute that assures that "no general contractor will have an advantage over its competitors." If we are to have a private, competitive economy then it would seem that allowing advantages among competitors to surface is a fundamental principle of that system. The Gilbaine study, noted below under "Costs," offers empirical substantiation to the common sense notion that there are legitimate reasons for competing general contractors to get different bids from the same sub-contractor. The study further indicates that most of these reasons have to do with how good or bad each general contractor is as a manager and business partner. The Interstate case is offered here as evidence that the filed sub-bid law acts to prevent and prohibit the Commonwealth from recognizing, encouraging, or taking advantage of these differences.

As a general matter, the pattern shown by Interstate is but one simple method to bid shop and peddle through the filed sub-bid law. An alternative, more complex paradigm for bid peddling and shopping through the filed sub-bid law can be described. A general contractor arranges for a low "false" bid to be submitted in one of the filed categories. The false bid may be by the general itself and restricted to itself, by a sub-contracting front set up just for this purpose, or most likely, by a legitimate sub-contractor acting on the general contractor's behalf. The general may then use the false low bid in several ways. He could get other filed sub-bidders (through shopping or peddling) to offer him a lower price than the one quoted in their filed bid. He could get a sub-contractor who hadn't even filed a sub-bid (perhaps a listed sub-subcontractor of the "front" sub) to offer a lower price and perform the work. The general could arrange for the front sub to withdraw his bid after a deal was agreed to with another filed sub-bidder.

Just as a general contractor could arrange any of these circumstances, so too could a sub-contractor who was seeking to get work through peddling his bid. A sub-contractor would agree to a price lower than his filed bid in order to get work, with the hope or expectation that he could break even or make a profit by inferior workmanship or substitution of inferior materials on the project. A legitimate sub-contractor would agree to operate as a front for any number of reasons, including a close working relationship with the perpetrator of the scheme, the expectation of playing a different role the next time the scheme is used, or for financial reward.
The potential use of this pattern or variations on it are illustrated by the following five examples. Each is an actual BBC project. It should be stressed that whatever the BBC's other shortcomings, they are the single most frequent user of the filed sub-bid law and, as such, probably most professional in its application. Because the pattern is of more importance and interest than the specific individual actions taken, the names of contractors and most projects are omitted.

A State Prison: In his testimony before the Commission William Masiello recounted the story of how the roof of the Chapel at MCI Concord came to be constructed in a defective manner preventing its use as intended. On December 1, 1970, the filed sub-bidders list for this project was published. It contained the names of three filed sub-bidders in the roofing category. They were A Co., at $134,400; the B Co., at $141,420; and C Co., at $147,000. The lowest bidder, A Co. was listed by the lowest general bidder, who obtained the general contract. In the memorandum of approval, dated December 28, 1970, from the BBC Director to the Commissioner of Administration and Finance, A Co. is listed as the filed sub-bidder for Roofing, at the above bid price. The BBC Director always states in the Memorandum of Approval who the sub-subcontractors will be in those filed sub-bid categories. Within these categories the BBC also requires the filed sub-bidder to list its proposed sub-subcontractors and the amount of the sub-sub-bid. No sub-subcontractors were listed.

The project was supposed to take exactly two years to build. By the Spring of 1973 blistering of the roof was already apparent and a controversy had begun as to who was responsible for the defective work. At this point, the correspondence in the architect's and sub-contractor's files shows that in addition to the usual finger-pointing between architect, general contractor, and filed sub-contractor, the filed sub-contractor, A Co., pointed toward its sub-subcontractor for responsibility. It developed that A Co. had in fact
sub-contracted out the roofing work which it was supposed to perform itself.

We place this example under the heading of "Bid Shopping and Peddling" not only because of the general opportunity for bid shopping or peddling that this situation allows, but particularly because of the identity of the illegal sub-subcontractor. It was C___ Co. which had been the highest filed sub-bidder on this same project two years earlier when the original filed sub-bids were received. The two filed sub-contracting firms involved held, between them, thirty (30) of the one hundred and sixty-eight (168) roofing filed sub-contracts on BBC projects between 1968 and 1979, and were among the eight (8) roofing firms to hold seventy-two percent (72%) of the filed sub-contracts in this period. (See Volume 6.)
A Community College: The electrical sub-bids received ranged in price from $83,390 to $97,834. The bid of A____ Electric Co. was at $97,000 and restricted to C____ General Contractor. C____ was the lowest general bid. The second low general bidder protested that A____ Electrical was not licensed to do electrical work and that the presiding officer of A____ was an employee of C. As a result, A____ Electrical's sub-bid was rejected and C____ substituted B____ Electrical, the highest bidder, asserting that the nature of this remodeling project required a close working relationship with the electrical sub-contractor. Even with B____ Electrical's high sub-bid, C____ was still the lowest general bidder (its "item #1" work the non-filed sub-bid and general contracting section was $30,000 less than the second lowest general bidder) and was awarded the contract.

In the words of a letter prepared two years later by BBC Assistant Director Frederick Kussman:

It is my suspicion that an arrangement may have been made between C____ and B____ Electrical Co. wherein the B____ Co. may not in fact have received $97,836 (their bid) on this contract, but may in fact have received monies closely related to (the lowest electrical sub-bidder's) bid which leaves open for explanation $14,446.

A State College: Among the sub-bids listed on Nov. 21 for lathing and plastering, A____ Plastering Co. was lowest at $51,000. The second lowest bid was B____ Plastering Co. at $67,913. On Nov. 27, after the list of filed sub-bids was distributed and two days before the general bids were due, A____ Plastering asked the BBC for permission to withdraw its sub-bid because, "as you can see the last two items on our worksheet was not recorded on the price sheets." The following day, Nov. 28, in a memo to the BBC Examining Section, Frederick Kussman states that according to this sub-contractor,

The estimator failed to fill the (47 line accounting paper) breakdown when converting area and materials to dollars and cents. Accordingly, all work on drawing A-2 and the upper lobby was omitted resulting in an error of $12,379. In a total bid of $51,000. The correct price should have been $63,379.

With the deadline for general bids one day away, Kussman asked the Examining Section at BBC, "Does examining have any reason to refuse the petition to withdraw?" The following day, Nov. 29, the only two general bids on this $14 million project both carried A____ Plastering Co. Over a month later, on Jan. 5, the BBC Examining Section responded to Kussman:

In review of F. Kussman's memo...and upon examination of the plan, specifically Sheet A-2 and the upper lobby, it was found that this represented 6,830 sq. ft. of plastering. The total amount of plastering on this project 11,676 sq. ft. so that Sheet A-2 and the upper lobby represent the bulk of gyspum plastering. A____ Plastering has stated a bona fide error was made by omitting the work on Sheet A-2 and the upper lobby and that it would cost $12,379 more to do this work, and make a total bid of $63,379. This seems preposterous because if this was true then it is costing the Commonwealth $51,000 for 4,846 sq. ft. of plastering and only $12,379 for 6,830 sq. ft. of plastering. (Emphasis added.)
Nevertheless, despite A____'s reason for withdrawing being "preposterous," A____ was allowed to withdraw and B____ Plastering, the second low bidder was substituted. It is of interest to note in retrospect that A____ Plastering and B____ Plastering, between the two of them, held nine percent (9%) of all plastering sub-contracts on BBC projects between 1968 and 1979.

On this same state college project, the Miscellaneous and Ornamental Ironwork sub-contract also presents an interesting illustration. Five days after bidding the Miscellaneous Metals sub-contract category and three days after the filed sub-bid list was distributed, the lowest metals sub-bidder, C____, wrote to the BBC asking to withdraw its bid. C____ said that after consulting with the project's architect it found that various items were to be included in the Miscellaneous Metal bid that C____ had thought came under a different section, Ferrous Metals. The BBC did not formally respond to C____ or withdraw the bid. Instead, after the general contract was awarded, a change order was approved for C____ to perform the disputed work. The cost of the change order, $33,000., put C____'s total contract payments above the second lowest sub-bidder, D____, by about $6,000. In approving the change order, the architect attempted to state his version of events in a letter to the BBC.

This letter is in regard to Change Order of [the general contractor] for $33,100.58, in order to provide steel framing for cooling tower supports and bracing the Curtain Wall at the Library levels and TV Studio. This bracing and steel supports were shown in the Contract Documents on Drawings A66, A68, and A69, and were completely detailed therein. The Specifications for the project indicated contradictory references as to the sections where this steel framing was to be included. The intention was to include this work in the Miscellaneous Metal section and reference was made to it being included in that section in the Curtain Wall section of the Specifications. Yet, no direct indication was given in the "Work Included" portion of the Miscellaneous Metal section of the Specifications.

An Addendum was prepared to clarify this and to clearly assign the responsibility for this work to the Miscellaneous Metal section of the Specifications. The Addenda was not issued by the Bureau of Building Construction. At the time that the matter was under consideration, during bidding, the Bureau declined to issue the Addenda after discussions with our office when it was determined that the value of work was not substantial and that there was a question of timing in getting this information to the bidders. It was then agreed that this framing was to be included in the project by Change Order during construction. This can be verified by Mr. X____, [a BBC employee] who directed that the Addenda not be issued. When C____ was advised that they were the Low Bidders, they immediately advised the Bureau, in writing, that their Bid did not include framing for the cooling tower supports or bracing for the Curtain Wall and they accordingly asked to be disqualified. The BBC advised them that the items under question were to be added to the work by Change Order and were not considered as part of the original Bid.

Again, it is of interest to note that C____ and D____ sub-contractors (the lowest and second lowest bidders) are among the four Miscellaneous and Ornamental Iron sub-contractors to receive 43% of all BBC project filed sub-contracts in this category, between 1968 and 1979.
A School for the Retarded: A general contractor, A__, Inc., submitted sub-bids restricted to himself in six filed sub-bid categories: Masonry, Miscellaneous Metals, Waterproofing, Roofing, Plastering and Ceramic Tile. In all cases but Masonry, A__'s filed sub-bid was also lowest. The BBC rejected three of these sub-bids as unrealistically low, but allowed the other three to stand. When general bids were received, A__ was second lowest. Had A__ been able to use its own sub-bids in all six categories, it would have been lowest general bidder. A__ protested to the Department of Labor and Industries, but the protest was denied. In the words of the BBC response to A__'s protest, "The protestant apparently played games with the bid law and got burnt." Had A__ played the same games but more tactfully, it is likely that all six of its sub-bids would have been allowed to stand and that A__ would then have won the general contract. The whole issue became moot when BBC announced that the project was to be re-bid because of a discrepancy in the plans and specifications.

To recapitulate, the incentive for bid peddling and shopping is powerfully present in the filed sub-bid law because a sub-contractor's performance has no bearing on whether the general contractor for whom he worked can win future contracts. The filed sub-bid law provides ample opportunity, as illustrated, for shopping and peddling to occur, either by the manipulation and sometimes the withdrawal of "front" sub-contractors or behind the use of sub-bids filed by general contractors and restricted to themselves. To deal with possible bid shopping, filed sub-contractors restrict their bids and may build a cushion into their bid price, because selectively quoting higher prices to certain general contractors cannot be openly done.

Bid Rigging

Bid shopping and bid rigging are two distinct procedures. The aim and result of bid shopping is that sub-contract work goes to the sub-contractor willing to offer the lowest price, even if this involves cut-throat competition and a subterfuge to violate the filed sub-bid law. Sub-bid rigging is a manipulation of the bid law or collusion between a bidder and another person (the architect or an awarding authority official) to circumvent competition and award the contract to a sub-contractor who in fact is not the lowest available bidder. The evidence presented to the Commission shows that bid rigging is possible and has occurred on filed sub-bid contracts.

The most direct evidence on point came in the testimony of William Masiello. After describing a variety of ways to rig supply contracts, including those that are sub-subcontracts or vendors within filed sub-trades, Masiello described one of the ways to rig a filed sub-bid.36 Either the architect (as in this case) or another party in a position of authority arranges with a sub-contractor in
advance of bidding that the sub-contractor will not be held to the materials in the contract specifications or to the necessary standard of workmanship. That sub-contractor can then submit a filed sub-bid lower than the other sub-contractors who are bidding on the entire work as specified. In Masiello's own words:

A. Another way that I bid rigged it, was through a subcontractor, a filed subcontractor. What I did with in the electrical contractor, he came in to me. He was short of work and through my electrical engineer predetermined even before it went out to bid. What we did in this instance was we speced conduit.

Q. And by spec means he put it in the specifications?
A. So, when the electrical contractors bid on it they had to put conduit in all the walls. When Mr. O came to the company, I believe this is at the Elm Park Community School, we told him that we wouldn't hold him to the conduit.

Q. You would not hold him to the conduit?
A. That he could put in Romex or something less than conduit. I think maybe Romex is not the word I am looking for. It was just a wire without going through a pipe. This gave him approximately $5,000 on any other contractor because he knew if it went in that he didn't have to put conduit in.

The record also makes clear that this technique is not unique to this project or the electrical filed sub-bid:

MR. WEINSTEIN: You referred to the electrical contractor. Now, that was one of the mandatory filed sub-bids that was required under the Massachusetts statute, right?

THE WITNESS: That's correct, sir.

MR. WEINSTEIN: And the technique that you have described could apply to numerous or all of the listed sub filed bids, right?

THE WITNESS: Mr. Weinstein, once the wires are behind the wall nobody ever opens them up again.

Contrary to Masiello's assertion, sometimes the walls are opened up again. The extent of grossly defective workmanship on the Melrose Housing Authority buildings led the Housing Authority Board to the unusual step of "destructive testing." As a result of their opening up the walls at the McCarthy Apartments, the Commission was provided evidence suggesting a second example of the same type of filed sub-bid rigging that Masiello described. Leslie Brown (an architect employed by the firm hired as consultant to the Melrose Housing Authority to investigate defects) testified that in order to determine the cause of failures in the fire alarm system, he ordered existing walls to be opened to enable a clear view of the wiring system.37

Q. What did you find as a result of your investigation?
A. The original specifications and drawings call for the system to be installed in EMT which is a metal conduit system. What we found was in fact the metal conduit system was not used throughout the building. In
conversations with the manufacturer they informed us that in fact they felt this work was the main reason why we were having false alarms.

MR. WEINSTEIN: Mr. Chairman. Was this all electrical work we are discussing now?
THE WITNESS: Yes. This fire alarm is all electrical subwork.
MR. WEINSTEIN: One of the filed electrical sub-bids?
THE WITNESS: That is correct.

The Commission was shocked to find this example in which the lives of over one hundred elderly tenants were put in jeopardy by the illegal actions of this filed sub-contractor and whoever may have colluded with him to allow this result.

A third example was also presented in testimony by William Masiello, involving filed sub-bids for metal windows. The essence of this testimony and the corroborating evidence is that Masiello and the William Bayley Co. arranged that Masiello's architectural firm would write specifications for metal windows that only Bayley could meet ("boxed" or proprietary specifications), allowing Bayley to be the lowest or only filed sub-bidder in the "Metal Windows" category required by the filed sub-bid law. The circumstances surrounding the projects on which Bayley was a filed sub-contractor are so typical of the peculiarities of the filed sub-bid law that it is worthwhile to review some of them in greater detail here.

MCI-Concord-Project-P61-1#4 Masiello and Bayley agreed that Bayley could omit half the welds specified on their windows, saving Bayley some $4,000. As it turned out, Bayley was the only filed sub-bidder for metal windows. Although the BBC routinely rejects a filed sub-bid when there are fewer than three sub-bids in a trade, Bayley's bid was allowed, and of course Bayley won the $289,982 contract. Given that it was the exclusive bidder, Bayley could have easily added the $4,000 or any amount to its bid, rather than omit the welds.

The project also provides an example of how the filed sub-bid law divides trades. Between the opening of the general bids and the contract award, the lowest "Glass and Glazing" filed sub-bidder wrote to Masiello to propose an informal understanding on the division of work, as follows:

As discussed...we have found that our pricing for the glass and glazing...does not include that which is necessary to furnish and install 12 aluminum window units...of the Chapel Building "K."

(We have contacted) the low bidder on metal windows... Bayley...Through channels of communications, we have found that they have included in their pricing those windows mentioned above. They informed us that they did so due to the preliminary correspondence with the architect on the project.
"We have also contacted the second bidder on this (glass) section and were given to understand that they had not included these windows in their bid."

This appears to be the arrangement adhered to, although it is not known whether any of the other Glazing sub-bidders intended the work described here to
be included in their bid or not. Note that the awarding authority was not involved in this extra-legal arrangement.

**MCI Concord Project P61-1-#9A:** Bayley is again the Metal Window filed sub-contractor (there were four higher sub-bidders). During the course of work, Bayley and the general contractor had a series of disputes. First, the Painting filed sub-contractor, headed by the general contractor's brother, alleged, apparently erroneously, that Bayley was responsible for painting the window frames. Second, the general contractor found Bayley's caulking work defective, and after a dispute about whether it was Bayley's responsibility or the filed caulking sub-contractor's (the same firm that did the roof for the Melrose Housing Authority), it appears to have been within the scope of Bayley's contract. Finally, the general contractor complained that Bayley had failed to supply an adequate number of cranks for their windows.

**MCI Concord Project P61-1-#9C:** In contrast to the BBC's action on Contract P61-1-#4, above, when Bayley was the only filed sub-bidder for windows the BBC on this project rejected Bayley's $148,849 bid when it was the only sub-bidder and inserted an allowance of $66,000. Again, the specifications appear to have been "boxed" and were slightly modified by Masiello's firm for the re-bidding. On the second round of bids, Bayley, at $135,135, was lower than the only other bid received, at $136,636, and Bayley was awarded the contract. Simultaneously, in the Plumbing and HVAC filed sub-bids, the lowest bidders withdrew their bids for "bona fide" errors, although their bids were only $6,000 and $3,000, respectively, lower than the next higher bids. While construction was still underway, the windows were found to be defective, in that rust had begun to appear on the interiors and a variety of scratches in the enamel and wall burns had occurred during installation.

**Worcester County Jail:** Bayley was awarded the metal windows sub-contract on this project despite the fact that it was not the lowest filed sub-bidder. The bidding documents also show a notation which suggests that someone knew which alternate would be chosen at least two weeks before it was selected.

In all these examples with this filed sub-contractor, it is noteworthy that it is one of two sub-contractors who collectively received forty-five percent (45%) of sub-contracts in the Metal Window filed sub-bid category on BBC projects between 1968 and 1979.

A final example illustrates how the complexity of the filed sub-bid law can lead to irregularities in bidding which suggest bid rigging. It must be emphasized that the Commission did not investigate the award of the following project and is not asserting that a crime was committed. It is offered here as an example of how filed sub-bids could be employed to rig both the sub-contract
and general contract award.

On an MOC renovation contract awarded in 1976, seven general bids were received. The contract was awarded to the third lowest general bidder because of alleged errors made by the lowest and second lowest general contractors in listing which filed sub-contractors they would use.

There are four filed sub-trade categories of interest; presented below are the filed sub-bids that later proved relevant.

### Table (3) Relevant Filed Sub-bids on an MOC Project

<table>
<thead>
<tr>
<th>Trade &amp; Painting</th>
<th>Sub-bid</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>A... Inc.</td>
<td>$54,000</td>
<td>Restricted to A'... Construction</td>
</tr>
<tr>
<td>B... Inc.</td>
<td>$55,000</td>
<td>Open</td>
</tr>
<tr>
<td>C... Co.</td>
<td>$65,000</td>
<td>Open</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Caulking</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>C... Co.</td>
<td>$13,500</td>
<td>Restricted to C...</td>
</tr>
<tr>
<td>A... Inc.</td>
<td>$27,000</td>
<td>Restricted to A'... Construction</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Roofing</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A... Inc.</td>
<td>$2,000</td>
<td>Restricted to A'... Construction</td>
</tr>
<tr>
<td>D... Inc.</td>
<td>$2,200</td>
<td>Open</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Electrical</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>E... Co.</td>
<td>$6,800</td>
<td>Restricted to A'... Construction</td>
</tr>
<tr>
<td>F... Corp.</td>
<td>$8,330</td>
<td>Open</td>
</tr>
</tbody>
</table>

**Source:** MOC Contract Files

The three lowest general bidders submitted the following sub-bids among their item #2 filed sub-contractors for the project:

### Table (4), General Bidders and Filed Subbids on an MOC Project

<table>
<thead>
<tr>
<th>General Bidder &amp; Amount Bid</th>
<th>Subtrade</th>
<th>Subbidder</th>
<th>Subbid ($)</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>G... Co. $140,191</td>
<td>Electrical</td>
<td>E... Co.</td>
<td>$8,330</td>
<td>E... bid was restricted to A'... Construction; sub-bid $ amount was F... Corp. bid.</td>
</tr>
</tbody>
</table>

| C... Co. $142,000           | Sandblasting | B... Inc. | $55,000    | C... had also filed a sub-bid. |

| A'... Construction $131,848 | Roofing | D...       | $2,200     | A'... Const. had also filed a sub-bid, in the name A'... Inc. |

**Source:** MOC Contract Files

G... & Co. was the lowest general bidder but had mistakenly listed as its Electrical sub-bidder E...Co.'s name with F... Corp.'s price. E... Co.'s sub-bid had been restricted to A'... Construction. G... Co. consistently used F... Corp.'s sub-bid price in all its computations. G... Co.'s general bid was rejected. The General Counsel of the Department of Labor and Industries (DLI) supported the MDC.
in rejecting G...Co.'s general bid, characterizing it as "an incomplete general
bid form" and saying that G...Co. had used a sub-bid they were restricted from
using (E...Co.'s). Despite G...Co.'s consistent use of an available sub-bid
price, it was not allowed to correct the clerical error as to the sub-bid name.
The DLI General Counsel makes no mention in his decision of this possibility, but
states the question as purely whether G...Co. could use a restricted sub-bid name.

C...Co. was second lowest general bidder. For its sandblasting filed
sub-contractor, it listed A...Inc., although C...Co. had filed a higher
Sandblasting sub-bid itself. C...Co.'s sub-bid was not restricted to C...Co.
The statute, at Chapter 149, section 44J, requires that when a general contractor
submits a filed sub-bid, the general "shall also submit under item 2 of his
general bid his name and amount for such sub-trade." The MDC rejected C...Co.'s
general bid for this reason, and when C...Co. protested to DLI, the MDC's
rejection was upheld.

This left A...'Construction, the third lowest general bidder with the lowest
remaining general bid. There was one problem, however. Although A...
Construction had listed the D...Co. as its filed sub-contractor for the roofing
sub-trade, there had been a lower bid filed by A...Inc. for roofing, restricted
to A...'Construction. A...'Construction and A...Inc. are the same name,
operating at the same address. The question appears to have been whether A...
had not committed the same error as C...Co. had, of failing to use the sub-bid
that it itself had filed. C...Co. sent a letter to the MDC Commissioner
protesting any award to A...'Construction, claiming that A...' had violated the
law. For reasons not apparent from the available files, this protest was not
heard by DLI, nor did DLI raise the point itself, and A...'Construction was
awarded the general contract.

There was a protest filed with the Department of Labor and Industries against
A...'Construction, based on its Caulking filed sub-bid, which alleged that A...
did not customarily perform that trade. DLI ruled that if the awarding authority
found A...'competent to perform the trade and if there was no evidence that the
awarding authority had acted arbitrarily, then DLI would not substitute its
judgement for MDC's. The Caulking sub-bid was based on a price per unit of
caulking. Four months after DLI's ruling and the award of the general contract
to A...'Construction, the quantity of Caulking work was doubled by the MDC and
therefore A...'s price doubled. The MDC minutes state:

Report of Mr...... on Contract...with A...Inc.,
recommending an increase of 100% of the original quantity on
item no. 5 - "Caulking...", due to the fact that the amount last
year was somewhat low, plus the fact that this past winter was
severe causing an increase in the quantity of joints to be
repaired, on this contract.
The Commission V O T E D: to approve an increase of the
An examination of filed sub-bidding procedures such as those described above in connection with bid shopping and bid rigging may also be fruitfully undertaken to shed light on the administrative requirements of the filed sub-bid law. All of the cases cited above could serve to illustrate that the administrative requirements of this statute are extensive, but in addition further evidence limited to the issue of administration is presented below.

Every bidding system has some administrative requirements. Generally, the more complex systems will require greater administrative labor and expertise, with corresponding increases in costs, both for the owner/awarding authority and for the bidders. The least of these requirements under filed sub-bidding is the two days required on every project for BBC administrative personnel to mechanically process filed sub-bids. Also involved is the distribution of the filed sub-bids to the general contractors and the time of the Department of Labor and Industries general counsel and staff who are required to hear, decide, and defend protests to the actions of all public awarding authorities. Far greater are the inherent complexities imposed on all designers, general and sub-contractors, and awarding authorities in day-to-day functioning under the terms of the statute. In the words of the former Labor and Industries general counsel, Joseph Kane, testifying before the Commission (and generally in support of the filed sub-bid law),

...if a contractor does not know the filed sub-bid law and he's bidding on state and local jobs, he's not sane, he's just wasting money and time.

The complexity of bidding can be illustrated by a comparison of two cases taken from the files of the Department of Labor and Industries. In the first case, three roofing sub-bids were received; two were restricted to individual general contractors. The third sub-bid proved non-responsive to the specifications and was rejected. Because only two sub-bids remained, the awarding authority exercised its discretion to reject all sub-bids. A $200,000 allowance was to be used by all general bidders until the roofing work could be rebid. At the second bidding, of the four companies invited to bid, the three who responded were the same three who originally bid. The sub-bids in this round were considerably higher than those of the same companies in the first round, with a low bid of $265,000. All sub-bids were then rejected as unreasonable, based on the architect's estimate of $230,000 for the work and the lower first round sub-bids. A third round of sub-bidding was required.

Consider and compare a second case: only two HVAC sub-bids were received,
with sub-bidder A bidding $119,000 and sub-bidder B bidding $158,000. Of the two lowest general bidders, general contractor A used sub-bidder A, and general contractor B used sub-bidder B. General A was lowest, but for other reasons his bid was eventually rejected by the awarding authority. When sub-bidder A was asked to work with General B, sub-bidder A refused. The awarding authority, feeling that general B had no choice but to use the unreasonably high bid of sub-bidder B, invited a second round of bids, in effect rejecting sub-bidder B’s bid. Three bids were received in this second round: a new sub-bidder C, at $135,000, a new bid from sub-bidder B at $148,000, and a new sub-bidder D at $154,000. Note that sub-bidder B’s new bid was $10,000 lower than his original bid. Can the awarding authority now use the lowest available sub-bid, from sub-bidder C? Can it at least require sub-bidder B to perform at the lower of its two prices? If the awarding authority cited in the first case was correct in rebidding in order to get the maximum available competition and a more reasonable price, was the awarding authority in the second case equally justified?

In fact, the decision of the awarding authority in the first case was upheld, but in the second case the awarding authority was required to use the highest sub-bid it had received for the work. The Commission assumes that the decisions of the Department of Labor and Industries were correct in interpreting the specific requirements of the filed sub-bid law. These examples are offered to note that the filed sub-bidding statute required this bizarre result and created these situations.

A second type of requirement imposed by the filed sub-bidding statute begins in the design phase and extends into construction, and for the purpose of this report may be classed as an administrative requirement. The statutory provision for receiving separate filed sub-bids in each of seventeen designated trades (plus any other required by the awarding authority) demands that the project designer separate the specifications into the same seventeen categories so that sub-bidders in a particular trade will know on what they are bidding. The designer must indicate that item of work "X" is in the Ornamental-Iron-bidder's work and not in the Ferrous-Metal work (which is part of the general bid), to use the example from a case mentioned above. In private construction that is bid only through a general contractor, while all work is specified, no division of contractual responsibility is determined by the designer. In fact, quite to the contrary, the contractor is solely responsible for the means, methods and techniques of construction. This is stated explicitly in the AIA (American Institute of Architects) standard contract. The general contractor bids on the entire package of plans and specifications and is responsible for organizing and performing all the work at the quoted price. He alone is responsible for
selection of sub-contractors.

Three results follow from the filed sub-bidding requirement that the designer divide the specifications into sub-contract categories required by law for all public buildings. First, general contractors lose the responsibility and opportunity to sub-contract work in the manner which they desire for the management ease, economy, or efficiency they choose. The general contractors thereby do not come under legal rules which require independence as to these matters on the part of the general contractor in order to hold it liable for relevant extra costs. Second, innovations in architectural technology that involve a combination or division of building trades in any way different from the formula or "grid" prescribed in the statute may be unusable on Massachusetts public buildings. Finally, should any construction work fall in a gap or gray area between the specifications of two (or more) sub-contract categories, no one will accept responsibility for their performance within the bid prices or original contract or sub-contract terms. The awarded authority and the taxpayer pay for this work either a second time and/or at a premium, non-competitively bid price.

As cited earlier, building failures occur with great frequency where the work of a number of filed sub-bidders come together. These points can be defined as "interfaces" between the work of several subcontractors and the general contractor. As also indicated previously, these interfaces are defined in the contract documents prepared by the architect. The result is that the contract documents structure the contractual relationships between the general contractor and the filed sub-bidders. It is further necessary, because of the division of work, to be explicit as to "who is to do what". Beyond this there arises a necessity for the general contractor to endeavor to integrate the work of these several sub-bidders into a harmonious and homogeneous flow. The general contractor has no alternative except to use the structure created by the filed sub-bid system. What happens in a sequence of activities, when a filed sub-bidder fails to perform in a timely fashion? Either the job is delayed or the contractors endeavor to circumvent or work their way around the missing piece of work. The results of this problem are dramatically apparent as we look at the final products of their labors, that is, the finished buildings. The average time required for a BBC project was about 85% in excess of the allotted contractual time, highlighting the problem of untimely performance. As observed so often in this report, buildings are in deplorable condition or constructed improperly and in non-conformance, as witnessed by Dr. Woollett's investigations. As we examine them, we find elements missing or improperly constructed. Note once again the Melrose Housing project as an example.
It would be the desire of the Commonwealth, under the filed sub-bid system, to cast blame for failure in performance on the general contractor, since he is presumed to be the responsible party. In order to be held responsible, a general contractor must, in a legal sense, be an "independent contractor" which means that the contractor must be in full control of the means, methods and techniques of construction and that he alone determines and controls them. The filed sub-bidding system, as noted earlier, creates a structure under which the general contractor must perform. This dictates, at least in part, the techniques of construction that must be used. It also dictates, to a certain extent, the means that must be used. It severely limits the methods that the contractor may use. It undermines the general contractor's ability to control sequences and precludes him from utilizing methods which integrate the work involved in multiple sub-bid categories. How then, the Commission asks, can this individual be held responsible when the system of procurement undermines the basic principal of responsibility?

The "specification gap" problem arises from the requirement of the filed sub-bid law that construction work be separated into legally defined distinct categories during design. This puts the public awarding authority in a position of perhaps having to pay for change orders during construction to have work done that is in the plans and specifications but not in the "right" place for the requirements of the statute.

The "specific gap" problem confronting an awarding authority and the standard response to it are explained and illustrated by a portion of the dialogue between Commissioner Walter McCarthy and Joseph Corwin, general counsel to the Associated Subcontractors of Massachusetts, during a Commission hearing on October 17, 1979:41

Q. 
...What happens in a case where, for example, under our present file sub-bid system where, for example, mechanical work—In the general work there is a sink shown on the architectural drawing, but that sink is not shown on the mechanical drawings. What happens at such time if there is a desire the sink is needed, what happens?

A. 
It's an extra, very simply because the subcontractor taking off his quantities doesn't include that sink, unless—you know, you could put the sink on an architectural plan, but you have got to list that plan in the section. If you have the sink and you don't want to rewrite the whole damn plan, what you have to do in your coordination work before you put it out to bid, you say in drawing A6, and then he will look on drawing A6 and see it.

Q. 
That's because the general contractor has no responsibility for making sure, for example, all of the work in the contract is included in his bid, all he has to do is make sure, for example, if there is mechanical work...
that the mechanical bid is included in his bid, is that correct?
I think that's correct.

A.

In a private project, if the work is shown on either the plans or specification, in any place, then performance of that work at the original contract price is the clear responsibility of the general contractor. 42

Using a change order after contractors are selected and construction is underway means, of course, that there is no competitive bidding -- filed or otherwise -- on that portion of the work. This could lead to the anomalous result of one sub-bidder finding the ambiguity and including the work in question in his bid, while a second sub-bidder who ignores the ambiguity and is thereby able to bid lower by omitting the work in question can win the subcontract and then get paid extra for the same work. In order to prevent this result the only sensible thing for a filed sub-bidder to do is assume that any ambiguity in the work specified under "its" section is to be interpreted as not requiring the sub-bidder to perform that work and not requiring the sub-bidder to include that work in its filed sub-bid price. Then, if a dispute arises, the work automatically becomes an item for which the public awarding authority must pay an additional sum, through a change order.

Restrictive Effects of Filed-Sub-bidding on Design: Architectural Technology

The filed sub-bid statute has long been recognized as having a powerful effect on the design of public buildings, entirely aside from the quality of construction. Whatever the merits of the statute in serving the self-interest of those sub-contractors who bid public projects, the Commission's inquiry also concerned the many implications filed sub-bidding has on the public, as owner. Construction workmanship and bid rigging are two such implications. A third, architectural technology, is discussed here.

Architectural technology should not be confused with design esthetics. It refers to developments in the nature of building materials and in the technology of assembling those materials to affect the physical integrity, cost or speed of construction.

The conclusion of previous studies on the effects of filed sub-bidding on architectural technology is that the statute seriously impairs and almost blocks the ability of public awarding authorities to take advantage of significant improvements in architectural technology which would benefit the integrity, efficiency, cost or speed of construction. Foremost among these studies are the Memorandum Submitted by the Massachusetts State Association of Architects (M.S.A.A.), March 13, 1972 (as background to proposed legislative changes in Chapter 149 of the General Laws), and the publication A Systems Approach for Massachusetts Schools: A Study of School Building Costs for the Massachusetts
Advisory Council on Education (M.A.C.E.), 1971. Both are worth citing at length.

The conclusion reached by the M.S.A.A. Memorandum is that the statute's requirement that all construction be separated into seventeen sub-contract categories runs contrary to, and largely precludes the use of, the most significant advances presently available in architectural technology. The M.A.C.E. Study had the same conclusion and found that the few examples of public buildings in Massachusetts that employ technological advances were bid under conditions of questionable legality and only through the deference of the sub-contractors' trade association.

In the following excerpt, the M.S.A.A. Memorandum explains how Section 44C of the law, which specifies the seventeen categories, prevents the use of performance specifications:

Section 44C, as presently written, does not permit competition among the different new construction technologies and methods. It does not, for example, allow the awarding authority to invite bids through the use of performance specifications which set functional criteria which the work must meet. Instead, the present law in general requires the use of technical specifications or those "detailing all labor and materials." See Sweezey v. Mayor of Malden, 273 Mass. 536 (1931). Such specification must state the specific physical details of the work to be done. And because technical specifications describe what the final product must be rather than what it must do, industry is stifled from making innovative and economical advances in public construction through public bidding. For example, the Department of Housing and Urban Development's technological innovations achieved through Operation Breakthrough could never be publicly bid for within the Commonwealth.

Performance specifications, which have long been used effectively by the federal government in space and defense procurement, permit public bodies to specify the functions which they require of various building components, but then permit the final technical solutions which will meet all of the applicable requirements to be left in the hands of industry.

It thus is not possible under present law to divide the work of the Electrical sub-contractor and HVAC sub-contractor using a performance specification for an integrated ceiling "system" that is essentially a manufactured product, combining the work of these trades (and others), and meeting a description of what it must do. The description of what the ceiling system must do cannot separate out what the Electrical sub-contractor or the Electrical "sub-system" must do without taking apart the ceiling system and thereby defeating its whole purpose. The M.S.A.A Memorandum explains further what a "system", in the sense, is and the incompatibility of this approach with the present law:

Most of the recent technological innovations in building construction do not fall neatly into the traditional categories of trade work. They overlap two, three or more sub-trades. The widely used innovation of this type is the integrated ceiling. This system, which combines traditional electrical, heating, ventilating and air conditioning, and acoustical tile sub-trade work, is customarily provided by a single manufacturer. There is serious doubt whether such a system could lawfully be bid under the present law, since this sub-trade work must be
separately listed in the specifications and bid as separate sub-trade bids.

The ceiling system is but one example of the difficulty of fitting available new technology within the present statutory scheme.

The Massachusetts Advisory Council on Education (M.A.C.E.) Study reached the same conclusion regarding the incompatibility of "systems" (using integrated systems throughout all aspects of a single building) design and construction with the filed sub-bid statute, remarking, "The statutory categories of filed sub-bids are not well suited to systems components". The M.A.C.E. Study noted that the City of Boston had begun an experiment in systems construction (which was not complete at the time of their report in that construction was still underway) and reported:

In general, it is not possible to specify and bid systems buildings under the existing law without serious design, specification and legal compromises. One set of such compromises relates to the statutory categories of filed sub-bids. These categories are generally material-oriented ("acoustical tile," "painting," "electrical work," etc.), while systems components are function-oriented ("integrated ceilings," "interior space division," "exterior skin," and so on). This makes the conventional specification of systems components very cumbersome, since each component must be conceptually broken down into its constituent parts which are then apportioned among the appropriate sub-bid categories. A number of architectural firms have chosen to resolve this problem in a different manner. With the approval of the sub-contractors' association, they have specified and called for filed sub-bids in such new categories as "integrated ceilings." The legality of this procedure appears to be questionable, since it removes portions of the work required to be in specific sub-bid categories from them. Doubtless because this approach works to the advantage of all parties concerned, no one has yet challenged it. (Emphasis added.)

The legality is indeed questionable, and it is absurd that any public body desiring to save money and time by using modern construction must first break the law, and then be immune to challenge because it has received the approval of the Sub-contractors' Association. In an interview with the architect of two schools in the BOSTCO City of Boston Systems project completed under this arrangement, Commission staff was told of the design team's efforts to obtain the support of the sub-contractors association and building trades unions, which included flying representatives of these groups to Toronto and California to see existing Systems projects in operation. In this same interview, the architect described the filed sub-bid law as "one of the most restrictive bidding statutes in the United States. It is a universal grid applied to all projects, and all projects do not respond well to that universal grid." The M.A.C.E. Study concludes that, "it strongly appears that the systems method is incompatible with the present Massachusetts Law."

The M.S.A.A. Memorandum offered a specific illustration of this incompatibility, and of what can happen when a public body does not have the permission of the sub-contractors association to pursue its goals. The M.S.A.A.
presented this report on the case of Norfolk Electrical Company, Inc. v. Town of Norwell, 48 (decided two years after the BOSTCO "Systems" bidding):

The town was willing to innovate and called for an "Integrated Ceiling System" in the specifications. Only a year ago the Department of Labor and Industries and representatives of the subcontractors association had agreed to permit a filed sub-bid for an integrated ceiling, notwithstanding the fact, as noted above, that G.L. c. 149, Sec. 44C recognizes the three components of an integrated ceiling as three distinct and separate filed sub-bids. The new category was allowed because recent developments in the construction process had created, in their wake, manufacture's and sub contractors prepared to fabricate and install the system at a cost lower and a quality better than the traditional atomized process.

As with any innovative development of real value, some of the customary relationships which attached to the traditional process were no longer appropriate and new relationships developed in their stead. Thus the sub-contractor formerly familiar only with acoustical tile installation had now become familiar with the installation of the entire ceiling unit; while formerly he had to coordinate his efforts with the heating sub's vent and the electrician's light fixture, he now installed the entire system himself with only modest assistance from his electrical sub-sub. (Conversely, some electricians filed under this sub-bid class, doing all the work themselves except for the acoustical tile work done by a sub-sub.)

This is the way the work is done and this is the way the low sub-bidder filled out its bid form. Since a sub-bid for "Integrated Ceiling System" under c. 149 is so novel, it is little wonder that this bidder, a former acoustical sub-contractor, who customarily did his entire work himself, should be found relatively unfamiliar with the requirement of listing sub-sub-bids.

The Form for Sub-Bid set forth in Section 44C requires sub-bidders to list their own name as sub-sub-bidders if they are going to perform sub-sub-bid work themselves. The low sub-bidder failed to list his own name, and the next lowest sub-bidder promptly sued to stop the entire job. Despite the facts that no damage was done to anyone, that the town knew full well that the low sub-bidder intended to do the sub-sub-trade work himself, that neither price nor scope of the work were affected by the omission and the court itself characterized the omission as a technical violation of the statute, the ruling in the case was that this low sub-bid must be thrown out because the letter of the law had been violated. The court, in effect, referred the matter to the legislature for redress:

'The Court agrees that we live in a time of change, technological, social and economic. There may well be a need for changes in our public bidding statutes. The legislature is responsible for the statutes. It is to the legislature that the parties should turn for reform if reform is desirable in the public interest.'

Accessibility to "New" Sub-Contractors

The Commission chose to examine how readily subcontractors on public buildings are available to firms who have not previously won such subcontracts. While the overwhelming concern of the Commission in regard to subcontracting has been the quality of construction, the extent and seriousness of defective construction in subcontract work led the Commission to question the extent of competition for public building subcontracts and how widely distributed such subcontracts are among subcontractors in Massachusetts. As noted in the section above on Designer Selection, a wide distribution of contract awards may not be an and in itself, in that firms performing well should find themselves repeatedly chosen for public
work. It is when the performance is poor, as has been the case in the majority of buildings built for the Commonwealth and the counties, that a concentration of subcontracts among a few firms is a sign that there is something wrong with the selection system.

The established policy of the Commonwealth to equalize access to the benefits of our economy and society to persons or groups historically suppressed for reasons of color or sex -- Blacks, Hispanics, women -- also led the Commission to question how responsive the public's multi-billion dollar construction program has been to this policy. The Commission sought to question this record from both the aspect of equal opportunity and of affirmative action, i.e., does the construction subcontract selection law passively or actively allow or result in opportunity for minority and women subcontractors?

The evidence found by the Commission convincingly shows that the distribution of subcontract work has operated to prevent the achievement of the public's goals of high quality construction and access by historically excluded groups, and that the primary cause of this failure is the law requiring filed sub-bids.

Noted above, in this section under the heading "The Quality of Subcontract work," and in Volume 6 of this report, subcontracts on public building projects in the Commonwealth have gone to one small segment of the construction trades firms operating in Massachusetts. In some trades, although a respectable portion of the firms in the state have held at least one subcontract on a state or county building project, there nevertheless are a few firms in that trade which have held a disproportionately large share of subcontracts. In all cases the distribution of awards -- the participation in the benefits -- has been narrow.

Examples of trades in which a respectable portion of subcontractors in that category have won at least one contract during the ten year period under study include Glazing, Tile and Terrazo, and Elevators. The distribution of subcontracts, however, remains narrow. In Glazing, although thirty-nine Glazing subcontractors in the state had won at least one subcontract on BBC work, four (4) Glazing subcontractors held forty-two percent (42 percent) of the number of subcontracts (52 percent of the dollar volume.) In the Tile-filed-sub-contract category, while all thirty (30) of the known Tiling sub-contractors in the state had at least one BBC project sub-contract, four (4) firms again predominated with forty-one percent (41 percent) of the number of contracts (66 percent of the dollar volume.) In the Elevators filed sub-contract area, exact figures on the number of elevator contractors in the state are not available, but the fourteen (14) firms holding at least one sub-contract on BBC projects are probably a significant portion; nevertheless, two Elevator firms got forty percent (40 percent) of the filed sub-contracts (37 percent of the dollar volume.)
In all the other categories bid through filed sub-bidding, a smaller proportion of firms have ever held even one sub-contract on BBC projects. On the average in these other categories, around ten percent (10%) of the firms in the state have done all BBC's work. Again, even in these categories there are disconcertingly high concentrations of actual awards (number of contracts and dollar volume) to a few firms within this ten percent. Among this group of firms (all others than the three mentioned in the paragraph above), the highest concentration of awards is in Resilient Flooring, where one filed sub-bidder held thirty-six percent (36%) of the sub-contracts (and 39% of the dollar volume). The second example of very high concentration is the filed sub-bid category of Metal Windows, in which two sub-contractors held forty-five percent (45%) of the number of contracts, and thirty-seven percent (37%) of the dollar volume of awards. The case of the lowest concentration is Masonry, where fourteen firms held thirty-six percent (36%) of the sub-contracts. (The special characteristic of masonry, that many general contractors perform their own masonry, may make these figures less useful than those for other trades.) The second lowest concentration is in HVAC, the filed sub-bid category in which thirteen firms held twenty-eight percent (28%) of the sub-contracts (but 67% of the dollar volume of work.) Lest this outcome appear to run counter to the pattern in all other sub-trades, it should be recalled that these thirteen firms comprise less than one percent (1%) of the HVAC firms operating in Massachusetts.

The complete table of sub-contract distributions in the filed sub-bid categories is presented in Volume 6 of this report.

The record of access to sub-contracts awarded through filed sub-bidding by firms owned by Blacks, Hispanics, and women is even worse. It was the unanimous opinion of those professional personnel charged with the protection of minority rights in the Commonwealth, and the view of the minority contractors association, that filed sub-bidding denies minorities access and prevents an effective affirmative access program for minority sub-contractors.

In testimony of the Massachusetts Commission Against Discrimination (M.C.A.D.) to the Joint Legislative Committee on State Administration, the M.C.A.D. stated the following:

The Commission [Against Discrimination] has found that the present construction contract award system and requirements, including the filed sub-bid method of selecting subcontractors, acts as an impediment to participation in public construction by minority contractors. The Commission believes that the replacement of filed sub-bidding with a bid listing procedure and the establishment of a minority contractor set aside policy for state building construction contracts, together with other necessary legislative improvements, will remove this impediment and further the goal of minority participation in public contracts.
The filed sub-bid statute has this effect primarily because of the way it separates the sub-contractors from the general contractors and places a third party (the awarding authority) between them. General contractors cannot use any sub-contractor other than one who has filed a sub-bid with the awarding authority, and they are effectively restricted to selecting the sub-contractor among those who have put in the lowest bid. This means two things. First, equal opportunity is reduced because this arm's-length relationship between sub-contractor and general contractor increases the need for and use of requiring that sub-contractors be bonded. Second, affirmative action (set aside) is difficult to enforce because the absence of minority firms from the filed sub-bid list gives the general bidders a powerful, almost irrefutable argument for not meeting goals for minority sub-contractors. If minority sub-contractors are not among the filed sub-bidders, then it is not the general contractor's fault if there are no minority sub-contractors included in the general bid. The general may only use sub-contractors who filed a bid with the awarding authority. It is thus not the general contractor's responsibility to recruit minority firms, and neither does the awarding authority take responsibility for the identity of the sub-bidders. As stated by David Harris, head of the State Office of Minority Business Affairs, at a meeting of the legislative Black Caucus which Commission staff attended, if you are going to have an effective set aside, then you have to change the filed sub-bid law.

The connection of the filed sub-bid statute to the issue of bonding for minority sub-contractors was explained in a letter from John B. Cruz, a minority contractor and former head of the Contractor's Association of Boston, a minority contractors group, to the chairpersons of the State Administration Committee. Cruz wrote the following:

The existing file sub-bid law, under Chapter 149, is definitely a deterrent to minority business utilization. The existing system serves as an effective barrier to prevent minority contractors access to construction opportunities. History has shown that the largest obstacle for minority contractors to overcome is bonding.

The areas where minority contractors have had success is where the file sub-bid law does not apply, such as State Department of Public Works, Massachusetts Bay Transportation Authority, Massachusetts Housing Finance Agency, and Housing and Urban Development projects.

The absence of file sub-bid requirement at these agencies, permits a dialogue to develop between the prime contractors and the minority sub-contractors. It allows for negotiation, it allows the minority and majority contractor to explore what can be done to include the minority contractor on the job, items such as the minority contractor's bid price, his experiences, track record, payment terms and working capital can be discussed. There have been instances where because of lack of or error in pricing, the minority contractor had been either too high or too low. There is time to discuss this discrepancy and work to get the minority contractor within budget and on the job. There have been countless times, when minority contractors could not come up with bond, but yet the majority contractors or owners still deemed it good business practice to use the
minority firm, without the file sub-bid law.

At least the door is open and we are given a chance to bid, negotiate, and hopefully, perform. With the file sub-bid law, we are left standing on the outside staring at the closed door to opportunities.

The Bonding Company controls and dictates the market place, who bids what job. The Bonding Company effectively excludes minority contractors by requiring huge amounts of retained earnings and net worth of construction company they bond. They expect minority contractors to have retained earnings and net worths comparable to white firms. How can we, when a majority of white firms are second and third generation, firms, and have had generations of building up profits to depend on for their net worth.

Minority contractors can get financing for working capital to perform on the job, but cannot get bonding. It is frustrating--like putting us in a boxing ring, with one hand tied behind our backs, expecting us to compete.

There are minorities making it in the system, but it is not because of the existence of file sub-bid law, it is the absence of it.

The same effect is felt by women sub-contractors. In her testimony before the Commission at a hearing on October 17, 1979, Virginia Enos, a developer and contractor stated52 that bonding difficulties are paramount among the many obstacles facing women owning sub-contracting firms and trying to obtain work on state contracts.

The simultaneous occurrence of these two phenomena -- the extensive concentration of sub-contract work, and the exclusion of minority and women sub-contract firms -- is a contributing factor to the defective nature of much of the sub-contract work on the state's public buildings. It is to be expected that any law which acts to exclude certain persons or groups from competing, or which generally results in low levels of competition, would eventually lead to a reduction in the standards of performance of the few who operate successfully under that law.

Cost-of-Construction

The cost implications of the system of filed sub-bidding, compared to more conventional approaches to sub-contractor selection, is difficult to assess. The question is how construction costs compare with comparable construction not using filed sub-bidding. There are two factors which preclude ever collecting significant data on this issue. First, only Massachusetts and Connecticut use filed sub-bidding, and Connecticut has joined this exclusive club only recently. Secondly, the intrinsic differences between any two buildings allow for numerous interpretations of any difference in their cost of construction.52a (See appendix for relevant data from the DPW.)

The sub-contractor lobby in Massachusetts contends that the less costly nature of filed sub-bidding is shown by a report on the experience of New Jersey in the receipt of both single bids (from one general contractor who assembled all the sub-contractors) and separate bids (from five prime contractors: Electrical, HVAC, Plumbing, Structural Steel, and general or miscellaneous trades) on a number of projects.53 According to the report on this subject, "New Jersey
Single-Separate Bid Law on Public Projects: An Eight Year Summary," published in 1977 by The Mechanical Contracting Industry Council of New Jersey, the separate bidding resulted in lower bids on the vast majority of projects, by an average of 10 percent. This report is mentioned here only because it is frequently cited by those in support of filed sub-bidding as proof that filed sub-bidding saves money. In fact, this report has no bearing on filed sub-bidding. Separate contract bidding is entirely different from filed sub-bidding, and the reduced cost in separate bidding is recognized as coming from the absence of a "general contracting" function to coordinate and manage the separate trades. The general contracting function is not absent in filed sub-bidding, in which the owner is still paying for the services of a general contractor. Indeed, under filed sub-bidding, the owner is paying a surcharge on those services because of the added difficulty of coordinating sub-contractors selected through filed sub-bidding.

Thus, whatever other interest it may hold and whatever the drawbacks of the separate contracting system, the results of any study on the price of single bids as opposed to separate bids is irrelevant to an examination of filed sub-bidding. Evidence more on point is available from the Gilbaine thesis, "Sub-contractor Bidding Strategy," cited above. Gilbaine did not conduct a comparison of filed sub-bidding with anything else. Rather, his findings reflect on the strategic behavior of sub-contractors in the open market in reaction to certain objective and subjective characteristics of general contractors and the bidding process. From these findings, it is possible to extrapolate sub-contractor behavior in the filed sub-bid system.

One essential feature of the filed sub-bid system is that sub-bidders cannot in any way offer varying bids to different general contractors. In contrast, other bidding procedures allow sub-contractors to offer lower prices to some general contractors than to others. To the degree that lower prices cannot be offered to competing general contractors, the Commonwealth is not getting the lowest possible price and the cost of projects is increased. This is the cost of lost or foregone bid variations.

The Gilbaine study investigated bidding variations by sub-contractors. The study shows both what percent of sub-contractors actually do vary their bids when permitted to do so as well as the percent difference between the low bid and high bid these sub-contractors offer different generals.

The Table below shows the percent of sub-contractors who quote different prices to various general contractors on bid day. Overall, 67 percent of sub-contractors vary their bids; in the mechanical and electrical trades the percent quoting different prices reached 77 percent and 84 percent, respectively.
Table 5  Percent of subcontractors who quote different prices to different general contractors.  

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<th>% No</th>
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<tbody>
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<td>16.0</td>
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<td>mechanical*</td>
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<td>27.7</td>
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</tr>
</tbody>
</table>

* filed sub-bid category or equivalent  
** filed sub-bid categories are included within this trade category (e.g., Painting, Tile)

This study also showed by how much sub-contractors vary their bid. The table below shows the percent variation in sub-contractors among those sub-contractors who quote better prices to some general contractors than to others. The average variation in prices is 11 percent.

Table 6  Percent of variance of subcontract prices quoted to different general contractors by those subcontractors who quote different prices to different general contractors. (Source: "Subcontractor Bidding Strategy.")

<table>
<thead>
<tr>
<th>Trade Category</th>
<th>% of variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Curtain Wall*</td>
<td>16.056</td>
</tr>
<tr>
<td>Interior Finish**</td>
<td>13.222</td>
</tr>
<tr>
<td>Structural Steel</td>
<td>11.154</td>
</tr>
<tr>
<td>Mechanical*</td>
<td>10.864</td>
</tr>
<tr>
<td>Electrical*</td>
<td>9.786</td>
</tr>
<tr>
<td>Masonry*</td>
<td>6.500</td>
</tr>
<tr>
<td>Elevator*</td>
<td>4.500</td>
</tr>
<tr>
<td>Overall Average</td>
<td>11.172</td>
</tr>
</tbody>
</table>

* filed sub-bid category or equivalent  
** filed sub-bid categories are included within this trade category (e.g., Painting, Tile)

Subcontractors vary their bid prices depending on the identity of the general contractor to whom they are bidding. Individual general contractors, when their identity is known to sub-contractors in advance of sub-bidding, can get lower bids from most sub-contractors, and by significant margins. Subcontractors vary their bids for a variety of reasons. Chief among them are good past relations with the general contractor, the reputation of the general contractor for bid shopping, prompt payment habits of the general contractor, terms and conditions of the general contractor's contract, reputation for finishing the job on time, discussions of how the project will be built, and the identity of the general contractor's superintendent who will run the job. "The factors having the greatest effect on lowering the sub-contractor's quote to a general contractor," according to Gilbaine, 55 "were... good past relations, ... prompt payment habits, and... reputation for finishing on time... Reputation for bid shopping was rated far in advance of all other factors for raising the price sub-contractors quote."
Filed sub-bidding, however, does not include a legal mechanism for sub-contractors to quote different prices to different general contractors. As Gilbaine notes, filed sub-bidding, "still does not allow the sub-contractor to quote his best price because he must quote one bid price for the job, not knowing which general contractor he will have to work with." The sub-bidder cannot use varied bids as a strategy to deal with bid shopping. Instead, the sub-contractor can only use an overall increase in the bid. The filed sub-bid price must allow a cushion in case the award goes to one of the general contractors who is rated poorly by sub-contractors. Although a factor like the terms of the general contractor's contract do not apply in the case of public contracts (because the state imposes a standard contract), all the other factors do. Promptness of payment remains a factor, despite the state's direct payment law, because legal redress is no substitute for timely payments without recourse to administrative action. Bid shopping, as noted above, remains a persistent factor under filed sub-bidding.

Based on Gilbaine's findings, bids of as much as 11 percent lower on the average would be possible if the sub-contractors knew the identity of the general contractor to whom they are bidding. In certain trades, bids of as much as 16 percent lower would be possible under a bidding system other than filed sub-bidding. The total potential effect on bid prices can be estimated by comparing the frequency of varying bids (67 percent of sub-contractors) with the average amount of bid variations (11 percent). The potential net overall effect (67% x 11%) is 7.4 percent lower sub-contract prices if sub-contractors could know in all cases to which general contractor they're bidding. In the ten year period under study by the Commission, a 7.4 percent reduction in sub-contract prices in the filed sub-bid categories equals approximately $25.4 million.

Subcontractors may not be the only party that finds it necessary to add a cushion to their bids in response to the nature of filed sub-bidding. It was the conclusion of the Massachusetts Advisory Council on Education (M.A.C.E.) Study of school construction cited above, that general contractors logically add a cushion to their bids when bidding a filed sub-bid project, for much the same reasons noted in the Gilbaine study. The M.A.C.E. Study reported the following:

First, the general contractor includes in the percentage which he adds to his bid for overhead a considerable factor, often as much as ten percent, for his responsibilities in dealing with a multiplicity of subcontractors. Since under the filed sub-bid law he must deal with subcontractors without pre-qualification, the general contractor necessarily will not wish to err on the side of carrying an inadequate amount for contract administration.

Costs are also increased when the contractor feels that, because of potential competition, he must carry the sub-bid of a firm in which he does not have total confidence. In such cases, he has the option of requiring that the sub-contractor be bonded to him, and the cost of these bonds (normally one percent of the sub-bid) is ultimately borne by the awarding authority.
The M.A.C.E. Study concluded that this circumstance, combined with the absence of effective pre-qualification of sub-contractors or general contractors, cost public awarding authorities as much as five percent (5 percent) of the bid price.

The Commission also received a copy of the following general report from Alfred M. Fogerty, of A.M. Fogerty & Associates, of Hingham. Mr. Fogerty is a professional cost consultant, with experience during the past eight years estimating over one billion dollars in construction, of which his letter states, "most of which was in Massachusetts and came under Chapter 149 of the Mass. General Laws." Mr. Fogerty notes that between 1968 and 1970 he operated as a filed sub-bidder in the Miscellaneous Iron Category, while also operating as a general contractor in 1969 and '70 on "many" filed sub-bid projects. Fogerty's letter states:

It is my feeling that the filed sub-bid law can add anywhere from a low of 5 percent to 10 percent up to 25 percent to 50 percent of the cost of filed sub-trades. We have knowledge of some filed sub-bidders who will bring two bids to a bid opening and deposit the higher bid price if there is little or no competition, or deposit the lower bid price if there is a great deal of competition.

We also know of subcontractors who do not want to go through the bother and lengthy red tape of submitting field sub-bids. The bother and red tape are another factor which leads to higher prices to cover overhead, by obtaining bid bonds or bid deposits and then delivering bids at a specific time and place. In private industry a phone call to a general contractor from a filed sub-bidder, followed by a letter, is all that is required, thus eliminating much red tape, time, and consequently allowing lower costs.

When submitting their bids, filed sub-bidders do not know who the general Contractor will be until after the General Bids have been received. Often that sub-contractor can work more efficiently with one general contractor over another and he knows this from previous experience. But the difference between the contractors is not enough for the sub-contractor to restrict his bid from that particular contractor. Also, by restricting his bid to a certain contractor he may offend some other general bidder for whom he has worked in the past, if he has not taken the time or effort to ascertain what general bidders are on the list.

None of these estimates of added costs due to filed sub-bidding take into account the cost of repairs that are made necessary by defective construction, or the cost to the public of overruns of contract price and construction deadlines because of coordination problems.

The question of the cost of construction using filed sub-bidding also involves the economics of turnkey procurement, because as concepts, turnkey and filed sub-bidding are antithetical and incompatible. Turnkey, as the name implies, involves selecting a developer to produce a finished building for the owner, who buys the product from the developer upon completion. The owner has a program, which includes a variety of requirements, but does not participate in any way in the selection of sub-contractors. The concept requires removing the public sector as much as possible from the development process after the
developer is selected. The product must meet the program specifications, and the
laws applying to all private development must be followed. Among the various
features of this process is the exclusive authority of the developer during
construction.

Comparisons exist of the cost of public housing construction in Massachusetts
built through turnkey procurement and housing built through the standard
procurement process, including the filed sub-bid law. The table below presents
the results of these comparisons.

<table>
<thead>
<tr>
<th>Table (7), TURNKEY-VS. FILED SUB-BIDDING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comparative per unit cost of public housing built under Chapter 149</td>
</tr>
<tr>
<td>(44 A-L) procedures and under turnkey development</td>
</tr>
</tbody>
</table>

**ELDERLY**

<table>
<thead>
<tr>
<th>High Rise 667</th>
<th>Filed Subbid = $24,000</th>
<th>Turnkey = 22,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAVINGS</td>
<td>$2,000</td>
<td>8%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Low Rise 667</th>
<th>Filed Subbid = $22,000</th>
<th>Turnkey = 17,600</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAVINGS</td>
<td>$4,400</td>
<td>20%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Major Rehab 667b</th>
<th>Filed Subbid = $20,000</th>
<th>Turnkey = 16,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAVINGS</td>
<td>$4,000</td>
<td>20%</td>
</tr>
</tbody>
</table>

**FAMILY**

<table>
<thead>
<tr>
<th>New Development</th>
<th>Filed Subbid = $42,000</th>
<th>Turnkey = 31,700</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAVINGS</td>
<td>$11,000</td>
<td>26%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Major Rehab. 705</th>
<th>Filed Subbid = $40,000</th>
<th>Turnkey = 28,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAVINGS</td>
<td>$12,000</td>
<td>30%</td>
</tr>
</tbody>
</table>

---

Sources:

a) Letter to Sen. George G. Mendonca from Comm. Lewis Crampton (Dept. of
Community Affairs, 4/26/74, with attachments).

b) League of Women Voters, 1974.

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In addition, the conventional bidding procedure adds, on average, two months
between the completion of design and commencement of construction that are
eliminated in the turnkey process.*

These figures can in turn be compared to national comparisons of Turnkey to
standard public bidding techniques, recalling that until recently no other
jurisdiction in the United States used filed sub-bidding. While not as rigorous
a procedure as would be ideally desired, it is nevertheless significant to
compare two different things -- standard construction bidding without filed
sub-bidding and standard construction bidding with filed sub-bidding -- with a
constant third, Turnkey. According to the article "New Techniques in Public
Development, to John Connolly and Doris Bunte, The Boston Housing Authority,
versus Turnkey Procedures.

*(Source: Memorandum from Stephen Giddings, Director of Planning and
Development, to John Connolly and Doris Bunte, The Boston Housing Authority,
versus Turnkey Procedures.")
Housing,59 by Joseph Burstine, then Associate General Counsel to the Department of Housing and Urban Development, Turnkey nationally shows "a saving of ten to fifteen percent in cost." This figure compares with the savings in Massachusetts, where Turnkey housing is produced for as much as 30 percent below construction using filed sub-bidding. Even the 20 percent saving in elderly low-rise construction, the most common form of public housing in this state, is far superior to the savings from turnkey nationally, where filed sub-bidding does not exist. The difference is not that turnkey costs less in Massachusetts but that projects bid with filed sub-bids costs that much more than conventional bid projects in jurisdictions without filed sub-bidding.

WHAT THE EVIDENCE SHOWS

The Commission concludes, based on the examination above, that the filed sub-bid statute is a failure by every reasonable measure of a sub-contractor selection system for public construction. It creates or allows condition that are contrary to the public interest, and at the same time fails the self-interest of the majority of sub-contractors in Massachusetts. It is the kind of law that gives government regulations and operations a bad name.

Quality

The filed sub-bidding statute divides responsibility for selecting sub-contractors in such a way as to minimize the review of sub-contractor's past performance and minimizes the general contractor's accountability for all parts of a project. No incentive is thereby offered in terms of access to future contracts for high quality workmanship and for strict adherence to contract terms and specifications or for proper coordination and supervision of sub-contractors by general contractors. It provides no disincentive for defective work or failure to meet contract terms and specifications. Recourse to lengthy court processes to determine financial responsibility for defects years after the defects occurred and with no effect on the responsible firm's ability to secure further sub-contracts is a totally inadequate substitute for an effective selection system that prospectively prevents defective work. The Commonwealth's record in tolerating defective construction is directly (although not entirely) attributable to the selection of sub-contractor's through filed sub-bidding.

Aside from defective work, the public has been prevented from securing the best available architectural technology directly as a result of the filed sub-bid statute.

Integrity

The examples described above show that bid peddling and bid shopping are possible despite -- and in some cases because of -- the filed sub-bid law, and that shopping and peddling in fact occur. Sub-contractors who wish to peddle,
particularly those who are schooled in the intricacies of this law, can peddle. General contractors who wish to shop can shop. The only result of the statute is to make law breakers out of private business people who want to pursue legitimate sub-contract negotiations. It has also made shopping, peddling, and negotiating unavailable to the majority who are untutored in the law and not in the good graces of the organized proponents of the filed sub-bid law.

Because negotiations are put on a plane with bid shopping and peddling, the public also loses the potential benefits of sub-contract negotiation, which are a legitimate and traditional aspect of the general contractor’s management function. The public pays for a general contractor, but is prevented from gaining the full benefits of that service.

The examples described above further show that bid rigging is possible and has occurred under the filed sub-bid law. The filed sub-bid statute increases the opportunities for bid rigging of the general contract by creating a myriad of devices to selectively accept, reject, and withdraw general and sub-bids.

**Administration**

Construction is a complicated process. Filed sub-bidding imposes on it an impossible goal of accurately and completely dividing all plans and specifications on projects which are overwhelmingly characterized by the interlocking of trades. Filed sub-bidding places the burden for properly achieving this impossible goal on awarding authorities and their architects, but then relies upon the sub-contractors themselves to police this procedure as they see fit, protesting when it suits them. Awarding authorities and their designers have little interest in complying with these requirements other than their fear that sub-contractor protests will require that the project be rebid. The acquiescence of sub-contractors to major or minor departures from the law only comes as a relief to the awarding authorities. The result is a set of procedures and rulings of baffling complexity and inconsistent and unpredictable application. In turn, the side effects of administrative complexity include increased costs (due to "gaps" in sub-contractor's plans), increased opportunities for bid shopping, peddling, and rigging, and increased concentration of participation by sub-contractors who have mastered the specialized rules of this game.

**Accessibility**

Sub-contracting on public building projects is the domain of a small segment of the sub-contractors in Massachusetts. For the uninitiated sub-contractor, the "right" of access to public building work through filed sub-bidding is analogous to the right of indigent defendants to represent themselves in court. Everyone had the right, but it was not worth much in the end. This result is directly
attributable to the filed sub-bid statute making successful participation in public bidding a specialized art form.

The Commission has further concluded that filed sub-bidding reduces competition for sub-contract work precisely because it comes between the general contractor and sub-contractor. This prevents the sub-contractor who does not restrict his bid from knowing with which general contractor he will work. Many sub-contractors are simply unwilling to bid under that condition.

For Black, Hispanic, and women sub-contractors, filed sub-bidding is by far more of the problem than the solution. It has effectively impeded both equal access and affirmative action for minority and women sub-contractors. Set aside goals will be largely worthless as long as filed sub-bidding limits the responsibility of general contractors to select sub-contractors.

Cost

The public is not getting buildings that meet reasonable standards of construction at the lowest available cost, due to the requirements and effects of filed sub-bidding. In addition to the fact that construction in the filed sub-contract areas is defective, the public is paying for repair of facilities to correct or compensate for these defects. The "blind" bidding of sub-contractors (not knowing which general they will work with) adds to the initial price. The arms-length relationship between general contractors and many of the low sub-bidders on filed sub-bid projects requires general contractors to add a cushion to their bids, again increasing the initial price. Architectural technology with a proven record of reducing cost and construction time is unavailable to public building authorities in Massachusetts. Limited competition usually tends to increase price, and as shown above competition for filed sub-contracts is severely limited. The designer's difficulty in both completely noting all items of work for each filed sub-trade and thoroughly cross-referencing all plans and specifications make awarding authorities subject to otherwise unnecessary change orders, again increasing costs. Finally, by preventing legal, open negotiations between general contractors and sub-contractors, the public is denied any savings that might thereby accrue.

The exact amount of increased cost and lost opportunities for savings can be debated indefinitely. Whatever the figure, the filed sub-bid statute prevents the public from obtaining decent public buildings at the lowest available cost.

A NEW SUBCONTRACTOR SELECTION SYSTEM

It is not technically difficult to describe a sub-contractor selection system that is better than filed sub-bidding. The vexing problem of changing the filed sub-bidding system is political, and it is a problem of intense and symbolic
importance to government today. The problem is how government can deliver services by purchasing them from the private sector without becoming the captive of the private firms selling those services. File sub-bidding is a classic and disasterous example of a small segment of the private sector taking government regulations which should benefit the public and turning those regulations around to benefit themselves. In this case, a small group of sub-contractors has thrived through crafting and advocating regulatory laws which give this group an advantage over other sub-contractors, general contractors, and the taxpayer.

At issue is whether our state government retains the ability to balance the equities among competing private interests while giving primacy to the interest of citizens and taxpayers.

The characteristics of a system of sub-contractor selection that serves the public interest and is fair to private vendors are relatively straightforward, but require further articulation in five particular areas.

Quality of Work: Selection must place a premium on high standards of workmanship and compliance with contract terms and specifications. The process must remove from competition those who have failed in the past. It must enable the owner to focus, before a project begins, on who is responsible for judging past performance and delivering proper performance on the upcoming project.

Cost: Competition must be encouraged to the extent necessary to get the lowest available price for the standard of work demanded. The selection system must recognize that total life cycle costs are of greatest importance, not bid prices of individual components of construction. The selection system must not work to the owner's disadvantage by precluding the owner from using the procurement techniques and technology that best serve the owner's operating and financial needs. It should encourage contractors to develop project teams that can deliver a cost effective final product.

Administration: The administration must be consistent and predictable and within the professional capabilities of the numerous small awarding authorities and private businesses engaged in building construction. Enforcement of procedures should allow for and make use of self-interest of the private participants, but must not be dependent on the industry.

Integrity: The selection laws must not, through their complexity, create new avenues for rigging government contract awards. They must be realistic in recognizing the norms of industry behavior in the private market, and not require that persons doing business with the state hide, collude, use various subterfuges, and break the law to do what may be standard business procedure otherwise. The sub-contractor selection statute must not invite disregard and disrespect of the law through unnecessary and selectively enforced regulations.
Access: The selection system must have no restrictions of access, and should result in the selection of participants whose work is based on reputation, performance, price and explicit economic policies of the Commonwealth to redress historical wrongs.

Alternatives

The Commission chose to look to existing methods of sub-contractor selection first, to determine whether an alternative is available that has no shortcomings beyond those of filed sub-bidding and which, in at least some respect, is better for the public. The alternatives available fall under three labels:

1. Single contracting (one general contractor), with no intervention by the government/owner in the selection of sub-contractors. This is referred to below as the "Free-Market" method, because it is the most commonly used in the private sector. It is the predominant method in government contracting as well;

2. Separate-contracting, as described above in relation to New Jersey, in which the government/owner takes bids from specialty contractors in three or four trade areas. It then awards a separate contract in each of these areas, plus a general or miscellaneous contract for work not included in these areas. A variation on this theme, which recognizes the coordination problem inherent in separate contracting, is for the owner to hire a construction manager who coordinates the separate prime contractors;

3. Single contracting (one general), in which the government/owner has limited intervention -- not in the selection of sub-contractors but in the award of sub-contracts by the general contractors. This is done by requiring general bidders to list who their major sub-contractors will be when the general contractor submits the general bid. This system is called Bid-Listing. Bid listing is, "the best known and most widely used approach to solving bid shopping problems," according to the U.S. Environmental Protection Agency 1978 Report to Congress on Waste-Water-Treatment-Contracting-and-Bid-Shopping.60 (This report declined to recommend bid listing for all EPA projects.)

Separate contracting is very attractive to firms operating in the specialty trades, which become prime contractors under this system, because these particular firms contract directly with the government. Among the various effects of this system, therefore, is that prime contractors can take to themselves what formerly would have been part of the profit margin of a general contractor (within a single contract system.) The owner saves on the initial bid price, because at least a fraction of the general contractor's profit and overhead is removed. However, the owner may pay later on for the absence of the management and coordination function of the general contractor.
The General Court rejected separate bidding as a result of the 1954 study headed by Ernest A. Johnson, then Commissioner of the Department of Labor and Industries. This concludes the following (p. 7):

As a result of study, investigation and comparison of bidding procedures on public works in states where separation of contracts prevails as against states where the single contract (general) prevails, the Commission is unanimously opposed to separation of contracts... which in turn would involve considerable additional expense because of increased supervision, division of authority in performing the work, and would not improve the quality of the work nor be of economic advantage to the public.

This conclusion parallels the experience of the administrators of the New Jersey separate contracts system. Charles Townshend, the Deputy Director for Administration of the Division of Building and Construction, Department of the Treasury, State of New Jersey states in correspondence with his counterpart in the Wisconsin Bureau of Facilities Management, We have advocated the single bid... Most of our construction claims, especially delay claims, are due to the interference by one trade with another trade on the job. Coordination of five separate trades is not easy.

Separate contracting thus may not actually reduce costs in the long run. Separate contracting does not address issues such as bid shopping and peddling between the prime contractors and their sub-contractors. While serving the interest of the three or four sub-contract trades that become prime contractors, separate contracting presents all other sub-contractors with the same situation of single contracting without government intervention. For owners, it lacks the advantages of the single contract method. In his testimony before the State Administration Committee on March 19, 1980, Professor Raymond Leavitt, former Associate Professor in the Civil Engineering Department of M.I.T. and head of their Construction Engineering and Project Management program, stated his conclusions about separate contracting:

In thinking about the Commonwealth's position on this issue I would propose that it should buy the entire construction project at the lowest possible price, not the pieces, unless the state wants to get into the general contracting area, and I think GSA's (and our own) experience with construction management and multiple contracts is a disaster. I would not recommend that avenue.

The Commission concluded that aside from the issue of bid peddling and shopping the best interests of the public are met by the free market's approach. As Professor Levitt stated it, "the best way to judge what is in a construction consumer's interest is to look at what private consumers do. They have the freedom of choice and do not have other interests." Yet the issue of bid shopping and peddling require that alternatives be explored which may limit these practices. As noted in the UCLA Law Review,
It is necessary to distinguish between bid shopping and peddling that takes place after the prime contract has been awarded and that engaged in prior to the award. **Pre-award** bid shopping is a form of free competition in an open market. Generals competing for the prime contract will seek the lowest possible sub-bids. In practice, the often superior bargaining position of the general makes these negotiations unfair. Yet, the harmful effects of pre-award bid shopping are not extensive.

It is post-award bid shopping and peddling that may present a problem. The problem for the awarding authority can be that if sub-contractors accept contracts at very low and unreasonable prices, quality may suffer. Two actions will provide a counter-balance to the temptations of post-award bid shopping. One is placing greater weight on the general contractor's past performance, and second is making it clear that failure to meet specifications on any aspect of the project will rule out future contracts. More effective construction supervision by the awarding authority will likewise play a role. Every lump-sum contract creates a tension between the contractors and the owner, in that any money the contractors can save -- legitimately or otherwise -- adds to the contractors' profits. This situation always tests the ethics of contractors and the supervisory ability of owners. Nevertheless, the sub-contractor selection system should not contribute to the need for supervision by the government. An effective means of preventing post-award bid shopping and peddling would therefore be a welcome addition to any bidding system. The issue is whether an effective means exists and whether its side effects are worse than the problem it tries to solve.

Bid listing is generally regarded as a provision which reduces the opportunities for bid shopping and peddling, while having fewer negative side effects than filed sub-bidding. It does not eliminate the possibility of shopping and peddling, and it requires some administrative overhead. Bid listing was first proposed in Massachusetts by the 1934 "Report of the Special Commission Established Relative to Certain Matters Relating to Contracts for...Public Works". It was expressly proposed to limit bid peddling and shopping. Bid listing is in use today in Massachusetts for sub-subcontractors. In areas of work designated by the Awarding Authority, filed sub-bidders must list on their filed sub-bids the names of the sub-subcontractors they will use. Neither the Commission nor the legislature has heard any complaint or objection by either sub-contractors or by sub-subcontractors to the operation of this procedure.

The greatest experience and study in the use of bid listing has been on the part of the General Services Administration Public Building Service. A description of how the GSA bid listing procedure, operates is reproduced below:

The requirements for a listing of subcontractors is set forth in the General Services Administration Procurement regulation.
(GSPR) Chapter 58, Sections 58-2.202-70 and 58-2.404. It applies to new construction contracts exceeding $150,000 and repair and alteration contracts exceeding $500,000 (with the exception of certain phased construction contracts in the Construction Manager program where few subcontracts are involved).

Contracting officers are responsible for determining the categories to be listed for each project based on criteria in the regulations. They are required to include mechanical, electrical, elevator and escalator categories of work and all other general categories estimated to exceed 3 1/2 percent (since increased, see below) of the total contract price. The categories are developed from Government estimates and are inserted on the supplemental bid form.

There may be only 2 or 3 categories on a small project and up to 15 on a large project. The Listing of Subcontractors clause and the Supplement to Bid Form containing the list of categories by title and section or division number are included in the Invitation for Bids. The bidder must insert on the Supplement to Bid the name and address for each subcontractor with whom he proposes to subcontract for the named category. If the general contractor plans to perform the category, he lists himself; if he intends to subcontract part of the category, he lists himself, and his subcontractor(s). Only first-tier subcontractors are required to be listed. Failure to comply with the listing requirement causes the bid to be found nonresponsive, and it is rejected.

The Advisory Panel Report goes on to note that general contractors favor eliminating this requirement because they allege difficulties in receiving last minute sub-bids, in coordinating the listed sub-contract work to be done with the specification, and in identifying the lowest sub-bid from a qualified sub-contractor. Subcontractors strongly support bid listing, claiming that it restricts bid shopping and "enables them to quote their best price to the prime initially, and that government thereby receives the best price" (see Public Building Service Briefing: Subcontractor Listing Requirement, Nov. 17, 1977). In the words of Joseph Corwin, writing to President Carter as general counsel to the American Subcontractors of Massachusetts on June 23, 1977 (See reproduction of letter in Appendix.)

The General Services Administration Inaugurated this practice in an effort to provide fair competition by eliminating bid shopping on subcontractors after the general contractors price had been filed and opened by the General Services Administration. The purpose of the practice was to protect small business subcontractors. In this time of lessening construction, the practice is most important to prevent the elimination of small business subcontractors by bid shopping them to prices which really make it almost impossible for them to continue in business. This is the time when bid listing in the bid of the general contractor is most important.

Bid listing is regarded as a major protection by sub-contractors throughout the nation. On September 9, 1980, the General Counsel of the American Subcontractors Association McNeill Stokes testified at a hearing of the Office of Federal Procurement Policy that, while his association preferred separate contracting, it favored a uniform federal procurement procedure that includes bid listing.66 When bid listing was proposed as legislation for all federal procurement in 1970 by Congressman Robert L. Leggett,67 it was supported by
every major sub-contracting trade association.

The General Services Administration (GSA) has not been entirely pleased with its experience with bid listing. It appears that bid listing has many of the same shortcomings as filed sub-bidding in failing to actually preclude bid shopping, yet creating administrative complexities in order to do so. In 1977, GSA proposed discontinuing the use of bid listing, after the Department of the Interior had already done so. The events leading to GSA's proposal and its reasoning in making it are described in this excerpt from the 1977 GSA Office of Construction Management Report on Subcontracter Listing Requirement:68

Within recent months, ten protests involving the subcontractor listing requirements have been filed with the General Accounting Office. Three of these can be characterized as efforts to have the low bidder ruled non-responsive so that the protesters higher bid would have a chance at the award....

The recent increase in number of protests also reflects a surge of renewed effort to submit apparently responsive bids while actually remaining free of the bid shopping constraint, by means of listing "pass-throughs" (i.e., firms who will not or cannot perform the work for which they have been named and who will subcontract all or virtually all of the category of work for which they were named to another firm)....

Rejection of bids naming pass-throughs is the only means available to GSA for making the subcontractor listing requirement an effective bar to bid shopping. To the extent GSA is unable to reject bids for suspected naming of pass-throughs, those firms which regularly bid on GSA contracts will gradually expand use of the device and the circumvention will become more prevalent. A corollary is that other firms, not having learned of this device and having properly complied with the requirement, will be precluded from bid shopping, with the result that the bidders will not be competing on the same footing.

Another form of evasion has been experienced in the last year. One of the largest firms that regularly bids on GSA contracts named itself for a particular category of work and after being awarded the contract, entered into a so-called "management" contract with a bona fide subcontractor. The subcontractor's employees were put on the prime contractor's payrolls. The "management" subcontractor received a management fee which was subject to the adjustment, depending upon the amount paid by the prime to the workmen, such that the total amount paid was equivalent to a lump-sum subcontract. Knowledge of this means of evading the constraint on bid shopping could also spread, thereby weakening the effectiveness of the subcontractor listing requirement....

Regional offices report that bidders attend bid openings, eagerly waiting for disclosure of the low bidder's listing of subcontractors, to look for potential bases for protesting an award to a low bidder.

Whatever the reason, the fact remains that protests based upon subcontractor listing have become more common that at any time since the first year or so after the requirement was imposed and that the requirement is being evaded by more and more devious means.

The GSA Office of Construction Management Report offered two alternative solutions to this situation. One was to revise the procedure to try to close some of the loopholes allowing pass-throughs. The other was to eliminate the bid listing procedures entirely. In recommending that bid listing be discontinued the report noted:69
...there appears to be no way in which the clause could be revised to preclude the prime contractor from evading the restraint by putting a subcontractor's workmen on its payrolls. Secondly, revision of the clause itself cannot prevent recurrence of failures to name a subcontractor for a small segment of work buried in a section of the specifications constituting the category. Finally, revising the clause will undoubtedly add to its complexity, and thus give rise to an increase in the number of nonresponsive bids, thereby increasing the costs to the Government.

Following an outpouring of opinion from industry groups, including letters such as Mr. Corwin's to President Carter and visits by delegations to GSA headquarters in Washington, GSA ultimately concluded not to eliminate bid listing. The Report of the GSA Advisory Committee, after noting the intensity of diverging views, stated:

The Panel's review has not revealed sufficient justification to recommend that the subcontractor listing requirements be discontinued. Bid shopping is an undesirable practice, and there is merit in taking some measures to try to prevent the practice. Listing also can provide GSA with useful information, prior to award, as to the firms who will perform the major subcontracts.

Retaining the existing regulations, as written, would not be practical because of the scope of the problems, experienced from the listing requirement by general contractors, in preparing their bids, and by GSA in the bid and award process.

After considerable deliberation, the Panel concluded that GSA should continue to require a listing of subcontractors with construction bids but that the existing regulations should be revised to reduce the scope of the requirement and thereby reduce the number of subcontractors to be named with each bid. The mandatory categories should be the trades that provide the three major components for an office building: (1) HVAC (heating, ventilating, and air conditioning), (2) electrical and (3) vertical transportation. In addition, it was decided by the majority of the panel members that the listing shall include all other categories comprising at least 6 percent (in lieu of the current 3 1/2 percent) of the estimated contract cost.

The GSA is not the only federal agency with experience in listing. The Department of the Interior (DOI) instituted a bid listing requirement similar to the GSA's in November, 1965.70 Ten years later, the Department discontinued this requirement. Their decision came after a United States Court of Claims decision71 required DOI to pay $600,000, in damages to a general contractor who suffered expenses after DOI denied the general's request to drop a listed sub-contractor and substitute another for it, and the listed sub-contractor failed to perform. The DOI's announcement of the deletion of its bid listing requirement (Fed. Reg., Vol. 40, no. 79, p. 17848, April 17, 1975) gave the following reasons:

During the time this policy has been in effect, it has been found that the Government is exposed to liability for damages which is so forcefully demonstrated in "Meva Corporation v. United States," Ct. Cl. #492-69 (2/29/75); bidders have difficulty in understanding and complying with the requirements resulting, in many cases, in the submission of non-responsive bids and the loss to the Government of an otherwise responsible low bid; numerous protests against awards have been made to the Comptroller General directly related to circumstances involving the requirement, resulting in considerable delay in the award of
contracts and delay in timely accomplishment of important programs; bidders under present economic conditions find it difficult to get firm bids or quotations from subcontractors resulting in the successful bidder being placed in a position of disadvantage in price negotiations with the listed subcontractor after contract award is received; the requirement does not prevent "bid shopping" by subcontractors; and there is no substantial evidence that the requirement has been beneficial to the best interest of the Government.

The legislation recommended by the Commission on December 5, 1979 (and revised on March 19, 1980), H. 5630, would have repealed the filed sub-bid requirements of the bidding statutes and created a bid listing requirement virtually identical to GSA's revised regulations. The Commission retained doubts about only one question; whether bid listing would be worth the effort involved, in light of the GSA experience. But like GSA, the Commission reluctantly concluded that despite the drawbacks, bid listing is an attempt to prevent bid shopping and peddling that is as effective as any method known. It is as effective as filed sub-bidding, but is less harmful in terms of changes in quality, administration, access and cost.

It is a matter of record that the organized sub-contractor trade associations, led by the Associated Sub-contractors of Massachusetts, opposed this recommendation. Some member unions of the Massachusetts Building Trades Council supported the sub-contractors, whose seventeen categories of filed sub-bids parallel the jurisdictional lines of the trade unions. The Associated General Contractors of Massachusetts initially supported the Commission's proposal, but then backed off, becoming neutral. This position brought the Massachusetts group closer in line with national general contractor policy of opposing bid listing at the federal level. The Massachusetts State Association of Architects opposed filed sub-bidding and supported the Commission's proposal after an overwhelming vote of their membership in favor of that position. Few individual awarding authorities publicly declared their position, but the Massachusetts Municipal Association, whose local government members must comply with the filed sub-bid law, favored repeal. Massachusetts Common Cause and the League of Women Voters also supported the Commission's recommendation.

The sub-contractor organization's opposition to bid listing raised the question of whether sub-contractors -- even the organized minority who benefit from the filed sub-bid law -- do or do not believe that bid listing reduces bid shopping and peddling. If they have determined that bid listing does help prevent these practices, then that would add to an objective observer's conclusion that bid listing is worth the effort. If, however, the group most vociferous in opposing bid shopping and peddling came to the conclusion that bid listing is not worth the effort, then the choice is to either continue filed sub-bidding -- however ineffective and harmful it has proven to be -- or not to
intervene in the private market between sub-contractors and generals. Thus, pre-qualification and competition would presumably counter-balance the temptations to bid shop and peddle.

The Associated Sub-contractors' position in support of bid listing at the federal level is well established, where they find it preferable to the free market system. They even acknowledged as much in a forcefully worded letter to the Commission\textsuperscript{73} by stating:

Subcontractors have struggled to get out of the snakepit of bid shopping. They have\textit{achieved some success in Massachusetts, and also in other states and federal agencies, through other formats}. [Emphasis added.]

The only format used by any federal agencies to address bid shopping is bid listing.

On the other hand, the same letter reacts to the Commission's bid listing proposals by saying, "the proposal shows the utter disregard, even disdain, that has been accorded sub-contractors." In the course of the 1980 legislative debate, the Associated Sub-contractors clearly opposed bid listing.

Representatives of the Massachusetts State Building and Construction Trades Council also presented the Commission with arguments for the retention of the filed sub-bid statute. Chief among these was that a positive side effect of the law is to make it more possible to enforce the prevailing wage law. In a letter by its attorney to the Commission\textsuperscript{74} the Council supported filed sub-bidding, saying that "it goes hand in hand with the prevailing wage law," and then explained how:

The filed sub-bid law allows for the policing of prevailing wages by union business agents. Agents can be present at bid openings and see who bids and what the bids are. If the bidder is a known non-payer of prevailing wages or the bid is so low that it cannot contain prevailing wages, the business agent is immediately alerted to that fact. He can take early preventive measures....

The current filed sub-bid law also allows business agents to file letters of protest to the awarding authority....

This type of advance warning as is given by the filed sub-bid law allows early action by the union and does not force agents into a posture of only having to use economic sanctions, such as strikes.

As the Commission noted in its response to the Council,\textsuperscript{75} bid listing allows this same initiative and early action by union business agents. Indeed, one need not have any naming of sub-contractors with general bids to accomplish this end. If the purpose is to enforce payment of prevailing wages, then it would be equally effective simply to know the names of sub-contractors, and sub-subcontractors, in all trades for which wages are set by the prevailing wage law, and to know their sub-contract prices. One need not know the names of all prospective sub-contractors (i.e., all subbidders) to make sure that the one firm
which actually does the sub-contract work abides by the law.

Similarly, if the goal is also to punish violators of the prevailing wage law, then a far more effective and direct means than filed sub-bid protests can be found. The Commission has recommended that violation of this and other labor law results in debarment of a business from any work on public projects, whether as a general contractor, sub-contractor, or sub-sub. The effort and expense of the Department of Labor and Industries in interpreting the filed sub-bid law might better be spent in investigating and enforcing the prevailing wage law.

**Recommendations**

Filed sub-bidding should be repealed. It is an experiment that has conclusively failed. It is the least desirable of any known alternative for the selection of sub-contractors. Its continued use will result in the building of more defective construction, at taxpayer's expense.

The information brought to light in the course of the Commission hearings and investigations subsequent to the Commission's proposal of bid listing, and the judgements of bid listing put forward by construction industry trade associations, lead the Commission to conclude that the best interests of the public are served by not intervening in the relationship and agreements between general contractors and their sub-contractors.

The Commission therefore recommends that no mechanism or law be established to regulate sub-bidding to general contractors competing for public building contracts with any jurisdiction in the Commonwealth. Bid shopping and peddling are strategies adopted by private business people in reaction to market forces and in the expectation that they can be used effectively in the long term best interest of the shoppers and peddlers. Shopping and peddling cannot be stopped by any means, least of all by government regulation which ignores market realities. Allowing general contractors and sub-contractors to find their own equilibrium under the pressures of price competition and constant demands for high quality performance by public awarding authorities is the best available means to discourage bid shopping and peddling. This effort will be achieved only by vigorous price competition and the persistent disqualification from bidding of those general contractors who have been unable to produce construction that meets reasonable quality standards. General contractors must know that their ability to even compete for contracts with public agencies depends on satisfactory performance by every sub-contractor to whom they have delegated responsibility. Bid shopping thereby becomes its own punishment when a sub-contractor cannot effectively meet contract terms and specifications.

The Commission does recommend that three actions be taken to enforce the economic and social policies of the Commonwealth with regard to wages and redress
of past discriminations. Firms, whether under contract with the public awarding authority, or sub-contractors to that contractor, which violate state or federal law intended to promote equal opportunity, fair wages, decent working conditions, and competitive trade practices must be debarred from public building projects. The general contractor must be responsible for assembling sub-contractors for the portions of the work he chooses to sub-contract from among those who are not debarred. Bids which include debarred firms as sub-contractors must not be considered eligible bids.

Similarly, general contractors should be responsible for assembling sub-contractors so that the goals of the Commonwealth for set asides, for businesses owned by minorities and women, are met. The details of our recommendations on debarment are presented below under "Contractor Qualifications." The program for set asides is presented below, under the heading "Access to Public Contracts".

Finally, the Commonwealth's "direct payment" law should be amended when filed sub-bidding is repealed, to take into account the new status of sub-contractors. The direct payment law presently allows filed sub-contractors and certain other sub-contractors to make claims directly to the awarding authority for contract payments when the general contractor wrongfully withholds the sub-contractor's payments. This law currently restricts such rights to contractors directly under contract to the general contractor, the so-called first tier sub-contractors. The elimination of filed sub-bidding makes this distinction less applicable. As long as rights to direct payment in the event of default by the general contractor can be made clear to all parties before their work commences, such rights should be extended beyond the first tier of sub-contractors.

The recommendation of the Commission, in summary, is this: **repeal filed bidding.**

The specific legislative form of this recommendation can be found in the appendix.
INTRODUCTION

The building defects catalogued in preceding sections are in part a reflection of the qualifications of the general contractors and subcontractors who constructed these buildings. The combination of a low bid system for awarding general contracts with the lack of an effective system for screening out those contractors who are unqualified, overcommitted, underfinanced, incompetent, or lacking business integrity almost ensures that many contractors selected to build public buildings will perform poorly.

This proposition is confirmed by the public officials and design and construction professionals contacted by the Commission. Foster Jacobs, Director of Planning and Plant at Southeastern Massachusetts University (SMU), told the Commission that the BBC contractors whose performance he witnessed were of lower than average quality, required more supervision, and were responsible for more construction delay, defaults, and post-construction problems than the contractors whose performance he had observed during 26 years of experience in the private sector. Barbara Manford, Director of the Bureau of Housing Modernization at DCA, was equally critical of the contractors who perform work on DCA projects. She told the Commission that,

The quality of contractors in general who do modernization as well as new construction is not good, and it is one of the saddest things about construction and about our program...We do not get the best contractors working on our jobs.

She attributed the problem to the prevalent attitude towards state work "that it was an easy pawn and anybody could make a quick buck off it," and to the lack of a procedure for eliminating unqualified contractors or those who had performed badly on previous jobs. She decried the fact that, "We have no way of using competence as a criterion for hiring either consultants or contractors." John Woollett, Professor of Architectural Technology at the Harvard Graduate School of Design, an experienced project manager, and a consultant to the Commission, testified at the Commission's public hearings that:

There is a general feeling amongst contractors in Massachusetts that Commonwealth work is secondary, that it is the private work where they put all their energies, all their top management, and all their good work, that the Commonwealth work takes the lowest priority, that it is not necessary to meet time schedules, and that it is not necessary that the quality be of the highest standard. Near enough is good enough.
G.L. c.149, s.44A, the bidding law which applies to all public building contracts in excess of $5,000 for state projects or $2,000 for local projects, provides for the award of the general contract to the "lowest responsible and eligible bidder," but leaves to the awarding authority the development of criteria and procedures for determining eligibility and responsibility. Awarding authorities have not, as a rule, made serious efforts to screen out inferior contractors, largely because of the threat of litigation if the low bidder is denied the contract. The lack of documentation of prior performance of contractors on public and private jobs, insufficient clerical staff to check the contractor's references, and inadequate legal assistance to advise on rights and procedures relative to disqualifying the low bidder have made awarding authorities understandably reluctant to risk a lawsuit by denying a contract to the low bidder no matter how doubtful they are about the bidder's ability to perform.

One notable example of an awarding authority hiring a clearly unreliable general contractor occurred in the construction of the admissions building at SMU. The general contractor had abandoned a previous project, the Physical Education Center at Salem State College, leaving $185,000 in uncompleted work. Predictably, the contractor failed to complete the SMU building satisfactorily or within the allotted time, and the contractor's surety was called in. Construction was delayed over nine months, leaving liability issues that still have not been finally resolved.

Public officials and contractors interviewed by Commission staff agreed that the bonding companies are not doing an adequate job of screening bidders, and that the performance and payments bonds which general contractors and most subcontractors are required to furnish are insufficient to protect the public from the damage caused by incompetent contractors. Bonding companies rely almost entirely on contractors' financial status, assets, and workload, and do not take past performance into account in determining whether or in what amount they should bond. It is generally agreed that experience, not financial status, is the most important index of a contractor's ability to perform. Moreover, not all bonding companies are equally reliable. The bonding manager of a major insurance company told a Commission investigator that no more than 25 out of the 400 or so bonding companies doing business in Massachusetts are of any substance. Even so, the Commonwealth has no procedure for prequalifying the companies that bond contractors for state work. As a result, the Commonwealth often experiences problems in getting the surety to perform in cases where the contractor runs into difficulty. For example, when the general contractor on a Duxbury elderly housing project defaulted, the housing authority was unable to get the surety to respond to its requests to complete the work.
John Kennedy, an employee of Walsh Brothers' general contracting firm, which does primarily private work, told the Commission that clients in the private sector do not rely heavily on bonding companies to evaluate the capabilities of contractors. He considered bonding companies' evaluations worthless since they are based solely on financial considerations rather than on the contractor's reputation or ability to perform. He told the Commission that most of Walsh Brothers' work is unbonded since their clients are satisfied with the performance record of the firm.6

For nearly 25 years, the BBC has required the low general bidder to complete a statement of qualifications as a means of determining eligibility and responsibility. According to William Tibbits, Supervisor of Administrative Services at BBC, who is responsible for overseeing the bidding process, the BBC never once used the statement to disqualify a low bidder.7 In the past year and a half, the BBC has altered the procedure by expanding the qualification form and by requiring every general bidder to submit the form with the bid. Since this change in procedure occurred, approximately six to eight low bidders have been rejected by the BBC. According to general contractors interviewed by the Commission, the filing of a separate qualification statement with every bid on BBC work is a substantial and unnecessary burden. Although BBC personnel check the references supplied on the form and previous BBC work performed by the bidder, there is no set policy or criteria for evaluating bidders on the basis of the information supplied.8 Nor is there any central data bank where information on contractors' prior work is compiled and made available to agencies who must rate a bidder's qualifications.

Although the BBC has the right to reject the sub-bids of bidders whom it determines to be unqualified, the BBC does not normally evaluate the qualifications of sub-contractors who file the sub-bids which general bidders are required to use. In general, the BBC reviews sub-bids only for formal defects.9

The experience of the DCA and local housing authorities in evaluating general bidders on their projects has been similarly unsuccessful. By contract with the local housing authority, the designer is required to check the qualifications of general contractors who file bids. According to Stephen Demos, Chief Architect of DCA, their review is perfunctory. Barbara Manford, Director of DCA's Bureau of Housing Modernization, told the Commission that she knew of only two instances where DCA was able to document that the low bidder was unable to do the work.10 The DCA does not communicate with other public awarding authorities with regard to the performance of the contractors who bid on its projects.11

Harry Spence's testimony indicates that an awarding authority can, in fact, refuse to award a contract to the low bidder if it has the resources to do a
careful check of the contractor's qualifications and to document its case. While Spence was its Executive Director, the Cambridge Housing Authority successfully induced incompetent contractors to withdraw their bids and persuaded the Department of Labor and Industries, which decides bidding disputes under G.L. c. 149, s. 44K, that their rejection of bidders was justified. His testimony made clear that this was only possible because the housing authority had the clerical and legal assistance required to put together a well-documented case demonstrating that the contractors were unfit to do the work. Joseph Kane, former General Counsel of Labor & Industries, confirmed that an awarding authority can reject a low bidder if it has fully documented its case. However, given the meager clerical and legal resources of most awarding authorities, as well as the absence of records of contractors' prior performance, it is unlikely that many awarding authorities will be able to construct such a case.

The practice of evaluating a contractor only after he has been identified as the low bidder increases the likelihood that rejection of the bidder will be challenged and result in litigation, with substantial damages possible if the challenge is successful. The practice also increases the opportunity for fraudulent collusion between awarding authorities and contractors, who are particularly vulnerable to extortion once they have been identified as low bidders. The rejection of a contractor after bidding is concluded can lead to substantial delay in the award of a general contract and in the start of construction if the awarding authority's action is challenged. These potential delays make awarding authorities particularly reluctant to obstruct the process at that point.

If the procedures for excluding unqualified contractors from specific projects are inadequate, then the procedures for eliminating seriously deficient contractors from public work on a continuing basis are practically non-existent. The same incompetent or dishonest designers, consultants, contractors and suppliers appear on project after project; and the state has shown itself powerless to protect itself against them. The only statutory ground for debarring a contractor from public work was violation of the prevailing wage laws under G.L. c. 149, s.27C, a provision which has only recently been enforced. While debarment for violation of the prevailing wage laws helps to ensure the quality of workmanship by guaranteeing public construction workers a fair wage, it does not address the problems created by dishonest and incompetent contractors.

In 1978, in the wake of the MBM scandal, Governor Dukakis issued Executive Order No. 147, which provided for the suspension and debarment of contractors for periods of up to three years for the commission of specified crimes incident to
obtaining or performing public contracts or reflecting adversely on the contractors' business integrity. The Executive Order applied to contractors, sub-contractors, and providers of goods and services incident to construction. The Order is still on the books of the Commonwealth, but to the best knowledge of the Commission its sanctions have never been invoked. Persons in the design and construction fields interviewed by Commission staff were unaware of its existence. Even if it were vigorously enforced, the Executive Order would not adequately protect the public from grossly incompetent and unreliable, as opposed to criminal, contractors.

**LEGISLATIVE SOLUTIONS AND SUGGESTIONS FOR IMPLEMENTATION**

The Commission's legislation addresses the problem of screening contractors applying for public contracts in two ways. First, it establishes a system for prequalifying general bidders on all building construction projects subject to the public bidding laws, M.G.L. c. 149, ss. 44A et seq. Second, it establishes a procedure for debarring contractors, subcontractors, designers, suppliers, consultants, and other providers of goods and services for periods of up to five years for specified violations of law, a record of seriously deficient performance, or certain other conduct reflecting adversely on the contractor's integrity or responsibility.

**Prequalification**

Section 440 added by the Commission's legislation to Chapter 149 establishes a procedure for prequalifying general bidders on all contracts subject to the public bidding laws. This includes contracts "for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency" estimated to cost more than [$5000].

The section requires that general bidders be prequalified for a particular project, rather than for public construction work in general. Prospective bidders must file both an application to bid on a particular project and a prequalification statement, unless the bidder has already filed such a statement with any awarding authority in Massachusetts within the preceding 12 months.

The prequalification statement transmits general information about the bidder's form of business organization, key personnel, construction experience, and financial status. The statement may be filed either with the agency awarding the contract in which the bidder is interested or with the Division of Capital Planning and Operations. Awarding authorities are required to forward the originals of all prequalification statements they receive to the Division. The Division is required to maintain a central file of all current prequalification

**"Public agency" is defined in section 44A(1) as a "department, agency, board, commission, authority, [excluding the MBTA], or other instrumentality of the commonwealth or political subdivision of the commonwealth, or two or more subdivisions thereof."**
statements. Having filed a prequalification statement, a contractor wishing to bid on another public contract within the 12-month period need only refer to the date and number of the original statement in any later application to bid. The agency responsible for prequalifying bidders for that project can then obtain a copy of the contractor's prequalification statement from the Division. 16

The application to bid, unlike the prequalification statement, is project specific. In it, the bidder is required to update the information contained in the prequalification statement (unless the statement accompanies the application to bid) and to provide information relating to the bidder's ability to perform the particular contract. For example, experience on projects of similar size and type, present work commitments, name and qualifications of project supervisor, and pending litigation to which the bidder is a party would be detailed in an application to bid. 17

Within two weeks of receipt of applications to bid, the awarding authority is required to rate bidders on the basis of the information contained in the applications and prequalification statements according to procedures developed by the Division of Capital Planning and Operations. The criteria on which bidders are to be rated include their record of performance on prior projects and financial ability to undertake the job. These criteria are to be assigned separate numerical values and weights, and bidders are to be assigned overall numerical ratings. A rating below the a minimum prescribed by regulation will result in a bidder being adjudged ineligible to bid on the project. 18 However, a determination of ineligibility to bid on a particular project will not affect the bidder's eligibility to bid on other public projects demanding different qualifications.

The Commission drafted its legislation on the assumption that awarding authorities will normally be in the best position to evaluate the qualifications of those desiring to bid on its projects. However, in response to a concern expressed by the Massachusetts Municipal Association that the prequalification procedure might be burdensome, particularly for small localities, the Commission added a provision that an awarding authority can request the Division of Capital Planning and Operations to prequalify bidders for a particular project or for all projects undertaken by that awarding authority during a set period of time. 19

The legislation mandates that a list of those determined eligible to bid on a project be published in the Central Register and other publications in which the original notice inviting applications to bid appeared. 20 The requirement of publication not only informs eligible bidders that they may submit bids, but also alerts interested groups and individuals, for example, labor unions concerned about firms which have a record of not paying prevailing wages and minority groups concerned about firms with bad affirmative action records.
Copies of the ratings assigned to bidders, the documentary materials on which the ratings were based, and the bidder's written objections, if any, to the rating received must be forwarded by the awarding authorities to the Division of Capital Planning and Operations. These will be filed along with the prequalification statements and furnished upon request to other awarding authorities for the purpose of evaluating bidders.\textsuperscript{21}

The legislation specifies that the documents on file with the Division are not open to inspection by the general public.\textsuperscript{22} Two considerations motivated the Commission to include the provision for confidentiality. The first was that certain information included in these documents concerning a contractor's business organization and financial condition are not matters of public concern and should not be accessible to a contractor's competitors. Secondly, the more publicity accorded to the evaluations and ratings of contractors, the greater the danger, real or apparent, of ensuing libel suits. Those responsible for evaluating contractors might hesitate to give negative evaluations.

Contractors determined to be ineligible to bid must be notified forthwith of their ineligibility and the reasons therefor.\textsuperscript{23} In most cases, it should be possible to notify ineligible bidders prior to the publication of the list of eligible bidders. The statute specifies that the determination of ineligibility can be reversed after review by the Department of Labor and Industries. Therefore, timely receipt of the notice is important, since this review must be initiated and completed quickly if it is to accomplish its purpose of allowing improperly disqualified contractors to bid.

The statute specifies that a contractor wishing to appeal an adverse determination must do so with two business days of receipt of notice and that the Commissioner of Labor and Industries must investigate and render a written decision within one week of the appeal.\textsuperscript{24} If the Commissioner affirms the determination, the contractor may initiate legal action. A lawsuit at this stage would not normally delay bidding or construction. Moreover, since the contractor has not sustained any proveable financial loss by being denied the opportunity to bid, the awarding authority's exposure is minimal.

A contractor unwilling to challenge a determination of ineligibility through an appeal to the Department of Labor and Industries, but wishing to record his objections to such determination, may note them in writing and send them to the Division of Capital Planning and Operations. The Division will insert these written objections in the contractor's file and (with the contractor's permission) send them to other awarding authorities requesting information about the contractor in connection with a subsequent prequalification.\textsuperscript{25}

The prequalification procedure does not apply to sub-bidders.\textsuperscript{26} However, it would apply to a specialty contractor applying to bid on a prime contract -
for example, a roofing contractor wishing to bid on a roof replacement project. The Commission decided to exclude sub-bidders because the practical burden of prequalifying them would make the system unworkable and because it considered the state's further intrusion into the process of subcontractor selection unwarranted. As amended by the Joint Committee on State Administration, the statute retains the current provision authorizing awarding authorities to reject the sub-bids of contractors whom they consider incompetent. Moreover, the statute's disqualification provision permits subcontractors, like other individuals and firms providing goods or services relating to public capital facility projects, to be disqualified for periods of up to five years for seriously deficient performance.

Prequalification of contractors had the support of a majority of the designers and contractors responding to the Commission's questionnaires. It was also endorsed by a majority of the agency officials with whom Commission staff spoke, including the Chief of BBC Bid Section. Prequalification should facilitate the adoption of innovative construction techniques which require contractors with particular expertise. In a study conducted in November, 1971 for the Massachusetts Advisory Council on Education, A Systems Approach for Massachusetts Schools, the author noted that one of the major impediments to the adoption of the recently developed "systems" approach to school construction in the state was the absence of a procedure for prequalifying contractors. The study recommended that a new bidding law be developed to accommodate such an approach.

In devising the prequalification system described above, the Commission studied a number of systems operating in Massachusetts and other states. The prequalification system of the Massachusetts Bay Transportation Authority (MBTA) and the New Jersey Division of Buildings and Construction received particular attention because both systems have functioned successfully over relatively long periods of time. However, the Commission did not base its prequalification system on any one model, but developed a system that is unique in several respects.

Most other states that prequalify contractors, as well as the Massachusetts Department of Public Works (DPW), Metropolitan District Commission (MDC), and MBTA, have adopted entirely centralized prequalification systems. Contractors interested in being considered for public work are required to file a prequalification statement with a central agency in advance of bidding on any particular project. The agency rates bidders both as to the maximum dollar

*An approach utilizing prefabricated, integrated components allowing for increased speed in construction and greater flexibility in the use of completed buildings than conventional construction methods.*
amount of work and the types of work they are qualified to undertake. Bidders are allowed to bid only on work of the size and type for which they are prequalified.

The Commission rejected this approach because of the burden entailed in having to prequalify all potential bidders, as opposed to just those with a definite interest in bidding on a particular project. Moreover, an entirely centralized system would place an inordinate workload on the agency (most likely the Division of Capital Planning and Operations) responsible for prequalifying contractors. It would also deprive individual awarding authorities of any role in the selection of contractors for their projects.

The statute requires that the Deputy Commissioner of Capital Planning and Operations develop and promulgate standard prequalification forms and procedures and that the Division maintain a central file of prequalification statements and ratings. This should ensure uniform standards and prevent biased or arbitrary administration of the system. It should also facilitate the sharing of information among individual awarding authorities.

The amount of staff required to implement the prequalification system should not prove excessive. At the MBTA, which prequalifies at least 150 to 200 contractors every year, the work is done by one staff person who devotes approximately 20 percent of her time to the technical details of prequalification and an auditor who devotes an even smaller percentage of time to auditing contractors' financial statements. Based on the Commission's estimates, a comparable number of general contractors bid on state work in the course of a year. The Division of Capital Planning and Operations should be able to prequalify contractors both for its own projects and for projects of awarding authorities which have requested the Division's assistance with a comparable allocation of staff time.

The prequalification system requires the Commonwealth to adopt an effective system for rating the performance of general contractors on public construction projects. The New Jersey Division of Building and Construction has developed an excellent system for rating contractors and for using these ratings in its prequalification procedure. A copy of the form used to rate contractors is attached as an appendix. Each prime contractor is rated by the Division field engineer assigned to a project when the contractor's work is half finished, and again when it is 100 percent complete. The field engineer assigns the contractor an overall rating from 0 (unsatisfactory) to 10 (excellent), based on a

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*New Jersey has a system of multiple prime contracts whereby the state contracts separately with contractors in five specialities -- general contracting, structural steel and miscellaneous metals, electrical, plumbing, heating-ventilating-air conditioning -- who are jointly responsible for the construction of the project.
numerical evaluation of the contractor's performance in each of the 13 separate areas (e.g., schedule adherence, workmanship, superintendence). In prequalifying bidders, the New Jersey Division assigns a numerical rating based on a number of specified factors having to do with the bidder's financial position and previous experience. This rating is then multiplied by a figure representing the bidder's performance rating on previous state jobs to arrive at the bidder's prequalification rating.31*

A final prerequisite to the success of the prequalification system is an effective penalty for providing false information in a prequalification statement or application to bid. The Commission's statute provides that an awarding authority may terminate any contract if the contractor has furnished materially false information in a prequalification statement or application to bid on that contract.32 In addition, the contractor may be debarred from public work for up to five years.33

2. Debarment

The Commission's legislation adds a new section, 44C to chapter 149 of the General Laws providing for the debarment of contractors, including "general contractors, subcontractors, materials suppliers and vendors, and suppliers of architectural, engineering, construction management, testing, land surveying and consultant services."34 A debarred contractor is prohibited from bidding on or receiving contracts from any public agency relating to the "acquisition, planning, design, construction, demolition, installation, renovation, repair or maintenance of any capital facility."35 Contractors may be debarred for up to five years "commensurate with the seriousness of the offense."36

The bases for debarment are specified in section 44C(3). They include both criminal and non-criminal activities reflecting upon a contractor's business integrity or responsibility as a public contractor. The act provides that a contractor cannot be debarred for violations of law prior to a criminal conviction or final adjudication of wrongdoing by a court or administrative agency of competent jurisdiction. In the case of a debarment for other reasons (for example, supplying false information incident to obtaining a public contract or a record of unsatisfactory performance), the Deputy Commissioner of Capital Planning and Operations must determine that there is "clear and convincing evidence" to support the debarment.

Unlike the prequalification system, the debarment procedure is entirely centralized within the Division of Capital Planning and Operations. Since debarment is binding on all public agencies in the Commonwealth and has more

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*The Division also uses performance ratings to monitor problems arising in the course of construction. If a contractor is performing badly at the 50 percent completion stage, Division staff may hold a meeting to investigate the problem and, if necessary, order the contractor to take remedial measures.
serious consequences for the contractor, the Commission considered it appropriate to centralize the procedure in order to assure strictly uniform application. Centralization should not impose an undue burden on the Division since it is anticipated that debarment proceedings will not occur often.

The Deputy Commissioner is required to notify the contractor of a proposed debarment, the reasons, and the contractor's right to a public hearing prior to debarment.* If requested by the contractor, the Deputy Commissioner must hold a formal adjudicatory hearing under the provisions of the Administrative Procedure Act (M.G.L. c.30A) to determine whether debarment is warranted and for what period. If the decision is made to debar, the Deputy Commissioner must issue a written decision which makes specific findings of fact justifying the decision and the period of debarment specified in the decision.37 The decision must also inform the contractor of the availability of judicial review. As in the case of most other administrative decisions, the decision to debar may be reversed by a Superior Court if the decision is not supported by substantial evidence, is based upon errors of law or improper procedures, or is arbitrary or capricious.38

The Division of Capital Planning and Operations is required to maintain a list of debarred bidders and to keep the list current by issuing periodic notices of additions and deletions. The list must be published periodically in the Central Register and in other publications designated by the Deputy Commissioner.39

The Commission's debarment provision was modeled closely on that contained in the Federal Procurement Regulations (41 F/N CFR 1-1.600 et seq.). The major difference is that the federal regulation permits the temporary suspension of the contractor from government contracting "because a concern or individual is suspected upon adequate evidence... of engaging in criminal, fraudulent, or seriously improper conduct."40 The Commission decided that suspension prior to a public hearing was an unduly harsh measure not warranted by the risk that a contractor under suspicion of serious wrongdoing might be awarded a public contract prior to an adjudication of guilt.

The debarment provision will only succeed in accomplishing its purpose if the Commonwealth is able to document its case against a contractor it seeks to debar, particularly in cases involving poor performance rather than violations of law. This, in turn, requires implementation of a systematic and fair procedure for evaluating the performance of those involved in public construction, personnel

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*The provision in existing law, G.L. c.149, s. 27C, for automatic debarment of contractors convicted of violating the prevailing wage law has been retained and constitutes an exception to the requirement of a prior public hearing.
possessing sufficient knowledge and independence to perform evaluations, and centralized record-keeping. The Division of Capital Planning and Operations, as conceived by the Commission's legislation, should be capable of performing these tasks.
IMPROPER USE OF ALTERNATES AND UNIT PRICES

The subject of alternates and unit prices is included in the section of this report dealing with contractor selection because these variations on the standard bidding process are particularly subject to manipulation in order to favor a particular bidder. In that sense, they function as indirect methods of contractor selection.

ALTERNATES

Discussion of the Problem

Occasionally, an awarding authority will require general bidders to bid on one or more alternate sets of specifications increasing or decreasing the scope of the work called for in the base specifications. The awarding authority decides which alternates will be included in the project only after all bids are opened. This latitude not only permits awarding authorities to alter the project program at the last minute; it also allows for a great deal of discretion in awarding the general contract.

A study was conducted by the Commission to show the effect that selective use of alternates may have upon the ultimate contract award. Of the 665 contracts included in the sample studied, 93 were based on general bids which included at least one alternate. The Commission eliminated 77 of the 93 contracts from further study because the alternates involved, in any combination, could not have had any effect on the contract award. In the 16 remaining cases, however, the inclusion of or failure to include an alternate in the final contract had a direct bearing upon which general contractor was selected. Consequently, these 16 contracts were chosen for further examination.

The Commission obtained the construction files, including contract documents, change orders, and correspondence for 12 of the 16 contracts. It also examined the memoranda of approval for all 16 contracts. The Commission analyzed each contract and tabulated all possible combinations of base bids and alternates. When available, the change orders were also examined for instances in which work not authorized by the contract through selective use of alternates may have been accomplished through the change order process.

In 15 of the 16 contracts, at least one half of the combinations possible would have led to the selection of a contractor other than the one who actually got the award. In one instance, a different contractor would have gotten the award in four of the six possible combinations; in another, a different
contractor would have been awarded the contract in six of the eight possible combinations of base bid and alternates.

The change orders for 11 of the 16 selected contracts were examined to ascertain whether work not contemplated by the contract because of the particular selection of base bid and alternate was accomplished through the change order process. The examination revealed that this occurred in the case of a contract for exterior renovations to M.C.I. Framingham. Alternate #2 was not included in the award, but about 30 percent of the work described in that alternate was subsequently performed by change order.

In another case involving a contract for construction of a courthouse, the sole alternate was not accepted. However, work included in that alternate for installation and re-routing of sewer lines was subsequently performed under a second contract. Had the alternate been accepted in the first instance, a different construction company would have been low bidder and gotten the award. Both examples illustrate the ease with which the system can be manipulated to favor a particular bidder.

Legislative Solution

Alternates are a legitimate post-design budgeting tool. When alternates are used, an awarding authority need not decide on the actual scope of a project, and the designer need not complete plans and specifications that can be constructed within a strict budget, until bids are received. Work can be added or subtracted, depending on the bids, to create a project that can be built within budget.

On the other hand, the availability of alternates means that awarding authorities need not develop a clear program before design. Moreover, unrestricted use of alternates allows a designer to disregard construction costs to a greater extent than if the design had to meet strict budget limits. Without doubt, awarding authorities should be able to describe their ideal program, while reserving the right to construct something less if money is not available. This latitude, however, should not entitle an awarding authority to solicit bids without clearly indicating its priorities among the alternates on which bids are sought.

Although the increased reliance on pre-design programming and professional cost estimating mandated by the Commission's legislation will decrease the need for alternates at the state level, the problem will not be solved. Most awarding authorities other than the Commonwealth will not have similar capacity for programming and cost estimating. Even authorities with this capability may be tempted by the flexibility allowed by unrestricted use of alternates. Finally, inflationary pressures may require awarding authorities, regardless of their
intensities or skills, to hedge on what will be included in construction contracts. Rather than ban all use of alternates, the Commission chose to restrict their use in order to minimize the potential for abuse. The legislation requires an awarding authority to indicate in the bid documents the order in which it will consider alternates, if it decides to consider them at all.  

UNIT PRICES

Discussion of the Problem

Unit pricing is another device which serves a legitimate function in the preparation of bid documents, but which can be manipulated in order to favor a particular contractor.

A contractor is often asked to bid on the basis of a unit price (e.g. $x per cubic yard) rather than a lump sum price in cases where the awarding authority is unable to determine in advance the total amount of work to be performed or material supplied. The bid documents provide the designer's estimate of the amount of work and/or materials required. If the actual amount exceeds the estimate, the contractor is compensated for the extra work and/or materials on the basis of the unit price bid.

Unit pricing occurs with particular frequency in excavation work when the exact scope of excavation is unknown beforehand. A contractor with inside information about subsurface soil conditions can make a substantial profit if the architect, by accident or design, has miscalculated the amount of work.

This was the case in the excavation on the Hingham District Courthouse project discussed elsewhere in the Report. In that case, the construction firm that was the low bidder submitted a unit price for ledge excavation approximately four times higher than that submitted by other bidders, and almost five times the actual cost of the excavation. (The contractor offset the high unit price bid by bidding disproportionately low on other items.) The actual amount of ledge to be excavated was almost twice the amount the architect had estimated. The BBC subsequently approved change orders to cover the extra work totalling more than $55,000. Because of his disproportionately high bid on the excavation work, the contractor ended up making a substantial profit at the taxpayers' expense.

Although the bid documents authorized the BBC to reject any bid containing unduly high or low unit price schedules, the BBC awarded the general contract to the low bidder despite his disproportionately high bid on the excavation work. The BBC did not independently review the accuracy of the architect's estimate. Moreover, the courthouse site was situated next to a quarry. A considerable amount of ledge was visible by inspection of the site and should have led a reasonable observer to suspect that the estimate was low.
At best, the case reveals careless administration of the bidding process by the architect and the BBC. At worst, it suggests the possibility of collusion between the low bidder and the architect or the consultant who performed the test borings.

Finally, because a unit pricing system is by nature open-ended, it can easily be manipulated by an unscrupulous contractor in collusion with unscrupulous or inept project supervisors by falsifying the amount of work performed on a unit price basis.

Proposed Solutions

The Commission's legislation does not address the problems created by unit pricing because it considered them best remedied administratively.

One alternative to unit pricing used by the BBC in the past is to exclude excavation from bidding and to reimburse the general contractor separately for the actual amount of excavation performed at a rate of $15 per cubic yard. According to BBC personnel, this sum is inadequate to cover the costs of ledge removal. Therefore, the contractor is required to estimate the amount of ledge and to pad the general bid to cover the actual costs of ledge removal. Of course, it is possible to devise a fee schedule which fairly compensates contractors for the costs of excavation; however, such a system removes a substantial amount of construction work from competition.

If unit pricing is retained, it is incumbent on an awarding authority to review bids containing unit prices which appear substantially out of line and the estimates on which these bids were based. The awarding authority should also make available to bidders at the same place where bid documents are obtained the results of all test borings or other raw data on which the architect's estimates are based. This would enable all bidders to make independent estimates of the amount of work involved and put them all on an equal footing in bidding on a unit price basis.
ACCESS TO PUBLIC CONTRACTS

As the section on Subcontractor Selection shows, access to construction contracts and subcontracts for state and county buildings has been restricted in practice to relatively few firms. The current system for selecting contractors and subcontractors for these projects offers little or no assistance to businesses traditionally denied access to public contracts--small businesses, particularly those owned by minorities and women. The Commission's legislation addresses the deficiency of the current system in two ways: 1) it provides for the reservation of minimum percentages of work on building projects under the jurisdiction of the Division of Capital Planning and Operations for minority and women-owned businesses,1 and 2) it establishes a central register listing notices of public contracting opportunities and other information of interest to public contractors.2 Each of these provisions will be discussed in turn.

CONTRACTING OPPORTUNITIES FOR MINORITY AND WOMEN-OWNED BUSINESSES

Introduction

It is not disputed that minority and women-owned businesses face special problems as a result of present and past discrimination and that insufficient efforts have been made to compensate for such discrimination. The following discussion reports 1) the findings of local, state, and federal government that these businesses have been particularly handicapped in the construction field, 2) the measures taken at different levels and agencies of government to remedy the problem, and 3) the relative failure of the BBC to address the issue. The discussion then turns to the legislation itself, its goals, provisions, and implementation.

In Associated General Contractors of Massachusetts, Inc. v. Altshuler, 490 F.2d 9, 12 (1st Cir. 1973), the Court noted "that the construction industry has been particularly slow, throughout the nation, to open itself to racial minorities." The Court noted the particular racial imbalance in Boston's construction industry:

...[T]here is no question that a compelling need exists to remedy serious racial imbalance in the construction trades, particularly in Roxbury, Dorchester, and South End, where minorities constitute approximately forty percent of the population, and yet only about four percent of the membership of buildings trades unions...3 (Emphasis added.)

The court held that it was permissible to infer past discriminatory practices from the present existence of racial imbalance of this magnitude. On the basis of these considerations, the Court upheld the constitutionality of an affirmative action program requiring general contractors engaged in the construction of
buildings at Boston State College to hire a minimum of 20 percent of the workers from designated minority groups.

There is a growing recognition that women have been disadvantaged in business generally, and in construction-related businesses in particular. The preamble to the proposed regulations establishing goals and timetables for female participation in federal construction projects stated that:

According to the 1970 Census of Population, women constituted 37 percent of the experienced civilian labor force, and 19 percent of all persons 16 years or older with vocational training in trades or crafts. At the same time, however, women constituted only 5 percent of the experienced labor force in craft and kindred occupations, and only 1.2 percent of the experienced construction labor force...The interest of women in the construction trades and their ability for employment has been clearly demonstrated.4

The preamble found that purposeful discrimination, and not lack of interest or availability, was responsible for the exclusion of women from the construction industry.

According to David W. Davis, Executive Director of Massport:

There is widespread recognition at all levels of government of the need for affirmative action to help women in business overcome economic and social disadvantage. Such disadvantages manifested in societal stereotypes of male/female role, outright discrimination, inadequate educational and training opportunities, limitations on access to capital and credit, have all adversely affected the ability of women to take a full place in the business world.5

Executive Orders promulgated by the Mayor of Boston in 1978 and 1979 committed the city to reserving a minimum of 10 percent of all its construction work for minority businesses, and a minimum of 30 percent in "impacted areas," those with a high density of minority population. These executive orders further require the city to hire at least 50 percent of the work force on its construction projects from Boston residents, 25 percent from minorities, and 10 percent from women. The executive orders are justified and explained by a report finding that minorities have been the victims of discrimination in Boston in all areas of business and employment, but particularly in construction. The report recognizes that previous efforts to secure voluntary compliance with goals for minority participation in public contracting had totally failed.6

On the state level, Governor Oukakis' Executive Order No. 74 (amended and revised in 1975 by Executive Order No. 116) unequivocally committed the Commonwealth to a program of affirmative action. Because of its direct relevance to the Commission's legislative policy of assisting minority and women-owned businesses, the Governor's order is worth quoting at length:

The Commonwealth of Massachusetts has led this nation since its birth in protecting the rights and privileges of individuals. The Massachusetts Constitution of 1780, which has been a model for other states, is based on a belief in freedom and equality for all mankind and the duty of government to safeguard and foster for its people the enjoyment of these rights.
Our continued commitment to this principle is demonstrated by our strong laws prohibiting discrimination because of race, color, creed, national origin, military status, sex and age in the areas of employment, education, private and public housing units, commercial property and public accommodations. By requiring the elimination and prevention of racial imbalance in public schools, we have begun to end existing de facto segregation that denies equal educational opportunity to tens of thousands of children.

But in spite of these accomplishments, much remains to be done. Many families presently suffer from inadequate incomes, sub-standard and overcrowded housing and inferior education because discrimination and de facto segregation bar them from the better jobs, dwellings and schools. We recognize that any such effects of any illegal past or present discriminatory practices by state agencies and appointing authorities must be affirmatively remedied, and that the percentage racial and sexual makeup of the state work force should, at all levels, reflect the percentage racial and sexual makeup of the population where the jobs exist.

We have made a beginning, but if we are to finish the job we have begun, all branches of our state government must take the lead in the struggle for human rights and must exert their authority and exercise their talents for the enforcement of our anti-discrimination laws and the promotion of equal opportunities for all persons.

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It is the policy of the Commonwealth of Massachusetts to require that every state contract or state-assisted contract for public buildings and public works and for goods and services which exceeds $100,000 shall contain an article requiring the contractor, and his or her sub-contractors, to undertake through every possible measure such affirmative action as may be required by the secretary of the executive office within which the contracting or assisting agency is located (or if such agency is not located within an executive office, then such secretary shall be designated by the Commissioner). The secretary of each executive office shall require that the contracting or assisting agency include as part of state or state-assisted contracts for public buildings and public works, a version of the Commonwealth's Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program, appropriately adapted by the Commission. The objective of such affirmative action shall be that (1) all present and past effects of discrimination in employment because of race, color, religion, sex, age or national origin shall be eliminated, and (2) to promote the full realization of equal employment opportunity for minorities and women, including minority and women contractors, through positive and continuing programs. (Emphasis added).

This policy was adopted by the General Court in the 1978 legislation creating the State Office of Minority Business Assistance (SOMBA):7

It is the policy of the commonwealth to promote and facilitate the fullest possible participation by all citizens in the affairs of the commonwealth. The commonwealth has recognized for many years the special handicaps and obstacles faced by its minority citizens in effecting full participation. Minority business enterprises frequently face special handicaps and problems in achieving viable economic status. Various public and private programs have been initiated to assist minority business enterprises to achieve economic viability, though many businesses have not been adequately informed of these programs because of inadequate coordination and communication efforts, with the result that many services available are never adequately delivered to those who need them. The state government, as the biggest business in the commonwealth of Massachusetts, has a special responsibility to see that all available services and programs are put to the best use. These steps are necessary to guarantee the fullest participation by all citizens of the commonwealth in the economy of the state and to guarantee the fullest benefits to citizens of programs and services available for assistance.
Individual agencies and authorities of state government have instituted systems for awarding designated percentages of their contracting work to businesses owned by minorities or women. The Department of Public Works reserves two to four percent of the dollar value of selected state and federal highway projects by minority businesses. Massport reserves from two to 20 percent of the dollar value of its construction contracts for minority businesses, with the precise percentage set on a project-by-project basis. Massport is also instituting voluntary goals for contracting with women-owned businesses and is in the process of compiling a directory of such businesses in the New England area which are capable of and interested in doing work for Massport. The directory should be published before the end of 1980. The Mass. Bay Transportation Authority (MBTA) has set a goal of from 12 to 15 percent participation for minority and women-owned businesses on its construction contracts.

Federal Government

The President's Executive Order 11625 of 1971 required all federal executive agencies to develop comprehensive plans and programs to encourage minority business. Carter's Urban Policy Statement of 1978 directed all federal agencies to triple their contracting with minority businesses by the end of fiscal 1979 and to include goals for minority business participation in federal assistance programs to state and local governments.

Section 8(a) of the Small Business Act authorizes the Small Business Administration to provide federal procurement contracts as well as technical, managerial and financial assistance to small businesses owned by socially and economically disadvantaged persons, who are defined to include minorities.

The existence of pervasive racial discrimination in the construction industry led Congress to enact the Public Works Employment Act of 1977. This act provided that ten percent of all grants to state and local government for public works projects made available by the Economic Development Administration (EDA) of the Department of Commerce would be reserved for minority businesses. The constitutionality of the act was sustained by the United States Supreme Court in Fullilove v. Klutznick, 48 LW 4979, 4982 (6/24/80), as an appropriate remedy for past discrimination. The Court based its finding of past discrimination on statistical evidence that, in fiscal 1976, less than one percent of all federal procurement involved minority businesses although minorities comprised 15 to 18 percent of the population. The Court also cited a 1975 House Subcommittee Report which noted that:
"While minority persons comprise about 16 percent of the Nation's population, of the 13 million businesses in the United States, only 392,000 or approximately 3.0 percent are owned by minority individuals. The most recent data from the Department of Commerce also indicates that the gross receipts of all businesses in this country totals about $2,540.8 billion, and of this amount only $16.6 billion, or about 0.65 percent was realized by minority business concerns.

"These statistics are not the result of random chance. The presumption must be made that past discriminatory systems have resulted in present economic inequities. In order to right this situation, the Congress has formulated certain remedial programs designed to uplift those socially or economically disadvantaged persons to a level where they may effectively participate in the business mainstream of our economy."

Programs to assist women in entering union apprenticeship programs and in securing work on federally funded construction jobs have been in effect since 1978.11 Women involved in the construction industry as workers and contractors testified before the Commission about the enormous barriers faced by women in the construction field and the need for legislation to redress the problem.12 Serious efforts have also been made to assist women-owned businesses in acquiring government contracts. In 1979 President Carter issued Executive Order No. 12138 requiring federal agencies to adopt affirmative action programs to assist women-owned businesses. The Executive Order expressly recognized:

1. the significant role which small business and women entrepreneurs can play in promoting full employment and balanced growth in our economy;
2. the many obstacles facing women entrepreneurs; and
3. the need to aid and stimulate women's business enterprise.

In response to the Executive Order, federal agencies have begun creating contracting opportunities for women-owned businesses on a systematic basis. The Environmental Protection Agency (EPA) has mandated each of its regional offices to develop percentage goals of not less than two percent for contracts to women-owned businesses in connection with grants for constructing waste water treatment plants.13 The New England Regional Office has done extensive outreach to locate women-owned businesses interested in performing work under EPA grants and is in the process of compiling a directory of such businesses. According to Karen Morth, Equal Employment Opportunity Specialist of the EPA's Office of Civil Rights and Urban Affairs, the New England Region is considering a goal of from two to four percent, with a goal of four percent for the Boston area. The Department of Transportation is also in the process of establishing percentage goals for the participation of women-owned businesses in OOT contracting. In response to the Executive Order, the Small Business Administration has instituted a pilot mini-loan program providing loans of up to $20,000 to women who are starting or expanding a small business. The program is expressly designed to remedy the problems faced by women entrepreneurs in securing adequate capital and managerial and technical assistance.
Problems with the BBC

Although a number of state agencies listed above have voluntarily instituted programs to enlist participation by minority and women-owned businesses on their construction projects, the BBC has been notoriously slow to follow their example. According to Herbert Singleton, BBC's Equal Opportunity Officer, only two minority general contractors and about 12 minority subcontractors, to his knowledge, have been awarded BBC contracts during the past two years. Mr. Singleton was aware of only one subcontract awarded to a woman-owned business. The BBC does not maintain records of the number of contracts awarded to minority and women-owned businesses, so the degree of underutilization of minority and women-owned businesses cannot be fully determined.

Recently, the BBC instituted a voluntary five percent set-aside on a state-funded $60 million Transportation Building to be constructed at Park Plaza. Four general contractor-joint venture teams submitted bids, all responsive to the set-aside requirement. (The low bidder has been selected and is awaiting official approval.) The five percent figure was set by the Massachusetts Commission Against Discrimination (MCAO). According to Singleton, the figure was set low intentionally since this was the BBC's first attempt to establish a voluntary set-aside program and they wished to insure a workable system acceptable to contractors' organizations.

The U.S. Bureau of Census Economic Data for 1977 shows that there were a total of 210 Black and Hispanic contractors in Massachusetts, and 433 in Massachusetts and Connecticut combined. (No figures were available from the other New England States.) Other state agencies have had no difficulty in meeting goals or quotas for minority business participation in their contracting programs. Walter Williams, Director of Boston's Office of Minority Business, told a Commission investigator that the requirement for minority business utilization on Boston construction projects has been waived only in very rare instances involving specialized work which no minority-owned firms were available to perform. The BBC has administered a 10 percent set-aside on two projects funded by the EDA under the 1977 Public Works Employment Act without apparent difficulty in recruiting eligible minority firms.

The research conducted by EPA and Massport on the availability of women-owned businesses to provide goods or services required by these agencies is encouraging, and suggests that women-owned businesses are capable of performing a far greater share of public contracting than their present level of participation would suggest. The U.S. Census Bureau's 1977 Economic Census of Women-Owned Businesses reveals that there are 983 women-owned construction firms in New England and 335 in Massachusetts alone. These figures are probably somewhat inflated, since they are based on the legal ownership of the businesses
rather than actual management and control. Many male-owned and operated
businesses are listed in the name of the owner's wife or other female relative
for tax purposes. Nevertheless, even if only a small percentage of these
businesses are actually owned, managed, and controlled by women, it is clear that
such businesses are not receiving an equitable share of state work. According to
Herbert Singleton of the BBC, only one woman-owned contractor, to his knowledge,
has received a contract from the BBC within the past two years.

**Legislative Solutions and Suggestions for Implementation**

The Commonwealth, as the largest consumer of building construction services,
has an affirmative obligation to offer contracting opportunities to businesses
owned by persons traditionally denied equal access to public work. The BBC's
abyssal record in awarding contracts to minority and women-owned businesses is
sufficient proof that such businesses have indeed been denied equal access.
Making contracting opportunities available to minorities and women will stimulate
competition in the state's construction industry. It is appropriate for the
Commission to address these goals as part of its effort to improve the system of
awarding contracts for the construction of state and county buildings.

The Commission's legislative proposal establishing set-asides for
women-owned and minority businesses was shaped by a number of considerations:

1. The experience of other agencies demonstrates that purely voluntary
programs which do not establish a minimum amount of work to be set aside have not
worked.*

2. The legislation should do no more than provide the bare bones of the
program, leaving the development of procedures and regulations to the agencies
directly responsible for its implementation and operation and those having
particular expertise, namely, the Division of Capital Planning and Operations and
SOMBA.**

*See Preface to *City of Boston Supplemental Minority Participation and
Resident Preference Section*, p. III: "Research by the Office of Minority
Business indicated that minorities have received a miniscule number of contracts
under the 1975 minority business policies. Contractors, for the most part, have
ignored the goals of the City for minority participation in the contracting
process." In the Fullilove decision, 48 LW at 4984, the Court noted the failure
of the federal office of Minority Business Enterprise to increase contracting
opportunities for minority businesses under a voluntary system because of the
"glaring lack of specific objectives which each prime contractor should be
required to achieve."

**This approach closely parallels that of Congress in enacting the 1977
Public Works Employment Act which set forth the basic elements of a minority
set-aside program and left the actual implementation to the EDA, which
subsequently formulated regulations and technical bulletins to assist grantees in
complying with the provisions of the legislation. The Supreme Court endorsed
this approach in the Fullilove decision, 48 LW at 4984.
3. The legislation should specify that separate portions of the work on any particular project be reserved for minorities and women in order to avoid forcing women and minorities to compete for the same small share of work.

The legislation adds a new Section 40C to Chapter seven of the General Laws.\textsuperscript{14} This section provides that at least five percent of the total estimated construction cost of each contract under the supervision and control of the Division of Capital Planning and Operations must be reserved for minority businesses and an additional five percent for women-owned businesses. In the case of the work reserved for minority businesses, the five percent figure must be increased on a project-by-project basis to reflect the percentage of minority population in the geographical area where the project is located.

The five percent figure was established in consultation with Roger MacLeod, Director of the Public Sector Division of the MCAD, David Harris, Director of SOMBA, and members of the legislative Black Caucus.

Various people have expressed concern that the five percent figure may be too high, particularly with regard to women-owned businesses. As already stated, the number of women-owned firms in the New England area located by Massport and EPA, as well as the Bureau of the Census data on women-owned construction firms, suggests that there will be no problem in meeting this requirement. The First Circuit noted in the Altshuler case that courts are ill-equipped to judge the accuracy of government agencies' assessments of appropriate goals for affirmative action programs. Accordingly, the Court ruled that it would uphold any reasonable scheme which allowed noncomplying contractors to show that their noncompliance was excusable even if "a particular percentage goal might be slightly optimistic or unrealistic."\textsuperscript{15}

It should be noted that the legislation does not restrict the contracting and subcontracting work reserved for minority and women-owned firms to construction work. If the Division has difficulty in meeting the five percent requirement through the award of construction contracts and subcontracts alone, it may award minority and women-owned firms contracts or subcontracts for such construction-related services as architecture, engineering, consulting, testing, landscaping or surveying; for the manufacture or furnishing of supplies or materials; or for rentals of equipment. Walter Williams of the City of Boston's Office of Minority Business told Commission staff that the city enters into such contracts with minority businesses when there are insufficient minority firms to perform construction work alone, rather than waive the mandated percentage of minority participation on Boston's construction projects.
Certification of Minority and Women-Owned Businesses: The legislation makes SOMBA responsible for creating and updating a list of bona fide minority and women-owned businesses. SOMBA currently performs this service for many state and federal agencies which have established special programs to assist minority or women-owned businesses. SOMBA certified the minority firms that performed work on projects funded under the Federal Public Works Employment Act of 1977. Representatives of the EDA, which administered the Act, reported to Commission staff that SOMBA was one of the most effective agencies of its type with which they dealt. SOMBA has published a directory of minority businesses used by many agencies which have instituted minority contracting programs, and is currently developing procedures for updating the directory. SOMBA has also certified women-owned businesses for the EPA. It has developed forms and procedures for certifying bona fide minority and women-owned businesses, for deciding challenges to denials of certification, and for decertifying businesses which have abused their special status or falsified the information on which their certification was based. In order to assure that businesses are bona fide, SOMBA's certification form requires businesses to disclose the race or sex of those persons with actual day-to-day decision-making authority, as opposed to those possessing merely formal, technical ownership or control. SOMBA staff are required to visit the contractor's place of business in order to verify the information contained in the form. The certification form also evaluates the applicant's expertise, financial status, and ability to undertake a particular job, and is thus analogous to a prequalification statement. (Copies of SOMBA's certification form and rules of procedure are attached as appendices.)

Enforcement: The experience of other agencies in administering similar programs indicates that attempts will be made to circumvent its requirements unless the administering agency is vigilant in enforcement and is willing to take prompt action against individuals and firms who abuse the system. SOMBA's detailed decertification form and its administrative procedures enable it to expose purported minority or women-owned businesses which are, in fact, fronts for businesses ineligible for preferential treatment. However, the agency administering construction contracts which provide for participation by minority and women-owned businesses must monitor construction closely in order to make sure that the firms to which particular contracts or subcontracts were awarded are the firms actually performing the work and receiving the proceeds. The regulations promulgated by the Deputy Commissioner and SOMBA to enforce the provisions of the section should provide for immediate termination of any contract or subcontract
when abuse is discovered, as well as for institution of decertification or
debarment proceedings under chapter 149, s.44C when warranted.

The legislative provision for construction supervision by project managers
and resident engineers in the employ of the Commonwealth should help assure that
the set-aside system operates successfully, in accordance with its purpose.

Ability-to-Waive-the Set-Aside-Requirement in Cases of Hardship: On its
face, the provisions of the legislation are mandatory. The mandatory form of the
legislation was recommended by members of the legislative Black Caucus and other
people experienced in administering affirmative action programs. They warned
that any statutorily authorized waiver would be abused and would invalidate the
entire program. The Supreme Court, in Fullilove, quoted the sponsor of the
Public Works Employment Act who stated, in the course of debate: "every agency
of the Government has tried to figure out a way to avoid doing this very thing.
Believe me, these bureaucracies can come up with 10,000 ways to avoid doing
it".16

However, the Commission did not intend to render the Division of Capital
Planning and Operations powerless to waive the set-aside requirement in
situations where it is demonstrably impossible to achieve the requisite
participation by minority and women-owned businesses. The language of the
statute does not require such an interpretation. It states that not less than
five percent of the estimated cost of each project under the Division's
jurisdiction "shall be reserved" for minority and women-owned businesses
respectively. If the portion of work reserved for such businesses cannot be
performed by them, neither common sense nor the language of the statute demands
that the project be abandoned. However, the absence of an express provision for
waiver places on the Deputy Commissioner and on general contractors the burden of
demonstrating that they have made every effort to obtain the requisite
participation of minority and women-owned businesses before they can proceed
without it. It is anticipated that the regulations promulgated by the Deputy
Commissioner and SOMBA will provide sufficient flexibility to allow for waiver in
appropriate cases, while assuring that this flexibility will not be abused.

CENTRAL-REGISTER-LISTING-CONTRACTING-OPPORTUNITIES

The Legislation

Enabling Act Section 50 of the Commission's construction reform bill17
requires the Secretary of State to publish, not less often than once a week, a
central register listing notices of contracting opportunities offered by all
agencies and authorities of the Commonwealth and its political subdivisions. The
register must include, at a minimum, notices concerning:

(a) invitations relating to the procurement of supplies; design, construction and other services; and rentals of equipment incident to the design and/or construction, reconstruction, renovation, repair, demolition or furnishing of any capital facility; (b) notices of subcontracting opportunities incident to such design and/or construction, reconstruction, renovation, repair, demolition or furnishing; (c) notices of proposed sales, rentals or acquisitions of real property. Each notice shall provide information concerning the subject matter of the proposed transaction, any special qualifications or requirements pertaining thereto, instructions for submitting proposals, and such other information as the secretary shall require. The register shall also provide notice of the individual or firm selected for negotiation or award of any contract or as party to any other transaction, including leases, sales, and other agreements, advertised in a prior edition of the register; the amount of the contract, purchase, sale, lease or other agreement; the names of subcontractors and suppliers, if available; and information concerning currently debarred contractors...

The act creates an exemption for "emergency procurements necessary to preserve the health and safety of persons or property." It assigns public awarding authorities responsibility for notifying the Secretary of contracting opportunities and proposed transactions on a timely basis. Finally, the act provides that the register will be made available by subscription at a price sufficient to cover the costs of publication and mailing.

**Background of the Legislation**

The administrative costs of publishing the central register should be minimal; the benefits to the Commonwealth and its contractors will be substantial.

Notices pertaining to public construction contracts or awarded by Massachusetts agencies and localities are not listed in any central location. Public awarding authorities currently advertise for invitations to bid, requests for proposals, and other contracting services in one or more trade publications or local newspapers. The cost of newspaper advertising is borne by the awarding authorities. Announcements in trade publications, such as the Dodge Reports, are published as a service; there is no assurance that the announcement will appear on time or in the form submitted. Vendors, consultants and contractors - especially small businesses - have complained that they are not informed of contracting opportunities offered by public awarding authorities.

The subcommittee of the Post Audit and Oversight Committee established to investigate MBM noted in its final report that the public advertisement for the construction management services which MBM was ultimately selected to perform contained a project description which was inadequate to inform any firm not possessing inside information about what was actually involved in the project. As a result, MBM, which had taken great pains to acquire inside information, was at a distinct advantage relative to its competitors in securing the contract.
No statute or regulation governs the level of specificity required of such advertisements. As a result, access to public contracting opportunities may be restricted, in practice, to firms having an "inside track."

Accordingly, the Subcommittee Report on MBM included among its recommendations for legislative reform of the state's building construction system a proposal that:

Decisions and other information relative to monetary expenditures for state construction should be published by the Secretary of State in a form which is accessible to all interested companies and persons. A publication containing such information would be of value to firms doing business with the state and might well be made available at subscription rates capable of supporting the publication. Such publication would broadcast both the fact of decision and the criteria for decision. It could diminish the need for "inside" information, and expose the process to greater review and participation.19

Representative Philip Johnston (D-Marshfield) also recommended that the Commission meet the "critical need to make our state bidding procedures more open and accessible" by enacting legislation to create a central register of contracting opportunities offered by the Commonwealth.20 William Montouri made a similar recommendation on behalf of the Massachusetts Association of Land Surveyors and Civil Engineers of which he is president. The publication he proposed would list all proposed projects to be awarded by state agencies, as well as the firms selected for negotiation and for award of contracts and the amount of contracts and subcontracts awarded.21

The federal government has for many years published a Commerce Business Daily, mailed to subscribers every day except weekends and holidays. The publication lists notices of U.S. government procurement invitations, contract awards, subcontracting leads, sales of surplus property and foreign business opportunities. Notices are not limited to construction contracting information. The publication is approximately 28 pages in length and is available by subscription for $105 per year first class mail or $80 second class mail. By contrast, an annual subscription to the edition of Dodge Reports covering construction procurement in Massachusetts alone costs $1,112.

A central register, published by the Secretary of State on a non-profit basis, comparable in length and format to the federal Commerce Business Daily and mailed first class once a week, should cost subscribers approximately $21 a year. It is difficult to imagine a cheaper or more efficient way of increasing access to public contracts, particularly for small and disadvantaged businesses which stand to benefit most from such a publication.
INTRODUCTION

Construction is a crucial stage of every project. Up to 90 percent of a project's funds are expended during this stage. It is here that the problems noted in previous sections -- namely, design defects, careless and defective workmanship, and unauthorized substitutions of inferior materials -- are incorporated into a completed building. Errors and defects can be corrected thereafter only with great difficulty and expense.

At this stage, too, all the major participants in the process -- representatives of the project management and using agencies; the designer, consultants, and clerk-of-the-works; the general contractor, job superintendent, subcontractors, suppliers and workers; and state and local building inspectors -- are involved in performing their respective jobs. Failure of one to perform satisfactorily will normally affect the performance of others, and the project may be delayed or improperly completed as a result. Coordination of the work of the various participants is, therefore, particularly important during this phase.

This section will begin by describing the formal procedures for project management in effect during the period of the Commission's study. There follows an analysis of "Problems in Construction." This section concludes with a summary of "Legislative Solutions and Suggestions for Implementation."

FORMAL SYSTEM OF PROJECT MANAGEMENT

Execution of the Contract

After A&F's approval of the award of the general construction contract, the BBC requested an allotment of funds required for immediate encumbrance. If such an allotment was approved by the Budget Bureau, the BBC sent the Comptroller a request for a Reservation of Funds. The statute specifically provided that "no... [public building] contract shall be awarded by [the Director of the BBC] for a sum in excess of the amount which the comptroller shall certify to be available therefor."1 The funds encumbered typically covered initial obligations for the construction contract, the balance of the design fee, and the cost of testing services.

*See G.L. c. 7, s.13 for a description of the Comptroller's responsibilities in encumbering funds.
The BBC notified the general contractor of the award and instructed him to execute sub-contracts with the filed sub-bidders. The BBC could request the general contractor to substitute subcontractors; the general contractor could be ousted as low bidder as a result of the substitution. The Department of Labor and Industries was empowered to adjust all disputes arising from the award of general and sub-contracts.

After the BBC checked the contracts executed by the general contractor and sub-contractors, they were signed by the Director and submitted to the Attorney General for formal approval.

Once the contract was executed, the BBC sent the general contractor a Notice to Proceed establishing starting and completion dates for the project.

Construction Phase

At this stage internal responsibility for a project shifted from the project engineer in the Plan Examining Section to a project engineer in the Construction Section. The Annual Report of the BBC characterized the role of the Construction Section project engineer as follows:

A project engineer is appointed as overseer of the project. His function is to insure that the construction is in accordance with the approved plans and specifications. The Project Engineer is charged with the responsibility of coordinating the activities of the designer and the general contractor. In addition, he is called upon to review and make recommendations on all change requests and progress payments for both the designer and the prime contractor.

Sometime after the Notice to Proceed, a meeting attended by the project engineer, the general contractor, the designer, and certain sub-contractors was held to review the project's scope and schedule. A progress chart in the form of a bar graph was prepared by the general contractor and reviewed by the designer. Payments to the general contractor and sub-contractors were keyed to the progress of the project as defined by the chart. During the course of the project, weekly job meetings were held to review the progress of construction and deal with problems.

As construction proceeded, BBC inspectors visited the site "to determine the quality of construction" and to assure that the construction was in accordance with the plans and specifications.

* Until recently, in the case of purely mechanical and/or electrical projects, design review and construction oversight were carried out by personnel in the Mechanical/Electrical Section. In addition, project engineers in that section were responsible for review of the mechanical and electrical aspects of design and construction.
The Clerk-of-the-Works

The clerk-of-the-works was required to be on-site on a full time basis to oversee construction. Chapter 7, s. 41 required the contract with the designer to provide for appointment of a "qualified" clerk with the approval of the Director of the BBC. The statute provided that the clerk be a registered architect or professional engineer with at least five years' experience "in the construction and supervision of construction of buildings for an architectural, engineering or construction firm or association" and with a "proven ability to estimate construction costs and to keep accurate records and accounts thereof". However, there were two exceptions to this requirement. If not registered, the clerk must have had at least ten years of experience. Alternately, the director could exempt any project from the necessity of having a clerk-of-the-works or one with the qualifications required by the section, "if in his opinion such exemption would benefit the commonwealth."

According to c. 7, s. 41 the clerk was to:

devote full time to the work of the project, oversee continuously the detail of construction, keep informed at all times of the financial status of the project, and make such investigations for and reports and recommendations to the designer or the director as either may require.*

The clerk was hired by the designer, subject to BBC approval. The clerk's salary was negotiated and paid by the designer, who was reimbursed by the BBC for the clerk's salary plus 23 percent overhead for fringe benefits and other expenses attributable to the clerk's employment. Until very recently, clerks were recommended to the designer from a list maintained by the BBC and paid according to a fixed fee schedule considered too low to attract qualified people.

* The BBC Clerk of the Works Manual spelled out the clerk's responsibilities in greater detail. The clerk was required to be present on the project site at all times when work was in progress, prepare a daily report of all activities occurring on site and mail it daily to the BBC, the designer, and the using agency, participate in weekly job meetings, prepare a bimonthly progress report on the percentage of work completed, meet with the contractor to review requests for periodic payment, inspect all work performed and all materials incorporated into the work or stored on site for compliance with plans and specifications, bring any non-compliance to the attention of the contractor's representative and bring serious non-compliance to the immediate attention of the BBC project engineer and the designer, check the arithmetic and formal details of change order requests and recommend approval or disapproval, monitor the contractor's expenditure of time and materials on change orders on a daily basis, keep a daily diary of events at the site during the construction period, accompany BBC travelling inspectors on tours of the project and supply necessary information, arrange for testing of concrete and other required testing at appropriate times, coordinate the job and maintain harmonious relations among all the persons involved in the work, make a thorough final inspection of the project and help prepare a punch list.
The practice of having the BBC appoint clerks was discontinued in 1979 in order to give the designer greater control over and responsibility for the clerk's performance and to combat the widespread perception that BBC clerks were appointed on some basis other than merit. Under the negotiated fee arrangement, the salaries of clerks differed widely and there was no standard for the amount of benefits provided.

**Change Orders**

The statutory procedure for processing change orders set forth in G.L. c.7, S.43 required every change order request, regardless of the amount involved, to undergo a number of steps. The request was first submitted in writing to the clerk-of-the-works. The clerk forwarded it to the designer with his recommendation, and sent copies to the BBC and using agency. The designer in turn examined the change order request and forwarded it with his recommendation to the BBC, with a copy to the using agency. The BBC then acted on the change order. The BBC was required by G.L. c.30, S.39P to act on the change order request within 30 days. If the BBC disapproved the request, the requesting party had a right to appeal to the Commissioner of A&F.

**Certificate of Use and Occupancy**

When the using agency wanted or needed to use a system or occupy a building, the BBC could issue a Certificate of Use and Occupancy to the general contractor. Once a Certificate of Use and Occupancy issued, responsibility for such matters as heating and insurance shifted from the general contractor to the Commonwealth.

**Certificate of Substantial Completion**

When less than one percent of the contract remained to be completed, a Certificate of Substantial Completion could issue. At this stage, all "retainage" (money withheld from the general contractor) except for the value of "punch-list" items (incomplete items) was paid to the general contractor. The contractor's right to payment upon substantial completion was defined in c. 30, s. 39K.

**Certificate of Final Inspection, Release and Acceptance**

When construction was complete, the Department of Public Safety conducted a final inspection. If compliance with the Code was found, the Department issued a Certificate of Use and Occupancy. (The Commission's legislation has not affected the Department's responsibilities in any respect.)
The BBC procedure for final inspection and acceptance was as follows:

[The Director of the BBC] shall be responsible for accepting or rejecting each project upon its completion and for directing final payment for work done thereon; provided, however, that if upon inspection of any project for acceptance he shall find that the plans, specifications, contracts or change-orders for the project shall have not been fully complied with or that the operating agency shall for any reason object to his acceptance of the project, he shall, until such compliance has been effected, such objection has been removed or adjustment satisfactory to him has been made, refuse to accept the project and direct such payment.

Upon acceptance of the project, he shall release the same to the operating agency.

The BBC construction contract provided for a one-year guarantee period, dating from the time of final acceptance, during which the contractor was responsible for defects in materials and workmanship. The contractor had responsibility for defective work beyond the guarantee period under both tort and contract law.

Payments to the General Contractor

The basic procedure for making payments to general contractors on public works as well as BBC projects was outlined in c. 30 s. 39K. (These provisions have not been changed by the Commission's legislation.) The general contractor was required to furnish periodic estimates of amounts due on a monthly basis. The estimates were to include a listing of each filed subtrade and the amount and date of payment to filed subcontractors. Within 24 days, the BBC was required to pay the contractor the amount of the estimate less a sum for claims against the contract, a retention for direct payments to subcontractors (see below), and not more than 5% of the approved amount of the periodic payment (the "retainage"). The retainage was withheld to ensure full performance by the contractor and was to be paid upon substantial completion or final acceptance. Section 39K permitted the BBC to make changes in the periodic estimate in light of its own evaluation of the amount of work done.

Payments to the Sub-Contractor

Chapter 30, section 39F dealt with payments to subcontractors on building and public works projects subject to c. 149, s. 44A or c. 30, s. 39M. The general contractor was required to pay each subcontractor the amounts due according to the periodic estimate, less certain deductions, on a monthly basis. Within 65 days after completion of his work, the sub-contractor was supposed to be paid the balance due.

If the general contractor failed to make payment, the BBC could take reasonable steps to compel payment. The subcontractor could demand direct payment from the BBC, in which case the amount of that payment was deducted from subsequent payments to the general contractor.
The problems arising during construction can be broken down into distinct categories for the purposes of analysis and discussion: (1) inadequate project supervision, (2) inadequate cost controls, and (3) avoidable delay.

The following discussion is based primarily on the Commission's investigations of BBC projects. It would be wrong to conclude, however, that other state agencies manage their construction projects more efficiently. In fact, the data on cost overruns and construction delays compiled below suggests the contrary. The Report's emphasis on the BBC is the result of the Commission's greater familiarity with BBC procedures and projects and reflects the reality that the BBC, as the major constructor of the Commonwealth's buildings, deserves especially close scrutiny.

Construction Supervision on BBC Projects

The major defect in the Commonwealth's system of project management is the absence of any person clearly representing the interests of the Commonwealth during construction. To a significant degree, all the other problems discussed below are outgrowths of this single deficiency.

A number of personages involved in a BBC project have partial responsibility for its successful completion. No one person, however, has total responsibility for ensuring that the project is completed on time, within the budget and in conformity with the plans and specifications. As a result, supervision and coordination of the work may be inadequate, important decisions may be deferred or made haphazardly. If this occurs, quality and workmanship suffer, costs escalate needlessly and projects are not completed on schedule.

The Commonwealth's insufficient attention to project management is a recurring complaint among the persons surveyed by the Commission's staff: general and subcontractors, using agency representatives, BBC officials, and construction professionals. In his End of Fiscal Year 1975 Report on the BBC, Frederick Kussman, then Administrative Assistant to the Director, made the following statement: "I find it frightening that there are no career state employees at our construction sites on a full-time basis." In his fiscal 1978 report, he stated:

The BBC construction section personnel try to visit each job once a week. No one can convince an administrator that this is adequate. Projects should have an attendant full time resident decision maker. Why do roads and waterworks projects, some of which are child's-play compared to a building, require resident
engineers and we have no state employee at all. By contract terms the Designer shows up for a few hours each week and the Clerk of the Works is only an overseeing witness, so grossly underpaid that we have lost many of our good men and have had to publicly advertise for applicants.

The Role of the Designer: In the past, the designer, rather than any person employed by the state, had primary supervisory responsibility over state and county building projects. General Laws, c.7, S.41 provided that "the designer shall...be charged with general supervision of the construction of the project." In the language of the BBC Contract for Designer's Services: "The Designer shall, for the purpose of protecting the Commonwealth against defects and deficiencies in the work of the Project...be charged with general supervision, to the extent possible through review and observation of construction of the Project," and pay at least one weekly visit to the site. For performing these supervisory duties the designer received 25 percent of the total fee.

Those surveyed by Commission staff agreed that the designer is not adequately performing these duties. Dr. John Woollett, professor of architectural technology at Harvard University and a consultant to the Commission, testified at the Commission's public hearing on the results of an investigation of state and county buildings. He stated that 65 percent of the institutions visited by Commission staff and consultants had buildings with major defects, such as external walls falling down, nonfunctioning heating systems, potential fire hazards and continually leaking roofs. He testified that most buildings were poorly constructed and all badly supervised during construction: "Supervision by the Commonwealth and designers is lacking. The designers and the Commonwealth have been negligent in their administration of construction contracts. Buildings are accepted as complete when they have serious defects."9 At the same hearing, Woollett quoted from a technician's report on the Worcester State College Library:

Construction supervision on this building appears to have been nonexistent. The result is a building with incredible water damage that combined with HVAC problems have [rendered] the building unpleasant to inhabit, certain rooms unsafe for occupancy. The result is a building that has not been able to function as intended.10

The vacuum created by lack of supervision on BBC projects has led to ludicrous situations. Judge Alvin C. Tamkin of the Hingham District Court told a Commission investigator that during a period when additions were being made to the courthouse, he had to leave the bench on three occasions to prevent the contractor from substituting inferior materials for the materials called for in the designer's specifications.11
The designer fulfills his supervisory responsibilities with the assistance of consultants hired and paid out of the basic design fee to furnish architectural, electrical, mechanical, structural, landscaping and estimating services and the clerk-of-the-works. The design contract required the designer's consultants to visit the site at least once a week during that portion of construction within the consultant's area of expertise to inspect and report on the work.

**The Clerk-of-the-Works:** As the person providing continuous on-site inspection of construction and preparing daily reports on which the BBC and the designer depend for detailed knowledge of its progress, the clerk is crucial to the success or failure of the project. In the words of John Welch, head of the Construction Section of the BBC, the clerk is "the eyes of the job."\(^\text{12}\)

In practice, BBC clerks have been unable to fulfill the enormous responsibility placed upon them. Their performance is severely hampered by their multiple loyalties. Clerks are responsible both to the designer and the BBC. Their construction background and daily contact with the contractors on site make it likely that they will be sympathetic to the contractors' point of view.\(^\text{13}\) Because they are selected and paid by the designer, clerks are under enormous pressure not to report design-related problems.\(^\text{14}\) Individual BBC clerks told Commission investigators about the pressures exerted on them by designers and BBC officials to conceal problems discovered during construction and faulty work.\(^\text{15}\) One clerk described repeated attempts by contractors, job superintendents, and suppliers to influence him by offering to buy him lunch and Christmas presents.

BBC clerks have also been criticized for inadequate qualifications and ability. Foster Jacobs, Director of Planning and Plant at Southeastern Mass. University, testified that he had never encountered a BBC clerk who was a registered professional, and noted that they performed less well than those he encountered in the private sector.\(^\text{16}\) Jacobs' comments are confirmed by other building superintendents and engineers at state facilities interviewed by Commission staff and by general and subcontractors who responded to questionnaires sent out by the Commission.

Junior clerks employed on BBC jobs are particularly likely to be unqualified, judging by Commission investigations. One junior clerk on two BBC projects was a former bank teller with no construction experience. An experienced BBC clerk told Commission investigators that the junior clerks assigned to his projects were generally either "drunks or political hacks," and were of no use whatever. Moreover, some junior clerks are assigned to several jobs at the same time, often
in different cities. Even if they were qualified for their tasks, it is not clear how they could perform them under these circumstances.

The Role of the BBC Project Engineers and Inspectors: Because of severe understaffing and what may be the inadequate expertise of BBC project engineers, the BBC is not providing any significant degree of supervision. The BBC currently employs seven project engineers to supervise over 60 projects under construction at any given time.\(^{17}\) Of those, only three are registered engineers.\(^{18}\) Given their workload, BBC project engineers cannot do more than pay a brief weekly visit to a particular site and deal with the more pressing problems. The project engineers are hampered in performing their responsibilities by lack of information about the planning and design stages of the project. They are not assigned to the project until the bidding stage is completed; they do not usually see the project files predating construction or have direct contact with the BBC personnel who shepherded the project through the earlier stages.\(^{19}\) The problems caused by lack of continuity in project oversight were observed more than ten years ago by a private consulting firm hired to investigate BBC procedures:

During the lifetime of a typical project at BBC, the responsibility for its progress is transferred three times. From its inception through to the appropriation, it is the responsibility of an individual within the long range planning section. After the appropriation, responsibility is transferred to a plan examiner who monitors its progress until the bidding stage when it is again transferred... The resulting communication problems which arise each time responsibility is transferred have far reaching consequences.\(^{19}\)

Foster Jacobs noted that a number of the BBC Project engineers he encountered "seemed timid, to lack confidence of taking control," and that, as a result, it was difficult to arrive at decisions at the weekly job meetings.\(^{20}\) These criticisms were echoed by other public officials and building superintendents familiar with BBC procedure. General and subcontractors responding to the Commission's questionnaire generally gave the BBC low marks for decision-making and quality of supervision.

The construction management section of the BBC employed two inspectors who are responsible for performing more detailed inspection than that provided by the clerk-of-the-works or the project engineer. Given the number of projects supervised by the BBC, the inspectors were unable to perform this function adequately.\(^{21}\) Inspection and supervision of the mechanical and electrical work, which accounts for roughly 40 percent of the total construction cost of every project, was the responsibility of the Mechanical & Electrical Section of the BBC. This section, according to its head, Arthur Poulos, is grossly understaffed, with one full-time and one part-time electrical inspector and no mechanical inspectors.
Similar problems of inadequate construction supervision confront elderly and low-income family housing projects administered by the DCA. The local housing authorities have direct responsibility for overseeing construction projects, with minimal assistance from DCA whose field inspectors and professional staff pay occasional visits to the site. The DCA is responsible for approving change orders and reviewing payment requisitions, but generally defers to the architect's recommendations. The DCA lacks sufficient staff to provide more than cursory supervisory and technical assistance. It has three staff architects, four field inspectors, and one mechanical engineer to supervise 15 to 25 new projects per year (representing an investment of $1.5-$2 million) as well as several million dollars in modernization projects.

Nearly all the local housing authorities lack expertise and staff to supervise construction adequately and are forced to rely on the designer and clerk-of-the-works for day-to-day construction supervision. This arrangement, according to Harry Spence, former executive director of the Cambridge Housing Authority, opens the door to fraudulent collusion between the designer and the contractor and results in generally poor workmanship on DCA projects. 22 During Spence's tenure at Cambridge Housing Authority, he succeeded in developing an in-house professional staff, consisting of an architect, an engineer, a lawyer and an administrator. Spence told the Commission that this increased staff paid for itself in terms of reduced number of change orders and cost overruns. 23 However, his testimony made clear that Cambridge Housing Authority's experience was exceptional. Of the approximately 230 local housing authorities in the state, he estimated that only five or six have the resources to provide adequate supervision. 24

Case Studies of Inadequate Project Management

The Commission has studied extensively two projects on which supervision was notoriously inadequate, resulting in obvious and major design and construction errors going undetected and in an unacceptable final product. One is Cape Cod Community College, a BBC project, and the other is the McCarthy Apartments in Melrose, a DCA project. These projects are discussed elsewhere in the Report from the standpoint of faulty design and construction. They are described here for what they reveal about the total inadequacy of the construction management provided by the two agencies that construct the great majority of the Commonwealth's buildings.
Cape Cod Community College: Cape Cod Community College consists of nine buildings built between 1968 and 1975. The design firm handling the project hired a single structural consultant to oversee the structural aspects of design and construction. The construction work was contracted out to 13 individual general contractors. Major structural errors, including floor slabs inadequate to support normal loads, roofs improperly installed and pitched, masonry inadequate to withstand stress, and improperly designed and installed gutters, rain leaders, and flashing, have led to extensive water leakage which has caused severe exterior and interior damage to all buildings. Bad design was compounded by poor workmanship, deviations from plans and specifications, and improper installation on almost all the buildings. Some of the buildings were completed and occupied while others were still in the early stages of construction, yet the design and construction defects apparent on the completed buildings were repeated on the later buildings. Despite their nominal supervision of the project, the BBC was unable to determine responsibility for the serious problems at the college and had to hire an engineering firm to assess the relative liability of the designer and contractors in preparation of litigation.

McCarthy Apartments: The situation at the McCarthy Apartments, a housing for the elderly project in Melrose, illustrates even more vividly the abdication of supervisory responsibility on a DCA project. The roof installed on the building was of a type never before used in the U.S., it was significantly cheaper than the one called for in the specifications, and it was installed six months before the change order was issued. Leakage from the roof caused major problems within a year of installation. The fire alarm system was inadequately sheathed and susceptible to short-circuiting and frequent false alarms. The mortar on the exterior masonry did not meet building code standards or project specifications. Bricks were of substandard compressive strength. The tile and carpet suppliers substituted inferior grade products. Structurally crucial reinforcing rods were omitted, floor anchors were inadequately installed, and the masonry contractor failed to grout joints between masonry blocks and used substandard mortar in place of grout above the fourth floor. Russell J. Kenney, the president of the testing company hired to investigate the problems at the building, characterized the quality of construction supervision in testimony before the Commission in the following words:

In order for this to happen you cannot have one person who -- in other words, it just can't be a State Inspector who is not qualified, it can't be just the clerk-of-the-works, it can't be a City Inspector, architect, contractor. Everybody sort of has to get together to end up with this type of result. In other words, some of the areas are obvious. The contractor stopped receiving grout from a ready-mix firm after the fourth floor.
He no longer used the pump to pump the grout up into the wall. He simply threw mortar in. This should be obvious to everybody. He failed to put any reinforcing rods into extremely critical piers. He failed in about 80% areas to break through the slabs and to grout the shear anchors. Some of those are four foot on center. He used the wrong mortar throughout the whole entire job...If any one person basically, religiously performs their duties it cannot happen. It's not a conspiracy, it's a society of people not performing their function.28

COST CONTROLS

Cost escalation during construction is attributable to two separate causes: an unrealistically low estimated construction cost or mismanagement and waste during construction. The first of these is not a construction problem. It is the result of inadequate cost estimating during the programming and design stages, although it typically has repercussions during construction. Cost escalation during construction represents an unanticipated drain on public funds, and generally does not reflect any increase in value received.

Statistics on Cost Overruns

On the whole, the BBC performs better on controlling construction costs than most other state agencies. On BBC construction contracts since 1968, the average net overrun was approximately 4.50 percent. By comparison, average net change orders for projects with cost increases were 5.40 percent for the MDC, 5.01 percent for the Department of Education, 6.70 percent for the Department of Corrections, 7.43 percent for the Board of Higher Education, and 8.58 percent for the Division of State Colleges.*

However, a closer look at the BBC's record is less reassuring. Of the nine projects constructed since 1969 with the largest absolute cost overruns, seven were BBC projects. The Salem State College Library had a cost overrun of $1,134,980 (27 percent); a research building at Lowell Tech had an $881,851 (104 percent) cost overrun. One sitework project at the University of Massachusetts at Columbia Point exceeded the bid price by $529,317 (10 percent), another by $431,874 (38 percent). A Boston State College building had a cost overrun of $476,517 (46 percent), and a classroom building at SMU had a $429,459 (12 percent) cost overrun. The two other highest cost overruns in absolute dollar amounts were overruns of $605,824 (10 percent) and $460,459 (12 percent) on two MDC projects. Altogether, 61 projects studied by the Commission had construction cost overruns of $100,000 or more.

*A GSA study, Construction Contracting Systems (1970), pp. 3-8, showed that in private industry change orders on new, large buildings averaged less than four percent.
The BBC fares better when cost overruns are compared as a percent of project cost, rather than in absolute dollar terms. The highest percentage cost overruns tended to occur in the smaller projects handled by individual agencies. The BBC projects with the highest percentage cost overruns were the Lowell Tech project mentioned above and a project at the Tewksbury Hospital which ended up costing 75 percent ($333,462) more than the original contract price.

The other projects in the top ten in terms of percentage overruns were administered by other agencies. The Board of Higher Education exceeded the contract price by 202 percent ($10,000) on a Boston State College project, and by 157 percent ($2,900) on a project at the University of Massachusetts at Amherst. The Department of Mental Health exceeded the contract price for recreational facilities at Monson State Hospital by 133 percent ($10,000).

A Department of Corrections project at MCI Walpole had a cost overrun of 77 percent ($3,365). The MDC went over the contract price on two of its recreational facilities projects, once by 60 percent ($13,978) and once by 59 percent ($29,474). The Board of Education exceeded the contract price by 55 percent ($9,807) on a food services facility for a building operated by the Commission for the Blind. Of the contracts studied by the Commission, 64 had cost overruns of 20 percent or more, 102 had cost overruns of between 10 percent and 19 percent, and 119 had cost overruns of 5 percent to 9 percent. Altogether, that makes 285 projects, or almost 24 contracts a year, with unacceptably high cost overruns.

Concealed Cost Overruns

The true extent of cost overruns may be disguised in a number of ways. Cost increases are generally offset by "deduct" change orders, so that, although the net cost appears to have been under control, the Commonwealth is actually getting less than the design and appropriation contemplated. A related practice is to delete portions of work from a contract during construction in order to keep the project within budget. Almost one half, or $54,600, of a project for plumbing improvements to the State House was omitted after it became evident that the work could not be completed for the original contract price. Change orders on the remaining work added $36,764 to the contract price. The Commonwealth received little over half of the work it had contracted for at a savings of only 16 percent of the original contract price.

The tendency of the BBC to accept incomplete buildings, often over the protest of the users, further conceals the true value of cost overruns on the project since the expense of completion may be covered by a supplemental appropriation and treated as a new project.
For example, the BBC accepted a project for the installation of air conditioning at Pondville Hospital in 1977 despite instruction of the hospital engineers to the contrary because the air conditioning had been improperly installed. Similarly, the BBC accepted the Rehabilitation and Research Institute for Chronic Mental Illness building at Boston State Hospital in 1974 despite many construction defects enumerated in a letter from the building's maintenance foreman. The BBC failed to extract a promise from the general contractor to remedy the problem, and the warranty period expired with the defects uncorrected. The building superintendent at Bridgewater State College recommended against acceptance of the playing field because it had been improperly graded and landscaped and was totally unusable. The BBC not only accepted the field as complete, but subsequently awarded a second contract to the same contractor. At Lemuel Shattuck Hospital, the chief engineer refused to accept the mechanical systems, but the BBC accepted them. The same pattern was repeated in the BBC's acceptance of the Cape Cod Community College buildings, with numerous and serious design and construction defects.

**Failure to Monitor Change Orders**

Cost overruns may be due to individual large changes during construction, but are often due to a series of relatively small changes on a single project. The BBC Construction Section does not evaluate cost increases on a cumulative basis and may, therefore, not realize that a project with a series of seemingly small cost increases is using up its allotted contingency fund too quickly. According to John Welch, head of the Construction Section, the BBC does not set any limits on the total cost increases for any particular phase of construction. As a result, cost overruns can reach the point at which money for a change order must be taken out of the furnishing and equipment account. This means that unless there is a legislative deficiency appropriation, the using agency will get a structurally complete but functionally useless building when the project is accepted. 26

During the period from 1968 to 1980, $14 million was appropriated separately for furnishings and equipment on state building projects. Every such appropriation was required because the furnishings and equipment budget had been depleted to cover the costs of construction. During the construction of Salem State College library, the entire furnishings and equipment account was used to cover the increased costs of construction. The building was furnished with equipment from the old library until the legislature appropriated an additional $40,000. Ernst & Whinney, consultants to the BBC, criticized the careless manner in which the furnishings and equipment account is used on BBC projects:
The appropriation is supposed to include an amount for furnishings and equipment (F&E). Neither the legislature, the agency, nor BBC reserves these amounts exclusively for F&E. Instead, the F&E portion of the appropriation is viewed as a private contingency fund which can be drawn upon to allow a project to proceed even though responsible bids otherwise would exceed available construction funds. Conversely, the agency may use unexpended F&E funds for its own purposes. For example, we found F&E expenditures for gym clothing, which clearly should not be purchased with capital funds. It is considered relatively easy to obtain a subsequent appropriation to furnish and equip a newly constructed or renovated building when the original appropriation's F&E component has been exhausted without having furnished the building.27

Change orders may be unavoidable, but a disturbingly large number are the result of faulty design (e.g., Salem State Library, Salem District Courthouse, U. Mass. Medical School), expansion of the scope of the project or substitution of more expensive materials or design features (e.g., $20,000 in cosmetic changes at Salem District Courthouse), or of deliberate fraud. *

**Pricing of Change Orders**

Even necessary change orders are priced in a manner that allows or actually encourages overspending. Change orders are not normally competitively priced. Joseph Kane, former General Counsel of the Department of Labor and Industries, told the Commission that it was his practice to require change orders in excess of ten percent of the total contract price to be bid competitively. However, this practice is not required by statute, and it is not known whether Kane's successors have continued it.30

The pricing of change orders is left to the contractor. The contractor's price is reviewed summarily by the clerk-of-the-works, the BBC project engineer and the designer, but the BBC does not independently estimate the cost. To do so in a meaningful way would require the services of a professional cost estimator which the BBC lacks.31 If no agreement is reached on a lump sum price, the contractor is allowed to estimate the price of the change order on a time and materials basis, usually limited by a maximum figure. This maximum figure is often the price originally suggested by the contractor which the BBC rejected.32 This method of pricing change orders in effect gives the contractor complete control over the price and provides no incentive to reduce costs.

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*See, for example, William Masiello's description of his use of change orders as a method of generating cash for illegal kickbacks on the Dudley-Harrison Fire Station and MCI Concord projects,28 and Barbara Manford's testimony regarding fraudulent use of change orders on DCA modernization projects.29*
**Approvals of Change Orders**

The BBC's performance in processing change orders was singled out for criticism by general and subcontractors who responded to the Commission's questionnaires. The complexity of the process has led to widespread misuse of the emergency change order process as a means of processing completely inessential change orders. In the case of Salem District Courthouse, changes involving the painting of the secretarial pool area and interior planting to improve the appearance of the building were processed as emergency change orders. Emergency change orders are priced on a time and materials basis, further weakening cost control.

The lack of a single person with overall responsibility for project supervision results not only in a lack of accountability for change order approval, but in the failure to monitor cumulative project costs systematically to prevent overspending during construction. It also permits abuse of the change order process as a means of increasing the project's scope, adding more luxurious features, or generating cash for fraudulent purposes.

**Other Sources of Financial Waste**

Nonproductive costs of construction are manifested in many less obvious ways, notably in the cost of corrective work to remedy design or construction defects after construction is completed. A million dollars has already been appropriated to correct design and construction defects at Cape Cod Community College, and it is anticipated that an additional $1.5 million will be required to complete the task. An estimated $400,000 will be required to correct masonry defects in the Arts and Sciences Building at Salem State College; $160,000 has already been appropriated for this purpose. The cost of remedied work required to make the McCarthy Apartments in Melrose safe and habitable is estimated at $4 million - the original construction cost. Approximately $250,000 has been spent on consulting and testing services merely to diagnose the problems with the apartments.\(^{33}\) $2.5 million has been appropriated for interior and exterior repairs to the UMass/Amherst Library. Of this sum, $1.35 million is required to repair the brick facade. Design and construction defects may also increase operational costs of buildings in such areas as heating and air conditioning, lighting, cleaning and maintenance.\(^{34}\)

**Costs Due to Delay**

The costs attributable to avoidable delays represent an enormous source of overruns. For example, a five-year delay in the design of a nuclear reactor building at Lowell Technical Institute resulted in an award of damages to the
builder of the reactor of $850,000 and an additional $250,000 in design fees. Delay in the completion of a housing for the elderly project in Duxbury, compounded by the general contractor's default, cost the housing authority $5,301 in lost rents and $5,740 for additional designer's and clerk-of-the-work's fees. A three-month delay in paying the general contractor on the Fall River District Courthouse renovation project, as a result of the BBC's failure to secure legislative authorization to borrow funds before entering into a general contract for construction, required the state to pay the contractor $4,658 in interest.

Delays in project completion require the extended services of supervisory personnel at an added cost to the Commonwealth and an added burden on the BBC. They also require the leasing of other space or loss of rents in the case of a housing project, not to mention the intangible costs in inconvenience or inability to provide the services for which the project was undertaken.

Finally, delays increase costs substantially by virtue of inflation. Ernst & Whinney placed particular emphasis on the problem when they said:

The most non-productive financial aspect of BBC is increased cost due solely to inflation. When a project is conceived, its construction costs are estimated. At some later date, a contractor will bid to perform the project for a particular price, to which the contractor is legally committed. Differences between actual and estimated costs largely reflect inflationary increases, whereby prices for labor and materials rise without corresponding gains in value during the time period between estimate and bid. Construction's current annual inflation rate of 10.5 percent adds more than $10 million a year to the actual costs of each $100 million of the BBC's construction portfolio backlog.35

Failure to correctly estimate the costs of construction during the design stage itself represents a source of financial waste, as illustrated by the Fall River Courthouse project. The designer underestimated the construction cost by $159,000 and the appropriation was short by that amount. Because the BBC recognized the possibility of a deficit at the time the project was bid in 1978, it had certain essential features of the project - carpeting and important components of the air conditioning system - bid as alternates, and excluded them from the general contract in order to keep the project within budget. Carpeting was funded a year later through a $14,000 change order; it had been bid a year earlier at $12,000. The contract for the air-conditioning system is estimated to cost $73,000; it was originally bid at $49,000. Because the courthouse was designed and built with sealed windows, it remained unused for more than a year until the air conditioning system was finally installed.

Particular criticism of the BBC by general and subcontractors responding to the Commission's questionnaire resulted from delays in processing payments to contractors. Such delay forces contractors to increase their bids to cover the costs of borrowing. In addition, many contractors are unwilling to bid on state
work because of delays in payment, depriving the Commonwealth of the benefits of full competition. Harry Spence, former director of the Cambridge Housing Authority, told the Commission that when he tried to recruit competent contractors to bid on Authority contracts, he was told that the source of their reluctance to bid was "that when you work for a local Housing Authority you never know when you are going to get paid." He told the Commission that it was difficult to hold contractors liable for delays in completing projects because the Authority's record with respect to timely payment on requisitions was so bad.

**Fraud as a Source of Cost Overruns**

Finally, fraud -- most commonly between the contractor, subcontractor or supplier and the designer -- is either factored into the bid price or is reflected in charges for goods and services not provided. William Masiello, on May 14, 1980, testified in detail about the costs to the Commonwealth and its political subdivisions of such practices as bid rigging, padded allowances, substitutions of inferior materials, and numerous other fraudulent practices described in other sections of this report.

**DELAY**

Although construction delay as a source of cost escalation has already been discussed, its causes and nonfinancial aspects warrant further treatment. The magnitude of the problem is indicated by the following statistics based on the Commission's study of 1070 building construction contracts awarded since 1968 by all state agencies: 48 percent were completed behind schedule. Of large projects (those with an original contract period of one year or more), 80 percent were completed behind schedule. 17 percent were delayed by more than 50 percent of the original contract period. Only 31 percent of the 1070 contracts were completed on or ahead of schedule. (For 21 percent there was no data on original contract period, extended completion date or substantial completion date.)

**Delay on BBC Projects**

According to John Welch, Head of the BBC's Construction Section, the BBC attempts to control project duration by requiring the general contractor to prepare a work schedule in the form of a bar chart, showing the time durations for all elements of construction. The chart is reviewed by the designer who decides whether or not it is realistic and by the BBC project engineer who does
not independently evaluate the contractor's time estimates. The contractor is
required by contract to furnish a chart once a month that shows the actual
progress of construction in comparison with the original proposed schedule. Each
month, the clerk-of-the-works is responsible for assessing the percentage of the
project completed. If the project falls significantly behind schedule, a meeting
is held at the BBC to investigate the problem.39

The controls described by Welch are in fact ineffective to prevent delay. Of
273 construction contracts supervised by BBC from 1968 until the present for
which there is data on original and actual completion dates, the average delay
was 8.4 months or 70 percent of the original contract period. This figure does
not include the substantial delays that typically occur during design which,
according to the BBC's Fiscal 1979 Report, cost millions of dollars a year.
Foster Jacobs, Director of Planning and Plant at SMU, told the Commission that he
could not recall a single BBC project completed on schedule.40 On individual
large projects the delay is often many times greater than the average. The Salem
District Courthouse was delayed 17 months (over 100 percent of the original
contract period), the Salem State College Library was delayed more than two
years, the Physical Education Center at Salem State was occupied more than a year
after the scheduled completion date, and the Arts and Sciences Addition was
delayed a year and a half.

However, the BBC actually performs better than most other state agencies in
controlling construction delay. Building projects by all state agencies since
1968 were delayed an average of 78 percent of the original contract period, or
6.8 months. Of these, the MOC delayed an average of 73 percent (5.5 months), the
OPW 91 percent (5.3 months), the Department of Natural Resources 84 percent (4.7
months), the Department of Environmental Management 260 percent (10.3 months),
the Department of Education 170 percent (5.6 months), the Department of Mental
Health 77 percent (3.4 months), and the Department of Corrections 142 percent
(5.4 months).

**Failure to Penalize Contractors for Delay**

Data on BBC contracts shows that the average extension granted to the
contractor by the BBC (8.5 months) was actually greater than the time required to
complete the project, suggesting an excessively liberal policy with regard to
contract extensions. The State Auditor's office has repeatedly called attention
to the BBC's liberal policy regarding contract extensions and its failure to
require prompt completion of the punch list. Its report covering the period from
August, 1969 to August, 1970 cited 38 contracts on which the general contractor
was supposed to be completing a punch list. The report also noted that for the 75 contracts completed during that year, the BBC had authorized an average time extension of 225 days for each contract. This amounted to a total of 16,875 days: over 46 years of authorized delay. Later Auditor's reports show that the BBC has continued its policy of granting time extensions on most of its contracts. Of 231 BBC contracts in effect from October, 1976 through September, 1977, time extensions had been authorized on 154 contracts.

Moreover, the BBC often sanctions delay by backdating acceptance of projects. The time for completing the punch list (items left to be done after the project is substantially, or 99 percent, complete) often drags out for months or years. Yet the BBC often immunizes contractors from suit by backdating its final acceptance of the project to the date set for completion by the contract or the last change order. For example, the Salem State College Arts and Sciences Building was not occupied until November 1971, but the BBC's final acceptance of the project was dated September, 1970, only four months after the original contract period had ended. On individual contracts unauthorized delay is also a problem. By contract, the BBC is authorized to withhold $100 in liquidated damages from the contractor's payments for each day of unauthorized delay. However, BBC officials, including the chiefs of the Construction and Fiscal Sections, told the Commission that they could not recall any cases in which liquidated or actual damages were recovered, even when delay resulted in ascertainable loss to the Commonwealth. Ernst & Whinney suggest certain reasons for the Commonwealth's difficulty in pursuing legal remedies against dilatory contractors:

Since the BBC has not been able to place a value on timely construction completion, it cannot sue to recover actual damages. The amount which BBC construction contracts allow to be retained as liquidated damages is probably not sufficiently related to actual damages to withstand court challenge. Consequently, BBC seldom enforces the liquidated damages provision. We recommend that BBC develop a reasonable technique for calculating the actual damages of delay, incorporate the calculated amount in construction contracts as liquidated damages, and utilize the provision.

**Delay Caused by Change Order Process**

Construction delays are often caused by the change order process itself. The BBC may take months to process change orders, partly because of the cumbersome approval process described. Postponement of final action on change orders can delay final acceptance of projects almost indefinitely. In the Fiscal 1972 Auditor's Report on the BBC, it was noted that 32 projects which had been conditionally accepted prior to January 1, 1970 were awaiting final action on change orders or additional documentation. One project had been conditionally accepted on March 1, 1960; as of September 18, 1972 it had not been finally accepted.
Robert Nason testified that when he assumed the position of Executive Director of the Melrose Housing Authority in 1976 and began to investigate why the McCarthy Apartment project was proceeding so slowly, he discovered that there were 60 to 70 change orders outstanding which had not been processed by the designer or presented to the Authority for approval. According to Nason, approximately 60 changes were performed without the knowledge of the Authority.\textsuperscript{43}

**Delay Caused by Construction Disputes**

An additional cause of construction delay is the absence of a fair and speedy method for settling disputes regarding change orders and contractors' claims for payment for extra work or materials. Not only do unresolved disputes delay completion of construction, but they create tension and acrimony that threaten the morale of everyone on the job. According to Paul Good, former Chief of the Contracts Division of the Attorney General's office, the cost in terms of wasted time, inferior workmanship and added expense is considerable.\textsuperscript{44}

Under the BBC construction contract, the designer decides questions relating to the conduct, quantity, quality, equality, acceptability, fitness, and rate of progress of work and materials. The designer also decides questions concerning the interpretation of the plans and the contractor's fulfillment of the contract. The designer does not make final decisions concerning contractor's claims for payment, which are within the purview of the BBC. Because the contract does not provide for appeal of the designer's decisions, issues raised by the designer's alleged abuse of discretion frequently end up in litigation.

Although the law provides a limited right of appeal to the Commissioner of A&F in the case of disapprovals of requests for changes or payments,\textsuperscript{45} there exists no formal and fair mechanism for resolving most construction disputes. On BBC projects, an attempt is made to resolve disputes informally. However, this procedure carries no guarantee of procedural fairness and is perceived by the contractors to be inadequate. A great majority of contractors who responded to the Commission's questionnaires criticized the BBC's performance in resolving disputes and expressed support for a speedy and impartial procedure administered by an arbitrator or hearing officer independent of the BBC.

The lack of such a procedure has caused an increasingly large number of construction disputes to end up in litigation where they linger on for years. Most of these disputes involve contractors seeking additional compensation, but a growing number involve suits against contractors for unsatisfactory work.\textsuperscript{46}

The Contracts Section of the Attorney General's office, staffed by seven
attorneys, is currently handling about 83 lawsuits involving the BBC alone, in addition to several hundred suits involving other state agencies. The cases require extensive preparation because they involve complex fact situations and multiple parties. Final resolution is delayed because the cases are generally referred to masters by judges lacking expertise in construction matters.47 A further problem for the state affecting its success in litigation results from poor record-keeping and insufficient documentation to support litigation.

LEGISLATIVE SOLUTIONS AND SUGGESTIONS FOR IMPLEMENTATION

**Construction Supervision**

**Project Managers:** In devising a project management system to address the problems discussed above, the Commission's main goal was to establish a focus of accountability for each building project within the jurisdiction of the management and planning agency created by the Commission's legislation. To that end, the legislation recommended by the Commission provides that an individual employed by the Commonwealth as a project manager will be assigned to each project at the planning and appropriation stages, and will continue to oversee and coordinate the work of the project throughout design and construction.48 During construction, the project manager will be responsible for approving project schedules, payment requisitions and changes of up to a limit of $5000 per change order. The project manager will be responsible for assuring that work proceeds in timely fashion, within budget, and in conformity with the plans and specifications.

The Commission recommends that the Division of Capital Planning and Operations hire project managers with varying degrees of experience and with different areas of expertise. Less experienced project managers could be assigned to simple repair or alteration projects while developing the ability to oversee more complex projects. Those with specific expertise could supervise jobs demanding their skills and also advise other division personnel. The Division can thus acquire a staff of construction professionals with diversified talents to lend assistance as needed during the various stages of its projects.

Project managers will assume responsibilities now performed by the BBC Director or agency representatives in the areas of site selection, planning, designer selection, design, construction scheduling, project evaluation and approval of change orders. The involvement of the Directors of Project Management and Facilities Management in particular projects will be limited to formal approvals at key stages and to cases requiring special review. These
include execution of design and construction contracts, approval of design
documents, final project acceptance, and approval of individually or cumulatively
large change orders. Free from the day-to-day concerns of individual projects,
the directors can devote their primary attention to the effective administration
of their offices.

Resident Engineers: The legislation creates the position of resident
engineers to provide day-to-day project oversight. The resident engineer
will assume the functions presently performed by the clerk-of-the-works of
maintaining a continuous presence at the construction site, observing the details
of construction, keeping written records of those observations, and promptly
reporting irregularities or problems to the project manager. A state employee,
the resident engineer will be responsible only to the project manager. The
problem of divided loyalties which impedes the effectiveness of
clerks-of-the-works is thus eliminated. Unlike the clerk, the resident engineer
can appropriately make decisions regarding plans, specifications and materials,
represent the Commonwealth at job meetings and approve small change orders.
Delegation of limited authority to the project manager's on-site representative
will expedite decision-making which currently delays projects and makes state
work unattractive to many contractors.

The idea of focusing responsibility for project management on individuals
employed by the state is hardly a novel one. As early as 1969, the Arcon
Corporation, in its study of the BBC, recommended that the clerk-of-the-works be
hired directly by the BBC at an increased salary in order to attract better
qualified people with closer allegiance to the Commonwealth. Their report
also recommended that the BBC adopt a "concept of total project responsibility
...which would make a single project engineer primarily responsible for a project
from the appropriation stage through to final acceptance." Frederick J.
Kussman, former Administrative Assistant of the BBC, made the same recommendation
in a letter to BBC Director Horace Chase in April of 1968. He wrote: "Our
planning and construction engineers should be combined and henceforth referred to
as project engineers, who will live with a project from its conception through
its development and final acceptance." In July, 1972, the Malcolm E. Dudley
Report recommended that the BBC, "assume responsibility for construction
supervision through...clerks of the works who are on the BBC payroll," and
that, "serious consideration be given to adoption [by the BBC Construction
Section] of total construction responsibility." The Report noted that: "The
recommended arrangement would place full and direct authority for construction
control in the BBC where the responsibility is already." The most recent study
of the BBC conducted by Ernst & Whinney in 1979 found the BBC's construction supervision inadequate and recommended formation of a single construction management section. This study recognized the problems inherent in the BBC's reliance on the clerk-of-the-works, a non-BBC employee, to provide first hand construction supervision, and recommended that the problem be dealt with by increasing the number of BBC on-site inspections and by, "placing more accountability on the designer's professional responsibilities."

**Implications of the New Legislation:** The creation of a project manager-resident engineer team to supervise construction of state and county buildings will reduce the need for construction supervision by the designer. The legislation anticipates that the BBC design contract will be rewritten to reflect the designer's diminished role in the construction process. The designer will still be required to pay regular visits to the site and attend job meetings to answer questions about the interpretation of plans and specifications, the adequacy of materials and workmanship, and other matters within his technical expertise. However, the designer will no longer have overall supervisory responsibility. The statutory and contractual requirement that the designer hire a clerk-of-the-works is superfluous, since the resident engineer will assume the clerk's functions. In unusual cases, the designer's responsibilities may require the employment of an on-site representative. In those cases, additional compensation to cover the cost of hiring such an employee would be subject to negotiation between the Commonwealth and the designer.

The legislation does not directly address the issue of final authority to make decisions concerning plans and specifications. It was the Commission's intention that the project manager would have final decision-making authority in this area as in others. However, since this involves a matter within the designer's expertise, it may be appropriate to provide in the design contract that the designer may appeal any decision involving the interpretation of design documents to the Director of Project Management or Facilities Management, as appropriate, for final determination. The contract should also allow for the notice to the using agency and opportunity for it to be heard on the issue before the dispute is finally resolved.

A second consequence of hiring a project manager with direct responsibility for project supervision and a resident engineer to oversee construction is a reduced need for frequent inspections by state personnel. The policy of requiring BBC travelling inspectors to visit sites regularly could be discontinued. Instead, inspectors could be called in only when a particular operation within the inspector's area of expertise is being performed. These visits could be scheduled well in advance by the project manager to ensure that the individual inspector's time is efficiently allocated among projects.
Elimination of Waiver of Jurisdiction: The legislation abolishes the authority granted the BBC under present law to waive jurisdiction over projects under its statutory control.\textsuperscript{56} The Commission believes that all major construction projects benefit from centralized control and from the managerial and technical expertise that a central agency can provide.

Statistics collected by the Commission on building contracts awarded by state agencies since 1968 show that 45 percent of all such contracts over $10,000 were handled by agencies other than the BBC. The liberality with which the BBC has waived its jurisdiction over construction projects has created a record of cost overruns and delay on projects managed by individual agencies that makes the BBC appear a model of efficiency by contrast. Building projects performed by the MDC, the Department of Education, the Department of Corrections, the Board of Higher Education, and the Division of State Colleges had average net cost overruns of from 5.01 to 8.58 percent, compared with an average of 4.50 percent on BBC projects. Time extensions on BBC projects averaged 70 percent of the original contract period, while time extensions for all state projects (including the BBC) averaged 78 percent.

Moreover, permitting individual agencies to undertake projects free of BBC supervision has resulted in a proliferation of contract administration and engineering staffs which duplicate functions and multiply salaries while preventing the degree of specialization that a central construction agency can achieve.

Cost Control

Cost Estimating: The legislation addresses the problem of cost escalation on state and county projects by requiring the assignment of a cost estimator to every project undertaken by the Division of Capital Planning and Operations.\textsuperscript{57} Many studies have commented on the inadequacy of the Commonwealth's cost estimating procedures. The 1972 Malcolm E. Dudley Report, for example, recommended that, "estimating should be recognized as the demanding specialty it is," and that the BBC acquire "a full-time estimating capability" within its Administrative Services Section.\textsuperscript{58}

During construction, the cost estimator will be responsible for evaluating the cost data used in pricing change orders, checking the accuracy of the contractor's periodic requests for payment and the cost data on which they are based, and reviewing the punch list in order to determine the amount to be withheld from the contractor's final payment to cover the cost of completing the punch list items.
The cost estimator could also work with contractors, the designer, and the project manager on "value engineering," a review of the materials and processes to be employed in construction for the purpose of identifying changes which could lower construction costs without impairing the quality or scope of the project. Value engineering is widely used in the private sector and by the Mass. State College Building Authority. It is favored by contractors because the savings realized are commonly shared between the owner and the contractor. Contractors on most public jobs have no incentive to try to reduce costs since the savings from any approved changes now accrue entirely to the state.

Change Orders: An effective change order system must balance two competing concerns. On the one hand, it must minimize the potential for abuse as a vehicle for generating money to pay illegal "kickbacks" and for other improprieties. On the other hand, it should allow necessary changes in the work to be ordered and carried out with a minimum of delay and at a fair price.

Authority to Order Changes: Sections 42E through 42G of Chapter 7, as enacted by Chapter 579 of the Acts of 1980, (to go into effect on July 1, 1980)
provide greater accountability for the ordering and approval of change orders by placing responsibility in most instances exclusively on the project manager. Input by the designer, contractor, and others regarding any change order proposal is, of course, necessary and desirable, but ultimately the project manager has final responsibility for making the decision whether to order the change. The primary limitation on the project manager’s authority is that the change in the work be within the "general scope of the contract." Such changes include changes in the plans and specifications, the method or manner of performing the work, the Commonwealth-furnished facilities, equipment, materials, services or site, and the schedule of performance of the work.\(^5\) "General scope of the contract", as used in determining whether a proposed change order is within the contract’s scope, means work which was reasonably and fairly within the contemplation of the parties when the contract was entered into.\(^6\)

The director of project management is given responsibility for approving or disapproving change orders after the project manager’s decision in certain circumstances. The legislation requires the director to approve all increases in the contract price resulting from change orders or contract modifications where the individual increase in $5,000 or more or where all previously approved increases in the contract price cumulatively exceed five percent of the original contract price.\(^7\) These two independent criteria are designed to operate as red flags for projects that may in trouble, whether because the plans and specifications are faulty or because the contractor or the state is not performing its responsibilities during construction. When either of these criteria is met, Section 428 requires the director to order an internal audit to ascertain the reasons for large increases in the cost of the project. The director may decline to order such an audit if he is satisfied with the reasons proferred by the project manager, the architect and the contractor for the large cost increases, but he must state these reasons in writing.

The only other limitation on the authority of the project manager to approve change orders is the using agency’s right of appeal. The agency may appeal the approval or disapproval of a change order if the change may result in a deviation from the predesign documents that govern the scope and function of the building.\(^8\) For instance, the project manager may order that a wall be moved to a different position because of technical difficulties in placing it in the position called for in the plans and specifications. As a result of the repositioning, however, the room may be unusable for the purposes originally intended by the agency. In these or similar circumstances, the using agency will have the right to appeal the project manager’s decision. The Commission of Administration has final authority over such appeals, and the agency is not
intended to have any further recourse. It cannot, for example, appeal the decision to a court.

In order to avoid delays in construction, the project manager must have the authority to make decisions affecting the course of construction without disagreement or refusal by the contractor to carry out those decisions. Without such authority, every project might become bogged down by disputes between the project manager, the contractor, and the architect over how the work should proceed. Therefore, the legislation authorizes project managers to order any change in the work regardless of whether the contractor agrees that the change is necessary, and the contractor is obligated to carry out the project manager's order. Similarly, the project manager may order the contractor to proceed with the work in a certain manner despite any disagreement by the architect or the contractor over the proper interpretation of the plans and specifications. The contractor is obligated to carry out the project manager's orders after informing the project manager of his disagreement with the interpretation. Should either the architect or the contractor feel that the project manager's interpretation of the plans and specs is clearly erroneous or will result in a substantial deviation from the pre-design documents, he should immediately inform the director of his views.

**Constructive Changes in the Work:** Under normal circumstances, change orders issued by the project manager are required to be in writing.\(^{63}\) It is possible, however, that an order intended by the project manager as simply an interpretation of the plans and specs may be viewed by the contractor as a change in the plans and specs. Whatever the ultimate determination as to the nature of the order, the contractor is obligated to obey the project manager's order after consulting the director about the disagreement, even if the order is not in writing. Such unwritten order is referred to in the trade as a "constructive change." In order to be entitled to an equitable adjustment of the contract price (see Pricing of Change Orders, below) the contractor must give the Commonwealth written notice that he regards the project manager's order as a change order.\(^{64}\) If the contractor and the project manager remain in disagreement about the nature of the order and consequently cannot agree on an equitable adjustment, they may resort to an appeal procedure to determine whether the order was in fact a change order and the proper amount of an equitable adjustment. (See discussion of dispute resolution procedure below.)

**Pricing of Change Orders:** Section 42G adopts the federal model for the pricing of change orders. If the contractor and the project manager cannot agree on the proper price for a change order, the project manager unilaterally sets the price and the contractor, as stated above, must proceed with the work. Further
negotiations and, if necessary, appeal by the contractor can proceed thereafter. Progress of the work should not be delayed while the parties haggle over the price. The price can be more fairly set when pressure to come to a quick agreement in order to avoid delay in construction is no longer present.

It is equally important, however, that pricing of change orders be accomplished as soon as possible after commencement of the work. Retroactive pricing of change orders is undesirable for the following reasons: (1) it shifts the financial risks from the contractor to the government, (2) it creates a situation where the price agreed to is likely to be based on a cost reimbursement or time-and-materials basis, since the actual rather than anticipated costs are the basis for negotiation, and (3) it makes financial management difficult, because the Commonwealth cannot accurately determine until the equitable adjustment is made whether the project is exceeding appropriated funds. Pricing change orders prior to performance behests contractors by increasing the likelihood that they will be paid sooner for the work.

The concept of "equitable adjustment" in the pricing of change orders is long standing in federal construction contracting, and has been adopted in several Massachusetts statutes. Basically, an equitable adjustment is a change in the contract price that represents fair compensation for extra work done or work omitted. It gives the contractor and the project manager latitude to negotiate a settlement, constrained only by the general pricing principles outlined in Section 421 and regulations that may be promulgated by the deputy commissioner.

The key principle of Section 421 is the prohibition under most circumstances of the cost reimbursement or time-and-materials methods of price adjustment. The reason for this is simple: if a contractor is told that he will recover all costs incurred in performing a change order, he is unlikely to make any effort to perform the work at the least possible cost. More seriously, the contractor, if so inclined, will find it far easier to pad his time and materials records, since it is extremely difficult to verify these work sheets. Use of either a fixed price or lump sum guaranteed maximum price based on unit prices insures that the contractor does not inflate the costs of the change, since the price has been established ahead of time. If the cost of performing a change greatly exceeds the adjustment, as the result, for instance, of unforeseen site conditions, the contractor may ask for an additional adjustment. Because he cannot be certain that a hearing officer or court will find the increased costs justified, however, he is less likely to be flagrantly or purposefully inefficient. The contractor may on appeal submit evidence regarding the time spent and materials used in performing the change, but these
will be used only as additional evidence in determining whether the project manager's unilaterally set price was reasonable at the time it was set. If the price is found to be reasonable, the contractor will not be compensated for the additional time and materials and will suffer a loss. Thus, the contractor remains motivated to keep costs down.

Elements of the federal "truth-in-negotiation" act have been incorporated into the change order procedures as part of Chapter 579.\textsuperscript{66} In negotiating the equitable adjustment in the contract price with the project manager, the contractor must submit the cost and pricing data used in establishing his costs for performing the changed work, and he must certify that this data is accurate, complete and current as of the date it is submitted. The type of cost and pricing data that the Commonwealth may require to be submitted, in accordance with regulations to be promulgated by the deputy commissioner, may include minutes of the contractor's board of directors, interoffice memoranda, or any other data which even remotely bear on price. The completeness of the data submitted, furthermore, will be determined after performance, with the benefit of 20/20 hindsight. If it is later discovered by the Commonwealth that the certification was, in fact, false, the price to the Commonwealth, including profit or fee charged by the contractor, may be adjusted to exclude any significant cost increases caused by the inaccuracy or incompleteness of the cost and pricing data provided. The extent of the price adjustment will depend upon the extent of the project manager's reliance during negotiations on the misleading data or the extent that the price agreed upon would have been reduced had the project manager been given the opportunity to examine data not furnished. Moreover, if the false certification was fraudulently made, the contractor may be prosecuted criminally.\textsuperscript{62} In effect, the "truth-in-negotiations" provisions do away with the doctrine of caveat emptor as applied to pricing. A firm fixed price without full and complete disclosure is not a firm fixed price, since it is subject to later adjustment to the extent that the nondisclosure influenced the negotiated price.

\textbf{Unchanged Work-Consequential Changes:} Section 42G provides that if a change order "causes any change in the contractor's cost of performance of any work under the contract, whether or not that work is changed by any order, either the contractor or the project manager may request an equitable adjustment in the contract price." (Emphasis added). This provision allows contractors or the Commonwealth to obtain compensation administratively (rather than by recourse to the courts) for costs of work not formally changed by any change order -- but costs nevertheless increased as a result of a change order.
For example, a series of construction change orders may cause job delays that force work out of a logical order and affect the overall work schedule. The consequence may be increased costs of work not related to the change order. By virtue of the unchanged work provision, the "ripple" or "impact", effect of change orders may be compensated. Since costs to be compensated under this provision must be caused by the change order, only costs incurred after the change order issued are compensable. Delays before the change are governed by Chapter 30, section 39P.

**Time Control**

The Commission approached the problem of delay in construction primarily as a management problem, and its legislation reflects that assumption. Focusing responsibility for decision-making on the project manager should expedite payments to contractors, change orders, resolution of disputes, and many other complications that now delay projects for unreasonable lengths of time. The project manager's specific responsibility for seeing that realistic project schedules are prepared and adhered to should eliminate the common practice of granting automatic extensions to contractors and of backdating project acceptance.

**Recommended Contractual Provisions:** The Commission strongly recommends redrafting the ABC construction contract to provide enforceable penalties for unauthorized delay. One possibility is a formula for computing actual damages in place of the current provision for a flat penalty amount. Another desirable contract provision would be retention of one percent of the general contractor's final payment until final acceptance of the project—that is, until the one-year guarantee period has expired. This would encourage contractors to complete punch list work within the one-year period and to perform work required under the guarantee.

The contract used by the Massachusetts State College Building Authority addresses the problem of construction delay in a particularly creative fashion. It provides for accelerated release of the retainage to contractors who reach certain predetermined milestones in the project on or ahead of schedule. On certain large projects, contractors receive additional incentive payments if they reach these milestones 15 days or more ahead of schedule. According to Robert Stewart, Executive Director of the Building Authority, these provisions have been far more effective in preventing delay than a liquidated damages provision. The Commission recommends that the Building Authority's contract be studied with a view to adopting similar provisions if feasible.

**Dispute Resolution:** As a final measure to counteract delay, the legislation establishes a procedure for resolving common disputes between general contractors
and the Commonwealth in an expeditious fashion. The legislation adds a new section 39Q to chapter 30 of the General Laws, providing for the initial submission of a dispute to the chief executive official of the agency that awarded the contract or that official’s designee. In the case of a dispute involving a project within the control of the Division of Capital Planning and Operations, the project manager would act as the Deputy Commissioner’s designee. The official is required to render a written decision within 30 days.

An aggrieved party may appeal the decision to a hearing officer experienced in construction law employed by the Division of Hearing Officers. An independent agency within the Executive Office for Administration and Finance, the Division of Hearing Officers presently conducts administrative hearings for a number of state agencies. The hearing will normally be conducted according to the Division’s formal rules of procedure. The hearing officer must render a written decision within 120 days following the hearing. That decision can be appealed to the Superior Court and set aside if, among other reasons, it is unsupported by substantial evidence, contrary to the facts, based on legal error or improper procedures, or is arbitrary or capricious.

The legislation also creates an expedited hearing procedure for “small claims” cases—disputes involving less than $10,000. Currently, contractors do not pursue small claims because of the absence of an alternative to expensive litigation. This “small claims” procedure is available only at the option of a contractor who is party to the dispute. Expedited hearings are conducted according to the Division of Hearing Officers’ informal rules. The hearing officer must issue a decision within 60 days, and the decision cannot be set aside except in cases of fraud.

The dispute resolution procedure, outlined above, was modeled closely upon the federal Contract Disputes Act of 1978 which established a dispute resolution mechanism for contracts relating to the procurement of property, services, or construction awarded by federal executive agencies. The act provides for the creation of a board of contract appeals within each agency whose workload justifies it. Other agencies may arrange for their contract appeals to be heard by another agency’s board. The act allows contractors a choice of pursuing an administrative appeal or bringing an action in the federal Court of Claims.

A procedure for resolving construction disputes through hearing officers independent of the contracting authority was supported by the contractors responding to the Commission’s questionnaires. Paul Good, former Chief of the Attorney General’s Contracts division, considers such a procedure a desirable alternative to the present system.
The Commission initially proposed an administrative procedure as the exclusive method of resolving construction contract disputes involving state agencies. The Joint Committee on State Administration amended the bill to give contractors involved in disputes of more than $10,000 the option of appealing an adverse decision to the Division of Hearing Officers or instituting legal action. (For disputes involving $10,000 or less, the administrative procedure remains the sole remedy.) If the Division of Hearing Officers hires hearing officers well-qualified to adjudicate construction disputes and develops a reputation for rapid and fair disposition of such disputes, the Commission believes that contractors will voluntarily choose the administrative procedure over the far more expensive and time-consuming judicial process.
INTRODUCTION

The success of improved procedures for the planning, design and construction of state and county buildings will be worthwhile only if our capital facilities are preserved once they are built. Such preservation involves the performance of routine maintenance tasks on a scheduled basis; the occasional updating or replacement of systems as they deteriorate naturally; the timely repairs of defects due to poor design or construction; and conformance with newly developed standards of safety, accessibility and energy use.

The Commission has found that poor building maintenance by the Commonwealth has led to the incurring of significant, unnecessary costs; unsatisfactory, even unconstitutional, living and working conditions; and the eventual demoralization and lack of safety of those using the buildings. As with certain other aspects of the building procurement and management system, individual state agencies have been responsible for the performance of tasks without necessary guidance or coordination from a central authority, without sufficient funding, and without adequate staff. Problems of patronage and staff demoralization have also occurred. In the maintenance and repair area, these difficulties have been expressed as an almost total lack of preventive building maintenance and funding for repair projects, leading to increased expenditures as smaller problems develop into larger ones; a lack of expertise in the performance of repair or code conformance projects; and a lack of interest in coordination of aspects of building operation, particularly heating and air conditioning, with building condition.

PROBLEMS OF MAINTENANCE AND REPAIR

Maintenance Operations

It is a commonplace of Massachusetts government that our buildings receive little or no preventive maintenance. "Preventive maintenance," in this context, means the regular oiling, cleaning and replacement of parts to keep the buildings operating smoothly. Deferring performance of preventive maintenance has resulted in the development of expensive repair projects. The pervasiveness of this problem is indicated by its discussion in many agency and consultant reports on building condition, including the following:

The greatest problem and a direct cause of the violence within the institutions, are the system's antiquated, poorly maintained and overcrowded facilities. The Commonwealth must cease its
historical practice of refusing adequate funds for routine maintenance. Insufficient funds for plant maintenance only results in future capital expenditures for replacement. No plant-dependent business operation can survive without proper care and maintenance of equipment and buildings. The costs of inadequate maintenance in our correctional system are suffered by both inmates and correctional personnel and borne by the taxpayers. (1978 Governor's Advisory Committee Report on Corrections)

A Bureau of Building Construction internal memorandum stated:

If proper investigatory inspection and funding is elevated to the degree of importance required, the Commonwealth can eventually save millions and millions of dollars in capital expenditures. It is allegedly institutionally poor in the maintenance area.¹

In fact, a study team for the Department of Community Affairs attributed one-third of the cost of upgrading family housing projects to the lack of a programmed system for routine maintenance.²

Repair Operations

While the lack of preventive maintenance has resulted in greater capital expenditures by the Commonwealth for repair, and even renovation, it appears to be equally true that repairs are not necessarily performed to rectify problems that develop. In the following statement the President of the University of Massachusetts asserts that a lack of attention paid to needed repairs also adds to increased costs:

The physical condition of the campuses, especially Amherst, is becoming serious. Indeed, it is the concern which parents, students, alumni and faculty most frequently call to my attention. They recognize, as do I, that unless we keep up with daily maintenance and routine repairs, the environment for student life and learning will become shoddy - and so will the atmosphere and attitudes of those in the environment. Moreover, if we are serious about maintaining the University in the future, we cannot simply defer to another and more expensive time the costs of repairing deteriorating buildings. We are already paying the price of past neglect in capital appropriations for deferred maintenance. (Statement of David C. Knapp, President, University of Massachusetts, before the House Ways and Means Committee, February 27, 1980)

The same conclusion was reached by a Senate report:

As the Commonwealth has learned from the underfunding of maintenance and repair accounts that resulted from the fiscal crisis of 1975, such practices save dollars in the short run, but in the long run they are expensive...If state institutions, many of which are old and deteriorating, are not maintained, people and programs suffer. Over time this practice leads to expensive capital improvements or to such extensive deterioration that the facilities no longer are habitable. (Senate No. 2200, May 15, 1980)

Furthermore, a committee of the University of Massachusetts Building Authority estimated in 1978 that Authority buildings built at the Amherst campus for $80 million required $20 million in repair work.³

Delays in the completion of building repairs also compromise user safety and add to costs by contributing to building damage that would otherwise not occur.
At the University of Lowell, a situation similar to that of other educational facilities has occurred, where the cost of damage to "ceilings, rugs, walls and electrical systems, damage that would not have occurred if the regular repairs had been done on time," was estimated in 1979 to total $5.2 million.

Funding

In examining the reasons that both preventive maintenance and repair of state buildings have been ignored, underfunding appears to be primary. In conversation with state employees involved in the budgetary process, preservation of the physical plant has appeared as a low priority on almost everyone's list. The following discussion of maintenance and repair budgeting has been gathered from these individuals, most of whom made their comments on conditions of anonymity.

Funding for building maintenance and repair is sought through the operating budget or the capital outlay budget. Maintenance funds or monies for small repair projects are appropriated through the "12" account of the operating budget. Large repair projects and renovations--over $100,000--are required to go through the capital outlay process. For projects estimated to cost between $10,000 and $100,000, there is a special capital outlay appropriation, discussed below.

Although the following description of the budgeting process focuses on the operating budget, the treatment of the maintenance account in relation to others within that budget parallels that of repair in relation to new construction projects within the capital outlay budget. According to one agency budget director, facility personnel make requests to the department for maintenance funds. Little evaluation of the physical plant is made by agency personnel of maintenance needs; instead, an inflation formula is applied to the amount of money appropriated for that purpose during the past year. A lack of secretariat support for more positive action in this area limits agency initiative. Instead, programmatic and personnel interests assume a disproportionately higher priority than the requirements of the "12" maintenance account.

The Commission has received somewhat inconsistent accounts of what happens at the next stage of this process; namely, that of budget preparation by the Budget Bureau. According to one source, as long as agencies keep their requests consistent with past appropriations, they are approved. A Budget Bureau analyst adds that there is not much review of 12 account requests because, generally, the sums involved are small. (Expenditures from the twelve account were $14,645,201 in fiscal year 1968 and $39,147,699 in fiscal year 1980, according to records kept by the Comptroller.) Even more troubling, however, is the assertion of a
budget official that the 12 account is among the first to be cut significantly when budgets must be trimmed. Because Budget Bureau personnel do not make site visits, it is unclear on what basis such a cut is made. What is clear is that under either scheme presented here, the cycle of maintenance underfunding becomes impossible to break within the executive.

An analyst for the Senate Ways and Means Committee indicates that, where agencies are apparently not interested in lobbying for increased maintenance and repair funding, the legislature has not chosen to become the advocate for this cause. Beginning in 1978, the legislature did appropriate funds through the capital outlay budget for repair projects, but not for maintenance. The same analyst told Commission staff, however, that those who provided the 1978 monies have been disillusioned by agency attitudes towards maintenance funding and have turned their attention elsewhere. The current situation certainly appears to be one in which maintenance and repair interests lack adequate representation in the budgeting process.

The low priority assumed both by maintenance funding in the operating budget, and minor and major repairs in the capital outlay budget, is described by an example provided by Senator Chester Atkins in testimony before the Commission.

Let me cite one specific example, and that is the boilers and the power plant at the Western Massachusetts Hospital in Westfield, a Department of Public Health facility.

What happened in this particular instance is one of the boilers is completely inoperative, leading to a situation where it is much more costly to operate the plant with two boilers than it would be with three boilers in terms of fuel cost, and this particular item, which was number one in the Department of Public Health’s priorities did not even appear in the budget.... The net effect is that we’re, at some point, going to have to replace that entire facility. The longer we wait to replace it, the higher fuel costs are, and the more time we incur those fuel costs for inefficient operation, and it is an enormously unsafe facility. If the State were subject to the same requirements and the same level of scrutiny that a private industry is under OSHA, the plant would have been closed a substantial period of time ago.\(^5\)

In part, the lack of priority assigned to these interests can be attributed, at the central level, to changing interests on the part of the executive. In Atkins’ words:

Now, what has happened is that the State runs a really massive program of public health hospitals. They were, at one time, for the most part, T.B. hospitals, and now have been shifted on a gradual basis to hospitals, in many instances, that deal with long-term care, chronic care in programs, and some of the specialized programs in certain areas, for instance, the cancer program at Pondville Hospital. This administration, the previous administration and the one before that, have all had, as a priority, ridding this State of those kinds of public health responsibilities. They haven’t been able to do that but the net effect has been that those buildings have suffered tremendously, the physical plant has been allowed to decline substantially, there hasn’t been the interest and attention focused on that, and we’re paying the price because we’re still
in the buildings, and we're having to pay for things that could have been replaced or repaired several years ago that now are requiring massive new construction.\textsuperscript{6}

In another part, the fact that, "...nobody ever gets elected to office on roof repairs or boiler replacements,"\textsuperscript{7} suggests that neither the executive nor the legislature is particularly interested in the mundane job of keeping the capital stock well-maintained. In third part, however, its lack of priority is determined at the secretariat and agency level, from which pressure for funding must emanate. Particularly in the case of properties falling under the jurisdiction of the Executive Office of Human Services, which has been most effected by deinstitutionalization policies, it seems that an interest in vacating premises quickly has left them in disrepair.

Unfortunately, where funds have been appropriated for "the maintenance and repair of state-owned property to prevent deterioration or costly future repairs"\textsuperscript{8} they have not necessarily been spent. Capital outlay language included these purposes in making appropriations of $10,000,000 in 1978, and $2,000,000 in 1979. Under these sections, the Director of the Bureau of Building Construction (BBC) was made responsible for designating projects with the approval of the Commissioner of A&F with, "prior verification by the house and senate committees on ways and means." In 1979 and 1980, an additional $4,000,000 and $1,000,000 were appropriated, "to provide for a program of special repairs and improvements and certain contingencies of the various projects of the commonwealth; said amounts are based upon schedules approved by the house and senate committees on ways and means."\textsuperscript{9} The BBC has also administered these last two appropriations. Of the $17 million total appropriated for these purposes, however, only $2 million has been committed to date, and only a little over $1 million has actually been paid out. Furthermore, funds expended from these accounts, coming overwhelmingly from the 1978 appropriation, were spent strictly for repairs and renovations (primarily to roofs and mechanical systems) rather than for maintenance.

The situation has clearly been one, then, in which maintenance has received almost no funding at all, while repairs have gone underfunded. Commission staff has been given many specific examples of this problem. The maintenance account for the Walter E. Fernald School, currently operating under a consent decree, ran out in January 1979, in the middle of the fiscal year.\textsuperscript{10} According to an analyst for the Budget Bureau, it is not unusual for the Governor's Emergency Fund to be spent on projects which have reached crisis proportions only because funds were not provided when necessary through regular channels. Where inadequate amounts have been made available, the "patch repairs," made as a result, have had to be repeated. This situation occurred at the University of
Massachusetts Amherst Campus Center, as described in the section of this report dealing with the University of Massachusetts Building Authority. Among the repair projects remaining unfunded for two years or longer are a hole in the perimeter wall at MCI Concord, the roof of the Saltonstall building, and hazardous living conditions at MCI Walpole.

Maintenance and Repair Personnel

It is equally clear, however, that inadequate funding is not the only barrier to effective building maintenance and repair in the Commonwealth. It has already been indicated that $17,000,000 was made available during the past two years for maintenance and repair projects: An internal BBC memorandum of 1978 stressed the urgency of spending these funds, stating that:

...this appropriation will expire on June 30, 1981. However, since all of these projects are most urgent, we would be hard put to defend taking this long. Realizing the urgency, 6 of these projects will be before the DSB on either Sept. 6 or Sept. 16 and the rest will be on the next list.\textsuperscript{11}

Yet, the largest part of the money has not been spent.

Neither has the BBC fulfilled its obligations regarding building maintenance under Chapter 7 of the Massachusetts General Laws. Section 46 of that chapter authorized the Director of the BBC to initiate "projects of his own whenever in his judgement the maintenance of state-owned property requires such improvements to prevent deterioration or costly future repairs." Indeed, the Director of the BBC wrote in 1978 that "it appears that for the first time ever and now in our 25th year of existence the BBC can do something about preventive maintenance."\textsuperscript{12}

The BBC has not, however, taken the initiative here either. Furthermore, in Section 45 of Chapter 7, the Director is required as follows:

...From each agency of the commonwealth which has or shall have any charge of any building owned by or maintained at the expense of the commonwealth, he shall request, and the agency shall promptly furnish, periodic maintenance reports in such form and containing such information as he shall from time to time determine.

This information collection and processing function is not performed.

Limited staff at the BBC has meant, in fact, that that agency is unable to perform the supervisory function required in this area. The Bureau's Long Range Planning section, "which by osmosis includes maintenance,"\textsuperscript{13} is staffed by one technical staff person and four support staff members. Given inadequate resources, oversight of repair projects and building maintenance have suffered in comparison to oversight of new construction. The fact that this function is not fulfilled means that state agencies are left alone and without guidance in performing maintenance and minor repair tasks.
Conversations with agency staff concerning maintenance procedures indicate a lack of accountability for poor performance. Repeatedly, personnel problems were stressed. In one case, department structure was cited as largely contributing to a lack of communication between agency and facility personnel, resulting in a lack of agency oversight. At the Department of Corrections, stewards at the institutional level were described as being accountable only to the department's associate commissioners, and not to those in financial planning and management who would have a perspective on building costs and needs. In addition, the low status of maintenance personnel, and attendant low salaries have apparently contributed to poor morale and job dissatisfaction among these workers. In some cases, those who are hired do not have necessary qualifications to perform jobs required of them. Generally, training needed to maintain increasingly complicated building systems is not available. Absenteeism has been noted among some maintenance staffs. A third factor—in addition to department structure and staff demoralization—that has been noted, especially in connection with the housing authorities—is that of union involvement in determining who gets hired and who performs various tasks. In all, even if adequate funding were forthcoming, personnel qualifications, training, salaries and flexibility must be improved to ensure proper building maintenance and repair.

**Results of Poor Maintenance and Repair**

A lack of adequate funding, a lack of staff and interest at the central level, and personnel problems at the agencies have created a situation in which buildings occupied by state agencies have deteriorated badly over time, or have not had original defects repaired. Of 186 responses to a questionnaire sent by the Commission to institutions built in the last ten years, 142, or 76% indicated the existence of major defects.\(^{14}\)

A 1971 report on the Suffolk County Courthouse by Justice Walter H. McLaughlin, read in conjunction with a recent evaluation of the condition of courthouses generally, illustrates the effect which such conditions can have on the users of these buildings. A survey of courthouses completed in 1980 found only 12 percent to be in "adequate physical condition."\(^{15}\) According to Judge McLaughlin, in the Suffolk County Courthouse:

- Both buildings lack adequate lighting, ventilation, power, acoustics, plumbing facilities and elevator services.
- Both the windows and walls of the "New" Courthouse are defective, as are the windows of the "Old" Courthouse. This fact, coupled with erratic heating systems and inadequate ventilation, makes cold-weather usage intolerable at times.
In summary, the physical condition of these buildings can be considered substandard, causing inconvenience and inefficiency, creating health and safety hazards, exerting a demoralizing effect on staff and public alike, and thus reducing the prestige and effectiveness of the administration of justice.16

Taking these effects a step further, perhaps the most compelling argument which can be made for improving building maintenance is that in some cases building conditions have deteriorated to the point where residents’ health and safety are directly at stake. MCI Walpole has been castigated for the past three years by the Department of Public Health as a:

...facility that is suffering from...chronic neglect, disrepair, inmate damage, unsanitary conditions, and an overwhelming infestation of rodents and cockroaches. These conditions lead us to conclude that parts of the institution are unfit for human habitation and have the potential of spreading disease...to the inmates...the staff, visitors, and their families.17

The conditions described above have not been eliminated.

There are instances in which the court has ordered the state and the counties to improve building conditions.18 At Suffolk County Jail, for example, the Court found that, "the plumbing system is antiquated, inadequate toilets and sinks are corroded."19 But perhaps the most dramatic illustrations of the Commonwealth’s failure to maintain its property are the consent decrees entered into by the state for five older facilities for mentally retarded persons at Belchertown, Fernald, Monson, Wrentham and Dever.20 The unsanitary conditions upon which the class action suits, leading to the consent decrees, were based have been attributed primarily to years of "neglect and lack of maintenance."21

Sample remarks taken from 1980 budget requests of the Department of Public Health provide equally compelling arguments for improving building maintenance and repair. At the Lemuel Shattuck Hospital,

...the operating room floor requires replacement. The conductor terrazzo floor is 25 years old and must be replaced. The hallway, the entry to the operating room, as well as the floor in the operating room have large areas of erosion...The floor is difficult to clean & maintain & is in unsuitable condition for surgery.

And regarding an oil tank at Tewksbury Hospital:

This tank was constructed in 1963 and has not had any repair or maintenance work to date. It is imperative that the surface of this tank remain impervious to the elements. With the spiralling cost of fuel we must guarantee the safety of the tank by scraping, repairing and painting the exterior of it.

The connections here between lack of maintenance, lack of timely repair and replacement work, and expensive and unsafe deterioration of buildings are inescapable.
Maintenance and Repair of the Government Center

The maintenance and minor repair of the Government Center buildings are treated separately from that of other state buildings. While Chapter 8 of the General Laws does not precisely define the responsibility of the Bureau of State Buildings (BSB) in this regard, it does establish the Bureau's authority to act as user agency where these buildings are concerned. Under Section 9, the Superintendent of State Buildings is charged with:

the care and operation of the state house and its appurtenances and...general charge and oversight of other buildings or parts thereof owned by or leased to the commonwealth...and shall superintend all ordinary repairs thereof...

and, under Section 6,

the making of all repairs and improvements in the state house, in any building owned by the commonwealth and located in the immediate vicinity of the state house or located in the government center.

In practice, the Bureau maintains only the Government Center buildings, having no oversight function where other agencies are concerned. Furthermore, the BSB goes through the BBC for repair projects estimated to cost more than $10,000. Finally, it is responsible, through administrative act, for the maintenance of so-called "surplus properties."

The Bureau has a staff of approximately 240 people, excluding the Capitol Police. The vast majority of the work for the State House and Government Center buildings is performed by contracting for service, however. Included are contracts for cleaning, window-washing, fire control, extermination, the maintenance of mechanical systems, etc. Let every two years, the 26 contracts bid in 1980 totalled approximately $10 million.

A number of the individuals involved in the administration of these contracts have indicated, off the record, that improvements are required. The contracts themselves have not been updated in past years. They are inconsistent, contain inapplicable standard provisions, and do not incorporate changes into the document, but require attachments. In part due to the requirement that bidders post a 100% bond, the number of contractors bidding for work has generally been small. The bonding requirement was changed to 25% coverage in 1980.

The form of the contracts may contribute to difficulties in overseeing their performance. An Assistant Superintendent of State Buildings in each of the Government Center buildings (one for both the Hurley and Lindemann buildings) is responsible for the oversight of relevant contracts. According to one Building Superintendent, this responsibility is fulfilled unevenly so that little oversight occurs in some cases. This employee asserts that contractual responsibilities are not met by contractors but they receive payment anyway.
Although the Building Superintendents authorize monthly payments to these contractors, the lack of independent oversight has meant increased repair costs for the Commonwealth because the buildings have not been properly maintained.

Maintenance that is performed by staff of the Bureau of State Buildings is subject to an unusual allocation formula. Apparently, all of the Government Center buildings are under a single "12" maintenance account, which is allocated to the buildings in the following order or priority: the State House; and McCormack, Saltonstall, Hurley and Lindemann Buildings. According to one Superintendent, money is funneled into the high priority buildings at the expense of the others. Personnel are subject to the same formula. All of the painters and most of the skilled technicians available through the BSB are headquartered at the State House rather than at the individual buildings. Their services are requested for project-specific assignments, rather than on an on-going basis. According to the same Superintendent, these workers are usually involved in work on the State House and, therefore, unavailable when he requests their services.

Furthermore, absenteeism and under-qualification of personnel appears to be a problem in the BSB, as it has been in other state agencies. There is no lawyer or structural engineer employed by the Bureau. In addition, those involved in administering the system claim that many jobs are assigned on a patronage basis. At one time, according to one administrator, some Bureau personnel were accustomed to coming in to work 2-4 hours late. Union jurisdictional work requirements have also been pointed to as creating inflexibility. Rigid job classifications, for example, have led to instances in which two people are being paid to do the same job. The job grading system is based on seniority rather than any practical test of skills; similarly, there is no evaluation of people hired initially on a temporary basis to fill slots for which there are no civil service lists available. Apparently, the low salaries offered for these slots fail to attract applicants through the civil service procedure. Indicative of the breakdown of this personnel system is a Bureau of State Buildings' interoffice memorandum, dated January 1980, which indicates that in the McCormack Building eight of eighteen maintenance employees could not shovel snow because they had bad backs, arms or hearts. 22

The Commission can draw on its own experience in evaluating the level of maintenance of the government center buildings. Its own offices have rarely been thoroughly cleaned. The bathrooms, in particular, have too often lacked necessary supplies, and have been improperly cleaned. In the Saltonstall State Office building, ceiling leaks, in combination with the lack of a program for caulking granite wall seams, have resulted in the peeling and flaking of interior plaster and paper in 30% of the building. Again, the Commonwealth seems to be threatening the condition of its buildings through lack of attention.
Energy Conservation

Running throughout the preceding description of maintenance and repair of state and county buildings are references to energy usage. In many cases, improved maintenance procedures—from changing light bulbs when required, to keeping an interior clean—can reduce energy consumption considerably. According to the federal government, such procedures can result in a 60-70% saving in lighting and 10-15% saving in the operation of heating, ventilation and air-conditioning systems. The assumption can then be made that poor basic maintenance results in energy losses. Slow repair or lack of replacement of heating, ventilating and air conditioning systems, when needed, also results in wasted energy. Finally, simple conservation methods can be instituted which will save significant amounts of money. With the cost of heating and operating state buildings having sky-rocketed in the past ten years from approximately $11 million in 1968 to approximately $85 million in 1979 (according to records kept by the Comptroller), attention should be paid within building operation to fuel conservation.

While there is no analysis of energy consumption in buildings occupied by state agencies available, it is clear from conversations with state employees that little emphasis has been placed on energy conservation generally. Those interviewed by the Commission cited a lack of storm windows, gave examples of heat being left on in an entire building for one person working in the evening and on the weekend and the need for increased air conditioning because space planning considerations were disregarded. Alternatively, energy conservation measures, taken without regard for necessary maintenance procedures, have also demonstrated poor management. Commission staff has been told that the temperature in the Suffolk County Courthouse during the winter reaches 80-85 degrees. As a result, it is necessary to keep windows open. Yet, the Suffolk County Courthouse Commission posted a memo, on November 13, 1980, which read:

...you are respectfully urged to keep windows closed and make every effort to cooperate. Continued disregard will result in the complete severance from those offices from the heating systems.

Efforts made to date to improve energy conservation have primarily involved appropriations made to the BBC for energy conservation projects. Between 1974 and 1979, the General Court appropriated $12,500,000 for such projects, to be administered by that agency. In order to secure these funds, the agency submitted a list of projects to their secretariat which would forward its own list to the BBC. The BBC approved the projects. According to the BBC, no one person within the agency is responsible for selecting energy conservation
projects. A number of different individuals are involved in making these decisions, meaning that there is no overall perspective on energy consumption or necessary priorities within the agency. In fact, the lack of focus thus ensured may explain the fact that less than half of the available funds have been committed or paid out for such projects.

In 1980, the General Court also allocated $15 million to the Executive Office of Energy Resources (EOER) for energy conservation projects. The office is mandated to fund both energy audits and energy conservation projects. Its goals --to develop a program designed to educate user agencies as to how "walk-through" energy audits could be performed for purposes of identifying areas that may be energy inefficient and could benefit from improved maintenance, and to prioritize requests--are laudable. The Commission is concerned, however, that staff limitations will prevent the office from pursuing any educational efforts. The Commission is further puzzled at the rapidity with which EOER funds were allocated in September, 1980. The administrator of these funds had advised the Commission, just a week before $4.7 million was granted to housing authorities, that such decisions could not be made for a long period of time.

Finally, plans should be made, for energy saving in advance of building. Specifically, under Section 44M of Chapter 149:

Every contract for engineering or architectural services necessary for the preliminary design of all new building or for the modification or replacement of an energy system shall contain, at an initial stage, life-cycle cost estimates.

Such life-cycle costs will only be meaningful if based on information collected and applied by a coordinating agency.

SOLUTIONS TO MAINTENANCE & REPAIR PROBLEMS

The Commonwealth's system of building maintenance and repair, then, suffers from the lack of an informed, adequately staffed advocate. There is no agency to evaluate, to prioritize and to push for funding for these activities. There is no agency to offer guidance to state agency personnel or to ensure their performance. There is no agency concerned primarily with the expeditious completion of smaller projects, whether for roof repair or handicapped access. Finally, there is no agency which is concerned with the impact of building conditions on building operation.

The Commission's legislation directly addresses the establishment of a program of preventive maintenance in state buildings. The legislation creates an advocate at the central level and provides it with the information necessary to make educated requests for funding of both maintenance and repair projects.
Importantly, it focuses the responsibilities of this advocate so that its work will be considered primary by that agency. It ensures the exercise of a strong supervisory authority. Finally, it requires that the agency responsible for building maintenance and repair consider their relationship to building operation generally and energy usage in particular. This legislation therefore simply, but thoroughly, addresses problems found in the building maintenance and repair areas.

The new law focuses responsibility for the performance of relatively smaller repair and more specialized code-conformance projects, and oversight of building maintenance on the Director of an Office of Facilities Management within the Division of Capital Planning and Operations.

-- The Director of the Office must be a registered architect or engineer and must have experience in the management and supervision of the operation; maintenance and repair of buildings.

-- The Director must develop an inventory of the buildings owned by the Commonwealth, detailing their condition. With this information, he or she is expected to provide informed recommendations concerning the advisability of renovating and/or repairing buildings, and to establish a preventive maintenance program.

-- The Director is authorized to initiate capital outlay requests for projects which require the attention of his or her office.

As part of his or her responsibilities, the Director of Facilities Management reviews and makes recommendations concerning agency operating and capital outlay requests for maintenance and repair funds. In this way, an informed set of priorities is created.

The Office is mandated both to aid agency operations by providing necessary advice and standards, as well as to ensure that standards are being complied with by agency personnel.

-- The Director is mandated to assist using agencies in evaluating maintenance and repair problems and in devising and implementing solutions to them.

-- State agencies and building authorities are required to certify annually compliance with standards.

-- When state agencies are found not to be in compliance with standards, they may be made to report annually or may have maintenance and repair responsibility transferred away from them.

The Office is made responsible for the evaluation of energy consumption in state buildings as well as for the performance of energy audits in these buildings.

Finally, the Bureau of State Buildings retains responsibility for the maintenance and repair of Government Center buildings, but is renamed the Bureau of State Office Buildings and is placed under the Director of Facilities Management, within the Office of Facilities Management.

The following more complete description of the relevant portions of the new statutes includes recommendations for implementation of the legislation.

Sections 43A through 43G of Chapter 7 of the General Laws establish the

As mentioned previously in this report, the Division of Capital Planning and Operations contains both an Office of Project Management and an Office of Facilities Management. Section 40B of Chapter 7 directs the Deputy Commissioner of Capital Planning and Operations to assign projects under his/her jurisdiction to either office, at his/her discretion. The same section, however, offers the following guidelines for project distribution, directing that the Office of Facilities Management be generally responsible for:

...all repair, alteration, utility system, fire, health and safety, handicapped access and energy conservation projects the estimated cost of which exceeds $25,000.

The relatively narrow interest of the Office of Facilities Management should ensure that the necessary expertise and familiarity with maintenance and repair needs are developed and projects expedited. On this basis alone, it seems advisable to separate out the administration of these relatively smaller and somewhat specialized projects from those that involve major construction and renovation.

As such, under Section 43B, the Office will "develop and recommend to the deputy commissioner procedures and requirements for control and supervision of said projects commensurate with the specialized nature of these projects." It will be in a position to fulfill its function, mandated under Section 43E, of reviewing capital budget requests for repair projects and 12 account operating budget requests in an effort to set priorities and to advise the legislature. Under Section 43D, the Director may "initiate capital budget requests for building projects to be performed at one or more using agencies."

Under Section 40D, however, user agencies retain responsibility for

....control and oversight as to supervision of projects involving the ordinary maintenance of their buildings, structures or utilities, to the extent that the estimated cost of a project is less than $25,000.

The familiarity which agency maintenance personnel have with the facilities at which they work cannot be matched. In the case of maintenance and minor repair projects, therefore, their personal knowledge of the problems and peculiarities of the buildings and equipment warrants the decentralization of authority.

The central office plays an essential role in guiding the activities of user agencies in the performance of these tasks, however. Under Section 43E, the establishment of weekly or monthly schedules for the purpose of identifying structural, mechanical or electrical components which should be adjusted,
lubricated, replaced or otherwise attended to at periodic intervals will be dependent on both information and training provided by the Office. Standards and guidelines as well as less formal advice will fill a gap particularly significant for agencies which lack large maintenance staffs of their own.

In addition to assisting user agencies, the Office will be able--and, in fact, required--to exercise some clout when agencies fail to protect the physical plant by following prescribed procedures. Under Section 43C, agencies must certify to the Director "that all maintenance and repair standards have been complied with." Unannounced inspections may occur, and agencies found in non-compliance will be required to report on the status of their repair and maintenance operations on a monthly basis. Finally, if necessary, the Commissioner of Administration and Finance is authorized to "order transfer of supervision and control of maintenance and repair operations to the deputy commissioner."

The Office of Facilities Management is also mandated, under Section 43F, to consider the importance of "energy conservation maintenance and operating procedures." The impact of such procedures on energy consumption has been noted. Further, the Director of Facilities Management is mandated to, in conjunction with the Secretary of Energy Resources, "set priorities and energy efficiency standards for all state buildings and conduct energy audits of said buildings." Again, the placement of concern for energy conservation in state buildings, a relatively focused mandate, should expedite the rational spending for and implementation of these projects.

Given the emphasis of the Commission's legislation on planned rather than crisis management, efforts made in the area of preventive maintenance assume special importance in the success of the Office of Facilities Management. Recommendations have been made by those involved in administering the current system as to ways to aid such efforts which go beyond the Commission's legislation. It has been suggested, for example, that any meaningful maintenance program must be preceded by a structural analysis and full-scale appraisal of each building concerned. The creation of standards for the number and qualifications of personnel needed to run the facilities is necessary to ensure proper implementation of a maintenance program, as is evaluation of staff performance.

Perhaps the single most important factor in accomplishing the tasks set out in the legislation, however, is the establishment of the information system -- or inventory -- required under Section 43 and 43A. These sections call for the development of a building inventory which "may detail the age, condition, type of construction, and physical life expectancy of each building and its major
structural components," and which must include information on energy consumption. Responsibility for determining the information which will be included in the inventory lies with the Deputy Commissioner of Capital Planning and Operations, who must coordinate information collection on behalf of the Office of Facilities Management with that for the real property inventory required under Section 40K. Information provided in this inventory is absolutely necessary for the establishment of preventive maintenance schedules and for the decision-making processes involved in building repair or renovation.

Finally, enabling Sections 16 through 23 of the 1980 Act (chapter 579) ensure that a general standard of building maintenance and repair will be applied to all of the buildings owned by the Commonwealth, including those maintained by the Bureau of State Buildings. These provisions create a Bureau of State Office Buildings, which is responsible for the maintenance of the government center buildings, within the Office of Facilities Management. The Bureau actually performs maintenance tasks associated with these buildings, in contrast to the function of the Office generally.
RECORD KEEPING

"All such records shall be kept in the rooms where they are ordinarily used, and so arranged that they may be conveniently examined and referred to."

M.G.L. Chapter 66, s. 12

INTRODUCTION

An enormous amount of paper and other documentation is developed by and for the Commonwealth in the course of a typical building project. Legislators, administrators, and private vendors generate reports, requests, legislative documents, proposals, applications, approvals, allotments, encumbrances, and payment records, schedules, budgets, plans and specifications, operational and maintenance records; and correspondence at every step along the way.

With so much material, and so many agents responsible for it, it is easy to understand why project documentation is so often fragmented, dispersed, inaccessible and incomplete. This problem, though, is exacerbated by poor management of records. There is no central source of records on state or county building projects. Records kept by individual agencies are all too often disorganized or incomplete; each agency uses its own logic and system in maintaining records. Computerization of records by the BBC has been proceeding very slowly; most information can still only be retrieved by a difficult and time-consuming manual process, making analysis of this information for decision-making virtually impossible.

Perhaps most critical is that the Commonwealth often fails to record the most significant pieces of information relating to a project, such as the important decisions made on the size, nature and cost of planned facilities.

Yet it is crucial, if our record-keeping activity is to have any use or significance, that this information be well collected, well documented, and well stored.

Poor record-keeping hampers every phase of the administration of public works. The state's capital agenda cannot be rationally planned and controlled when the state doesn't know what it has done or how much was spent in the past,
what buildings and land it owns or leases, or what is the physical condition of its properties. Incompetent or unscrupulous designers and contractors may be repeatedly hired because agencies do not pool their experience with firms, or do not learn from their own past experiences. As a result of poor record-keeping, contract administration is chaotic and unfathomable, both during and after completion of the project, decisions are not well thought out or are avoided completely because decision makers know that they will not be held accountable. Private firms doing business with the state may keep false or poor records which conceal the generation of cash for political purposes; often it is found that important business papers have been stolen or lost through fire or flood. After the completion of construction, contract documents such as plans or change orders may be unavailable or hard to locate, making future repair and upkeep more difficult. Finally, if any design or construction defects become apparent after occupancy, the state is hampered in its efforts to recover the costs of damages because the documentation to support litigation is often inadequate or not available.

Proper record keeping entails the development of adequate standards for the documentation of projects—both for the types of information to be recorded and for the ways in which this information is to be recorded. Also, this information must be summarized, cataloged, and stored so that it will be readily retrievable for those who need it in the future.

Even assuming for a moment that this mountain of paper is well maintained, it is not enough to simply store it: it must above all be both usable and intelligently used. The immediate and the long-range uses of this information, thus, will have great impact on what is kept, and how it is kept.

In its work, the Special Commission was immediately confronted with the problems of inadequate and fragmented record-keeping. In its attempt to identify cases of wrongdoing or maladministration in state building projects, the Special Commission needed to identify many specific details in individual projects, and to perform a statistical survey of overall agency performance. One of the first things the Commission set out to do when it started in 1978 was to collect basic information on the ten years of state and county building activity within its mandate. The Commission wanted at that time only the most elementary type of data: the number of contracts which had been let, the purpose of each contract, the names of the designers and contractors, the original terms and amount of each contract, the amount actually spent on each project, and the proposed and the actual completion dates. Such a modest data gathering effort would, the Commission thought, take a few months. In fact, it was enormously difficult to obtain this basic information; records were missing, incomplete, misfiled or
forgotten. To get complete data on any one individual project, several different files had to be located. Since no summary sheets are kept for individual projects, every file had to be read thoroughly. To accumulate a simple record of all projects within the Commission's mandate was a monumental undertaking.

THE COMPTROLLER

An effort was made to obtain the information from the Comptroller's files, since that office is charged with making payments made to designers, contractors and other vendors on projects done by the BBC and all other state agencies. Again, there were problems. The records of payments kept by the Comptroller did not adequately reflect the administrative methods used by contracting agencies; for example, projects were often split into as many as four or five parts, which the Comptroller's Office would then record together on one card. The cards, manually kept, were confusing to read. Moreover, they were sometimes incomplete, missing, or unreliable; for example, the records often did not reflect when a project was finished. The Comptroller had records of projects in its active file on which no payments had been made for ten or more years, yet there was no indication of when, or whether, the project had ever been terminated. While these records kept by the Comptroller may be adequate for the Comptroller's purpose, namely that of control over payments made and requested by vendors, they are clearly not adequate for an administrator who wants to oversee and evaluate the capital outlay program in the Commonwealth.

THE BUREAU-OF BUILDING-CONSTRUCTION

Record-keeping Criteria

At the BBC, which has been responsible for nearly a billion dollars' worth of construction in the last twelve years, the Special Commission found the files disorganized, fragmented, incomplete, erratically maintained, and difficult to locate. Even more disturbing was the failure to keep complete records of the most important information generated and decisions made during a project. For example, the budget of a project would grow enormously, the scope of the project would change, new facilities would be added and ones originally planned would be discarded, and contracts would be split and mushroom into multiple projects.

Many of the characterizations of BBC record-keeping in this section are derived from the Commission's 2-1/2 year effort to review the files and records of the BBC. Commission staff, students and volunteers spent literally thousands of hours locating, reviewing and summarizing BBC documents and discussing the same with BBC staff. Many of the Commission's findings and observations are corroborated by the Ernst & Whinney report, "Operations Appraisal of the Bureau of Building Construction," done in September 1977; see especially pp. 22-24, 34, 38, and 42-44). A similar, although less extensive, effort was made to review the files of other agencies.
Yet, the records often gave no explanation either for the changes in the project or for the retention of the same designer as a small project blossomed into a huge project. Rarely, and then only informally in a memo, would any of the participants in a project review the history or attempt to evaluate the progress of the project and the performance of the actors.

Very little information is collected at the BBC summarizing the most important contract features; and nowhere is this information centrally gathered and reviewed. The Fiscal section does keep ongoing records of all financial aspects of projects, but this information reveals little of the character of the project and offers little explanation of problems encountered in projects. In any case, this information is not routinely shared with other sections or reviewed by management. The BBC has in the last several years instituted a computerized project schedule monitoring program, which identifies current BBC projects and their schedule status. However, the computer printout focuses almost entirely on the design schedule, and provides little information on planning and construction phases. Moreover, it provides virtually no budgetary information; one cannot use it to trace the increases in construction cost, design fees and miscellaneous costs so common to state building projects. The program still lacks most costs per square foot information, making it inadequate for preliminary cost estimating for future projects. Indeed, many BBC employees display little respect for the program and the information contained in it. Even with its detailed design schedule data, the system has not been effectively used by the BBC to review its program of contract administration or the performance of its vendors. Instead of using the computer program for broad analysis of its activities, the BBC has used the program to file pieces of data which are little used after a project is completed.

Maintenance of Files

Even the records which the BBC does keep are not well maintained. There are no agency standards concerning what records must be kept, and no effort is made to coordinate the record-keeping activities of the individual sections within the BBC. Individual sections or employees make their own ad hoc and idiosyncratic decisions as to which records should be kept and which discarded. As a result, the records are so scattered that it is difficult to compile a complete set of records for any building or agency. There is no cross-referencing system for separate projects connected within a single building; a designer working on a renovation or addition project has no systematic way of finding BBC files on any previous construction on the building he or she is renovating.

Even on a single contract, the records are divided among several different BBC sections. The construction, plan examining, mechanical/electrical, bid,
planning and fiscal sections of the BBC each keeps its own set of records on each project; there is great variation in the quality and extent of the files maintained by different sections. In cases of overlapping jurisdiction among sections, records may be duplicated, or may be entirely absent—each section having assumed that another section was keeping the records. There is no guide or index to the location of the various documents relating to a particular contract. In piecing together the history of a project, one must locate several files and documents, often relying on hunches and chance as to their possible location. When a project is completed, no effort is made to assemble all the materials relating to the project before storage; for example, design contracts are mostly kept at the BBC, while construction contracts, correspondence and change orders are often sent out to be stored at Grafton State Hospital. (For more on storage, see below.)

At any point during or after a project's active phase, the files are poorly accounted for. Many of the papers in the files are not in chronological order, making the file hard to read; if a document is missing, it is impossible to tell whether it was mis-filed, filed but then lost, or never filed in the first place. A number of the files are not bound; consequently papers may be lost or put out of order. Some files are empty; many are incomplete. Some papers are placed loosely in the cabinet drawers and are buried underneath other files. File cabinets are not placed in order, even within one BBC section. Supervision over contents and removal of files is minimal; in-house removal of BBC records requires only initialising a list identifying the record and the date removed and returned. Often the dates are not filled in; some entries on the sign-out sheet appear to show that records have not been returned in five or more years. Some records are not included in any official files; they remain in individual BBC employees' desks. Some BBC employees even keep files at home in attics, garages and basements, limiting their availability still further.

Contract Documents

Critical documents are often missing from BBC files. The final "contract set" of plans is missing for nearly one quarter of all BBC projects, although it is by this set of plans that the performance of the contractors will be measured. The BBC does not usually keep the "as-built" plans of completed projects, although these are essential for maintenance, repair and renovation of buildings. The BBC does keep the preliminary plans in most projects, although they are less useful than the final plans or as-built plans which are often missing. The preliminary plans, however, are virtually inaccessible. The plan cabinets are out of order and often unlabelled. The past year's plans have not been filed; they have simply been piled up on top of the file cabinets. Older
plans are often misfiled, or have not been returned to the file cabinets after use.

In the past few years the BBC has begun to keep microfilm records of final plans and specifications. The microfilming has not noticeably improved the BBC's record keeping instead, the BBC microfilm files simply reflect the disarray in its paper files. Microfilms are often missing from the files. When the films are finally located it is difficult to use them; the BBC's two microfilm reader/printers have not worked for years. But even fixing them would not solve the problem, since they are incompatible with two of the three types of microfilm in the BBC files.

**Record Storage**

Files on completed projects must be stored by the BBC. Yet, there is no central storage area for the BBC, so they are scattered about the state. Some files are stored in a vacant kitchen at Grafton State Hospital; others are in the basement of the old warden's house at MCI Concord which has not been used for years. There is no policy regarding where files should be stored. Indeed, it is not even certain that all the different files for a single project will end up in the same place. In any case, no simple record is compiled of where the files for any completed project can be located, nor is there any guarantee that the files can be easily found once their storage facility has been identified. Perhaps worst of all, the information contained in stored documents is as good as lost, given the difficulty of locating and retrieving stored boxes, for no summary record of much of the contract information is made and kept at the BBC.

**Using Agencies**

Record-keeping on the part of the BBC's 150-odd client institutions is in no better order than it is at the BBC. Particularly because there are so many individual institutions and because there are few reporting requirements, many of the most basic documents regarding these buildings are scattered throughout the state. Also, since the institutions are permitted to administer contracts under $25,000, or larger contracts with a waiver from the BBC, such contracts are not accounted for, and little control is exerted over them. Without the central recording of information relating to agency-administered contracts, it is hard to see how the legislature can keep track of the money it has appropriated or how it can realistically plan future appropriations.

Not only are the records pertaining to the initial planning, the operation, maintenance and repair, and the utilization of space and physical condition of these buildings scattered, but the quality and character of the records is widely varied. Some institutions with professional staff keep excellent records, others keep no useful or extensive records at all. Moreover, what records are kept are
incompatible among agencies: each agency or institution has its own forms, documents and standards for record-keeping. There are no statewide standards for such documents, and no central collection of them or recording of the information contained in them.

Counties are particularly poor record keepers; prior to 1972 the county commissioners had sole jurisdiction over all county projects, and since 1972 over contracts less than $5,000 or if a BBC waiver is granted. County clerks or engineers are responsible for documents relating to county projects; however, the Special Commission found that many counties lacked any filing procedure. Payments and contract information was scattered from office to office, with no central records area. In Suffolk County, contracts are numbered consecutively, making it difficult to relate contracts to the particular building or work performed. A great deal of the information had been destroyed with the permission of the Supervisor of Public Records. The Special Commission was unable to find much of the information regarding pre-1972 county administered contracts.

OTHER ADMINISTERING AGENCIES

Records maintained by authorities such as Mass. Port Authority, the Department of Community Affairs, the M.B.T.A. and educational building authorities vary widely in quality. Fiscal records are usually, but not always, better kept than contractual and administrative records. (One agency apparently has no record of how several million dollars of state aid money was spent.) Contract documentation is sometimes in terrible shape; at the DCA contracts and files often could not be located.

Smaller, less centralized, and highly autonomous authorities tend to keep the worst records. For example, the records of the Government Center Commission, which was responsible for $94 million worth of construction from 1960 to 1975, were found in total disorder in file cabinets in a small closet in the McCormack Building. Real estate appraisals, minutes of meetings, notes and assorted documents and microfilms were lumped into drawers. As with the BBC, none of the cabinets were in order and many were unlabelled. Change order files were incomplete; indeed, at the time of construction, the State Auditor found that the 244 change orders for the McCormack Building could not be audited "on a consistent basis because of incomplete records substantiating this work."1

The chaos of record keeping at these small authorities not only confounds the ability of these authorities to carry out their work, but even seems to spring from their very autonomous and unsupervised methods of operation. The University of Massachusetts Building Authority, with no professional staff of its own, and answerable to no one but the Board of Trustees of UMass, depends
entirely on the files of its general counsel and of the University Physical Plant department. The design documents for one of its projects, a $20 million Campus Center, were kept by the architect. Indeed, the change orders for this project were never approved by the Authority, and the Authority never received copies of them.

The fiscal records of the UMass Building Authority are also in disorder, due to the complexities of financial arrangements with the University's operation of its self-amortizing projects, and the minimal reporting requirements to which it and the University are held. This condition led to the $474,757 overstatement of its cash account balance in the 1976 bond prospectus of the Campus Center project. The Authority's own auditor found that "financial information as presented [in the University's reports to the Authority] was lacking in both sufficient detail and disclosure, and was not prepared in accordance with generally accepted accounting principles."2

PRIVATE-VENDORS

The business records of private firms doing business with the state constitute a different type of problem from the records of public agencies. However, it is important that the Commonwealth be confident that its contract awards and payments to firms are legitimately made. Yet until this year, there has been no requirement that a firm having a public design or construction contract keep its records for a limited period. False entries in business records are not prohibited, nor are there any affirmative requirements to assure that business records fairly and accurately reflect the transactions of companies having design or construction contracts.

No meaningful investigation can take place without review of the project and financial records of the firms under contract with the Commonwealth. All too often the Commission has been told by firms summoned to produce documents that no documents exist or that files are incomplete because they were no longer needed.

When vendor documents have been reviewed to determine whether the vendor has been involved in any illegal activity, the Commission has found a pattern of expenditures on the books of firms which appear on their face to be legitimate and proper business expenses but which, upon closer examination, turn out to have actually been used for some other purpose. These other purposes include the generation of cash ultimately used for illegal payments. The results of the Commission's investigations of cash generation by private firms are discussed in detail in another part of this report. (See Volume 5.)

DISCUSSION

Record keeping for an activity as complex as a statewide capital investment program is an inherently difficult task; however the Commonwealth's haphazard
an approach to management of its own records makes this task far more difficult than it need be. The record-keeping problems described in the preceding section exist in and stem from a Byzantine framework of agencies and actors that is overly complex and poorly coordinated. The purpose of this section, then, is to delineate the framework of agencies currently concerned with records pertaining to buildings and to explore the nature and causes of the problems in governmental record-keeping.

THE FRAMEWORK OF RESPONSIBILITY FOR RECORD-KEEPING

Those keeping & using records: The following chart outlines who keeps what records pertaining to the state and county building process. It notes significant responsibilities only, as there is a great deal more overlap than is indicated here; for example, most transmittals between agencies and sections are kept in some manner by each. Also, this chart does not comment on the quality of the records or files involved.

<table>
<thead>
<tr>
<th>WHO</th>
<th>WHAT</th>
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<tbody>
<tr>
<td>1. Bureau of Bldg. Construction</td>
<td>planning documents and files; early cost estimates; advertisements for designers</td>
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<tr>
<td>a. long range planning section</td>
<td></td>
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<tr>
<td>b. design section (plans exam, and mech/elac.)</td>
<td>plans and specifications; master plans</td>
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<td>c. construction section</td>
<td>contract files, including correspondence, change orders &amp; documentation; memoranda of approval; performance bonds supplied by contractors</td>
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<tr>
<td>d. fiscal section</td>
<td>requests and payments to vendors; project budget sheets</td>
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<tr>
<td>e. administrative section</td>
<td>bidding documents; BBC personnel and administrative files</td>
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<tr>
<td>2. Using Agencies</td>
<td>Each individual agency or institution maintains its own files on:</td>
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<td></td>
<td>- self administered contracts</td>
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<td></td>
<td>- capital outlay requests &amp; planning materials</td>
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<td>- maintenance &amp; operation records</td>
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<td>- correspondence with BBC incl. approvals</td>
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<td>Independent state authorities: Mass Port Authority DCA and local housing auth. MBTA, MTA, MDC, MHFA, educational building author. Government Center Comm.</td>
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<td>Secretary of State, including State Archives</td>
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16. Boards of registration

- Records of registration for: architects, engineers, landscape architects, electricians and plumbers

17. Department of Labor & Industries

- Records of complaints and rulings on bidding and labor disputes

18. Department of Public Safety

- Certificates of Use and Occupancy for buildings

19. Private vendors (designers, contractors)

- Business papers relating to dealings with state: contracts, invoices, documents (Not public documents)

Supervision of Record-Keeping and Standards: Responsibility for the supervision of all state documents lies with two agencies: the Records Conservation Board (RCB), consisting of the state librarian, the attorney general, the State Comptroller, the Commissioner of Administration, the supervisor of public records; and the state archivist and the Secretary of State's Office, in particular the Supervisor of Public Records and the State Archivist.

However, the Commonwealth has had very little adequate supervision of records, for a number of reasons. There is some uncertainty or duplication regarding the purposes of the two agencies. Apparently the RCB's function is to establish disposal schedules, and the Supervisor's is to approve disposal requests, although this relationship is not clearly defined in practice. The Supervisor is primarily responsible for the determination of public records requests. Only recently has the supervisor begun to evaluate the records management of state agencies and public entities: these "audits" have thus far only touched on the records of cities and towns and the Executive Office of Environmental Affairs. Moreover, these activities have been more in the character of surveys than inventories: it remains to the agencies themselves to mobilize and carry out actual improvements in records management.

The Nature and Cause of Record-Keeping Problems

Poor record keeping is caused by a number of problems in contract administration. The lack of a central agency charged with the maintenance of files on all state construction is perhaps the most significant problem in this area. Such a central agency would have responsibility for compiling and keeping records and for setting uniform standards for record-keeping by state agencies, authorities and counties. Existing efforts of individual agencies to improve record-keeping are encouraging, but are not sufficient to solve the problem, primarily because no single agency currently possesses the authority or resources to cover all agencies administering building contracts. The Supervisor of Public
Records, cannot itself perform any in-depth overhaul of actual records. The BBC has started to computerize its own records, but, as noted earlier, even this effort has not included many significant pieces of information, and again, does not extend to agencies other than the BBC.

The proliferation and fragmentation of agencies overseeing contracts is itself a cause of record keeping problems. Not only do the various agencies not share information or place it in a central repository, but also their separate methods of operation make agency records incompatible with records of other agencies. Of course, some agencies have special procedural requirements determined by statute or source of funding; but even the records of these agencies could be made largely compatible with others through more logical and efficient records management.

Another obstacle to good record keeping is poor overall project management. Within the operation of each agency, the poor management methods (described in other sections of this volume) themselves engender problems in record keeping. Chaotic records effectively mirror the chaotic activities from which the records arise and which the records are supposed to document. Such disarray is evidenced at every level of record keeping -- from the clerical function which maintains the files to the decision-making process which creates and processes the documents.

**SOLUTIONS**

The legislative proposals of the Commission, as passed by the Legislature,5 are intended to ensure that:

- the records of agencies are consistently and logically organized and maintained in a central place;
- the records of agencies clearly reflect the activities of those agencies;
- the activities and records of agencies are open for public access and scrutiny when appropriate;
- the opportunities are reduced for illicit bribery and other forms of corruption through false record keeping by public agencies and private vendors.

**The Records of Public Agencies**

Central to the Commission recommendations to improve public record keeping is the creation of a central agency which would act as a clearinghouse for information concerning public construction. This agency should establish minimum standards for records relating to construction, maintenance, and renovation of capital facilities, keep a catalog of where all the required records can be obtained, and serve as a repository for selected records and reports. In particular, it is expected that the division of capital planning and operation
will make use of the most advanced automated management information systems and data processing applicable to the fulfillment of its duties and functions.\(^6\)

A centralized record keeping agency can perform several functions that individual agencies cannot. By setting standards and minimum requirements for records, it would make sure that overall descriptive information, such as the data the Commission has been collecting over the past year with great difficulty, would be easily available. It could help in locating information kept by individual agencies and could serve as a central repository and library for some basic data, such as annual reports. It could also keep track of all the records, reports and other data required by the designer selection board, the state's central planning agency, and other agencies supervising building projects in the Commonwealth.

All projects directly under the jurisdiction of the division of capital planning and operations\(^7\) would naturally be included in this information bank, as would projects subject to the oversight of the division, but administered by another agency.\(^3\) To ensure compatibility and usability of information on projects administered, such agencies must keep records and report to the division in accordance with minimum standards and guidelines set by the division.\(^9\)

Cities and towns must also report contract information in accordance with these guidelines, but only for projects which require the specific approval of the legislature or a state agency. This central collection of information on all projects on which the state spends its money will, for the first time, provide the state and its citizens with a comprehensive picture of the management of state property.

A number of new reporting requirements also guarantee that information about agency operations will be gathered and publicly available. Most important of these are the quarterly and annual reports of the division of capital planning and operations. Currently, the BBC issues no formal report or evaluation of its activities; although several internal memos have been written in the past, these are neither comprehensive nor publicly available. The reports of the state auditor are essentially the only public review of BBC operations; however, even these do not list every current BBC project, and are no longer issued annually but once every two years. Moreover, these reviews are performed externally, and do not provide the BBC with an opportunity for self-examination. Thus, the quarterly and annual reports of the division are intended to serve as a means of internal assessment, as a public evaluation of agency operation and as a comprehensive view of the state's construction program. The quarterly reports are limited to a review of projects directly under the division's supervision, and shall include at least:
... a statement of the name of each project, the administering agency and the using agency, a brief current description of the project and any substantial changes in the description of the project during the past three months, the source of funds, the state of progress of the project, a summary of the total and major costs of the projects as originally estimated and as currently expended or currently estimated to be expended, the original project schedule and the current and estimated progress of the project, and such other information as the deputy commissioner may require be included. 10

The annual report of the division, which will also serve as one of the four quarterly reports, includes not only the projects directly supervised by the division, but also a statement of the status of projects administered and reported on to the division by other agencies (as described above). The report may, at the director's discretion, exclude projects less than $25,000 which are administered by an agency other than a state agency. In addition to the types of information on projects provided in the quarterly reports, the annual report will also include:

... the authorizations for and sources of funds and expenditure and unencumbered balances thereof; identification of the designers and contractors who have contracted with the administering agency to provide materials or services therefore, the administering agency's project and contract numbers, the value of the contracts and the amount of money paid in accordance with the contracts; and such other information as the deputy commissioner may require be included. 11

The annual report also includes a statement of the problems which have arisen in the capital facility programs and procurement procedures and the director's recommendations for administrative or legislative remedies for the problems described.

The choice of February 15 for the preparation of this and several other annual reports is to allow the division sufficient time to prepare its report after the rush of work necessary for the preparation of the governor's capital outlay budget proposals. The February date is also to give the legislature the most up-to-date assessment of the state building program for use in its deliberations of the capital budget. Finally, to ensure proper public awareness of the division's activities, both the quarterly and the annual reports are public documents, available for general distribution. In addition, to guarantee the openness of decision-making in the budgeting process, all materials relevant to the development of the governor's capital budget are public documents, and shall be publicly available in the State House library; and copies of the budget shall also be sent to the state office building in Springfield. 12 The version of the Commission's bill presented to the Committee on State Administration required that a copy of the governor's budget be sent to the libraries in cities and towns of the Commonwealth. However, this provision was removed by the Legislature. It should be noted that, at about that same time, the Senate Ways and Means Committee sent a copy of its version of the state operating budget to every city and town of the Commonwealth.
Within 30 days after the submission of the capital budget in January of each year, and most likely as a part of its regular February 15 report, the deputy commissioner is also to report to the governor and legislature as to the impact of the proposed budget on the state's long-range capital facilities plans; and its policies, programs and priorities; and the requirements of federal assistance programs; these may, for example, include policies regarding environmental impact, energy conservation, and architectural barriers.13

Another crucial evaluation of the state's capital facilities will be provided in an annual report of the deputy commissioner, also submitted on February 15, which deals with the state's management of real property, including space utilization, rentals, and the disposition of property.14 An inventory of real property will be created to provide a central source of information on the disposition, utilization and condition of the state's real property.15 In addition, an inventory of buildings will be created recording the age, condition, type of construction and life expectancy of buildings and their major structural components. As repairs and alterations take place, these will be added to the store of information on each building, and a comprehensive record of the physical history of each building will be created and maintained.16 For more discussion of this area, see the sections of this volume dealing with real property management and building maintenance.

Finally, several repositories or registers will aid the collection and availability of certain types of documents or information. For example, the bureau of programming within the division will create a repository of all plans, master plans, studies, programs and design documents prepared for state agencies subject to the oversight of the division.17 The Commission's legislation, passed in July of 1980 also creates a central register of public contracting opportunities in the Commonwealth.18 For more detail, see the section of this report dealing with access to public contracts.

Recommendations Concerning Private Vendors

The role of a company's financial records is pivotal in any investigation of a company's business activities in the public sector. The Commission has found that suspicious financial transactions, when pursued through interviews and the review of records of related companies, do lead to evidence of illegal payments. For more detail of these activities, see the report of the Commission's investigations in other parts of this report.

This trail cannot be followed when a company has no records for relevant years, or when its records are inadequate or incomplete. Nor can any investigation perform basic calculations, such as comparing the quality and quantity of materials ordered against what is required by specifications, without
essential records. This means that the circumstances of what records are available, rather than the magnitude or frequency of any fraud or illegal activity, determines who may be brought to account for illegal activities.

The characteristic use of disguised business financial transactions as the source of funds for illegal payments is not unique to the experience of this Commission, or to Massachusetts. The same pattern was found in Maryland by the United States Attorney there during his investigation of the buying of state and county contracts. It was that investigation which led to then Vice President Spiro Agnew's entry of a plea of nolo contendere to federal charges and to his subsequent resignation from office. Similarly, the United States Attorney for the District of New Jersey has identified phony business transactions as the device used in his state by contractors hiding illegal payments made in connection with public contracts.

Most recently, the Securities and Exchange Commission has been told by American companies who admittedly paid bribes and kickbacks in the United States and in other countries that such payments were falsely recorded on their books to make the transactions appear to be legitimate. Congress took action to nip this practice in the bud by including provisions in the Foreign Corrupt Practices Act of 1977, 91 Stat. 1494, which require subject companies to maintain records that accurately and fairly reflect the company's transactions and dispositions of its assets. This legislation is the source of the Commission's legislation with respect to a statement on internal accounting control. The statement on internal accounting control and of the audited statement of financial condition is to provide the awarding authority with some assurance that the contracting firm has safeguards against record falsification which will make it more difficult and, therefore, less likely that such practices will occur during the term of the contract. This regular review by an independent certified public accountant should act to deter practices which otherwise are uncovered only through investigations conducted after the fact.

The need for some affirmative duty to retain business records is obvious if any government agency, including the Inspector General, is to be in a position to investigate building contracts in Massachusetts. A six-year period of time within which such records must be kept seemed reasonable to the Commission since that is the period for most criminal statutes of limitations. In addition, Chapter 531 of the Acts of 1980, "An act establishing civil and criminal remedies for certain fraudulent acts affecting the Commonwealth and commercial bribery," makes a criminal offense any false entry, or any failure to make a true entry, in any of these records.
The Commission recognizes that an audited financial statement and a statement on internal management control may impose an additional financial burden on some companies. This burden, however, will be minimal with respect to construction firms, which ordinarily must prepare audited financial statements for bonding purposes. Other companies, such as design firms, may not otherwise have their records audited by an independent certified public accountant. Balancing this cost factor against the compelling need for some meaningful deterrent against false record-keeping, the Commission has established a minimum contract amount of one hundred thousand dollars which must be recorded before a firm is required to file an audited financial statement and a statement on internal accounting control. Because design fees are a small percentage of construction cost, this threshold amount means that a design firm would ordinarily have to be awarded a contract for design of a project costing more than one million dollars before having to file any of these statements.
The problems detailed throughout this Report have cost the taxpayers of the Commonwealth enormous sums of money. Volume 6 estimates the cost of the system's tangible failures. Corruption, fraud, waste, defective work -- all these have drained our treasury. The public has also been paying for administrative organizations and personnel to operate this system. These agencies and people were supposed to be preventing problems. As described throughout this Report, they have contributed to these problems in certain cases, failed at their roles in other cases, and for the most part have been underfunded, underqualified and underequipped to the job asked of them.

The reforms initiated by this Commission are designed to prevent corruption and maldistribution and to end the financial waste. To do this, the procedures recommended must be carried out by organizations that are staffed with personnel who are qualified to the required jobs, and with enough of those people to get the job done. The proper management of our multi-million dollar construction program requires a staff and budget suited to the task. This section presents the budget recommended by the Commission to properly carry out the requirements of the legislation passed in 1980 to improve the public building system. This expenditure is small in comparison to the cost of the capital outlay program to be managed (see back to the section, "The Nature and Scope of Capital Investments," in this chapter), the amount of public money being wasted which could be saved, and as a price for restoring integrity to a much abused part of our Commonwealth's government.

Division of Capital Planning and Operations: Cost Analysis

The Commission estimate of the cost of the Division of Capital Planning and Operations for fiscal year 1981 (had the Commission's legislation taken effect on July 1, 1980) included a cost of approximately $3.24 million and a proposed staff of 141 persons. A detailed breakdown of this estimate is provided in the appendix to this report (Volume 12).

To set that estimate in perspective it is necessary to review how much is currently being spent on similar functions and how much others have proposed be spent on such activities. The Division's activities include capital planning and budgeting, project management, and real property management. Those three sets of functions are performed to some degree currently by at least three different agencies. Certain capital planning and budgeting functions are carried out by the Budget Bureau and the Long-Range Planning Section of the Bureau of Building Construction (BBC). Project management activities of the sort about which the
Commission was concerned are performed solely by the Bureau of Building
Construction. Some real property management work is done by the Bureau of State
Buildings and directly through the Executive Office for Administration and
Finance.

At the time of the Commission's estimates (June, 1980) the BBC had 109
authorized positions, including 95 permanent positions. Of the 76 positions
actually filled, 69 were permanent and 7 temporary. The appropriation for
salaries for that staff for fiscal year 1980 was approximately $1.52 million.
The appropriation for salary for a staff which was specified to include "no more
than 95 permanent employees" for fiscal year 1981 was about $1.66 million
(slightly less than a 9% increase).

The final salary budget was below the original request by the Governor of
about $1.80 million and substantially below the BBC request of about $2.3
million. The BBC recommendation was for a total of 134 positions, including 113
permanent positions. It is important to note that in 1979 the Administration's
own consultants (Ernst & Whinney) had recommended a staff of 128 (for the BBC
alone). BBC section heads themselves had in the aggregate sought authorizations of
over 200 positions to meet estimated needs.

As noted in the text above, the Bureau of the Budget appears to have only a
single person working on capital outlay matters. The Commission's estimate of
that person's salary cost was $20,000 for fiscal year 1980 and $22,000 for fiscal
year 1981.

This past spring there appear to have been approximately 6 people concerned
with real property management activities, of whom 5 were working for the Bureau
of State Buildings and 1 directly for A&F. Our estimate of their salary cost was
$120,000 for fiscal year 1980 and $132,000 for fiscal year 1981. (Note: there
appears to have been no change in personnel in the last two mentioned areas for
the 1981 fiscal year.)

In sum, then, to the extent that functions by the proposed Division are being
carried out currently, they are performed by 83 persons at a total salary cost of
about $1.81 million. If the Ernst & Whinney recommendations had been accepted
(and therefore, the BBC staff were raised to 128) then the likely staff would
number 135 and the salary cost would be approximately $2.94 million. In light of
the fact that the proposed Division encompasses activities broader than those
currently carried on, the Commission estimate of a Division staff of about $141
and a salary cost of about $3.24 million seems eminently reasonable. (It should
be noted in this context that even if only authorized positions at the BBC were
filled, the nominally authorized staff for functions currently performed would be
with an estimated salary cost of $2.57 million. Thus the proposed increase from currently authorized positions would be 25 staff at a salary cost increase of $0.67 million.) Thus, the proposed increased expenditures arise from three factors: (1) the proposed increase in the number of staff; (2) a shift in the composition in that staff toward more highly trained persons; and (3) in a number of instances, higher salaries than are currently paid by the Commonwealth.

At the same time as providing an overall estimate of staff and salary cost the Commission offered a detailed characterization of the specific staff positions and approximate salaries for each Office within the Division and the administrative/policy staff under the direction of the Deputy Commissioner. The development of such an estimate was achieved by (a) a comparison of proposed Division activities with those of organizations, private and public, which carry on similar activities; and (b) an evaluation of the number and scope of projects supervised by the BBC in the past and a projection of the work to be done in the future.

There is no way to make a direct comparison of the proposed Division and organizations with similar responsibilities in other states (or in the private sector) since in no other state (or in no private entity) are precisely the same functions performed. However, in two states, Wisconsin and Illinois, there were great similarities in a number of areas. Moreover, officials there were very generous of their time and resources which enabled the Commission to understand how their agencies worked in practice and not merely on paper. In addition, it appeared that in many areas bearing upon the quality and efficiency of public construction, those agencies performed very well compared to Massachusetts. The materials and discussions also enabled the Commission to understand what pitfalls there were and how certain weaknesses or difficulties might be avoided.

The materials were also very helpful in gauging the fairness and accuracy of the Commission estimates of the number and type of personnel required to perform the mandated tasks. The capital outlay program of Wisconsin during the past decade or so was on the average about 75% of that of Massachusetts; the program in Illinois was 2 to 2 1/4 times as large. This permitted the Commission to evaluate how similar functions are carried out on a different scale. In addition it permitted a comparison of costs at those different scales. Thus, as of February, 1980, Wisconsin's Bureau of Facilities Management (which is roughly comparable to the proposed Division) had about 121 employees and salaries of about $3.08 million (or about $26.5 thousand per employee). The most recent information from Illinois for fiscal year 1980 gave approximately 245 employees with salaries of about $4.68 million (or about $19.2 thousand per employee). Apart from issues of scale, it should be observed that Wisconsin's Bureau has
somewhat narrower functions than the proposed Division; whereas Illinois' Board performs certain functions not done by the Division and vice-versa. If the proposed Division were in effect in fiscal year 1980 the estimated salary cost for the suggested 141 employees would be about $2.92 million (or about $20.7 thousand per employee). The principal reason for the difference in cost per employee among the three jurisdictions is more a matter of the typical employee being paid more in Wisconsin than in the two other jurisdictions.

The projected budget for the Division for any fiscal year is based on the assumption of a uniform capital outlay equal (in real terms) to the average capital outlay over the period inquired into by the Commission. The average actual dollar capital outlay for that time frame was about $125 million. In current real terms this would correspond to the Division handling a capital outlay of between $175 to $190 million for the 1981 fiscal year. (Note that the capital outlay nominally within the jurisdiction of the BBC for the 1981 fiscal year was approximately $190 million; the average for the past three years -- in real terms -- has been relatively close to this.) The budget further assumes that the size distribution of the projects to be administered will reflect the long-term size distribution (in real terms) with some weighting toward smaller projects. This has been the trend in recent years and is expected to continue. (Note that a similar shift has been occurring in other states, including the ones into which the Commission inquired.)

Judgements may, of course, differ as to precisely the number of persons at a particular staff level and their salaries. However, the Commission feels it would be unwise to have a salary scale any lower than the one suggested and preferably somewhat higher. Moreover, depending upon the current flow of capital outlay funds, a staff of perhaps 5 fewer persons or 10 or so more persons would not be unreasonable.
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I. FINDINGS ON THE EFFECT OF PRIVATE MONEY ON GOVERNMENT DECISION-MAKING

A. SUMMARY OF FINDINGS FROM SPECIFIC-INVESTIGATIONS

It is expensive to run for public office in Massachusetts. This was true for the period studied by the Commission and is even more so today. 1978 candidates for statewide office spent an aggregate of $6,111,617. Aspirants to legislative office expended approximately $3,768,323 in the same year.

In public testimony the Commission heard a number of witnesses attest to the importance of raising large sums of money in order to attain and continue to hold elective public office. In private testimony and in investigations of specific transactions and individuals, the Commission was able to link this need or demand for political contributions with legal and illegal political fundraising, and decisions to undertake building projects, award building contracts, and administer these contracts inequitably to favor the contractors or designers who made the contributions.
The Commission found that during three gubernatorial administrations from 1962 through 1974, design contracts worth millions of dollars were routinely awarded in return for political contributions. The Commission found that fundraisers assessed businesspeople a certain percentage of their fees and that those in business paid their contributions illegally in cash and with corporate funds. This corrupt system was accepted by fundraisers, administrators and businesspeople. It guaranteed that a willingness and ability to make political contributions was the key factor in the award of contracts. The quality of services to be rendered to the Commonwealth had almost no place in the decision.

Although individual legislators typically have had less power to dispense favors and therefore to systematize patronage, this has not necessarily reduced the pressure to raise funds or single opportunities to do so illegally. State Senators Joseph DiCarlo and Ronald MacKenzie admitted before the Commission to accepting $23,000 from the construction management firm of McKee-Berger-Mansueto in return for changing a legislative report on MBM's performance at UMass/Boston. The Commission also presented testimony that Senator James A. Kelly, Jr. took $500 a month from the architectural firm of Masiello and Associates in return for helping William Masiello get contracts and assuring that the Legislature appropriated ample funds for Masiello's projects.

In his opening statement before the Commission, Senator MacKenzie stated:

...I became involved initially in what I considered to be a perfectly innocent attempt to help out Bill Harding, who was a personal friend and substantial contributor to my campaign.

...there was an ongoing necessity to engage in political fundraising, and I can assure you that every elected official finds this necessity to be most unpleasant part of holding public office.

I do not offer the evident culpability of MBM in mitigation of my own. Nor do I offer the nagging necessity for political fundraising as an excuse for my conduct. However, it is fatuous to suppose that elected officials, having burdensome financial commitments to the political process, can continually be exposed to the fat cat wheeler-dealers without some injury being done to the cause of good government. In the face of such an unholy wedding of conditions, the wonder is that it happens with such infrequency. I predict that unless the important remedial legislation proposed by this commission is combined with a comprehensive plan for the public financing of political campaigns, your successors will be here 10 or 15 years hence attempting to remedy new ills produced in large measure by the same old causes.1

The detrimental effect of candidates' need for and reliance on large political contributions is not limited to cases of corruption, however. Testimony offered to the Commission by Representative Barney Frank revealed the pressures created by the acceptance of sizeable contributions:

Some of my colleagues say, "You are influenced by political contributions?" Of course I am. If I come back to my desk from lunch five minutes before I have to leave and there are two people who have worked very hard on my campaign and someone who gave me $300 or $400 a year and there are a couple of people I would call, they are among the people who get my priorities.
Most people get involved with paying back campaign contributions and those are the people who will be liberated by a public financing system from those kinds of influence.2

This sentiment was expressed by many legislators in conversation with Commission staff.

The evidence concerning the disposition of building contracts by executive, legislative and county officials represents one end, then, of a continuum linking campaign contributions to the performance of governmental acts. As Representative Philip Johnston stated in testimony before the Commission:

[Under our current system of financing campaigns, candidates must be responsive to large contributors if they wish to be elected. Once elected, office holders must be responsive to important donors if they wish to be re-elected. One need not be a professional politician to be aware of the fact that most large contributors do not give to candidates out of any idealistic concern for good government. They give for a simple and obvious reason: they expect something in return. Too often, the agreement of reciprocity involves contracts.]

Examples of the Commission's findings, set in this context, should speak for themselves. Each example below is discussed in greater length in Section 7 of this report.

**Policies Concerning Disposition of Contracts**

The Commission heard in public testimony and found supporting documentation indicating that during the Peabody, Volpe and Sargent administrations contracts were dispensed to whose who made campaign contributions.

- Sherwood Tarlow, chief fundraiser for Governor Endicott Peabody (1963-4), testified that the Peabody administration approached architects and engineers interested in state contracts for political contributions. A fundraising scheme employed to this end involved having designers meet the Governor in a suite of rooms at the Statler Hilton Hotel, where they pledged to make contributions in exchange for consideration in the award of design contracts. Tarlow and Secretary for Administration and Finance William Waldron further testified that such firms would receive contracts unless the Bureau of Building Construction determined that they were unqualified, a determination rarely ever made.

- Frank Masiello testified that before making any contributions to the campaign of Governor John Volpe, beginning in 1964, he met with Albert "Toots" Manzi, Volpe's Worcester County Coordinator. At that meeting Manzi allegedly agreed that if Masiello supported the Volpe campaign financially, he would receive additional state contracts from the Volpe administration. Masiello further testified that he made the requested contributions and his design firm did, in fact, receive such contracts.

- Victor Zuchero, Executive Finance Director for two of Governor Francis Sargent's gubernatorial campaigns, testified in some detail about fundraising activities during Sargent's administration (1969-1974). He testified that the names of finalists nominated by the Designer Selection Board for state contracts were routinely sent to the fund-raising office to ascertain whether they were contributors and that the names were automatically added to a mailing list soliciting contributions. He also testified that political contributors would contact him by telephone or in meetings to indicate that they were under consideration for a contract and to ask Zuchero to "out in a good word for them."

These activities were by no means limited to state government. The Commission found similar solicitation patterns at the county and city level.

- In Suffolk County, Robert Vey, former director of the Boston Public Facilities Department (PFD), according to testimony before the Commission, solicited contributions from contractors and architects doing business with the department. His secretary, Patricia Vandenough, testified to the regularity
with which these individuals met with Vey at his fundraising office in the First National Bank Building.

In an affidavit, Michael Saola, a contractor, stated that he was summoned to Vey’s office in 1974 and was asked by Vey to make a contribution to Mayor Kevin White. Saola refused to give more than $200, which Vey considered to be little given the amount of work which Saola did for the City. Saola understood that his subsequent inability to obtain city contracts, even on those projects for which he was low bidder, was due to his refusal to contribute heavily.

**Quid Pro Quo Agreements**

The Commission found that in many cases contributions were made to elected officials in exchange for specific building projects rather than general consideration in the award process. Frank Masiello’s testimony before the Commission detailed the frequency with which this technique was employed prior to 1968. The following stories of the award of contracts for Holyoke Community College and the Springfield Mental Health Center provide examples of such abuses after that date.

- According to Frank Masiello, in 1968 Albert Manzi asked the design firm of Daniel, Mann, Johnson and Mendenhall (DMJM) to make a political contribution of $70,000 to $80,000 in order to obtain a contract to design a new campus for Holyoke Community College. Mr. Manzi informed DMJM that it would not receive the contract without making a political contribution. In return, Manzi would ensure that DMJM would be selected as the designer for the project as long as it was nominated as a finalist by the Designer Selection Board.

As of November 1972, DMJM had received approximately $925,000 in fees from the Commonwealth for work on the Holyoke Community College project. The Commission has determined that the firm’s payments to Manzi totalled between $36,000 and $43,000; and further, that $6,000 of this money was deposited in the Sargent Reception Committee Account at the Guaranty Bank and Trust Company in Worcester.

- William Masiello testified that he arranged in 1974 to acquire a design contract for the Springfield Mental Health Center after agreeing with Lieutenant Governor Donald Dwight to make a contribution. Masiello testified that at a meeting in Dwight’s office at the State House, he and Dwight settled on a payment of $2,000 in cash, with more forthcoming once the project was under way. On Election Day, November 5, 1974, Masiello generated $2,000 in cash. He testified that on the same day, he went to Dwight’s office and handed him the $2,000 in an envelope.

Although the Springfield Mental Health Center was never constructed, Masiello’s firm did the preliminary design work and received approximately $88,000 of the anticipated design fees for the project.

The Commission’s investigations reveal similar cases on the county level. One such instance involved the award by Essex County of contracts to Project Construction Management, Inc. (PCM). The importance of political contributions to the award of this contract was clear from the testimony. The firm had two principals, Daniel Shields and William Harding, but no staff. All the work under PCM contracts was, in fact, to be done by another firm.

- Daniel Shields and William Harding testified that in 1974 they agreed to pay Essex County Commissioner Daniel J. Burke $25,000 for his assistance in soliciting contracts for construction management. Although all of the work was to be done by Slaydek Construction Services, PCM was to receive 40 percent of the proceeds.

The Commission has documentary evidence that $7,000 was given by PCM to Daniel Burke, $5,000 of which was deposited in Burke’s campaign account. Although they subsequently were declared invalid by the courts, contracts worth hundreds of thousands of dollars were awarded to PCM by the Essex County Commissioners.
Fundraising Activities as Means of Exercising Influence

Sometimes the quid pro quo was not just a matter of exchanging a specific contribution for a specific contract. On the state level, for example, Frank Masiello was involved in the previously mentioned solicitation scheme under Governor Peabody's administration and in fundraising activities for Governor Volpe, in an effort to further increase his chances of receiving design contracts. William Masiello engaged in fundraising in Suffolk County for Kevin White and considered his success to be part of the exchange in an unspoken quid pro quo agreement.

William Masiello testified before the Commission that in 1970 he conducted extensive fundraising for Kevin White's gubernatorial campaign. According to Masiello, he raised and contributed some $8,000-10,000 to White, including personal funds and money solicited from his consultants and professional acquaintances. Shortly thereafter, Masiello was awarded the design contract for the Dudley-Harrison Fire Station.

Masiello continued to raise money for White's campaigns. He testified that between 1973 and 1976 he raised somewhere between $10,000 and $20,000 for this purpose. His firm received contracts during this period to do planning and design work on the Charles Street Jail and Deer Island Correctional Facility projects for the City of Boston, for fees totalling over $300,000.

Influence in Areas Other Than Contract Awards

In the course of the Commission's investigation into the award of building contracts, it found other, although related areas of the political system in which money bought influence. The cases of Senators DiCarlo, MacKenzie and Kelly illustrate ways in which the legislature's committee and hearing system; the process of sponsoring, lobbying and voting for legislation; and procedures involved in formulating the budget can be subverted by private campaign contributions.

Senators DiCarlo and MacKenzie admitted before the Commission that they accepted money from the design firm of McKee-Berger-Mansueto (MBM) to alter the report of a legislative committee chaired by DiCarlo in 1971 that was charged with investigating MBM's UMass Boston contract. Interviews with witnesses and a copy of the document indicate that an early draft of the report called for MBM's services on the UMass project to be terminated in December, 1972. Had that happened, MBM would have lost well over one million dollars in fees.

As mentioned earlier, Senator MacKenzie testified that he first became involved with the MBM report at the urging of his largest campaign contributor, William Harding. At the time Harding was employed by a company in the process of merging with MBM.

In 1973 Harding convinced MacKenzie to file legislation which permitted counties to hire outside project management firms. Such statutory authority appeared necessary in order for companies like Harding's to benefit from the substantial construction projects which Essex County was planning at that time. MacKenzie's bill was enacted during the 1973 legislative session.

William Masiello testified that he aided Senator James Kelly, Chair of the Senate Ways and Means Committee from 1971-1975, with political fundraising in return for help in obtaining and holding on to state work. In addition to the monthly payments mentioned earlier, William Masiello engaged in fundraising for Kevin White at the request of Senator Kelly, and for Kelly's own needs. These funds came primarily from consultants and suppliers working on Masiello's state and county building contracts.

In return, Masiello testified, he had free access to Senator Kelly, and to the power of the Chair's office in Senate Ways and Means. Masiello used this relationship to influence designer selection, to pressure state officials
supervising projects, to expedite a variety of bureaucratic problems, to appropriate money for Masiello projects, and to increase the authorized costs of construction on Masiello jobs and thus raise the designer’s fees. For example, several millions of dollars were added for Masiello’s MCI-Concord project by Senate Ways and Means during Kelly’s tenure as Chair; and, on the Masiello Gentile school project, an increase in the estimated cost of construction from $5,500,000 to $13,700,000 affected through Kelly’s office. This meant an increase of at least $250,000 in designer’s fees.

The pattern of improper influence on the political process exerted by large contributions described above is implicit in any system that relies predominantly on private contributions. The Commission has made an extensive study of campaign costs and expenditures which is discussed in the following pages. This study has, in fact, confirmed the extraordinary impact of vast sums of money and large contributions on political campaigns. The discussion that follows shows how costly it is to run for public office and reveals a trend of escalating campaign costs that outpace inflation. It also demonstrates the importance of single large contributions in financing campaigns for legislative as well as statewide office. Finally, it discloses the role played by special interest groups in generating a disproportionate number of such contributions.

B. SUMMARY OF CONCLUSIONS FROM THE COMMISSION’S REVIEW OF CAMPAIGN FUND-RAISING REPORTS

The Commission has conducted a systematic study of the financing of political campaigns in Massachusetts over the past ten years. Commission investigators examined the financial disclosure reports of hundreds of candidates for statewide and legislative office on file with the Office of Campaign and Political Finance. The principal findings which are discussed in the sections that follow may be summarized as follows:

1. During the period studied by the Commission, the cost of running for office has escalated at a rate greatly in excess of inflation. In some cases, the increases outstrip inflation by a factor of two or three.

- Gubernatorial candidates in the 1970 Democratic primary spent an average of $123,000. In 1978 the average amount for the principal contenders was $225,000, an increase of 146%.

- During the same time period, average expenditures by candidates for treasurer increased by 200%, average expenditures by candidates for state representative increased by 198%, and average expenditures by candidates for state senator increased by 197%.

2. Legislative candidates, particularly those legislators occupying positions as chairpersons of committees or other positions of leadership and influence, raise large sums of money even in non-election years.

- Legislative candidates who were either committee chairpeople or who held official leadership positions raised almost as much in the non-election year of 1979 as they did in the previous election year. For all legislative candidates surveyed, the amount raised in 1979 comprised 78% of the amount raised in 1978.

3. Legislative candidates who occupy influential positions—either as committee chairpeople or as members of the official leadership—not only
receive much more in contributions than other candidates, they also receive more large contributions.

- In 1978 these candidates received about twice as many contributions of $500 or more and three to four times as many contributions of $100 or more as other legislative candidates.

4. Not only are candidates under pressure to raise large sums of money for their campaigns, but they tend to raise those sums in the form of large contributions from single contributors.

- Single contributions of $500 or more comprised nearly 50% of the money given to candidates for Governor in 1978.
- Between 20% and 30% of the funds raised by other candidates for statewide office took the form of contributions of $500 or more.
- Candidates for State Senator raised over 67% of their contributions in single contributions of $100 or more. Nearly 50% of the contributions to candidates for State Representative were in amounts of $100 or more.

5. Contributions by special interest groups represent a substantial factor in political campaigns.

- In the period from 1978 to 1980, the aggregate amount of such contributions comprised between 10% and 20% of all contributions to the legislators surveyed. For certain legislators, particularly those holding positions of influence, the percentage approached 40% to 50%.

6. Special interest groups exert a far greater impact on campaigns than the amounts they contribute suggest, because they invariably make large contributions. This is true for all legislators surveyed, but particularly so for influential legislators.

- 30% of all contributions of $1000 or more received by influential legislators in 1978 came from special interest groups. On the average, over 40%, and in particular instances as much as 60%, of all single contributions of $250 or more came from special interest groups.

7. Although many special interest groups make contributions to candidates, far less than half of such groups are required to systematically report their campaign activities by Massachusetts law. Similarly, groups that do not report give large single contributions almost as frequently (and on occasion more so) than those that report.

- From a survey of only a small sample of legislative candidates, the Commission found over 190 such groups which do not report. The total number of such groups which do report is only about 110. The actual number of special interest groups which do not report is probably several times larger.

C. ANALYSIS OF DATA FROM COMMISSION'S REVIEW OF CAMPAIGN FUND-RAISING REPORTS

Introduction (See Table A)

It is a fact of political life that substantial amounts of money are raised by candidates for elective office. Studies performed by the Commission have yielded figures for the cost of running for office in 1978. The average cost of campaigning for statewide office in that year by the opponents in the general election broke down as follows: Governor, $1,477,050; Lieutenant Governor, $125,079; Attorney General, $385,055; Secretary of State, $81,977; State
Treasurer: $165,716; and State Auditor, $42,198. The average cost of campaigning for the office of State Representative in 1978 was $7,630; for State Senator the figure was $14,425. These figures, as well as the available figures from 1970 and 1974 are included in Table A. Columns 4 & 5 of Table A show increases in the cost of running for office which generally far exceed increases due to inflation as shown by the Consumer Price Index. The reasons for the frequent large jumps and the occasional modest increases relate to the special characteristics of the races held in each of the years. Those characteristics are discussed in the comments following Table A.

**Campaign Fundraising: Non-Election Year**

The Commission found a significant amount of campaign finance activity in the non-election year of 1979. The legislative candidates studied in the Commission's sample received contributions in 1979, the non-election year, totalling nearly 78% of the amount they received in 1978, the election year.*

Equally striking was the finding that candidates who were chairpersons of committees or who held official leadership positions received almost the same amount in contributions in the non-election year, whereas other candidates received only a tiny fraction of the corresponding amounts.**

* Correspondingly, those candidates spent in 1979 an amount equal to at least 55% of the amount spent in the 1978 election year.

** On the expenditure side, candidates who were committee chairpersons or who held official leadership positions spent in the non-election year an amount equal to two-thirds of what they spent in the election year. Others spent only very small amounts in the non-election year.
### TABLE A(1)

**CAMPAIGN EXPENDITURES, 1970-1978**

<table>
<thead>
<tr>
<th>Office</th>
<th>1970</th>
<th>1974</th>
<th>1978</th>
<th>% Increase</th>
<th>CPI</th>
</tr>
</thead>
<tbody>
<tr>
<td>GOVERNOR</td>
<td>213,000(2)</td>
<td>-</td>
<td>523,000(2)</td>
<td>146.1</td>
<td>.68</td>
</tr>
<tr>
<td></td>
<td>- 1,023,492</td>
<td>1,477,050</td>
<td></td>
<td>44.6</td>
<td>32.3</td>
</tr>
<tr>
<td>LT. GOVERNOR(3)</td>
<td>172,720</td>
<td>-</td>
<td>225,079(4)</td>
<td>30.3</td>
<td>68.0</td>
</tr>
<tr>
<td></td>
<td>- 168,215(4)</td>
<td>225,079(4)</td>
<td></td>
<td>34.0</td>
<td>32.3</td>
</tr>
<tr>
<td>ATTORNEY GENERAL</td>
<td>153,000</td>
<td>- 385,055</td>
<td>385,055</td>
<td>151.7</td>
<td>68.0</td>
</tr>
<tr>
<td></td>
<td>- 352,483</td>
<td>385,055</td>
<td></td>
<td>10.9</td>
<td>32.3</td>
</tr>
<tr>
<td>SECRETARY OF STATE</td>
<td>62,000</td>
<td>- 81,977</td>
<td>81,977</td>
<td>38.7</td>
<td>68.0</td>
</tr>
<tr>
<td>STATE TREASURER</td>
<td>24,472</td>
<td>- 165,716</td>
<td>165,716</td>
<td>577.2</td>
<td>68.0</td>
</tr>
<tr>
<td>STATE AUDITOR</td>
<td>9,049</td>
<td>- 42,198</td>
<td>42,198</td>
<td>366.3</td>
<td>68.0</td>
</tr>
<tr>
<td>STATE SENATOR</td>
<td>5,610(5)</td>
<td>- 14,425(5)</td>
<td>14,425(5)</td>
<td>157.1</td>
<td>68.0</td>
</tr>
<tr>
<td>STATE REP.</td>
<td>2,560(5)</td>
<td>- 7,630(5)</td>
<td>7,630(5)</td>
<td>198.5</td>
<td>68.0</td>
</tr>
</tbody>
</table>

(1) All figures other than those for 1970 were obtained by Commission investigators from the records of the Office of Campaign and Political Finance. Figures from 1970 were obtained from Guy Chandler Clifford, *Financing State Electoral Campaigns in Massachusetts in 1970: The Case for Reform*, University of Massachusetts Ph.D. Thesis, 1975, Xerox University Microfilms, Ann Arbor, Michigan.

(2) Average of expenditures in the primary for the principal contenders in the Democratic primary.

(3) Note that candidates for Lieutenant Governor campaign independently in primary; in the general election they are paired as a team with the party's gubernatorial candidate.

(4) Figure for principal contender.

(5) Figures based on average of sample of all candidates for this legislative office.


**NOTE:** Unless otherwise specified the expenditure figures for statewide offices represent the average of expenditures for the entire campaign of the two opponents in the general election.
Figures pertaining to the 1970 race for Governor are skewed because the campaign was marked by enormous expenditures by one candidate, Francis W. Sargent, who spent over $2,000,000. However, the four principal contenders in the Democratic primary spent an average of $213,000. Average expenditures in that primary in 1978 represented a 148% increase over that amount. In 1974 the two opponents in the general election spent an average of $1,023,492, on their entire campaigns. The 1978 figures represent a 45% increase. As Table A shows, the Consumer Price Index increased by only 68% from 1970 to 1978 and by only 32% from 1974 to 1978.

Lieutenant Governor

There was only one principal contender in 1974 and 1978 and the increase in campaign costs was great. The change from 1970 to 1974 was more limited, but this may reflect the fact that in 1970 there was a vacancy in the Lieutenant Governor's office so that especially expensive campaigns were mounted by candidates for Lieutenant Governor.

Attorney General

There was no opposition in the primaries in the race for Attorney General in 1970 and in 1978. Expenditures in the latter year represented an increase over 1970 costs of 152%. The increase from 1974 to 1978 was modest, but in 1974 there were six contenders in the Democratic primary and three in the Republican primary. The losers spent $790,000 in addition to what the winners devoted to their campaigns. Therefore, if there had been opposition in 1978, the aggregate figures for all candidates and the averages for winners of the primary would likely have shown a dramatic jump over the corresponding 1974 figures.

Secretary of State

Although the two contenders in 1970 were unopposed in their respective primaries the challenger mounted one of the strongest campaigns of any candidates from her party that year. By contrast in 1978, there were seven competitors in the Democratic primary. Thus, although the average for the two opponents in the general election in 1978 was only about 82,000, three of the losing primary contestants spent about $156,000, $117,000, and $98,000, respectively, on the average far above the amount spent by either candidate in the 1970 campaign.

State Treasurer

The enormous increase is in part attributable to the fact that in 1970 the candidates were unopposed in their respective primaries, whereas in 1978 there were six hopefuls in the Democratic primary. All contenders in 1978 spent about
$530,000 in the aggregate, an average of about $76,000 apiece, representing an increase of 200% over to 1970. Even more dramatic were the expenditures by three of the contenders in 1978: $199,850, $173,974, and $131,581, respectively.

State Auditor

Neither candidate in the 1970 general election was opposed in the primaries and the challenge in the general election was weak. In 1978 there was opposition in the Democratic primary. Indeed, the loser in that primary outspent the winner, $128,000 to $82,000. Thus, to some degree the enormous rise in costs may be attributable to increased opposition in the primary.

Legislative Offices

The amounts required to mount legislative campaigns rose markedly between 1970 and 1978. A candidate for State Representative in 1970 spent on the average about $2,560. By 1978, the figure was $7,630, an increase of 198%.* Similarly, a candidate for State Senator in 1970 expended on the average about $5,610, whereas in 1978 the amount was $14,425, an increase of about 157%.*

The current pattern suggests a continuing increase in the costs of legislative campaigns even though data for purposes of comparison were available for 1980 only for expenditures prior to the general election. If corresponding periods in 1978 and 1980 are compared, then the amount spent by those in official leadership positions increased an average of 38.1% whereas the consumer price index increased by 26.7% in the same time period.

A small sample of those who were neither chairpersons of committees nor holders of official leadership positions showed a 22.0% increase in spending. Only for candidates who were chairpersons was there a drop in expenditures, approximately 6.0%. This decrease may be attributable to the fact that on the average such candidates faced less opposition in 1978 than they did in 1980.

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* Individual campaigns ranged from the very inexpensive to extremely costly. For Representatives in 1978, the range was from below $1,000 to nearly $51,000; for Senators, from below $1,000 to nearly $62,000. The median cost of a State Representative campaign jumped from $1,840 in 1970 to about $6,000 in 1978, an increase of about 225%.

** The median in 1970 was about $3,840; in 1978, it was $8,660, an increase of 126%.
The Importance of Raising Large Single Contributions (See Tables B and C)

Not only are candidates under pressure to raise large sums of money for their campaigns, but they are pressured to meet that need by obtaining large contributions from single contributors. This pattern is reviewed in Table B and the accompanying comments. The essential conclusion of the data is that large contributions (those of $500 or more) play a significant role in most campaigns for statewide offices, particularly the governorship, representing generally from 20% to 50% of the aggregate value of all contributions.*

There is a similar pattern of large contributions in legislative races. The word "large" has a different meaning in this context because an individual Senator or Representative must reach on the average only 1/40th or 1/160th, respectively, of the number of voters that a statewide candidate must reach. Moreover, in 1978 the average amount of contributions to an individual Senator or Representative was $17,500 and $5,900, respectively, whereas the average amount given to the two principal contenders for Governor was about $1,200,000. Thus, legislative candidates must reach only 1/100th as many voters and raise only about 1/100th as much money as gubernatorial candidates.

However, as shown in Table C, the Commission found that significant sums of money were raised by legislative candidates in amounts larger than $100. Candidates for Senator received about 67% of the total value of all contributions in such amounts; candidates for Representative, nearly 50%. Substantial amounts were also raised in contributions of $250 or more and, on occasion, $500 or more.

The importance of large single contributions is even greater in the case of candidates who hold committee chairs and official leadership positions. An analysis of the 1978** election shows that such a candidate was 2-1/2 times more likely to receive a contribution of $1,000 or more, more than 2 times as likely to receive one between $500 and $999, 1-1/2 times more likely to receive one between $250 and $499, and 4-1/2 times more likely to receive one between $100 and $249 than was a candidate in the non-influential group.

* The Commission did not make any systematic inquiry into campaign contributions to candidates in local elections. However, in the course of its work the Commission did analyze contributions to and expenditures by one mayoral candidate in 1979. The Commission found that in that year the candidate received 398 single contributions of $1,000 or more and 362 between $500 and $999. These contributions represented approximately 60.4% of the total of $1,155,987 raised by the candidate, a fraction greater than that for any candidate for statewide or legislative office in 1978. Expenditures by the candidate were $1,230,309, a sum greater than that for any candidate in 1978 other than the winner of the gubernatorial election.

** Based on a sample of 16 committee chairpersons and 7 people holding official leadership positions.
Impact of Special Interest Groups: Aggregate Contributions

Contributors with access to large sums of money can play a significant role in financing candidates' campaigns. The Commission has found that monies from special interest groups represent a substantial factor in campaigns. This is true with regard to both the total amount raised and the amount raised in large single contributions.

A study of contributions to legislative candidates in 1978, 1979, and 1980 shows that on the average over 13.4% of all monies came from interest groups. The figure for the off-election year of 1979 was even higher, at 17.2%. The actual impact of such funds is actually much greater on committee chairpeople and those holding official leadership positions.

In the time period noted, the entire group received 13.9% of their contributions from interest groups; those holding official leadership positions garnered 18.9% from such groups. For particular legislators, of course, the figures were higher. One influential legislator obtained an average 34.9% of all his contributions from interest groups for 1978-80; in 1979 it was even higher, namely, 51.9%.

Impact of Special Interest Groups: Large Single Contributions

The description so far understates the importance of special interest contributions because it is the size of a particular contribution which makes it significant in the eyes of a candidate. It is clear from the Commission's inquiry that special interest group support invariably takes the form of large single contributions.

Over the period from 1978 to 1980, 30.5% of all contributions of $1,000 or more to committee chairpersons were from interest groups. For the $500 to $999 range the figure was 40.4% and for the $250 to $499 category it was 47.2%. In 1978 and 1979, 57.1% and 61.5%, respectively, of contributions between $250 and $499 were from special interest groups.

Impact of Special Interest Groups: Influential Legislators

A similar pattern emerges with respect to candidates holding official leadership positions, with even larger proportions of special interest contributions in the higher dollar categories.

- For 1978 and 1980, such candidates received 59.4% of single contributions of $1,000 or more from interest groups. For the $500 to $999 range the figure was 22.7%.

* The study for 1980 includes all campaign finance activity as reported before the general election.
** For those in neither category the figure was 10.4%.
*** Only 11.6% of contributions to chairpersons were in the $100 to $249 range and 0.2% under $100.
And even though it is true that non-influential candidates typically receive fewer contributions from special interest groups, such contributions represent a significant fraction of the large ones.

- For such candidates, the figures were: $1,000+ range, 16.7%; $500 to $999 range, 27.7%; and $250 to $499 range, 29.8%.
TABLE B

THE IMPACT OF LARGE CONTRIBUTIONS

IN 1978:

STATEWIDE CANDIDATES

% of Dollar Value of All Contributions in the Form of Single Contributions

<table>
<thead>
<tr>
<th>Office</th>
<th>Between $500 and $999</th>
<th>$1,000 or More</th>
<th>TOTAL $500 or More</th>
</tr>
</thead>
<tbody>
<tr>
<td>GOVERNOR</td>
<td>25.8%</td>
<td>21.7%</td>
<td>47.5%</td>
</tr>
<tr>
<td>LIEUTENANT GOVERNOR</td>
<td>17.4%</td>
<td>10.0%</td>
<td>27.4%</td>
</tr>
<tr>
<td>ATTORNEY GENERAL</td>
<td>15.0%</td>
<td>7.7%</td>
<td>22.7%</td>
</tr>
<tr>
<td>SECRETARY OF STATE</td>
<td>17.5%</td>
<td>13.4%</td>
<td>30.9%</td>
</tr>
<tr>
<td>STATE TREASURER</td>
<td>17.9%</td>
<td>10.8%</td>
<td>28.7%</td>
</tr>
<tr>
<td>STATE AUDITOR</td>
<td>4.5%</td>
<td>3.1%</td>
<td>7.6%</td>
</tr>
</tbody>
</table>
COMMENTS ON TABLE 9

Governor

In 1978, all candidates for Governor raised over 47% of their total contributions from single contributions of $500 or more. Nearly 22% of involved single contributions of $1000 or more.

Lieutenant Governor

Candidates for this office received over 38% of their campaign contributions from single contributions of $500 or more. One candidate obtained over 72% of his funds from such contributions.

Attorney General

In 1978, 22.7% of the dollar value of all contributions were in the form of contributions of $500 or more.

Secretary of State

The figure for contributions of $500 or more was 30.9%. One major candidate received 37.7% in contributions of $500 or more; another 36.2%.

State Treasurer

Three of the candidates had 34.2%, 32.2% and 31.7% of their contributions in amounts of $500 or more.

State Auditor

Only for the State Auditor's campaign were large contributions of limited significance in 1978. This may reflect the limited opposition in the campaign.
TABLE C

THE IMPACT OF LARGE CONTRIBUTIONS

IN 1978:

LEGISLATIVE CANDIDATES

% of Dollar Value

Of All Contributions in the
Form of Single Contributions

<table>
<thead>
<tr>
<th></th>
<th>State Senator</th>
<th>State Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100 to $249</td>
<td>45.2%</td>
<td>31.3%</td>
</tr>
<tr>
<td>$250 to $499</td>
<td>9.3%</td>
<td>7.8%</td>
</tr>
<tr>
<td>$500 to $999</td>
<td>9.7%</td>
<td>6.6%</td>
</tr>
<tr>
<td>$1,000 or more</td>
<td>3.2%</td>
<td>2.5%</td>
</tr>
</tbody>
</table>

TOTAL: $100 or more 67.4% 48.2%
Impact of Special Interest Groups Not Reporting As Political Committees (See Table D)

Even though special interest groups make substantial contributions to political campaigns and tend to make the largest single contributions, all such groups are not subject to the same regulations and reporting requirements.

An entity termed a "political committee" is defined by Massachusetts law. Such an entity is required to register with and report to the Office of Campaign and Political Finance its contributions and expenditures. Corporations are banned from contributing directly or indirectly to candidates or their political committees. However, there are few restrictions on other entities such as non-corporate businesses, trade associations, professional associations, or labor organizations.

The Commission's inquiry into the records of candidates at the Office of Campaign and Political Finance revealed several important facts: (a) that groups which are treated by the Office as being "political committees" under the Massachusetts law represent only a fraction of the special interest groups which contribute to candidates' campaigns; (b) the amount of money contributed by such groups is at least as great, and may even exceed by a substantial sum the amount contributed by groups treated as political committees; and (c) large single contributions from such groups are at least as frequent and important as those from groups treated as political committees.

As shown in Table D, the data from the Office of Campaign and Political Finance show a total of 111 groups which registered as political committees. Broadly speaking, these groups are primarily partisan, non-partisan, special issue, and business groups. Groups not treated as political committees do not register, and there is no simple or direct way to determine their number or impact. It is necessary to analyze contributions to candidates and their political committees since contributors, including group contributors, must be identified in reports by individual candidates and their campaign committees. A sample of 38 legislative candidates revealed a total of 194 group contributors which are not registered as political committees. These are primarily government employee and non-governmental employees groups, partisan, business, and special interest groups.

Non-registered groups give contributions aggregating roughly the same amount as groups registered as political committees. The relative weight of large single contributions is typically as great as, and on occasion larger than, that for registered groups. If the number and value of contributions were scaled up in proportion to the universe studied, the number of non-registered groups and the aggregate value of contributions would have been considerably larger.
<table>
<thead>
<tr>
<th>TYPE OF GROUP</th>
<th>NOT REGISTERED AS POLITICAL COMMITTEES(2)</th>
<th>REGISTERED AS POLITICAL COMMITTEES(1)</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>PARTISAN</td>
<td>27 (13.9%)</td>
<td>27 (24.31%)</td>
<td>54 (17.7%)</td>
</tr>
<tr>
<td>NON-PARTISAN</td>
<td>4 (2.1%)</td>
<td>15 (13.5%)</td>
<td>19 (6.2%)</td>
</tr>
<tr>
<td>BUSINESS</td>
<td>16 (8.2%)</td>
<td>25 (22.5%)</td>
<td>41 (13.4%)</td>
</tr>
<tr>
<td>TRADE GROUP</td>
<td>8 (4.1%)</td>
<td>5 (4.5%)</td>
<td>13 (4.3%)</td>
</tr>
<tr>
<td>PROFESSIONAL</td>
<td>3 (1.5%)</td>
<td>8 (7.2%)</td>
<td>11 (3.6%)</td>
</tr>
<tr>
<td>GOVERNMENT EMPLOYEE</td>
<td>42 (21.7%)</td>
<td>6 (5.4%)</td>
<td>48 (15.7%)</td>
</tr>
<tr>
<td>LABOR (NON-GOVERNMENT EMPLOYEE)</td>
<td>83 (46.6%)</td>
<td>9 (8.1%)</td>
<td>92 (30.2%)</td>
</tr>
<tr>
<td>SPECIAL ISSUE</td>
<td>11 (5.7%)</td>
<td>16 (14.5%)</td>
<td>27 (8.9%)</td>
</tr>
</tbody>
</table>

194 (100.0%)  111 (100.0%)  305 (100.0%)  

(1) This represents essentially all groups registered as political committees.  
(2) This represents all groups not registered as political committees found among contributors to sample of 38 legislative candidates from 1978-80.
II. FINDINGS ON THE FAILURE OF THE EXISTING SYSTEM TO ENFORCE CAMPAIGN FINANCE LAWS

Section I of this report focuses on the connection between the existing campaign finance system and the exercise of undue influence by contributors in the governmental decision-making process. This section describes two failures of the laws designed to curtail abuses of the system. Laws prohibiting contributions from corporate sources, limiting the maximum size of certain contributions, restricting cash contributions, requiring special interest groups to report contributions and political expenditures, and requiring the proper identification of contributors have not been fully implemented and enforced.

A. VIOLATIONS OF PROVISIONS FOR REPORTING CONTRIBUTIONS

Concealed Corporate Contributions

Many abuses cited in Section IA were carried out in violation of existing laws. In some cases, corporate checks were made directly payable to a political figure in violation of laws prohibiting corporate contributions to candidates.8 In others, corporate contributions were made indirectly, again in violation of the prohibition against corporate contributions and the requirement that contributions be made in the name of the true donor.9 Some of these contributions also violated laws restricting the size of cash contributions and requiring the disclosure of contributions in excess of $25 ($15 in the case of a legislative candidate).10

Most of these techniques were employed to hide the true source of the corporate contributions made to public officials. Contributors avoided disclosure of their contributions in some cases by making corporate checks payable to an employee or other intermediary, who then wrote his or her own personal check to a political figure. In other instances, the names of individuals who were not the actual contributors were illegally listed as such on the candidates records. More often, however, contributions were made in the form of cash contributed directly by businesspeople or generated from corporate checks. Such expenses may have been listed in the corporation's books as employee bonuses or expense account reimbursements. Corporate contributions made in-kind, in the form of printing or other services, like such cash contributions, completely circumvented the disclosure system.

Even under a system which greatly reduces the importance of large private contributions such as the Commission has proposed, the need to prevent such abuses will not vanish. A certain number of contributors and candidates will be susceptible to corruption under almost any system. Therefore, the importance of enforcing the campaign finance laws should not be minimized. Moreover, the purpose of these laws is not only to prevent and expose illegality. Disclosure
laws were enacted in large part to let political opponents and the general public know who is contributing to a particular campaign and how a candidate is expending campaign funds. The Commission believes that these laws are capable of serving their intended purposes given an agency able and willing to administer and enforce them. The Office of Campaign and Political Finance was created to perform that function.

Inadequacy of Existing Disclosure Reports

The Commission's investigation of the disclosure reports filed by statewide and legislative candidates and their committees has revealed a haphazard and disorganized system. 11 Because reports were frequently not submitted when due, many were unavailable for examination by Commission investigators. Of the 835 reports required to be filed by candidates and political committees prior to the 1980 primary more than a third (298) were not filed on time. More than one quarter of the reports examined by Commission investigators were incomplete. Addresses of contributors were often listed as "unknown". Many reports were undated, and in some cases initial and final balances were omitted.

The investigators found many illegalities and inconsistencies in the reports. Many reports contained errors in arithmetic, some involving amounts as high as $500 to $1,000. Contributions to candidates reported by groups registered as political committees were often not listed on candidates' reports, and vice versa. In a number of cases, a candidate's political committee reported contributing more than $100 to another candidate's political committee in violation of c.55, s.6. Investigators found illegal corporate contributions which had gone unnoticed.

B. ROLE OF THE OFFICE OF CAMPAIGN AND POLITICAL FINANCE

The Commission has concluded, on the basis of its investigation,* that the record keeping and auditing functions assigned by Chapter 1173 of the Acts of 1973 to the Office of Campaign and Political Finance are not being adequately performed. Under c.55, s.3, the Office is charged with the responsibility to make reports available to the public; to investigate the "legality, validity, completeness and accuracy" of the reports required to be filed and actions to be taken by candidates and others under the campaign finance laws; to hold hearings concerning alleged violations; and to present evidence of violations to the

* During most of the 2 1/2 years of the Commission's existence, Commission staff have been involved in working at the Office of Campaign and Political Finance. During one period of several months three Commission investigators worked at the Office for 4 to 5 days a week. They examined reports filed by several hundred candidates and political committees concerning thousands of contributions and expenditures. The discussion that follows is based in large part on their observations and experiences.
Attorney General. In fact, the Office is not performing many of these functions and is performing others in a perfunctory manner.

**Deficiencies of the Office as a Record Keeping Agency**

The current Director of the Office has expressed his view to Commission staff that the principal role of his office is to act as record keeping agency. He believes that the law is and should be largely self-enforcing; the system depends on scrutiny of the records by interested parties who may detect and publicize irregularities in the records and on the voters who receive and act on such information. According to this view, the function of the Office is to obtain as complete financial disclosure as possible without interfering with the political process.

Yet, Commission investigators noted that the Office staff often had difficulty producing the records requested. They noted that the system for releasing records for public inspection is lax. The person requesting the records must fill out a slip stating his or her name and address, but is not required to produce identification to verify that information. When the files are returned, their contents are not checked to ensure that nothing has been removed or altered.

Furthermore, the deference with which the Office staff treats those responsible for filing reports has impaired the Office's ability to accomplish the limited goals it has set itself. The following incidents involving Commission investigators indicate the extent to which this attitude affects the Office's activities:

-- When asked by a Commission investigator about a single expenditure of $17,000, reported as a "general expenditure", a staff auditor replied, "Well, what about it? It doesn't seem especially high to me."

-- The response of Office staff to questions about the identity of an out-of-state political committee reported as contributing to a candidate's campaign and about a contribution reported as having been made to a non-candidate was to suggest that the Commission investigators find out for themselves.

-- A Commission Investigator noted that the records of a candidate who was a long-standing member of the legislature did not appear to make any sense. Dates and initial and final balances were missing from some; beginning and final balances on others did not correspond. The candidate had closed his campaign account and transferred the money to his personal account, but about $1,000 apparently disappeared in the transaction. The investigator went to the chief auditor and asked him to explain the records. At first he denied that anything was wrong. When she pointed out the discrepancies and omissions, the auditor told her that he would look into the matter. Later that day, she was approached by the candidate in question. He assured her that the $1,000 discrepancy she had discovered was merely "an accounting problem," and that they (presumably, the candidate and the auditor) had already "taken care of it."

-- On another occasion, a Commission investigator noted a corporate contribution listed on a candidate's report. She brought this to the attention of the auditor who initially challenged her assertion that it was a corporate contribution. When demonstrated that it was, he telephoned the candidate, another prominent legislator, and reported the problem, assured the candidate that there was probably nothing wrong, and asked him to look into the matter at his convenience.
In addition, the Office does little and probably can do little to enforce filing deadlines. For example, Commission investigators observed that candidates and treasurers who came into the Office and apologized for the late filing of their reports were told by Office staff not to worry about it. Currently, delinquent notices are sent to each candidate and committee not filing on time. Such notices were sent to more than one-third of the legislative candidates and committees after the 1980 primary. Sixty-six candidates and committees were sent final notices by certified mail 28 days after the mailing of the delinquent notices. Of these, 16 candidates and political committees were reported to the Attorney General after the election because they had still not filed primary reports.

Failure of the Office to Perform Auditing and Investigative Functions

The ineffectiveness of the Office in obtaining compliance with the law is even more apparent in those areas which the Office considers to be of lower priority than record keeping: namely, auditing and investigation. Although the Director is required by law to check candidates' records for accuracy and completeness within thirty days of filing, the records are not in fact checked until after the final report is filed on January 10 following the election. The Director and Deputy Director have described this check as involving examination of the completeness of the records and their arithmetical accuracy and a random check to determine whether listed contributors appear on street lists and in telephone directories. Commission investigators noted, however, that amended reports correcting inaccuracies were nearly always filed at the initiative of the campaign treasurer or candidate, rather than at the behest of the Office, casting doubt on the thoroughness of this review. Moreover, as already noted, the records are in many instances incomplete, contain arithmetical errors, and often do not list contributors' addresses.

While the Office asserts that problems discovered in the course of a routine check which require closer scrutiny are brought to the attention of the chief auditor, the Office's procedures are clearly inadequate to detect the existence of many problems. For example, no effort is made to ascertain whether a listed contributor has, in fact, made a contribution or whether the amounts of contributions and expenditures listed in the disclosure reports correspond with the candidate's or committee's bank records. For depository candidates' records, there is no attempt to check actual deposits against contributions listed by the candidate's committee, although the Director assumes that the bank does not audit these. Furthermore, no determination is made as to whether groups which have made contributions are or should be registered as political committees as required by c. 55, s. 5.
The Director has used his powers to summon campaign records and conduct investigative hearings only "a couple of times," by his own estimate, during his four years in office. In neither case has this led to a referral for prosecution to the Attorney General. The Commission's own findings indicate that this result is not due to candidates' and contributors' scrupulous compliance with the law. Rather, it reflects the lack of aggressive enforcement by the Office of Campaign and Political Finance.

Failure of the Office to Perform Its Advisory Role

A separate role assigned by statute to the Office is that of interpreting the requirements of the campaign finance laws as they affect candidates and contributors. This function is to be performed through the promulgation of rules, regulations, and advisory opinions. Because the Director has not issued rules and regulations, however, his interpretations of the law have been made primarily through such opinions.

Advisory opinions have frequently been sought concerning permissible expenditures by political committees other than those organized on behalf of a candidate for statewide office. Chapter 55, s. 6 allows such committees to expend campaign funds "for the enhancement of the political future of the candidate or the principle for which the committee was organized," but not "for the candidate's or any other person's personal use." Defining what constitutes enhancement of one's political future as opposed to one's personal use has proven difficult, underlining the importance of the Office's role in providing guidance in this area. In practice, however, such guidance has been minimal. The Director has told Commission staff that while he has refused to allow candidates to expend funds on such clearly personal items as clothing and haircuts, he believes that candidates should be allowed great leeway in determining what expenditures will enhance their political futures.* If the public takes issue with a candidate's expenditures, they will not make contributions to or vote for that candidate.

In keeping with this approach, the Director has offered the following advice to candidates inquiring about the legality of a particular expenditure.

-- In a letter of May 19, 1976, the Director responded to a question concerning the legality of spending campaign funds on a party for a candidate's campaign workers as follows:
   "...if the party was conducted in such a way as to enhance your chances of re-election, then the expense is proper provided your committee agrees it is a proper expense."

-- The Director similarly allowed a candidate to pay the expenses of a softball team named after him from his campaign account in a letter of June 14, 1977:
   "If your committee agrees that such an expenditure would enhance your political future, then it would be my opinion that the expenditure is proper."

* One candidate's records, however, indicated that he had purchased a suit and ring with his campaign funds.
In response to a query concerning the legitimacy of an expenditure to attend a convention, the Director stated, "I defer to your judgment since you are in a better position to make this decision than I." (Letter of July 12, 1976).

Lack of Accountability of Office

While the Commission supports the continued independence of the agency charged with overseeing the campaign finance laws, it is concerned about the Office's lack of accountability under existing practices. The only check on the activities of the Office is that provided by the Commission which appoints the Director. The Commission is composed of the State Secretary, the dean of a Massachusetts law school, and the chairs of the two major political parties. The Commission is empowered by c. 55, s. 3 to remove the Director, and, by implication, to monitor his performance. However, according to the Director, the Commission members have virtually no contact with his office. The position required to be filled by a law school dean has been vacant for a number of years. In practice, therefore, the office operates free of any oversight. As a result, it is difficult to bring any pressure to bear on the office to take a more aggressive role in performing its statutory functions.

III. SUMMARY OR RECOMMENDATIONS FOR RESTRICTING LARGE CAMPAIGN CONTRIBUTIONS AND PARTIAL PUBLIC FINANCING OF POLITICAL CAMPAIGNS.

The Commission's investigations have revealed a pervasive relationship between candidates' needs for large sums of money and people's willingness to make large contributions for a price. The resulting interference with the operations of government threatens the integrity of our political system.

This state of affairs also exacts a toll in terms of the quality and cost of public construction. It places undue pressure on candidates and elected officials and undoubtedly discourages many able people from seeking elective office. The Commission believes that the present system of financing political campaigns does not serve the public interest and must be substantially changed.

The Commission's recommendations for restructuring the campaign finance system fall into two major categories: lowering contribution limits, and strengthening and extending public financing of campaigns. Low contribution limits are intended to reduce the influence of large contributions but not to substantially diminish the pool of private contributions or the overall total of indebtedness to contributors, and to alleviate the pressure to raise funds. Such public financing will only be successful, however, if it represents a significant portion of the total funds available to candidates. Finally, an adequate source of money for the public finance of races must be provided.

The Commission's legislation implements a system based on these premises through the following provisions:
Contributions by persons and political committees are limited to $1,000 to a candidate for statewide office and his or her political committee and $500 to other candidates and their political committees. For these purposes, the term "person" includes individuals and certain groups.

The Commission found that many special interest groups, permitted by law to make contributions of any size, made large contributions, particularly to influential legislators. This provision effectively limits contributions from special interest groups for the first time.

Retention of the existing $1,000 limitation actually represents a reduction from the $1,000 limit imposed since 1975, given the effects of inflation. The smaller amounts of money which may be given to legislative candidates are warranted by the relatively smaller sums which they must raise for their campaigns.

The creation of a public finance mechanism which funds races in the following order of priority, as funds become available: Governor, Lieutenant Governor, Attorney General, other statewide offices and legislative offices. Under the funding scheme,

- Candidates qualify for funding by raising minimum amounts of money. The total amounts which must be raised by candidates for statewide offices are those in current law. The totals are $2,500 for Senate candidates and $1,250 for House candidates. The latter sums must be raised in $25 increments. In all cases, these "qualifying contributions" must come from individuals and must be made in the form of a written instrument, not cash. Candidates must also be opposed in order to receive public funding.

These provisions ensure that candidates eligible for public finance have broad-based electoral support.

- Only contributions of $500 or less to statewide candidates are matched with public monies; and only the first $100 of contributions to legislative candidates are matched. Again, contributions to be matched must meet the criteria for "qualifying contributions" mentioned above. Candidates for statewide office receive public monies in two stages, before the primary and before the general election; and can receive an amount up to a ceiling specified in current law. Candidates for legislative office can begin receiving public funds after June 30 of the year preceding an election, with no distinction made between the primary and general elections, as long as the candidates continue to have opposition. Candidates for the Senate may receive up to $12,000 in public funds; and candidates for the House, up to $6,000.

In keeping with the eligibility requirements mentioned above, these provisions ensure that public monies are offered to candidates who demonstrate substantial and continued electoral support.

- Those receiving public finance are subject to certain restrictions:

- Candidates for statewide office receiving public finance may accept contributions of $500 or less; for legislative office, $250 or less. Those contribution limits are half the size of those imposed on non-publicly financed candidates.

Candidates accepting public finance receive the same amounts from individual contributors that non-publicly financed candidates can receive, since private contributions to the former are matched. This provision, along with those concerning the use of personal funds and the return of surplus monies (discussed below), ensure that public funds are not simply added on to the private monies contributed now.

- Candidates accepting public finance may not expend more than the following amounts of personal funds on their campaigns: Governor, $50,000; other statewide offices, $25,000; Senator, $4,000; Representative, $2,000.

One goal of public finance is to provide accessibility to those who lack personal funds. To allow those with large amounts of personal funds to substantially influence an election would defeat this purpose.

- The amount of money left in the campaign account of a candidate accepting public finance two weeks after the election must be repaid to the state election campaign fund on a dollar-for-dollar basis.
- An individual $2 checkoff is established on the state income tax form for publicly funding campaigns. This designation would not increase the taxpayer's liability; it would allocate such tax monies to be placed in the state election campaign fund.

The Commonwealth's current system for funding statewide campaigns is dependent on designation of the $1 add-on the state income tax return. This add-on increases the taxpayer's liability by that amount. Only 4% of Massachusetts taxpayers participate in the add-on system, as opposed to the 33% of that population which checks off $1 on the federal return to fund the Presidential race.

- As mentioned above, the extent of funding by the system is determined by the amount of money which taxpayers choose to check off on their tax returns. Under this system, an order of priorities of races to be publicly funded is established and a triggering mechanism created which allocates monies to any particular office only if there is adequate funding for those with higher priority. The proposed order of priority is: Governor, Lieutenant Governor, Attorney General, other statewide offices and legislative offices. In 1982, however, only candidates for Governor and Lieutenant Governor would receive public funding because estimated tax checkoff revenues would cover only the cost of those races. Candidates for other statewide offices and legislative offices could begin receiving public financing in 1986.

The dependence of this system on the amount of public funding which Massachusetts taxpayers wish to allocate means that it truly reflects their interest in the state being fiscally responsible.

Analysis of Effectiveness of Improved System of Public Finance of Campaigns

Principal Findings

A detailed study by the Commission shows that the proposed public finance system will achieve the three goals stated above: low but realistic contribution limits; funding of a significant portion of a candidate's campaign by public monies; and establishment of an adequate source of funding. The Commission has found that:

(a) The proposed contribution limits for publicly financed candidates substantially reduce the influence of large contributions out those limits in conjunction with public finance result in a slight increase in the total funds available to candidates.

(b) Public finance would in most races cover between 28% and 44% of the campaign costs of statewide and legislative candidates.

(c) The system would be funded in a fiscally responsible way:

1. Based on Massachusetts taxpayers' participation in the federal checkoff, the entire system would be fully funded but would represent less than 1/4 of one hundredth of one percent of the state budget and

2. The triggering mechanism provides for funding of a particular race only if the taxpayers have used the check-off to fully fund races of higher priority.

Analysis Supporting Principal Findings

Even though large contributions would have been substantially curtailed by the Commission's proposals if they had been effective in 1978, the net result of
the public finance proposal would have been a modest net gain in the amount of funds available to candidates. As shown in Supplement A, the loss in private contributions to gubernatorial candidates of $580,000 would have been more than made up for by the gain in public funding of $1,347,989. Supplement A also shows that the combined effect of limiting large contributions and providing public funds would, in 1978, have resulted in public funds comprising a substantial share of the total funds available to statewide candidates. Thus, in the case of the Governor's race, about 37% of the net amount of funds available would have been provided by the public finance system. Typically the percentage ranges from 28% to 44% for the various statewide candidates.

The same three substantive goals just discussed in relation to candidates for statewide offices would have also been achieved in 1978 if the Commission proposal for publicly funding candidates for legislative offices had been in effect. Under the Commission's proposal publicly funded legislative candidates would be limited to contributions of $250 or less. As Supplement B shows, this would have resulted in a 16.9% reduction in the total amount of private contributions to candidates for State Representative and 22.0% of the amount contributed to those for State Senator. At the same time, the average gain in funds provided by public funding exceeds the amount lost in contributions of over $250. Finally, the net result in 1978 would have been that public funds represented 36.8% of all the funds available to candidates for State Representative and 34.3% of the funds available to candidates for State Senator.

Fiscally Responsible Proposal

Adequate Funding (See Table F)

According to the Commission's detailed calculations summarized in Table F, the total amount of public monies required to fund statewide legislative candidates in 1978 and legislative candidates in 1980 would have been $5,478,430. This is a generous estimate of the amount actually required because it assumes full participation by all legislative candidates opposed in either the primary or general election.*

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* For example, 12 candidates for the House in 1978 raised less than the threshold of $1,250 necessary for qualifying for public finance. In that same year, 29 candidates for the Senate raised less than the threshold of $2,500 necessary for qualifying for public finance. Presumably, the statistics for 1980 were comparable. In addition, the estimate assumes that the first $100 of all contributions were from individuals (only these amounts in individual contributions can be matched by public funds). That is, of course, an overestimate. In addition, not all candidates would have received the maximum permissible amount of public funds. Thus, in 1978, 42 candidates for the House received less than $6,000 in contributions and 59 candidates for the Senate received less than $12,000 in contributions, so even if they qualified for public finance they would not have received the maximum match. For these reasons, in each of 1978 and 1980, $200,000 less would have been required in public funds under the Commission proposal. Similar arguments can be made with regard to funding of candidates for statewide office.
<table>
<thead>
<tr>
<th>Public Finance Monies Required to Fund Races in 1978 and 1980</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th></th>
<th>1978</th>
<th>1980</th>
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<tr>
<td>GOVERNOR(1)</td>
<td>$1,347,989</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>LIEUTENANT(2)</td>
<td></td>
<td>24,447</td>
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<td>GOVERNOR</td>
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<tr>
<td>ATTORNEY GENERAL</td>
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<td>-</td>
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<td>SECRETARY OF STATE</td>
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<td>-</td>
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<td>-</td>
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<td>STATE AUDITOR</td>
<td>78,219</td>
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<tr>
<td>STATE REPRESENTATIVE</td>
<td>1,469,762</td>
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<td>-</td>
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<td>STATE SENATORS</td>
<td>503,429</td>
<td>377,000</td>
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<td></td>
<td>4,203,430</td>
<td>1,275,000</td>
<td>5,478,430</td>
</tr>
</tbody>
</table>

(1) Includes Lieutenant Governor's race in general election.

(2) Includes only Lieutenant Governor's race in primary election.
Sufficient Monies from the Tax Checkoff

The Commission believes that sufficient monies from the proposed $2 checkoff would be available to sufficiently fund the public finance system as proposed. Currently, about 33% of Massachusetts taxpayers designate a tax checkoff on their federal tax returns to fund the system for publicly financing presidential campaigns. There is no reason to assume that the rate of tax checkoff would be substantially less on state tax returns to fund state races. Currently, of the 17 states with public finance systems, 13 raise monies by means of a voluntary tax checkoff. They have achieved substantial levels of taxpayer participation, generally ranging from 15 to 26 percent. In the 1978 tax year there were approximately 2,470,000 Massachusetts tax returns from individuals.* If 33% of the taxpayers had chosen the tax checkoff then a total of about $1,600,000 would have been raised. This would have represented approximately 1/4 of one hundredth of one percent of the total state budget for that year. Over a four year period a total of $6,400,000 in tax checkoff money would have been made available to publicly finance campaigns. In light of the discussion in the previous section, it is clear that more than enough money would have been available to fund the 1978 statewide and legislative elections and the 1980 legislative elections. It also suggests that the scheme could to some degree accommodate the increase in costs due to inflation and an increase in the number of candidates seeking elective office.

Triggering Mechanism:

Making the Public Finance Proposal Fiscally Sound

In addition to proposing a scheme which the Commission believes will raise sufficient funds to completely satisfy the public finance requirements, the Commission also included several safeguards to ensure the workability of the system. The most important of these is a triggering mechanism which provides funds to candidates for a particular office only if sufficient funds are available to candidates for offices assigned higher priority. The principal features of that mechanism are as follows**:

A set of priorities are established according to which various races will be funded if the money is available. Those priorities are: (1) Governor; (2) Lieutenant Governor; (3) Attorney General; (4) Secretary of State, State

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* The proposal for the checkoff permits a $2 checkoff on individual tax returns and $4 on joint returns. Since nearly half of all tax returns from individuals are joint returns, if the rate of checkoff is as projected (33%), the checkoff may raise more money than estimated here.

** For a detailed description, see Supplement C.
Treasurer, and State Auditor; and (5) legislators. One year prior to the election a determination is made of how much tax checkoff money will be available in the election year. A formula prescribed by the bill is used to determine whether there will be sufficient money to publicly finance the highest priority races (Governor and Lieutenant Governor). If any money is left over, then a similar formula is used to estimate if sufficient funds will be available to fund the second priority race, (Lieutenant Governor) and so on. An official announcement is made of which races will be publicly funded in the following year. This will clearly inform potential candidates well in advance of the election whether they can expect to receive public funds if they raise the sufficient number and size of private contributions. In the following year, available public funds will be provided only for the races specified the year before and distributed according to the statutorily prescribed formula.*


The Commission proposal provides for institution of the tax checkoff in the 1981 tax year, the one preceding the 1982 statewide election. Clearly, then, the funds raised will not be adequate to fund all races in 1982 according to the scheme proposed. For that reason, the proposal restricts public financing in 1982 to the races for Governor and Lieutenant Governor, allocating 10/11 of the monies available to the former and 1/11 to the latter.**

Because of limited revenues during the start-up period, the proposed bill also bars financing of legislative campaigns before 1986. By that year, the tax checkoff will have been operative for four years, and the entire estimated sum of money should be available to fund all the races.

Other Elements of an Effective Public Finance System

Of those states with public finance laws, at least four include candidates for legislative races. Of these, Minnesota since 1974 and Wisconsin since 1977 have actually had experience administering such a system.

Minnesota's own evaluation of its campaign finance system provides strong support for many of the elements of the campaign finance system proposed by the Commission. Its system is based on a $1 checkoff whereby taxpayers allocate the money either to political parties or to a general fund for publicly financed

* For detailed discussion, see Supplement C.

** The fractions were derived from the proportions of public finance provided by existing statute: $25,000 to the Governor's race in each of the primary and general election and $50,000 to the Lieutenant Governor's race in the primary election. Based on $1,600,000 in tax checkoff revenues, this would yield $1,454,000 for the Governor's race in the primary and general elections and $146,000 for the Lieutenant Governor's race in the primary.
candidates. The system contains expenditure limits for publicly financed candidates. Funds are not distributed until about one month before and following the election.

In reviewing the system, the Minnesota Ethical Practices Board, which administers the law, endorsed the concept of public finance as it operates in Minnesota and gave particular support to the continued funding of legislative as well as statewide races.\textsuperscript{12} However, the Board recommended a number of changes in the system which would, if implemented, result in a public finance system almost identical to the one proposed by the Commission. The Board recommended, for example, increasing the amount of the taxpayer checkoff to $2 in order to adequately fund the system. The Board noted that funding occurred too late to encourage candidates to participate and that flat grants, unlike matching grants, provide no incentive to candidates to solicit small individual contributions.

The Board also recommended that expenditure limits be abolished and that, instead, limits on contributions by individuals and interest groups be substantially lowered. In the opinion of the Board, unrealistically low expenditure limits have led to a decline in candidates' participation in public funding.

Similarly, in the opinion of the Executive Director of Wisconsin Elections Board, restrictions on candidates' total receipts from certain sources have led to a failure by many eligible candidates to participate in Wisconsin's public finance scheme.\textsuperscript{13}

\section*{IV. SUMMARY OF RECOMMENDATIONS FOR DEALING WITH REPORTING, DISCLOSURE, AND ENFORCEMENT}

The Commission's experience with the operations of the Office of Campaign and Political Finance demonstrates that the Office does not adequately perform its statutory role of assuring compliance with the campaign finance laws. The Commission has concluded that the problem lies in the statutory role of the Director as the autonomous head of an agency largely accountable to no one, the Office's lack of power to enforce the laws, and the lack of any statutory direction concerning the performance of audits and investigations. In addition, the Commission has identified loopholes and weaknesses in the existing law that encourage or allow improper conduct by candidates and contributors and further impede enforcement of the laws.

\subsection*{A. PROPOSALS CONCERNING CAMPAIGN AND POLITICAL FINANCE COMMISSION}

The Commission's recommendations to improve enforcement of the campaign finance laws through the creation of a new agency include the following proposals:

- The establishment of a Commission charged with monitoring and enforcing the campaign finance laws. The Commission itself would have responsibility for hiring staff, promulgating regulations, preparing annual reports, conducting
audits and investigations, and imposing civil sanctions. As noted in Section II above, the four-person commission created by Chapter 55, s. 3 serves no function in practice other than to select the Director of the Office of Campaign and Political Finance.

- The Commission must make field audits in specified instances. The bill also prescribes minimum requirements for a field audit. Current law does not require the Office to perform any specified number or type of audits.

- The Commission must undertake an investigation upon receipt of a sworn complaint. Under present law, the Office of Campaign and Political Finance undertakes investigations at the sole discretion of the Director.

- The Commission is empowered to prescribe penalties which may be imposed on an individual determined by the Commission to have violated the law.

- The Commission is required to prepare an annual report providing details concerning the accuracy and completeness of the reports filed by candidates and political committees and statistical information concerning campaign contributions and expenditures.

Campaign And Political Finance Commission

The new agency proposed by the Commission is modeled upon the legislation creating the State Ethics Commission with regard to its organization, staffing and powers. The Commission was also influenced in formulating its proposal by the agencies which successfully enforce the campaign finance laws in two other states: the Wisconsin State Elections Board and the California Fair Political Practices Commission. The proposed legislation contains elements of the statutory provisions creating these agencies and defining their powers.

Like the commissioners who comprise the State Ethics Commission, the members of the Commission created by the proposed legislation are required to be actively involved in its work. The bill reflects the Special Commission's belief that a five-person commission with a strong, clear statutory mandate and with responsibility for the day-to-day operations of the commission is more likely to enforce the campaign finance laws vigorously than the existing agency.

Audits

The Campaign and Political Finance Commission is required to audit the records of all candidates for statewide office and their political committees that receive more than $25,000 in contributions or expend more than $25,000 on their campaigns, and all candidates for legislative office, their political committees, and all other political committees that expend or receive more than $10,000. The Commission is also required to conduct a specified percentage of random audits on other candidates for statewide and legislative office and their political committees. A field audit must involve at least a comparison between the records and statements filed with the Commission and the financial records kept by candidates and their political committees. This provision assures that the audit function of the Commission will be performed in a responsible manner and that the Commission will not be merely a record-keeping agency.
Investigative Responsibilities

The proposed legislation requires the Commission to undertake an investigation upon receipt of a sworn complaint, as well as upon the Commission's own motion. The present law provides no guidance as to the circumstances which should trigger an investigation; the Office of Campaign and Political Finance has held only about two investigative hearings during the past four years.

Penalties

Subject to judicial review, the Commission is empowered to order candidates, political committees, and others to file required statements and reports; to cease and desist from violating the law; and to pay civil fines of up to $1,000 or three times the amount not properly reported, unlawfully contributed, expended, or received, as well as fines of up to $1,000 or $10 per day for each day of delay in filing a report. This fine increases to $100 per day after the candidate or committee receives official notice of delinquency. These civil penalties are high enough to encourage candidates, committees and others to file reports and statements on time and accurately disclose all required information; and to discourage contributions or expenditures in violation of the law.

The Office of Campaign and Political Finance has no power to enforce filing and disclosure requirements, and must refer all violations to the Attorney General for criminal prosecution. The findings of Commission staff indicate that the Office of Campaign and Political Finance has been notably unsuccessful in effecting compliance under the existing enforcement scheme.

Annual Reporting

Finally, the Commission is required to prepare an annual report providing details concerning the accuracy and completeness of the reports filed by candidates and political committees and statistical information concerning campaign contributions and expenditures. In addition to making this information readily accessible, this provision should help to ensure that financial disclosure reports are in fact complete and that the Commission is performing its checking and auditing functions in a responsible manner.

B. PROPOSALS FOR IMPROVED RECORD KEEPING AND REPORTING

Other recommendations included in the proposed legislation are designed to improve the extent and type of reports required in order to increase public access to important information concerning the funding of political campaigns and to facilitate detection of irregularities. These recommendations include:

- Increasing to six years the length of time for which records must be retained.
- Increasing the number of reports required to be filed by candidates for legislative office.
- Requiring persons doing a significant amount of business with public agencies in Massachusetts to report their contributions to candidates.

- Tightening up the definition of "political committee" to ensure that interest groups that make significant contributions to or expenditures on behalf of candidates register and file required reports.

- Narrowing permissible campaign expenditures by all candidates and their political committees to reasonable and necessary expenditures directly related to the campaign.

Retention of Records

Under the proposed legislation, financial records, reports, and statements required to be kept by candidates, political committees, and the Campaign and Political Finance Commission must be preserved for six years from January 10 following the election. Under present law, such records must be kept only until the end of the term of office sought or for two years. This provision has made it virtually impossible to document infractions of the law after the expiration of the period for retaining records, even though the statute of limitations for prosecuting campaign offenses is six years.

Reports by Legislative Candidates

Legislative candidates and their political committees are required to file financial disclosure reports 30 days before a primary and after the close of any calendar quarter in which the candidate or committee has received contributions or made expenditures in excess of $5,000. These reports are in addition to those required to be filed under present law eight days before the primary, eight days before the election, and January 10 following the election. The additional reports required by the proposed legislation will make available information concerning legislative candidates' receipts and expenditures early and often enough to adequately inform the public and allow detection of irregularities.

Reports by Persons Doing Business With Public Agencies

The bill contains a provision requiring persons doing at least $10,000 worth of business a year with public agencies to report their political contributions, the agencies with which they have done business, the nature and amount of such business, and the candidates or committees to which contributions were made. The same information is also required from certain persons associated with or acting on behalf of a business. This provision, which has no counterpart under existing law, is designed to expose the operation of improper influence on governmental decision making. The importance of such disclosure is underscored by the Commission's findings summarized in Section II above.

A related provision of the proposed legislation requires that no person or business entity doing business with a public agency be obligated to make a contribution or render a political service and that no such person or business entity be penalized for failing to do so.
Definition of Political Committees

The proposed legislation strengthens the reporting requirements for political committees by requiring reports not only from candidates' political committees but also from any group which has as a principal purpose the receipt of contributions or the expenditure of funds for political purposes or which receives contributions or makes expenditures in excess of $1000 in a calendar year. Under existing law, there is no clear or sufficiently comprehensive designation of which committees are required to file reports; many, in fact, do not.

Permissible Campaign Expenditures

The proposed law creates a single standard for campaign expenditures by all candidates and their political committees: namely, reasonable and necessary expenditures directly related to the campaign. Under existing law, this is the standard only for expenditures by political committees of candidates for statewide office. Other candidates' political committees are held to a much looser standard which allows expenditures to enhance a candidate's political future. Such political committees are also permitted to contribute to other political committees and campaign funds in restricted amounts. This provision is eliminated by the Commission's proposal. The current law contains no restrictions whatever upon expenditures by candidates themselves.

The Director's interpretations of the expenditure standard applicable to the political committees of legislative candidates, some of which were cited in Section II above, make it clear that virtually any expenditure a candidate or committee chooses to make will be held to enhance the candidate's political future. This loose standard is particularly inappropriate if the Commission's proposal to provide public financing of legislative races is adopted. In the Commission's view, no campaign contributions, and assuredly no public funds, should be spent on such items as softball teams. Yet the Director has routinely allowed such expenditures.
CAMPAIGN FINANCE

SUPPLEMENT A:

DETAILED SUMMARY OF CAMPAIGN CONTRIBUTIONS TO
AND EXPENDITURES BY CANDIDATES FOR
STATEWIDE OFFICE IN 1978

and

CALCULATION OF EFFECTS OF
PROPOSED PUBLIC FINANCE SYSTEM
ON CONTRIBUTIONS TO
CANDIDATES FOR STATEWIDE OFFICES.
SUPPLEMENT A:

DETAILED SUMMARY OF CAMPAIGN CONTRIBUTIONS TO AND EXPENDITURES BY CANDIDATES FOR STATEWIDE OFFICE IN 1978

Campaign Expenses

Expenses incurred between January 1, 1978 and December 31, 1978

Primary Expenses incurred between January 1, 1978 and September 15, 1978

If the candidate did not participate in the general election, all expenses considered incurred during that time period.

General Expenses incurred between September 16, 1978 and December 31, 1978

Contribution Receipts

Contributions received from persons other than the candidate between January 1, 1978 and December 31, 1978

Number of contributions

$1000+ - Number of contributions received from an individual which totaled $1000 or more. The number in parentheses represents the total value of the contributions. (number x $1000)

$500 to 1000 - Number of contributions received from an individual which totaled between $500 and $999. The number in parentheses represents the total value of the contributions. (number x $750)

$100 to 249 - Number of contributions received from an individual which totaled between $100 and $249. The number in parentheses represents the total value of the contributions (number x $175)

Total amount of contributions

Represents the total value of all contributions received during that time period.

Number in parentheses represents the total value of all contributions which totaled $500 or more.

Total personal contributions

Represents the total value of all contributions made by the candidate to his campaign.

Total personal loans

Represents the total value of all loans made by the candidate to his campaign fund.

Total loans made by others

Represents the total value of all loans made by others to the candidate's campaign fund.

Public funds

Represents the total funds distributed to the candidate's campaign fund under the present public finance system.

Total of all loans and contributions

Represents the total of all loans, personal and by others, and contributions, personal and by others made to the candidate's campaign fund during the time period.
## ELECTION FOR GOVERNOR

### Edward J. King

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
<th>$1,651,277</th>
</tr>
</thead>
<tbody>
<tr>
<td>965 contributions over $500</td>
<td>worth</td>
<td>$818,500</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>worth</td>
<td>$832,777</td>
</tr>
</tbody>
</table>

**loss if $500 limit**

**gain with public finance**

- $336,000
- $500,000

### Michael S. Dukakis

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
<th>$468,297</th>
</tr>
</thead>
<tbody>
<tr>
<td>260 contributions over $500</td>
<td>worth</td>
<td>$221,000</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>worth</td>
<td>$247,297</td>
</tr>
</tbody>
</table>

**loss if $500 limit**

**gain with public finance**

- $91,000
- $250,000

### Francis W. Hatch, Jr.

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
<th>$725,011</th>
</tr>
</thead>
<tbody>
<tr>
<td>402 contributions over $500</td>
<td>worth</td>
<td>$339,000</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>worth</td>
<td>$386,011</td>
</tr>
</tbody>
</table>

**loss if $500 limit**

**gain with public finance**

- $138,000
- $500,000

### Edward F. King

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
<th>$109,489</th>
</tr>
</thead>
<tbody>
<tr>
<td>330 contributions over $500</td>
<td>worth</td>
<td>$27,000</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>worth</td>
<td>$81,489</td>
</tr>
</tbody>
</table>

**loss if $500 limit**

**gain with public finance**

- $10,500
- $97,989

### Barbara Ackerman

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
<th>$21,250</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 contributions over $500</td>
<td>worth</td>
<td>$10,500</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>worth</td>
<td>$10,750</td>
</tr>
</tbody>
</table>

**loss if $500 limit**

**gain with public finance**

- $4,500
- $0

## TOTALS

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>$2,975,324 (100.0%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1672 contributions over $500</td>
<td>1,416,000 (47.6%)</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>1,559,324 (52.4%)</td>
</tr>
</tbody>
</table>

**loss if $500 limit**

**gain with public finance**

- $580,000 (19.5%)
- $1,347,989 (45.3%)

**NET gain with public finance**

- $767,989 (25.8%)

**TOTAL contributions under new scheme**

- $3,743,313 (100.0%)

**PUBLIC FINANCE FORMING PART OF TOTAL**

- $1,347,989 (36.7%)
NOTES

1. The "contributions" described above refer to contributions made between January 1, 1978 and December 31, 1978 and do not include contributions or loans by a candidate to his or her own campaign or loans by others to that campaign. During the same time period, the following loans and personal contributions were made to the candidates' campaigns:

<table>
<thead>
<tr>
<th></th>
<th>Personal Contributions</th>
<th>Personal Loans</th>
<th>Loans by Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Edward J. King</td>
<td>$0</td>
<td>$45,000</td>
<td>$0</td>
</tr>
<tr>
<td>Michael S. Dukakis</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Barbara Ackerman</td>
<td>0</td>
<td>21,461</td>
<td>0</td>
</tr>
<tr>
<td>Francis W. Hatch, Jr.</td>
<td>0</td>
<td>411,506</td>
<td>0</td>
</tr>
<tr>
<td>Edward F. King</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

So that

Total contributions $2,975,324
Total loans $477,967
Total $3,453,291

2. Total "expenditures" for the period between January 1, 1978 and December 31, 1978 were as follows:

<table>
<thead>
<tr>
<th></th>
<th>Total expenditures</th>
<th>Total contributions and loans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Edward J. King</td>
<td>$1,735,833</td>
<td>$3,453,291</td>
</tr>
<tr>
<td>Michael S. Dukakis</td>
<td>517,103</td>
<td></td>
</tr>
<tr>
<td>Barbara Ackerman</td>
<td>39,509</td>
<td></td>
</tr>
<tr>
<td>Francis W. Hatch, Jr.</td>
<td>1,218,267</td>
<td></td>
</tr>
<tr>
<td>Edward F. King</td>
<td>135,344</td>
<td></td>
</tr>
</tbody>
</table>

Total expenditures $3,646,056 (approximately)
<table>
<thead>
<tr>
<th>CANDIDATE</th>
<th>PARTY</th>
<th>Primary</th>
<th>General</th>
<th>Total</th>
<th>Number of Contributions</th>
<th>Total amount of Contributions</th>
<th>Total Personal Contributions</th>
<th>Total Personal Loans made to Candidate's campaign by others</th>
<th>Public Funds</th>
<th>Total of all loans &amp; contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Edward J. King</td>
<td>D</td>
<td>$529,045</td>
<td>$1,206,788</td>
<td>$1,735,833</td>
<td>379 ($379,000)</td>
<td>586 ($439,500)</td>
<td>446 $1,651,277 ($818,500)</td>
<td>0</td>
<td>$45,000</td>
<td>$0</td>
</tr>
<tr>
<td>Michael Dukakis</td>
<td>D</td>
<td>$517,103</td>
<td>$517,103</td>
<td>$104 ($104,000)</td>
<td>156 ($117,000)</td>
<td>93 $468,297 ($221,000)</td>
<td>0</td>
<td>0</td>
<td>$0</td>
<td>$468,297</td>
</tr>
<tr>
<td>Barbara Ackerman</td>
<td>D</td>
<td>$39,509</td>
<td>$39,509</td>
<td>$6 ($6,000)</td>
<td>6 ($4,500)</td>
<td>6 $21,250 ($10,500)</td>
<td>0</td>
<td>$21,461</td>
<td>$0</td>
<td>$42,711</td>
</tr>
<tr>
<td>Francis Hatch</td>
<td>R</td>
<td>$455,050</td>
<td>$763,217</td>
<td>$1,218,267</td>
<td>150 ($150,000)</td>
<td>252 ($189,000)</td>
<td>220 $725,011 ($339,000)</td>
<td>0</td>
<td>$411,506</td>
<td>$0</td>
</tr>
<tr>
<td>Edward P. King</td>
<td>R</td>
<td>$135,344</td>
<td>$135,344</td>
<td>$9 ($9,000)</td>
<td>24 ($18,000)</td>
<td>26 $109,489 ($27,000)</td>
<td>0</td>
<td>0</td>
<td>$0</td>
<td>$109,489</td>
</tr>
<tr>
<td>TOTALS</td>
<td></td>
<td>$1,676,051</td>
<td>$1,970,005</td>
<td>$3,646,056</td>
<td>648 ($648,000)</td>
<td>1024 ($768,000)</td>
<td>791 $2,975,324 ($1,416,000)</td>
<td>0</td>
<td>$477,967</td>
<td>$0</td>
</tr>
</tbody>
</table>
### ELECTION FOR LIEUTENANT GOVERNOR

#### Thomas P. O'Neill, III

<table>
<thead>
<tr>
<th>Description</th>
<th>Worth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Contributions</td>
<td>$200,750</td>
</tr>
<tr>
<td>50 contributions over $500</td>
<td>$41,000</td>
</tr>
<tr>
<td>Remaining contributions under $500</td>
<td>$159,750</td>
</tr>
<tr>
<td>Loss of $500 limit</td>
<td>$16,000</td>
</tr>
<tr>
<td>Gain with public finance</td>
<td>$0</td>
</tr>
</tbody>
</table>

#### William I. Cowin

<table>
<thead>
<tr>
<th>Description</th>
<th>Worth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total contributions</td>
<td>$30,947</td>
</tr>
<tr>
<td>26 contributions over $500</td>
<td>$19,500</td>
</tr>
<tr>
<td>Remaining contributions under $500</td>
<td>$11,447</td>
</tr>
<tr>
<td>Loss of $500 limit</td>
<td>$6,500</td>
</tr>
<tr>
<td>Gain with public finance</td>
<td>$24,447</td>
</tr>
</tbody>
</table>

#### Peter L. McDowell

<table>
<thead>
<tr>
<th>Description</th>
<th>Worth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total contributions</td>
<td>$8,304</td>
</tr>
<tr>
<td>3 contributions over $500</td>
<td>$2,250</td>
</tr>
<tr>
<td>Remaining contributions under $500</td>
<td>$6,054</td>
</tr>
<tr>
<td>Loss of $500 limit</td>
<td>$750</td>
</tr>
<tr>
<td>Gain with public finance</td>
<td>$0</td>
</tr>
</tbody>
</table>

#### TOTALS

<table>
<thead>
<tr>
<th>Description</th>
<th>Worth</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total contributions</td>
<td>$240,001</td>
<td>(26.1%)</td>
</tr>
<tr>
<td>79 contributions over $500</td>
<td>$62,750</td>
<td>(26.1%)</td>
</tr>
<tr>
<td>Remaining contributions under $500</td>
<td>$177,251</td>
<td>(73.9%)</td>
</tr>
<tr>
<td>Loss of $500 limit</td>
<td>$23,250</td>
<td>(9.7%)</td>
</tr>
<tr>
<td>Gain with public finance</td>
<td>$24,447</td>
<td>(10.0%)</td>
</tr>
<tr>
<td>NET gain with public finance</td>
<td>$1,197</td>
<td>(10.5%)</td>
</tr>
<tr>
<td>TOTAL contributions under new scheme</td>
<td>$217,948</td>
<td>(100.0%)</td>
</tr>
<tr>
<td>PUBLIC FINANCE forming part of total</td>
<td>$24,447</td>
<td>(11.2%)</td>
</tr>
</tbody>
</table>
NOTES

1. The "contributions" described above refer to contributions made between January 1, 1978 and December 31, 1978 and do not include contributions or loans by a candidate to his or her own campaign or loans by others to that campaign. During the same time period, the following loans and personal contributions were made to the candidates' campaigns:

<table>
<thead>
<tr>
<th>Name</th>
<th>Personal Contributions</th>
<th>Personal Loans</th>
<th>Loans by Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomas P. O'Neill, III</td>
<td>$ 905</td>
<td>$ 0</td>
<td>$ 0</td>
</tr>
<tr>
<td>William I. Cowin</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
</tr>
<tr>
<td>Peter L. McDowell</td>
<td>$ 1,125</td>
<td>$ 0</td>
<td>$ 0</td>
</tr>
<tr>
<td></td>
<td><strong>$ 2,030</strong></td>
<td><strong>$ 0</strong></td>
<td><strong>$ 0</strong></td>
</tr>
</tbody>
</table>

So that

Total contributions = $240,000

Total loans and personal contributions = $2,030

Total = $242,031

2. Total "expenditures" for the period between January 1, 1978 and December 31, 1978 were as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomas P. O'Neill, III</td>
<td>$255,407</td>
</tr>
<tr>
<td>William I. Cowin</td>
<td>$24,751</td>
</tr>
<tr>
<td>Peter L. McDowell</td>
<td>$8,571</td>
</tr>
</tbody>
</table>

Total expenditures = $258,729 (approximately)

Total contributions and loans = $242,031
### Campaign Expenses

<table>
<thead>
<tr>
<th>CANDIDATE</th>
<th>PARTY</th>
<th>Primary</th>
<th>General</th>
<th>Total</th>
<th>Number of Contributions</th>
<th>Total Amounts of Contributions</th>
<th>Total Personal Loans</th>
<th>Total loans made to Candidate's by others</th>
<th>Public Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Primary Winner</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thomas O'Neill</td>
<td>D</td>
<td>$152,995</td>
<td>$72,412</td>
<td>$225,407</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$201,655</td>
</tr>
<tr>
<td>William Cowin</td>
<td>R</td>
<td>$1,945</td>
<td>$22,806</td>
<td>$24,751</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$30,947</td>
</tr>
<tr>
<td>Peter McDowell</td>
<td>R</td>
<td>$4</td>
<td>$8,567</td>
<td>$8,571</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$9,429</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td>$154,944</td>
<td>$103,785</td>
<td>$258,729</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$242,031</td>
</tr>
</tbody>
</table>

### Contribution Receipts:

<table>
<thead>
<tr>
<th>CANDIDATE</th>
<th>PARTY</th>
<th>Primary</th>
<th>General</th>
<th>Total</th>
<th>Number of Contributions</th>
<th>Total Amounts of Contributions</th>
<th>Total Personal Loans</th>
<th>Total loans made to Candidate's by others</th>
<th>Public Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Primary Winner</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thomas O'Neill</td>
<td>D</td>
<td>$152,995</td>
<td>$72,412</td>
<td>$225,407</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$201,655</td>
</tr>
<tr>
<td>William Cowin</td>
<td>R</td>
<td>$1,945</td>
<td>$22,806</td>
<td>$24,751</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$30,947</td>
</tr>
<tr>
<td>Peter McDowell</td>
<td>R</td>
<td>$4</td>
<td>$8,567</td>
<td>$8,571</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$9,429</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td>$154,944</td>
<td>$103,785</td>
<td>$258,729</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$242,031</td>
</tr>
</tbody>
</table>

1978
Francis X. Bellotti

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
</tr>
</thead>
<tbody>
<tr>
<td>154 contributions over $500</td>
<td>$534,515</td>
</tr>
<tr>
<td>Remaining contributions under $500</td>
<td>124,500</td>
</tr>
<tr>
<td></td>
<td>410,015</td>
</tr>
<tr>
<td>loss if $500 limit</td>
<td>47,500</td>
</tr>
<tr>
<td>gain with public finance</td>
<td>125,000</td>
</tr>
</tbody>
</table>

William F. Weld

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
</tr>
</thead>
<tbody>
<tr>
<td>45 contributions over $500</td>
<td>$183,636</td>
</tr>
<tr>
<td>Remaining contributions under $500</td>
<td>38,500</td>
</tr>
<tr>
<td></td>
<td>145,136</td>
</tr>
<tr>
<td>loss if $500 limit</td>
<td>16,000</td>
</tr>
<tr>
<td>gain with public finance</td>
<td>125,000</td>
</tr>
</tbody>
</table>

TOTALS

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
</tr>
</thead>
<tbody>
<tr>
<td>199 contributions over $500</td>
<td>$718,151 (100.0%)</td>
</tr>
<tr>
<td>Remaining contributions under $500</td>
<td>163,000 (22.7%)</td>
</tr>
<tr>
<td></td>
<td>555,151 (77.3%)</td>
</tr>
<tr>
<td>loss if $500 limit</td>
<td>63,500 (8.8%)</td>
</tr>
<tr>
<td>gain with public finance</td>
<td>250,000 (34.8%)</td>
</tr>
<tr>
<td>NET gain with public finance</td>
<td>$186,500 (26.0%)</td>
</tr>
</tbody>
</table>

TOTAL contributions, public and private, under the new scheme

$904,651 (100.0%)  
PUBLIC FINANCE forming part of total

$250,000 (27.7%)
NOTES

1. The "contributions" described above refer to contributions made between January 1, 1978 and December 31, 1978 and do not include contributions or loans by a candidate to his or her own campaign or loans by others to that campaign. During the same time period, the following loans and personal contributions were made to the candidates' campaigns:

<table>
<thead>
<tr>
<th></th>
<th>Personal Contributions</th>
<th>Personal Loans</th>
<th>Loans by Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Francis X. Bellotti</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>William F. Weld</td>
<td>$125,610</td>
<td>$0</td>
<td>$25,541</td>
</tr>
</tbody>
</table>

$125,610 + $0 + $25,541 = $151,151

So that

Total contributions $718,151
Total loans 151,151
Total $869,302

2. Total "expenditures" for the period between January 1, 1978 and December 31, 1978 were as follows:

<table>
<thead>
<tr>
<th></th>
<th>Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Francis S. Bellotti</td>
<td>$422,509</td>
</tr>
<tr>
<td>William F. Weld</td>
<td>347,601</td>
</tr>
</tbody>
</table>

Total expenditures $770,110 (approximately)

Total contributions and loans $869,302
# ATTORNEY GENERAL

## Campaign Expenses

<table>
<thead>
<tr>
<th>CANDIDATE</th>
<th>PARTY</th>
<th>Primary</th>
<th>General</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Francis X. Bellotti</td>
<td>D</td>
<td>$77,156</td>
<td>$345,353</td>
<td>$422,509</td>
</tr>
<tr>
<td>William F. Weld</td>
<td>R</td>
<td>$122,600</td>
<td>$225,001</td>
<td>$347,601</td>
</tr>
</tbody>
</table>

## Contribution Receipts

<table>
<thead>
<tr>
<th>CANDIDATE</th>
<th>Party</th>
<th>Primary</th>
<th>General</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Francis X. Bellotti</td>
<td>D</td>
<td>$77,156</td>
<td>$345,353</td>
<td>$422,509</td>
</tr>
<tr>
<td>William F. Weld</td>
<td>R</td>
<td>$122,600</td>
<td>$225,001</td>
<td>$347,601</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number of Contributions</th>
<th>$1,000+</th>
<th>$500 to $1,000</th>
<th>$250 to $499</th>
<th>$100 to $249</th>
<th>Total amount of Contributions</th>
<th>Total Personal Loans</th>
<th>Total Loans made to Candidate's campaign by others</th>
<th>Public Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Francis X. Bellotti</td>
<td>36</td>
<td>118</td>
<td>161</td>
<td>1668</td>
<td>$534,515</td>
<td>0</td>
<td>0</td>
<td>$534,515</td>
</tr>
<tr>
<td>William F. Weld</td>
<td>19</td>
<td>26</td>
<td>40</td>
<td>265</td>
<td>$183,636</td>
<td>0</td>
<td>0</td>
<td>$25,541</td>
</tr>
<tr>
<td>Totals</td>
<td>55</td>
<td>144</td>
<td>201</td>
<td>1933</td>
<td>$718,151</td>
<td>0</td>
<td>0</td>
<td>$25,541</td>
</tr>
</tbody>
</table>

1978
### Michael J. Connolly

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
<th>$49,863</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 contributions over $500</td>
<td>worth</td>
<td>$2,500</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>worth</td>
<td>$47,363</td>
</tr>
<tr>
<td><strong>loss if $500 limit</strong></td>
<td>gain with public finance</td>
<td>1,000</td>
</tr>
</tbody>
</table>

### Lois G. Pines

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
<th>$110,675</th>
</tr>
</thead>
<tbody>
<tr>
<td>44 contributions over $500</td>
<td>worth</td>
<td>$36,750</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>worth</td>
<td>$73,925</td>
</tr>
<tr>
<td><strong>loss if $500 limit</strong></td>
<td>gain with public finance</td>
<td>14,750</td>
</tr>
</tbody>
</table>

### Anthony Vigliotti

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
<th>$38,399</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 contributions over $500</td>
<td>worth</td>
<td>$3,250</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>worth</td>
<td>$35,149</td>
</tr>
<tr>
<td><strong>loss if $500 limit</strong></td>
<td>gain with public finance</td>
<td>1,250</td>
</tr>
</tbody>
</table>

### John Fulham

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
<th>$96,460</th>
</tr>
</thead>
<tbody>
<tr>
<td>41 contributions over $500</td>
<td>worth</td>
<td>$36,500</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>worth</td>
<td>$59,960</td>
</tr>
<tr>
<td><strong>loss if $500 limit</strong></td>
<td>gain with public finance</td>
<td>16,000</td>
</tr>
</tbody>
</table>

### David Crosby

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
<th>$52,397</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 contributions over $500</td>
<td>worth</td>
<td>$19,000</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>worth</td>
<td>$33,397</td>
</tr>
<tr>
<td><strong>loss if $500 limit</strong></td>
<td>gain with public finance</td>
<td>8,000</td>
</tr>
</tbody>
</table>

### James W. Hennigan

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
<th>$40,435</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 contributions over $500</td>
<td>worth</td>
<td>$14,000</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>worth</td>
<td>$26,435</td>
</tr>
<tr>
<td><strong>loss if $500 limit</strong></td>
<td>gain with public finance</td>
<td>5,000</td>
</tr>
</tbody>
</table>

### William S. Galvin

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
<th>$24,740</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 contributions over $500</td>
<td>worth</td>
<td>$3,000</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>worth</td>
<td>$21,740</td>
</tr>
<tr>
<td><strong>loss if $500 limit</strong></td>
<td>gain with public finance</td>
<td>1,000</td>
</tr>
</tbody>
</table>

### John W. Sears

<table>
<thead>
<tr>
<th>Total contributions</th>
<th>worth</th>
<th>$78,292</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 contributions over $500</td>
<td>worth</td>
<td>$18,750</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>worth</td>
<td>$59,542</td>
</tr>
<tr>
<td><strong>loss if $500 limit</strong></td>
<td>gain with public finance</td>
<td>7,750</td>
</tr>
<tr>
<td>Description</td>
<td>Amount</td>
<td>Percentage</td>
</tr>
<tr>
<td>-----------------------------------------------------------------</td>
<td>----------</td>
<td>------------</td>
</tr>
<tr>
<td>Total contributions</td>
<td>$491,261</td>
<td>(100.0%)</td>
</tr>
<tr>
<td>158 contributions over $500</td>
<td>$133,800</td>
<td>(27.3%)</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>$357,460</td>
<td>(72.7%)</td>
</tr>
<tr>
<td>Loss if $500 limit</td>
<td>$54,750</td>
<td>(11.2%)</td>
</tr>
<tr>
<td>gain with public finance</td>
<td>$339,584</td>
<td>(69.1%)</td>
</tr>
<tr>
<td>NET gain with public finance</td>
<td>$284,834</td>
<td>(57.1%)</td>
</tr>
<tr>
<td>TOTAL contributions under new scheme</td>
<td>$776,095</td>
<td>(100.0%)</td>
</tr>
<tr>
<td>PUBLIC FINANCE FORMING PART OF TOTAL</td>
<td>$339,584</td>
<td>(43.6%)</td>
</tr>
</tbody>
</table>
NOTES

1. The "contributions" described above refer to contributions made between January 1, 1978 and December 31, 1978 and do not include contributions or loans by a candidate to his or her own campaign or loans by others to that campaign. During the same time period, the following loans and personal contributions were made to the candidates' campaigns:

<table>
<thead>
<tr>
<th>Name</th>
<th>Personal Contributions</th>
<th>Personal Loans</th>
<th>Loans by Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael J. Connolly</td>
<td>$6,000</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Lois G. Pines</td>
<td>0</td>
<td>49,000</td>
<td>0</td>
</tr>
<tr>
<td>Anthony Vigliotti</td>
<td>21,593</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>John Fulham</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>David Crosby</td>
<td>42,253</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>James Hennigan</td>
<td>0</td>
<td>18,750</td>
<td>0</td>
</tr>
<tr>
<td>William J. Galvin</td>
<td>0</td>
<td>2,500</td>
<td>0</td>
</tr>
<tr>
<td>John W. Sears</td>
<td>0</td>
<td>43,000</td>
<td>0</td>
</tr>
</tbody>
</table>

$69,846 + $113,250 + $0 = $183,096

So that

Total contributions = $455,261
Total loans and personal contributions = 183,096
Total = $683,357

2. Total "expenditures" for the period between January 1, 1978 and December 31, 1978 were as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Total expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael J. Connolly</td>
<td>$62,002</td>
</tr>
<tr>
<td>Lois G Pines</td>
<td>155,689</td>
</tr>
<tr>
<td>Anthony Vigliotti</td>
<td>64,834</td>
</tr>
<tr>
<td>John Fulham</td>
<td>97,997</td>
</tr>
<tr>
<td>David Crosby</td>
<td>117,372</td>
</tr>
<tr>
<td>James W. Hennigan</td>
<td>61,535</td>
</tr>
<tr>
<td>William J. Galvin</td>
<td>29,208</td>
</tr>
<tr>
<td>John W. Sears</td>
<td>101,951</td>
</tr>
</tbody>
</table>

Total expenditures = $690,588 (approximately)
Total contributions and loans = $683,357
<table>
<thead>
<tr>
<th>CANDIDATE</th>
<th>PARTY</th>
<th>Primary</th>
<th>General</th>
<th>Total</th>
<th>Number of Contributions</th>
<th>Total amount of Contributions</th>
<th>Total Personal Loans</th>
<th>Total Personal Loans made to Candidate's campaign by others</th>
<th>Total Loans made to Candidate's campaign by others</th>
<th>Public Funds of all Loans &amp; Contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael J. Connelly*</td>
<td>D</td>
<td>$25,237</td>
<td>$36,765</td>
<td>$62,002</td>
<td>1</td>
<td>$1,000+</td>
<td>2</td>
<td>$500 to $1,000</td>
<td>29</td>
<td>$250 to $499</td>
</tr>
<tr>
<td>Lois G. Pines</td>
<td>D</td>
<td>$155,689</td>
<td>$155,689</td>
<td>$311,378</td>
<td>15</td>
<td>$15,000+</td>
<td>29</td>
<td>$250 to $499</td>
<td>27</td>
<td>$100 to $249</td>
</tr>
<tr>
<td>Anthony Vigliotti</td>
<td>D</td>
<td>$64,834</td>
<td>$64,834</td>
<td>$139,668</td>
<td>1</td>
<td>$1,000+</td>
<td>3</td>
<td>$500 to $1,000</td>
<td>11</td>
<td>$250 to $499</td>
</tr>
<tr>
<td>John Fulham</td>
<td>D</td>
<td>$97,997</td>
<td>$97,997</td>
<td>$195,994</td>
<td>23</td>
<td>$23,000+</td>
<td>18</td>
<td>$10,000+</td>
<td>19</td>
<td>$250 to $499</td>
</tr>
<tr>
<td>David Crosby</td>
<td>D</td>
<td>$117,372</td>
<td>$117,372</td>
<td>$234,744</td>
<td>1</td>
<td>$10,000+</td>
<td>12</td>
<td>$500 to $1,000</td>
<td>16</td>
<td>$250 to $499</td>
</tr>
<tr>
<td>James W. Hennigan</td>
<td>D</td>
<td>$61,535</td>
<td>$61,535</td>
<td>$123,070</td>
<td>2</td>
<td>$2,000+</td>
<td>16</td>
<td>$10,000+</td>
<td>11</td>
<td>$250 to $499</td>
</tr>
<tr>
<td>William J. Galvin</td>
<td>D</td>
<td>$29,208</td>
<td>$29,208</td>
<td>$58,416</td>
<td>0</td>
<td>(0)</td>
<td>4</td>
<td>$500 to $1,000</td>
<td>13</td>
<td>$250 to $499</td>
</tr>
<tr>
<td>John W. Sears*</td>
<td>R</td>
<td>$7,914</td>
<td>$94,137</td>
<td>$101,951</td>
<td>9</td>
<td>$9,000+</td>
<td>13</td>
<td>$500 to $1,000</td>
<td>14</td>
<td>$250 to $499</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$559,686</td>
<td>$130,902</td>
<td>$690,588</td>
<td>61</td>
<td>$10,000+</td>
<td>97</td>
<td>$500 to $1,000</td>
<td>144</td>
<td>$250 to $499</td>
</tr>
</tbody>
</table>
### ELECTION FOR STATE TREASURER

#### Robert Q. Crane

<table>
<thead>
<tr>
<th>Contributions</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$138,957</td>
</tr>
<tr>
<td>Over $500</td>
<td>44,250</td>
</tr>
<tr>
<td>Under $500</td>
<td>94,707</td>
</tr>
<tr>
<td>Loss if $500</td>
<td>16,750</td>
</tr>
<tr>
<td>Gain with public finance</td>
<td>100,000</td>
</tr>
</tbody>
</table>

#### Lawrence E. Blacke

<table>
<thead>
<tr>
<th>Contributions</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$435</td>
</tr>
<tr>
<td>Over $500</td>
<td>0</td>
</tr>
<tr>
<td>Under $500</td>
<td>435</td>
</tr>
<tr>
<td>Loss if $500</td>
<td>0</td>
</tr>
<tr>
<td>Gain with public finance</td>
<td>0</td>
</tr>
</tbody>
</table>

#### Lawrence S. DiCara

<table>
<thead>
<tr>
<th>Contributions</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$134,952</td>
</tr>
<tr>
<td>Over $500</td>
<td>43,500</td>
</tr>
<tr>
<td>Under $500</td>
<td>91,452</td>
</tr>
<tr>
<td>Loss if $500</td>
<td>23,000</td>
</tr>
<tr>
<td>Gain with public finance</td>
<td>50,000</td>
</tr>
</tbody>
</table>

#### Paul R. Cacchiotti

<table>
<thead>
<tr>
<th>Contributions</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$3,472</td>
</tr>
<tr>
<td>Over $500</td>
<td>0</td>
</tr>
<tr>
<td>Under $500</td>
<td>3,472</td>
</tr>
<tr>
<td>Loss if $500</td>
<td>0</td>
</tr>
<tr>
<td>Gain with public finance</td>
<td>0</td>
</tr>
</tbody>
</table>

#### Thomas D. Lopes

<table>
<thead>
<tr>
<th>Contributions</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$9,044</td>
</tr>
<tr>
<td>Over $500</td>
<td>0</td>
</tr>
<tr>
<td>Under $500</td>
<td>9,044</td>
</tr>
<tr>
<td>Loss if $500</td>
<td>0</td>
</tr>
<tr>
<td>Gain with public finance</td>
<td>0</td>
</tr>
</tbody>
</table>

#### Dayce P. Moore

<table>
<thead>
<tr>
<th>Contributions</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$5,693</td>
</tr>
<tr>
<td>Over $500</td>
<td>750</td>
</tr>
<tr>
<td>Under $500</td>
<td>4,943</td>
</tr>
<tr>
<td>Loss if $500</td>
<td>250</td>
</tr>
<tr>
<td>Gain with public finance</td>
<td>0</td>
</tr>
</tbody>
</table>

#### Lewis S. W. Crampton

<table>
<thead>
<tr>
<th>Contributions</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$97,311</td>
</tr>
<tr>
<td>Over $500</td>
<td>33,250</td>
</tr>
<tr>
<td>Under $500</td>
<td>54,081</td>
</tr>
<tr>
<td>Loss if $500</td>
<td>14,250</td>
</tr>
<tr>
<td>Gain with public finance</td>
<td>50,000</td>
</tr>
<tr>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>Total contributions</td>
<td>$389,864</td>
</tr>
<tr>
<td>135 contributions over $500</td>
<td>$121,800</td>
</tr>
<tr>
<td>remaining contributions under $500</td>
<td>$368,064</td>
</tr>
<tr>
<td>loss if $500-limit</td>
<td>$54,250</td>
</tr>
<tr>
<td>gain with public finance</td>
<td>$200,000</td>
</tr>
<tr>
<td>NET gain with public finance</td>
<td>$145,750</td>
</tr>
<tr>
<td>TOTAL contributions under new scheme</td>
<td>$535,614</td>
</tr>
<tr>
<td>PUBLIC FINANCE FORMING PART OF TOTAL</td>
<td>$200,000</td>
</tr>
</tbody>
</table>
NOTES

1. The "contributions" described above refer to contributions made between January 1, 1978 and December 31, 1978 and do not include contributions or loans by a candidate to his or her own campaign or loans by others to that campaign. During the same time period, the following loans and personal contributions were made to the candidates' campaigns:

<table>
<thead>
<tr>
<th></th>
<th>Personal Contributions</th>
<th>Personal Loans</th>
<th>Loans by Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert Q. Crane</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Lawrence E. Blacke</td>
<td>0</td>
<td>256</td>
<td>0</td>
</tr>
<tr>
<td>Lawrence S. DiCara</td>
<td>0</td>
<td>29,000</td>
<td>4,300</td>
</tr>
<tr>
<td>Paul R. Cacchiotti</td>
<td>250</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Thomas D. Lopes</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dayce P. Moore</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Lewis S. W. Crampton</td>
<td>43,200</td>
<td>500</td>
<td>0</td>
</tr>
</tbody>
</table>

So that

Total contributions = $389,864
Total loans and personal contributions = 77,506
Total = $467,370

2. Total "expenditures" for the period between January 1, 1978 and December 31, 1978 were as follows:

<table>
<thead>
<tr>
<th></th>
<th>Total expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert Q. Crane</td>
<td>$199,850</td>
</tr>
<tr>
<td>Lawrence E. Blacke</td>
<td>810</td>
</tr>
<tr>
<td>Lawrence S. DiCara</td>
<td>173,794</td>
</tr>
<tr>
<td>Paul R. Cacchiotti</td>
<td>4,735</td>
</tr>
<tr>
<td>Thomas D. Lopes</td>
<td>12,946</td>
</tr>
<tr>
<td>Dayce P. Moore</td>
<td>8,397</td>
</tr>
<tr>
<td>Lewis S. W. Crampton</td>
<td>132,381</td>
</tr>
</tbody>
</table>

Total expenditures = $532,913 (approximately)

Total contributions and loans = $467,370
<table>
<thead>
<tr>
<th>CANDIDATE</th>
<th>PARTY</th>
<th>Primary</th>
<th>General</th>
<th>Total</th>
<th>Number of Contributions</th>
<th>Total amount of Contributions</th>
<th>Total Personal</th>
<th>Total Loans made to Candidate's campaign by others</th>
<th>Public Funds</th>
<th>Total of all Loans &amp; Contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert Q. Crane*</td>
<td>D</td>
<td>$103,932</td>
<td>$95,918</td>
<td>$199,850</td>
<td>12 (12,000)</td>
<td>$138,957 (144,250)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>$2502</td>
</tr>
<tr>
<td>Lawrence E. Blacke</td>
<td>D</td>
<td>$810</td>
<td>--------</td>
<td>$810</td>
<td>0</td>
<td>$435 (0)</td>
<td>0</td>
<td>$256</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Lawrence S. DiCara</td>
<td>D</td>
<td>$173,794</td>
<td>--------</td>
<td>$173,794</td>
<td>11 (11,000)</td>
<td>$134,952 (143,500)</td>
<td>0</td>
<td>$29,000</td>
<td>$4,300</td>
<td>0</td>
</tr>
<tr>
<td>Paul R. Cacchiotti</td>
<td>D</td>
<td>$4,735</td>
<td>--------</td>
<td>$4,735</td>
<td>0</td>
<td>$3,472 (0)</td>
<td>$250</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Thomas D. Lopes</td>
<td>D</td>
<td>$12,946</td>
<td>--------</td>
<td>$12,946</td>
<td>0</td>
<td>$9,044 (0)</td>
<td>0</td>
<td>$3,800</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dayce P. Moore</td>
<td>D</td>
<td>$8,397</td>
<td>--------</td>
<td>$8,397</td>
<td>0</td>
<td>$5,693 (750)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Lewis S.W. Crampton*</td>
<td>R</td>
<td>$60,061</td>
<td>$71,520</td>
<td>$131,581</td>
<td>19 (19,000)</td>
<td>$97,311 (33,250)</td>
<td>$43,200</td>
<td>$500</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td>$364,675</td>
<td>$167,436</td>
<td>$532,111</td>
<td>42 (42,000)</td>
<td>$389,864 (121,750)</td>
<td>$43,450</td>
<td>$33,556</td>
<td>$4,300</td>
<td>$2502</td>
</tr>
</tbody>
</table>
### ELECTION FOR AUDITOR

<table>
<thead>
<tr>
<th></th>
<th>Thaddeus Buczko</th>
<th>Peter Meade</th>
<th>William Casey</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total contributions</strong></td>
<td>worth $28,469</td>
<td>worth $100,171</td>
<td>worth $900</td>
</tr>
<tr>
<td><strong>1 contribution over $500</strong></td>
<td>worth 750</td>
<td>worth 6,250</td>
<td>worth 0</td>
</tr>
<tr>
<td><strong>remaining contributions under $500</strong></td>
<td>worth 27,719</td>
<td>worth 93,921</td>
<td>worth 900</td>
</tr>
<tr>
<td><strong>loss if $500 limit</strong></td>
<td>gain with public finance: 250</td>
<td>gain with public finance: 750</td>
<td>gain with public finance: 0</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>NET gain with public finance:</strong> $77,219 (59.6%)</td>
<td><strong>NET gain with public finance:</strong> $78,219 (60.4%)</td>
<td><strong>NET gain with public finance:</strong> $78,219 (37.8%)</td>
</tr>
<tr>
<td><strong>12 contributions over $500</strong></td>
<td>$129,540 (100.0%)</td>
<td>$206,759 (100.0%)</td>
<td>$206,759 (100.0%)</td>
</tr>
<tr>
<td><strong>remaining contributions under $500</strong></td>
<td>$119,540 (92.3%)</td>
<td>$119,540 (92.3%)</td>
<td>$119,540 (92.3%)</td>
</tr>
<tr>
<td><strong>loss if $500 limit</strong></td>
<td>gain with public finance: 1,000</td>
<td>gain with public finance: 78,219</td>
<td>gain with public finance: 78,219</td>
</tr>
<tr>
<td><strong>TOTAL contributions under new scheme</strong></td>
<td>$206,759 (100.0%)</td>
<td>$206,759 (100.0%)</td>
<td>$206,759 (100.0%)</td>
</tr>
</tbody>
</table>
NOTES

1. The "contributions" described above refer to contributions made between January 1, 1978 and December 31, 1978 and do not include contributions or loans by a candidate to his or her own campaign or loans by others to that campaign. During the same time period, the following loans and personal contributions were made to the candidates' campaigns:

<table>
<thead>
<tr>
<th></th>
<th>Personal Contributions</th>
<th>Personal Loans</th>
<th>Loans by Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thaddeus Buczko</td>
<td>$0</td>
<td>$45,000</td>
<td>$0</td>
</tr>
<tr>
<td>Peter Meade</td>
<td>0</td>
<td>400</td>
<td>0</td>
</tr>
<tr>
<td>William Casey</td>
<td>1,000</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

So that

Total contributions = $129,540
Total loans and personal contributions = 46,400
Total = $175,940

2. Total "expenditures" for the period between January 1, 1978 and December 31, 1978 were as follows:

<table>
<thead>
<tr>
<th></th>
<th>Total expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thaddeus Buczko</td>
<td>$82,496</td>
</tr>
<tr>
<td>Peter Meade</td>
<td>128,625</td>
</tr>
<tr>
<td>William Casey</td>
<td>1,900</td>
</tr>
</tbody>
</table>

Total expenditures = $213,021 (approximately)

Total contributions and loans = $175,940
<table>
<thead>
<tr>
<th>CANDIDATE</th>
<th>PARTY</th>
<th>PRIMARY</th>
<th>GENERAL</th>
<th>TOTAL</th>
<th>NUMBER OF CONTRIBUTIONS</th>
<th>TOTAL AMOUNT OF CONTRIBUTIONS</th>
<th>TOTAL PERSONAL LOANS</th>
<th>TOTAL PERSONAL LOANS MADE TO CANDIDATE'S CAMPAIGN BY OTHERS</th>
<th>PUBLIC FUNDS</th>
<th>TOTAL OF ALL LOANS &amp; CONTRIBUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thaddeus Buczko</td>
<td>D</td>
<td>$82,496</td>
<td>0</td>
<td>0</td>
<td>$1,000+</td>
<td>$28,469 ($750)</td>
<td>0</td>
<td>0</td>
<td>$0</td>
<td>$73,469</td>
</tr>
<tr>
<td>Peter Neade</td>
<td>D</td>
<td>$128,265</td>
<td>4</td>
<td>7</td>
<td>$500 to $1,000 ($5,250)</td>
<td>$100,171 ($6,250)</td>
<td>0</td>
<td>0</td>
<td>$0</td>
<td>$100,571</td>
</tr>
<tr>
<td>William Casey</td>
<td>R</td>
<td>$1,900</td>
<td>0</td>
<td>0</td>
<td>$250 to $499 ($0)</td>
<td>$900 ($0)</td>
<td>$1,000</td>
<td>0</td>
<td>$0</td>
<td>$1,900</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td>$213,021</td>
<td>4</td>
<td>8</td>
<td>$100 to $249 ($6,000)</td>
<td>$129,540 ($10,000)</td>
<td>$1,000</td>
<td>0</td>
<td>$0</td>
<td>$175,940</td>
</tr>
</tbody>
</table>
SUPPLEMENT B:

DETAILED SUMMARY OF CAMPAIGN CONTRIBUTIONS TO
AND EXPENDITURES BY CANDIDATES FOR
LEGISLATIVE OFFICE IN 1978

and

CALCULATION OF EFFECTS OF
PROPOSED PUBLIC FINANCE SYSTEM
ON CONTRIBUTIONS TO
CANDIDATES FOR LEGISLATIVE OFFICES.
1978 STATE REPRESENTATIVE ELECTION

457 Candidates*

I. Total Contributions:

Average contributions = $5,922

II. Number of Contributions:

<table>
<thead>
<tr>
<th>Range</th>
<th>Number of Contributions</th>
<th>Total Contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1000- $178,000</td>
<td>68</td>
<td>68,000</td>
</tr>
<tr>
<td>$500-1000 $175,500</td>
<td>236</td>
<td>178,500</td>
</tr>
<tr>
<td>$250-500 $211,500</td>
<td>564</td>
<td>211,500</td>
</tr>
<tr>
<td>$100-250 $847,350</td>
<td>4842</td>
<td>847,350</td>
</tr>
</tbody>
</table>

TOTAL contributions over $100: 1,305,350 (48.2%)
TOTAL contributions under $100: 1,401,004 (51.8%)
TOTAL contributions under $250: 2,249,354 (83.1%)
TOTAL contributions over $500: 246,500 (9.1%)

III. Non-publicly Funded Candidates

Likely contribution loss if $500 contribution limit: $161,500 (6.0%)

IV. Publicly Funded Candidates

a. with all 457 candidates participating

Likely gain because of matching public funds: $1,972,204 (72.9%)
Likely loss because of $250 contribution limit: - 240,500 (-8.9%)
Likely net gain for publicly financed candidates: 1,731,704 (64.0%)

b. with 420 candidates qualified and participating in primary** and 206 candidates qualified and participating in general election

Likely gain because of matching public funds: 1,469,762
Likely loss because of $250 contribution limit: - 179,230
Likely net gain for publicly financed candidates: 1,290,532

Public finance
Private contributions in new scheme
TOTAL contributions (public and private) in new scheme:

$1,469,762 (36.8%)
2,557,124 (63.2%)
$3,996,886 (100.0%)

Based on scaling up from sample of 105 candidates.

** Assuming 50% of total qualifying contributions matched for those qualifying during primary only and 100% for all others.
### 1978 STATE SENATE ELECTION

#### 91 Candidates

**I. Total Contributions:**

Average contributions = $17,469

**II. Number of Contributions:**

<table>
<thead>
<tr>
<th>Range</th>
<th>Number of Contributions</th>
<th>Contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1000-1000 range</td>
<td>34</td>
<td>34,000</td>
</tr>
<tr>
<td>$500-1000 range</td>
<td>138</td>
<td>103,500</td>
</tr>
<tr>
<td>$250-500 range</td>
<td>263</td>
<td>98,625</td>
</tr>
<tr>
<td>$100-250 range</td>
<td>2742</td>
<td>479,850</td>
</tr>
</tbody>
</table>

TOTAL contributions over $100 = 715,975 (67.4%)

TOTAL contributions under $100 = 345,994 (32.6%)

**III. Non-publicly Funded Candidates**

Likely contribution loss if $500 contribution limit: $51,500 (4.8%)

**IV. Publicly Funded Candidates**

a. with all 91 candidates participating

Likely gain because of matching public funds: $653,694 (61.6%)

Likely loss because of $250 contribution limit: $127,375 (-12.0%)

Likely net gain for publicly financed candidates: $526,319 (49.6%)

b. with 72 candidates qualified and participating in primary and 40 candidates qualified and participating in general election

Likely gain because of matching public funds: 503,429

Likely loss because of $250 contribution limit: 99,069

Likely net gain for publicly financed candidates: 323,787

**Public finance**

$503,429 (34.3%)

**Private contributions in new scheme**

$962,900 (65.7%)

**TOTAL contributions (public and private) in new scheme**

$1,466,329 (100.0%)

---

*Assuming 50% of total qualifying contributions matched for those qualifying during primary only and 100% for all others.*
1978 ELECTION FOR STATE REPRESENTATIVE

<table>
<thead>
<tr>
<th>DEMOCRATS</th>
<th>160 races</th>
<th>320 Democratic candidates</th>
<th>130 D winners</th>
</tr>
</thead>
<tbody>
<tr>
<td>8 races</td>
<td>No candidates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>59 races</td>
<td>Candidates in primary without opposition</td>
<td>25 D winners</td>
<td></td>
</tr>
<tr>
<td></td>
<td>25 races no opposition in the general election</td>
<td>25 D winners</td>
<td></td>
</tr>
<tr>
<td></td>
<td>28 races opposed by Republican only</td>
<td>17 D winners</td>
<td></td>
</tr>
<tr>
<td></td>
<td>6 races opposed by Independent only</td>
<td>5 D winners</td>
<td></td>
</tr>
<tr>
<td></td>
<td>0 races opposed by Republican and Independent</td>
<td>0 D winners</td>
<td></td>
</tr>
<tr>
<td>93 races</td>
<td>Candidates in primary with opposition</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>51 races with 2 opponents in the primary</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>25 races with 3 opponents in the primary</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>12 races with 4 opponents in the primary</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 race with 5 opponents in the primary</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2 races with 7 opponents in the primary</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 race with 8 opponents in the primary</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 race with 9 opponents in the primary</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>35 races with no opposition in the general election</td>
<td>35 D winners</td>
<td></td>
</tr>
<tr>
<td></td>
<td>24 races with 2 opponents in the primary</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>8 races with 3 opponents in the primary</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3 races with 4 opponents in the primary</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>33 races opposed by Republican only</td>
<td>27 D winners</td>
<td></td>
</tr>
<tr>
<td></td>
<td>11 races opposed by Independent only</td>
<td>10 D winners</td>
<td></td>
</tr>
<tr>
<td></td>
<td>14 races opposed by Republican and Independent</td>
<td>11 D winners</td>
<td></td>
</tr>
<tr>
<td>Races</td>
<td>Description</td>
<td>Qualifying Cases</td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>-----------------------------------------------------------------------------</td>
<td>------------------</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>No qualifying candidates because no candidates running</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>59</td>
<td>25 races no opposition in the primary and no opposition in the general election</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>34</td>
<td>34 races no opposition in the primary but opposition in the general election</td>
<td>34</td>
<td></td>
</tr>
<tr>
<td>93</td>
<td>35 races with opposition in the primary but no opposition in the general election</td>
<td>84</td>
<td></td>
</tr>
<tr>
<td>58</td>
<td>58 races with opposition in the primary and the general election</td>
<td>120</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td>204</td>
<td></td>
</tr>
</tbody>
</table>

3 qualifying in primary as Democrats and ran as independent in general election
## 1978 ELECTION FOR STATE REPRESENTATIVE

**REPUBLICANS**

<table>
<thead>
<tr>
<th>Races</th>
<th>Description</th>
<th>Winners</th>
</tr>
</thead>
<tbody>
<tr>
<td>73</td>
<td>No candidates</td>
<td></td>
</tr>
<tr>
<td>78</td>
<td>Candidates in primary without opposition</td>
<td></td>
</tr>
<tr>
<td></td>
<td>7 races no opposition in the general election</td>
<td>7 R winners</td>
</tr>
<tr>
<td></td>
<td>54 races opposed by Democrat only</td>
<td>13 R winners</td>
</tr>
<tr>
<td></td>
<td>1 race opposed by Independent only</td>
<td>1 R winner</td>
</tr>
<tr>
<td></td>
<td>13 races opposed by Democrat and Independent</td>
<td>2 R winners</td>
</tr>
<tr>
<td></td>
<td>3 races Did not participate in the general election</td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>R winners</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Candidates in primary with opposition</td>
<td></td>
</tr>
<tr>
<td></td>
<td>6 races with 2 opponents in the primary</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2 races with 3 opponents in the primary</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 race with 4 opponents in the primary</td>
<td></td>
</tr>
<tr>
<td></td>
<td>O races with no opposition in the general election</td>
<td>0 R winners</td>
</tr>
<tr>
<td>8</td>
<td>races opposed by Democrat only</td>
<td>4 R winners</td>
</tr>
<tr>
<td>0</td>
<td>races opposed by Independent only</td>
<td>0 R winners</td>
</tr>
<tr>
<td>1</td>
<td>race opposed by Democrat and Independent</td>
<td>1 R winner</td>
</tr>
<tr>
<td></td>
<td>O races with no opposition in the general election</td>
<td></td>
</tr>
<tr>
<td>160</td>
<td>100 Republican candidates</td>
<td>28 R winners</td>
</tr>
<tr>
<td>Races</td>
<td>Description</td>
<td>Qualifying Candidates</td>
</tr>
<tr>
<td>-------</td>
<td>-----------------------------------------------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>73</td>
<td>No qualifying candidates because no candidates running</td>
<td>0</td>
</tr>
<tr>
<td>78</td>
<td>7 races no opposition in the primary and no opposition in the general election</td>
<td>0 qualifying</td>
</tr>
<tr>
<td></td>
<td>3 races no opposition in the primary but participation in the general election</td>
<td>0 qualifying*</td>
</tr>
<tr>
<td>68</td>
<td>9 races no opposition in the primary but opposition in the general election</td>
<td>68 qualifying during primary and general election</td>
</tr>
<tr>
<td>9</td>
<td>9 races with opposition in the primary and the general election</td>
<td>13 qualifying in primary only</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9 qualifying for primary and general election</td>
</tr>
</tbody>
</table>

**TOTAL**

13 qualifying during primary only

77 qualifying during primary and general election

---

* Already counted ran in both Republican and Democratic primaries.
### 1978 ELECTION FOR STATE REPRESENTATIVE

#### INDEPENDENTS

<table>
<thead>
<tr>
<th>Races</th>
<th>Independent Candidates</th>
<th>Description</th>
<th>Winners</th>
</tr>
</thead>
<tbody>
<tr>
<td>129</td>
<td>No Independent candidates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>1 Race Opposed by Independents, Democrats, and Republicans</td>
<td>D I winners</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>2 Independent opponents, and Democrat with 5 opponents in primary and unopposed Republican</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>2 Independents and Democrat with opponent in primary</td>
<td>D I winners</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>2 Independents and Democrat with 3 opponents in primary</td>
<td>D I winners</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>2 Independents and Democrat with 3 opponents in the primary</td>
<td>O I winners</td>
<td></td>
</tr>
</tbody>
</table>

#### Oppositions

<table>
<thead>
<tr>
<th>Races</th>
<th>Description</th>
<th>Winners</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unopposed Democrat and Republican</td>
<td>D I winners</td>
</tr>
<tr>
<td>4</td>
<td>Democrat with 1 opponent and unopposed Republican</td>
<td>D I winners</td>
</tr>
<tr>
<td>5</td>
<td>Democrat with 2 opponents and unopposed Republican</td>
<td>1 I winner</td>
</tr>
<tr>
<td>1</td>
<td>Democrat with 3 opponents and unopposed Republican</td>
<td>D I winners</td>
</tr>
<tr>
<td>1</td>
<td>Democrat with 7 opponents and unopposed Republican</td>
<td>D I winners</td>
</tr>
<tr>
<td>1</td>
<td>Democrat with 1 opponent and Republican with 2 opponents in the primary</td>
<td>D I winners</td>
</tr>
</tbody>
</table>

#### Opposition by Republican only

<table>
<thead>
<tr>
<th>Races</th>
<th>Description</th>
<th>Winners</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Republican primary uncontested</td>
<td>D I winners</td>
</tr>
</tbody>
</table>

#### Opposition by Democrats only

<table>
<thead>
<tr>
<th>Races</th>
<th>Description</th>
<th>Winners</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Democratic primary uncontested</td>
<td>O I winners</td>
</tr>
<tr>
<td>5</td>
<td>Democrat with 1 opponent in the primary</td>
<td>1 I winner</td>
</tr>
<tr>
<td>1</td>
<td>Democrat with 2 opponents in the primary</td>
<td>D I winners</td>
</tr>
</tbody>
</table>

#### Total

<table>
<thead>
<tr>
<th>Races</th>
<th>Independent Candidates</th>
<th>Winners</th>
</tr>
</thead>
<tbody>
<tr>
<td>160</td>
<td>37</td>
<td>2 I winners</td>
</tr>
<tr>
<td>Races</td>
<td>Candidates Description</td>
<td>37 qualifying during primary and general election</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>129 races</td>
<td>No qualifying candidates because no candidates running</td>
<td>0 qualifying</td>
</tr>
<tr>
<td>31 races</td>
<td>37 candidates opposed in the general election</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3) qualifying as Democrats in primary election</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>34 qualifying for primary and general election</td>
</tr>
</tbody>
</table>
QUALIFYING CANDIDATES* FOR 1978 ELECTION
FOR STATE REPRESENTATIVE

13 Republicans qualify for funds during the primary only
201 Democrats qualify for funds during the primary only

214 Candidates qualify for funds during the primary only

77 Republicans qualify for funds during the primary and general election
92 Democrats qualify for funds during the primary and general election
37 Independents qualify for funds during the primary and general election**

206 Candidates qualify for funds during the primary and general election

420 Candidates qualify for primary only
206 Candidates qualify during the general election

* Potentially qualified if minimum contributions obtained.
** Includes 3 candidates who ran as Democrats in primary and as Independents in the general election.
1978 ELECTION FOR STATE SENATOR

DEMOCRATS

3 races  No candidates

21 races  Candidates in primary without opposition

13 races no opposition in the general election  13 D winners
6 races opposed by Republican only  5 D winners
1 race opposed by Independent only  1 D winner
1 race opposed by Republican and Independent  1 D winner

16 races  Candidates in primary with opposition

10 races with 2 opponents in the primary
3 races with 3 opponents in the primary
3 races with 4 opponents in the primary

35 races with no opposition in the general election  5 D winners

3 races with 2 opponents in the primary
1 race with 3 opponents in the primary
1 race with 4 opponents in the primary

8 races opposed by Republican only  6 D winners
2 races opposed by Independent only  2 D winners
1 race opposed by Republican and Independent  1 D winner

40 races  65 Democratic candidates  34 D winners
### DEMOCRATS

#### Public Funds

<table>
<thead>
<tr>
<th>Races</th>
<th>Description</th>
<th>Qualifying Candidates</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 races</td>
<td>No qualifying candidates because no candidates running</td>
<td>0</td>
</tr>
<tr>
<td>21 races</td>
<td>13 races no opposition in the primary and no opposition in the general election</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>8 races no opposition in the primary but opposition in the general election</td>
<td></td>
</tr>
<tr>
<td>16 races</td>
<td>5 races with opposition in the primary but no opposition in the general election</td>
<td>13 qualifying during primary only</td>
</tr>
<tr>
<td></td>
<td>11 races with opposition in the primary and the general election</td>
<td>17 qualifying during primary only</td>
</tr>
<tr>
<td></td>
<td></td>
<td>11 qualifying during primary and general election</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>30 qualifying during primary only</td>
</tr>
<tr>
<td></td>
<td></td>
<td>19 qualifying during primary and general election</td>
</tr>
</tbody>
</table>
### 1978 ELECTION FOR STATE SENATOR

#### REPUBLICANS

<table>
<thead>
<tr>
<th>Races</th>
<th>Description</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 races</td>
<td>No candidates</td>
<td></td>
</tr>
<tr>
<td>16 races</td>
<td>Candidates in primary without opposition</td>
<td></td>
</tr>
<tr>
<td>3 races</td>
<td>no opposition in the general election</td>
<td>3 R winners</td>
</tr>
<tr>
<td>11 races</td>
<td>opposed by Democrat only</td>
<td>2 R winners</td>
</tr>
<tr>
<td>0 races</td>
<td>opposed by Independent only</td>
<td>0 R winners</td>
</tr>
<tr>
<td>2 races</td>
<td>opposed by Democrat and Independent</td>
<td>0 R winners</td>
</tr>
<tr>
<td>2 races</td>
<td>Candidates in primary with opposition</td>
<td></td>
</tr>
<tr>
<td>2 races</td>
<td>with 2 opponents in the primary</td>
<td></td>
</tr>
<tr>
<td>0 races</td>
<td>with no opposition in the general election</td>
<td>0 R winners</td>
</tr>
<tr>
<td>2 races</td>
<td>opposed by Democrat only</td>
<td>1 R winners</td>
</tr>
<tr>
<td>0 races</td>
<td>opposed by Independent only</td>
<td>0 R winners</td>
</tr>
<tr>
<td>0 races</td>
<td>opposed by Democrat and Independent</td>
<td>0 R winners</td>
</tr>
<tr>
<td>40 races</td>
<td>20 Republican candidates</td>
<td>6 R winners</td>
</tr>
<tr>
<td>Races</td>
<td>Description</td>
<td>Qualifying</td>
</tr>
<tr>
<td>-------</td>
<td>----------------------------------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>22</td>
<td>No qualifying candidates because no candidates running</td>
<td>0</td>
</tr>
<tr>
<td>16</td>
<td>3 races no opposition in the primary and no opposition in the general election</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>13 races no opposition in the primary but participation in the general election</td>
<td>13</td>
</tr>
<tr>
<td>2</td>
<td>2 races with opposition in the primary and the general election</td>
<td>2</td>
</tr>
</tbody>
</table>

**TOTAL**

2 qualifying during primary only
15 qualifying during primary and general election
1978 ELECTION FOR STATE SENATOR

INDEPENDENTS

34 races  No candidates  0 I winners
6 races  4 Races Opposed by Democrats only
          2 races  1 Independent and a Democrat with no opponents in the primary  0 I winners
          1 race  1 Independent and a Democrat with 1 opponent in the primary  0 I winners
          1 race  1 Independent and a Democrat with 2 opponents in the primary  0 I winners
2 Races Opposed by Democrats and Republicans
          1 race  1 Independent, a Democrat with 1 opponent in the primary and a Republican with 0 opponents in the primary  0 I winners
          1 race  1 Independent, 1 Democrat with 0 opponents in the primary and a Republican with 0 opponents in the primary  0 I winners

40 races  6 Independent Candidates  0 I winners
INDEPENDENTS

Public Funds

6 races Opposed by candidates in primary and general election 6 qualifying
2 Republicans qualify for funds during the primary only
30 Democrats qualify for funds during the primary only

32 Candidates qualify for funds during the primary only

15 Republicans qualify for funds during the primary and general election
19 Democrats qualify for funds during the primary and general election
6 Independents qualify for funds during the primary and general election*

40 Candidates qualify for funds during the primary and general election

72 Candidates qualify for primary only
40 Candidates qualify during the general election

* Potentially qualified if minimum contributions obtained.
The triggering mechanism according to which candidates for the various statewide and legislative elective offices are publicly financed depending upon the priority of the office in the funding scheme and the availability of public funds works as follows:

(1) **Estimate Prior to the Election Year:**

By November 1 of the year before the statewide or biennial election, the Comptroller is required to determine the balance of the State Election Campaign Fund. Depending on the year, one or three years of tax checkoff money will have been accumulated in the Fund by that point. The Comptroller is then required to estimate, according to a simple extrapolation formula prescribed by the statute, how much would be available in the upcoming statewide or biennial election. Using that estimate, the Comptroller is required to determine which statewide and/or legislative elective offices would be funded in the election if the balance of the State Election Campaign Fund were as estimated. The Comptroller's determination is based on the allocation scheme (discussed below) which would actually be used in the election year. The Comptroller must then publish the estimated balance of the Fund and the list of offices to be funded. Regardless of the actual balance of the Fund in the election year only the offices on that list will be publicly funded.

(2) **Allocation of Monies in the Election Year**: 

At least nine weeks before the election, the Comptroller is required to determine the actual balance of the State Election Campaign Fund as of June 30 of that year.

(a) Maximum Public Finance Payments (MPFP's), pertaining to the previous statewide election year, are then determined. The MPFP for any particular office is determined by multiplying the number of candidates for that office in the last statewide election who actually qualified for public finance by the maximum amount of public funds those candidates were theoretically eligible for, whether or not they actually received those funds. Thus, if there were public financing for gubernatorial candidates under this scheme in 1982, the MPFP (based for a sample calculation, including all candidates, see the accompanying Table 1.)
on the 1978 statewide election) would be $1,500,000. This would be because there were two candidates in each of the two party primaries who would have qualified for public finance and each potentially could have received $250,000 in public matching funds. There were, in addition, two candidates in the general election, each of whom would have qualified for public finance and could have received $250,000 apiece. Thus, the MPFP for gubernatorial candidates in 1978 would be $1,500,000 ( = 4 x $250,000 + 2 x $250,000). Similarly, if in 1978, a total of 420 candidates for state representative and 72 candidates for state senator had qualified for public finance, the MPFP would have been $3,384,000 ( = 420 x $6,000 + 72 x $12,000).

(b) After the MPFP's are determined, the allocation is made as follows: If the balance of the Fund in the election year exceeds the MPFP for candidates for Governor, a sum equal to that MPFP is set aside from the Fund to finance candidates for Governor in that election year. Otherwise, the entire balance is applied to the race for Governor. In case of an excess, a comparison of the excess is made with the MPFP for candidates for Lieutenant Governor. If it is greater than the MPFP, an amount equal to the MPFP is set aside from the Fund to finance candidates for Lieutenant Governor in the primary only. If it is less, then the remainder goes to finance only such candidates. If there is money left over it is compared with the MPFP for candidates for Attorney General and the same procedure is used. If any money is left over after that allocation, the amount remaining is compared to the sum of the MPFP's for candidates for Secretary of State, State Treasurer, and State Auditor. If it is greater than the sum, an amount equal to the sum is set aside to fund those races. If it is not, the sum is allocated pro-rata according to the MPFP's for each of those three statewide races. Finally, any sum remaining is compared with the MPFP for all legislative races. If it is in excess of the MPFP, an amount equal to the MPFP is allocated to legislative races and the remainder pro-rated among all statewide and legislative races according to the share they have already received. If there is no excess, then all funds are allocated to the legislative races.


As noted in the text, the only races publicly funded in 1982 would be those for Governor and Lieutenant Governor, with 10/11 of the balance of the State Election Campaign Fund reserved for the former (primary and general
election) and 1/11 for the latter (primary election only). There is to be no public financing of legislative candidates before 1986. In 1986, the full scheme goes into effect except for one transitional element. Since no candidates other than those for Governor and Lieutenant Governor will have been publicly funded in 1982, it will not be possible to determine a Maximum Public Finance Payment for those candidates. In lieu of that, the proposal uses a so-called Base Public Finance Payment (BPFP). This would be determined by counting the number of candidates for a particular office who had the requisite opposition in the primary and/or general election to qualify for public finance and who also received at least 15% of the votes in the election and then multiplying that number by the maximum amount of public funds permitted to such candidates. The 15% threshold is, in effect, intended to be the measure of whether a candidate would have received sufficient qualifying contributions. All other aspects of the funding mechanism take effect in 1986, and subsequent to that year MPFP's will, of course, be used to make the allocation according to the proposed statute.
TABLE 1

ILLUSTRATION OF ALLOCATION SCHEME FOR 1990 STATEWIDE ELECTION YEAR

$6,000,000 available in State Election Campaign Fund

1. Governor: 4 in the primary and 2 in the general election.
2. Lt. Governor: 2 in the primary.
3. Attorney General: 2 in the general election.
4. State Secretary: 7 in the primary and 2 in the general election.
5. State Treasurer: 2 in the primary and 2 in the general election.
6. State Auditor: 2 in the primary and 1 in the general election.
7. Legislators: 400 candidates for State Representative and 60 candidates for State Senator.

Maximum Public Finance Payments (MPFP's) in 1986

<table>
<thead>
<tr>
<th>Office</th>
<th>Payment (MPFP)</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor</td>
<td>$1,500,000</td>
<td>$1,500,000 = 4 x $250,000 + 2 x $250,000</td>
</tr>
<tr>
<td>Lt. Governor</td>
<td>$100,000</td>
<td>$100,000 = 2 x $50,000</td>
</tr>
<tr>
<td>Attorney General</td>
<td>$250,000</td>
<td></td>
</tr>
<tr>
<td>State Secretary</td>
<td>$450,000</td>
<td>$450,000 = 5 x $50,000 + 2 x $50,000</td>
</tr>
<tr>
<td>State Treasurer</td>
<td>$200,000</td>
<td>$200,000 = 2 x $50,000 + 2 x $50,000</td>
</tr>
<tr>
<td>State Auditor</td>
<td>$150,000</td>
<td>$150,000 = 2 x $50,000 + 1 x $50,000</td>
</tr>
<tr>
<td>Legislators</td>
<td>$3,120,000</td>
<td>$3,120,000 = 400 x $6,000 + 60 x $12,000</td>
</tr>
</tbody>
</table>

Total: $5,770,000

Allocation to Candidates for Various Offices in 1990

<table>
<thead>
<tr>
<th>Office</th>
<th>Payment (MPFP)</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor</td>
<td>$1,559,800</td>
<td>$1,500,000 + $59,800</td>
</tr>
<tr>
<td>Lt. Governor</td>
<td>$104,000</td>
<td>$100,000 + $4,000</td>
</tr>
<tr>
<td>Attorney General</td>
<td>$260,000</td>
<td>$250,000 + $10,000</td>
</tr>
<tr>
<td>State Secretary</td>
<td>$467,900</td>
<td>$450,000 + $17,900</td>
</tr>
<tr>
<td>State Treasurer</td>
<td>$208,000</td>
<td>$200,000 + $8,000</td>
</tr>
<tr>
<td>State Auditor</td>
<td>$156,000</td>
<td>$150,000 + $6,000</td>
</tr>
<tr>
<td>Legislators</td>
<td>$3,244,300</td>
<td>$3,120,000 + $124,300</td>
</tr>
</tbody>
</table>

Total: $6,000,000

$6,000,000 = $5,770,000 + $230,000
NOTE

If $4,500,000 were available in 1990, then the allocations to statewide races would be the same as noted above (a total of $2,550,000) and the remaining amount ($1,950,000) would be pro-rated among legislative candidates. If only $2,500,000 were available, the allocations to Governor, Lt. Governor and Attorney General would remain the same (a total of $1,850,000) and the remaining amount ($650,000) would be pro-rated among the three other statewide races ($366,000 for State Secretary; $162,000 for State Treasurer; $122,000 for State Auditor). Nothing would be allocated to legislative races. (The lack of funds for financing legislative races would have been known the previous year and the Comptroller would not have listed legislative offices among those to be funded in 1990.)
The graph depicts the relationship between money and votes in 1978 campaigns for the Massachusetts House of Representatives. Each winning candidate is represented by a ♦; each losing candidate by a ○. The percent of money a candidate spent of the total expenditure in his/her campaign is recorded on the vertical axis. The percent of votes a candidate received of the total vote is recorded on the horizontal axis.

The distribution of points indicates clearly that the more money a candidate spends relative to opposing candidates, the higher will be his or her percentage of the total vote. A candidate who spends less than half of the total funds expended in a campaign is about three times as...
likely to lose as one who spends more than half.

The same relationship extends to the Senate, though if a line is drawn through the points of a regression analysis, the slope is steeper. This is because of the larger size of the state districts which necessitates a greater expenditure per each percentage increase in the vote.

The Commission also found that on the average:

- Challengers must spend more than the usual amount spent in a campaign in order to defeat an incumbent.
- Urban campaigns cost more than rural campaigns.
- Cost is further increased in running a successful urban campaign.
DETECTING AND PREVENTING FRAUD
THE OFFICE OF INSPECTOR GENERAL

Introduction

This section discusses the need to prevent and detect fraud, waste and abuse in the expenditure of tax dollars. When the Commission began its investigation there was no existing state agency which had or wished to perform that function. Both the State Auditor and Comptroller have supported the establishment of a quasi-criminal investigative unit which will identify those instances of fraud which are presently undetected. Both officials decline to recommend that this function be included within their agencies. The functions of prevention and program review are not within the traditional roles of prosecutors on the state or local level. It is to fill this function that the Office of Inspector General has been established.

Problems In Detection & Prevention

The Commonwealth was unable to conduct systematic comprehensive investigations to determine the presence of fraud or abuse in a particular project or program. There was neither the staff nor resources nor the authority available to acquire all the necessary pieces of information and based on these make the type of analysis that will reveal any evidence of fraud. Similarly, those programs and procedures vulnerable to fraud were not analyzed from this perspective. As a result, the state could never be sure of what it was paying for. Fraudulent or abusive practices could flourish unchecked, increasing the cost to the state for every public program.

A significant amount of fraud and illegal activities involve vendors and those having contracts with the Commonwealth, and can only be detected through an investigation which includes a thorough review of the books and records of those doing business with the Commonwealth. In the area of construction, there is fraud in the form of collusion between architects and suppliers, or between architects and contractors; fraud in the form of materials used which do not genuinely meet the standards set by contract specifications.

Limitations on the Role of State Auditor: The State Auditor was the principal office in the Commonwealth responsible for an ongoing review of how the state spends its money. The Commission has no reason to question the quality of the State Auditor's work in this area; in fact, a great deal of the Commission's basic information was gathered from the detailed reports of the state auditors.
over the years, identifying and analyzing excessive expenditures on state construction projects. The problem, however, was that the State Auditor's hands were tied; he cannot go beyond a review of the state's own files to launch a full-scale investigation of what really happened to cause the excess expenditures. The State Auditor was limited by his function to a review of documents in state files and to a determination of whether there has been compliance with appropriate statutes, regulations, accounting procedures and auditing standards.

Limitations in Prosecutor's Roles: At the other end of the spectrum from the State Auditor are the federal, state and local prosecutors, who have the power to investigate specific instances of fraud and corruption. Their focus, however, is necessarily limited by their roles as prosecutors. Their investigations are generally criminal in nature, limited in scope by the allegations being investigated or by the issues in a particular case. They do not have the power to conduct wide-ranging, systematic investigations to determine whether there has been fraud or abuse in a particular project or program. Moreover, any prosecuting office has to balance competing demands and establish priorities which vary with changing circumstances.

In the case of most investigations conducted by prosecutors, it is known that a crime has been committed. The prosecutor's job is to find out who did it. Investigations into white-collar crime and political corruption are quite different. It is first necessary to reconstitute the event, in order to discover whether there is a crime or not. It is, in ordinary language, an incredibly tedious paper chase. But in white-collar crime and political corruption, the paper does not speak for itself; it is not self-declarative. More importantly, in cases of fraud or bribery, there is no complaint; that is, both parties to the action are happy with their particular deal and are, for rather obvious reasons, quiet about what is going on. A CPA may find a pattern which is troubling to the conscience of a bookkeeper, but an investigator needs the power to ask questions of individuals involved in the transaction to discover what the paper actually signified, whether the conduct is criminal or not.

Early in the course of its hearings and investigations, the Commission became aware of the need of some institutional mechanism which would review regularly government contracts awarded within Massachusetts. The Commission's own experience in organizing its work had taught it how complex, time consuming, and specialized such investigations are. A close familiarity with the state's contract awards process, including the actors involved, standard procedure, and information about the contractor work, was essential before areas of investigation could be selected. Such essential background information would be
equally necessary for any investigative agency wishing to pursue this type of investigation. Most investigative units at the state and local level, however, have within their jurisdiction a large number of areas to investigate. None are limited to state and local contracts generally. Consequently, they are not in the position in the normal course of their work to invest the resources required in understanding a particular contract award system, which is an essential prerequisite to any investigation.

Another part of the problem was that the law enforcement institutions in the Commonwealth were not staffed or organized so as to be in a position to conduct effectively investigations which require a great deal of knowledge concerning financial transfers and corporate operations. The Attorney General's office for example is composed primarily of attorneys who are responsible for prosecuting and defending all cases in which the Commonwealth is a party. They do not have the investigative staff to spend the weeks and years needed to develop routinely the evidence which is required in procurement fraud cases before a criminal prosecution may be brought.

Corrupt and fraudulent activities involving state contracts could not be prevented simply through the prosecution of a few wrong-doers. It is more important and valuable to correct on a on-going basis the practices and procedures within an agency which permit fraudulent acts to occur and to recur. It was also felt that the resources which are devoted to developing the evidence needed for a criminal case could at the same time produce recommendations for reform within the system which would make a recurrence of similar criminal activities less likely in the future. It is not part of the traditional function of prosecutors to make such recommendations beyond strictly criminal law revisions.

Thus, there is a vast middle ground between the State Auditor and prosecuting agencies, between the ability to review all state transactions to a limited degree without the power to investigate, and the power to investigate allegations of fraud on a case-by-case basis. It is this gap which prevented the systematic investigation of ongoing fraud and abuse and calls for the establishment of a new agency with that single responsibility.

Solutions

The Federal Model: The detection and prevention of fraud and abuse of public funds has been the subject of long study by the Federal government.

Recognizing the limitations of existing federal agencies to combat fraud, waste and abuse, the Congress recently created Inspectors General. This concept has been widely adopted and has proved itself in practical operation. The very
term "Inspector General" comes from the practice of the armed services of the United States. After Watergate, a similar independent office (albeit with a different name) was set up in the United States Department of Justice. By Public Law 95-452, 92 Stat. 1101, Congress established offices of Inspector General within the United States Departments of Agriculture, Commerce, Housing and Urban Development, the Interior, Labor and Transportation and within the General Services Administration for Veterans Administration among other United States agencies.

Under the provisions of the "Inspector General Act of 1978", each federal Inspector General is an independent office that consolidates the functions of audit and investigation and directs them to the single focus of detecting and preventing fraud, waste and abuse. The emphasis is on prevention, with improved detection capabilities and techniques forming an integral part. The goals of the Act include:

1. to conduct and supervise audits and investigations relating to programs and operation;
2. to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and
3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for the progress of corrective action.

A review of Inspector General reports filed with Congress to date indicate that this program is fullfilling its legislative purpose.

Though in existence for only a short time, their results are encouraging. The Inspector General for the General Services Administration, for example, reported that in its first four month period of operation it had saved the agency close to $6 million dollars and had uncovered in one investigation over $2 million in construction fraud. New York City has followed the federal model, and their results have been equally successful. The Inspector General, through the deterrence of fraudulent conduct and through the correction of vulnerable or wasteful management practices, results in significantly lower costs to government.

Key Characteristics: The Commission had appear before it the Inspector General from the General Services Administration, Kurt Muellenberg, who testified on May 8, 1980. In his testimony he identified certain aspects of the office of Inspector General as being critical. The first was independence. Federal Inspector Generals are appointed for an indefinite term, and can't be removed by
the administrator of the department within which he is located. Only the
President may remove an Inspector General and he must state to Congress the
reasons for taking that action. The second characteristic of the office which
Mr. Muellenberg identified as being important is the subpoena power. The Inspector
General has the power to subpoena documents, but not testimony. Mr. Muellenberg
testified that in his judgement the Inspector General should have the power to
subpoena testimony as well as documents.

The success of the federal Inspector General offices can be attributed
further to the overall design of the office. First, it provides for sufficient
staff and resources committed to the single responsibility of detecting and
preventing fraud, waste and abuse, because the effectiveness of this activity is
diminished by inadequate staffing and by conflicting program responsibilities.

It further provides for the consolidation of the audit and investigative
functions. This inter-disciplinary approach has been most successful in
uncovering increasingly complex fraudulent schemes.

The federal statute creates the following duties and responsibilities of the
Inspector General toward the agencies over which it has jurisdiction:

1. to conduct, supervise and coordinate audits and investigations relating
to the programs and operations of each agency;

2. to review existing and proposed legislation and regulations relating to
programs and operations of each agency and to make recommendations concerning the
impact of such legislation or regulations on the economy and efficiency in the
administration of programs or the prevention and detection of fraud and abuse in
such programs and operations administered or financed by each agency;

3. to recommend policies for, and to conduct, supervise, or coordinate other
activities carried out or financed by such establishment for the purpose of
promoting economy and efficiency in the administration of, or preventing and
detecting fraud and abuse in, its programs and operations;

4. to recommend policies for, and to conduct, supervise, or coordinate
relationships between each agency and other State and local governmental
agencies, and non-governmental entities with respect to (A) all matters relating
to the promotion of economy and efficiency in the administration of, or the
prevention and detection of fraud and abuse in, programs and operations
administered or financed by such establishment, or (B) the identification and
prosecution of participants in such fraud or abuse; and

5. to keep the head of each agency and the legislature fully and currently
informed, by means of the reports required by section and otherwise, concerning
fraud and other serious problems, abuses, and deficiencies relating to the
administration of programs, and operations administered or financed by such
establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

Recommendations & Legislation

The Commission has made every effort in drafting the legislation establishing the Office of Inspector-General to assure that the office will be independent and professional, that the Inspector General will cooperate closely with existing agencies, and that the Inspector General will not duplicate or infringe upon the work of existing agencies. The Office of Inspector General should result in lower program costs to state government through the deterrence of fraudulent conduct, the correction of wasteful management practices, and the collection of monies fraudulently lost to the Commonwealth. This will also mean a fairer and more hospitable climate for the many honest firms who wish to do business with the state.

In general terms, the act passed by the legislature provides for the establishment of an Office of Inspector General with the authority and responsibility for detecting and preventing "fraud and abuse in the expenditure of public funds" by certain departments, agencies or officers or employees of the Commonwealth. The Inspector General is given power to inspect books and accounts and other documents necessary to the performance of his functions, and would be authorized to use legal process when voluntary cooperation was withheld or when he believed that legal process would be necessary to obtain evidence before it was lost, destroyed or otherwise became unavailable. He would also be authorized to refer matters to the appropriate state law enforcement officers for prosecution of criminal offenses and to institute civil actions with the permission of the Attorney General. Public officials, business firms and individuals are protected against unjust publicity or other violations of privacy by a mandate that the internal proceedings in the Office of Inspector General be kept confidential.

The structure and powers of the Office of Inspector General were carefully crafted by this Commission to create an apolitical, professional investigative body to support effective prosecution of fraud and corruption by the full array of forces at the public's disposal. The legislature saw fit to establish this office only after 1) exempting themselves from investigation by the new Office, 2) injecting political partisanship into the Office's controlling Inspector General Council, and 3) denying federal prosecutors access to the Inspector General's investigative findings.
The changes in points (1) and (3) above are not found in the Inspector General Bill passed by the House and not included in any changes in the form of amendments voted by the Senate and accepted or even considered by the House in the Conference Committee. All of the changes made by the Senate without any formal vote or formal amendment procedure appear to have been made by the Senate Committee on Bills in the Third Reading.

Jurisdiction: The law provides that the Office of Inspector General have authority to investigate all procurement of supplies and services related to all construction and maintenance of physical structures within the Commonwealth as well as the procurement of all other supplies and equipment by any public body within the Commonwealth. This is the minimum appropriate jurisdiction for this office.

The Commission's mandate had been to investigate the construction of state and county buildings. We, therefore, have no empirical evidence of corruption in any other area of the state's business, but our experience has led us to the conclusion there is a strong probability of fraud in other areas of procurement. Looking toward the future, great capital outlays of the Commonwealth will not be only in the area of building construction; they will probably be in areas of water and air pollution, energy programs, and transportation. If the Office of Inspector General is to prevent and detect fraud and abuse in the spending of the taxpayer's money, then the Commonwealth must stand ready to police itself in all areas of state procurement. Practically, a narrow area of jurisdiction cannot be expected to attract the quality of professional leadership which is, finally, the best insurance for the right conduct of the Office of Inspector General.

Independence: To insure independence in the operation of the Inspector General's Office, the Commission recommended that the appointing power be shared by the two constitutional officers whose areas of responsibility come closest to that of the Inspector General and by the executive branch representative who is responsible for the law enforcement related activities; therefore, the Commission recommended the Attorney General, State Auditor, and the Secretary of Public Safety agree upon the individual who is named to the Office of Inspector General. The second thing which the Commission did to protect the independence of the Inspector General was to establish the five year term so that the appointments of the Inspector General would not coincide with the four year terms of State Constitutional officers. Third, the Commission required that the Inspector General may be removed from office with cause only after a hearing. To assure that the Inspector General would not be politically motivated in the conduct of the office's activities, the Commission recommended that there be a proscription against political activities by the Inspector General while in office and for a period of time after he or she left office.
As this report goes to press, the appointment procedure required by the Act has not resulted in the appointment of the first Inspector General. The Attorney General, State Auditor, and Governor have been unable to agree on a selection. Although agreement is expected soon, it is nevertheless six months since the law was signed with an emergency preamble, putting it into effect immediately. The statute makes no provision for selection in the event of a deadlock.

The Commission, therefore, now recommends a new procedure to appoint the Inspector General. To ensure political independence and the integrity of the appointing process, while precluding the possibility of a deadlock, a majority vote of the deans of the seven law schools in Massachusetts should be required to nominate the Inspector General. The Governor should then appoint or reject their nominee. In the event of a rejection, and until a nominee is acceptable to the Governor, a majority vote of the deans should be required to forward further nominees, one at a time. This two-step process is made necessary by the constitutional problem of having non-governmental persons appoint an executive official.

Legislation embodying this procedure appears in the appendix (see Volume 12.)

**Subpoena Powers:** The new law gives the Inspector General authority to use means of investigation necessary to detect and prevent illegality, fraud, gross waste, and like abuses. Obviously, he needs access to all records in state departments and agencies, and also the cooperation of all their officers and employees. Equally obviously, he should be free to examine all public documents and to request non-governmental business organizations and individuals to produce testimony and documents concerning their dealings with the Commonwealth or any of its subdivisions.

The law gives the Inspector General authority to require attendance and testimony by summons. He is also authorized to resort to a summons to require the production of relevant books and papers. It must be remembered that compulsory process is often necessary to the conduct of an affective investigation. The act does not impair any of the customary evidentiary privileges, such as the privilege against self-incrimination and the lawyer-client privilege.

Such summons may issue upon no greater showing than the Inspector General Act requires in any grand jury investigation or civil action. No showing of "reason to believe" that the books or papers contain evidence of crime is required in either instance. There is no reason for such a restriction to be put upon investigation into illegality, fraud, gross waste or abuse in the conduct of public business. To require the Inspector General to prove "probable cause" or "reason to believe" that a crime has been committed would be to require him to prove his case before he may conduct his investigation.
The Commission's bill provided that a six-person Inspector General Council, composed of the Attorney General, Secretary of Public Safety, State Auditor, State Comptroller, an attorney appointed by the Attorney General from a list of three recommended attorneys proposed by the Speaker of the House, and a business leader chosen by the State Auditor from a list of three recommended by the Senate President, must approve all summonses by a vote of at least four members of this Council.

The Legislation was amended in the Senate to expand the Council and to specify party affiliation of certain members of the Council. The expanded membership increases the Commission's concern about the likelihood of maintaining confidentiality of the Council's deliberations.

The law provides that the Inspector General Council must approve such summonses of individuals under conditions of confidentiality, before they are issued by the Inspector General. A presentation of the reasons for seeking the issuance of the summons must be specified in detail by the Inspector General to the Inspector General Council for their approval. In addition, the Act delineates in detail standards for the issuance of summonses for testimony, and establishes that testimony under oath must be taken in private under mandated conditions of secrecy before a panel approved by the Council. The law further mandates that a person summoned receive with the summons a list of rights and protections, including notice of the subject being investigated, the scope of the questioning, and whether the summoned person is a subject of the investigation. Finally, the act provides for a "sunset" provision by which the power of summons over individuals automatically expires unless renewed by the General Court in four years.

The Senate Counsel's Office made a significant change to limit the subpoena power: legislative records are now exempt from summonses. The language "except records under the provisions of section eighteen of chapter sixty-six as defined in section three of said chapter sixty-six" has been inserted in three places in the Inspector General Act. These insertions have the effect of excluding the Inspector General from access to the records so defined, from requesting the records so defined, and from summoning the records so defined. The records so defined in chapter sixty-six of the General Law are the records of the General Court and certain records in the office in the Commissioner of Veterans Services, as follows:

This chapter shall not apply to the records of the general court, nor shall declarations, affidavits and other papers filed by claimants in the office of the commissioner of veterans' services, or records kept by him for reference by the officials of his office, be public records.
Referrals: The Commission recommended that the Inspector General should have power of referral to any prosecuting agency, i.e., the U.S. Attorney, the Attorney General, or one of the several District Attorneys. The House passed a bill that retained that provision. At some point, while the bill was in the Senate, Senate Counsel, however, struck the provision permitting referrals to the U.S. Attorney by the Inspector General without prior approval of the council, thereby creating the absurd result that it is now a state crime for the Inspector General to refer evidence of a federal crime to the federal government; and a federal crime not to refer it. It is clearly of questionable constitutionality to forbid an officer of the Commonwealth from bringing evidence of a criminal action which violates federal law to the attention of the U.S. Attorney. Nevertheless, two changes were made to the Commission's recommendations which have the effect of preventing the Inspector General Bill from referring potentially criminal matters to the office of the United States Attorney, and of making any such prohibited referral by the Inspector-General a criminal offense. These limitations should be removed.

ENFORCEMENT STATUTES

As Commission investigators encountered false business records and uncovered patterns of cash generation, illegal payments, and instances of outright extortion, they learned that many of these activities were neither prohibited nor deterred by Massachusetts law. Glaring holes were evident in statutes designed to protect the Commonwealth from fraud, so the Commission moved to give the state effective criminal recourse and civil remedies. The resulting provisions were already enacted by the Legislature in its 1980 session. Many of them draw upon experience common to the federal government and other states.

The Need for New Laws

A common thread throughout the Commission's investigations has been the pivotal role of record-keeping practices in any scheme involving illegal payments. No contractor wants to use his own taxable earnings as the source of an illegal payment. Company records are therefore falsified to permit the generation of cash to be used for illegal payments. Many contractors who make substantial campaign contributions as a "cost of doing business" look to their companies for reimbursement disguised as payments for entertainment and other such apparently legitimate expenses. And, in some cases, essential business records, including books of original entry, are missing by the time an investigation is underway.
Massachusetts had no statute affirmatively requiring businesses to maintain complete records which accurately reflect the firm's business transactions. Nor did Massachusetts have a statute making the failure to maintain such records a criminal offense per se. The statute which came closest to covering such acts -- namely, General Laws c.266 s.67 which prohibits the making of false corporate entries with intent to defraud -- was completely inadequate because it did not cover false record-keeping done to hide cash generation for illegal payments.

The New Statutes
Acting on the Commission's recommendation, the General Court passed legislation to increase, substantially, the ability of law enforcement agencies to prosecute individuals and firms found to have defrauded the Commonwealth or its cities and towns. The new laws (found in chapter 531 of the Acts of 1980) provide enforcement authorities the tools with which to promote honesty and fairness in the new contract award system, as well as in other areas of state and county operations.

False Statements: It is now illegal to intentionally file false statements with any state or local government agency. When the Commission began its investigations, it found numerous instances in which contractors cited phony qualifications or experiences, or falsely described work performed on state jobs. The prohibitions now in effect are modeled after the federal, civil and criminal False Claims Act, 31 U.S.C. s.231, 18 U.S.C. s.287 and 18 U.S.C. s.1001, respectively. The statutes have been successfully applied in federal prosecutions involving the payment of money to individuals and private contractors under a myriad of federal programs. The most visible and recent such prosecutions have been against the suppliers of goods and services under the medicaid and medicare programs. These statutes will include, within their reach, all claims for payment fraudulently made upon any state or local department or agency. This statute would also make it a crime to file an intentional and material false statement with any state or local government agency. Violations carry a maximum $10,000 fine or five year imprisonment.

Economic Extortion: It is now a crime to engage in economic extortion. Statutes prohibiting commercial bribery -- the extortion of money from one firm by another -- have been strengthened and modernized. Private businessmen are now prohibited from using their power of selection of suppliers and consultants as leverage for inducing kickbacks or other improper payments.

Section 3 of the Act restates, in modern and simplified language, Massachusetts' current statute prohibiting commercial bribery, and adds thereto, in subsection (b), the crime of economic extortion. Subsection (a) of
Section 3 contains all the elements of the offense which had been set forth in General Laws chapter 271, section 39, but deletes the immunity language contained therein because such language is no longer necessary due to Massachusetts' general immunity statute.

Subsection (b) makes a criminal offense the threat of economic injury to compel someone to do an act against his will. General Laws c.265 s.25 contains similar language, but is limited to the threat of, "injury to the person or property of another." This language does not clearly cover a businessman's use of his power to select suppliers or consultants as leverage for inducing kickbacks or other improper payments. For this reason, we are informed, this statute is rarely used as the basis for prosecuting cases based upon threats of economic harm. The Commission's experience has been that such acts do occur among private business entities performing work in public projects.
PILOTING THE LEGISLATION
The process that led to reform of the Commonwealth's construction system and creation of the Office of Inspector General is a case study of the way change can come about in our laws and government operations. Kevin Harrington, former state Senate President, was fond of the saying, "Those who like the law or sausage should not watch either being made." The political process is indeed inelegant, but those who would change the way things are have no choice but to get involved in it. In the hope of assisting such people, this chapter offers lessons to be learned about the process from the Commission's experience. It describes the Commission's understanding of its mandate from the General Court, assumptions it made about the process of legislated change, strategies that were developed and tested, and steps its members and staff took to carry out the Commission's plans.

The first part of this chapter, entitled "Organization," is about the Commission's legislative activities. It offers suggestions on how to develop and present a case to the General Court. The second part is entitled "News Media." It describes the steps taken by the Commission to present information to the media and, through them, to the public.

ORGANIZATION
DEVELOPING AND DRAFTING LEGISLATIVE PROPOSALS
PRESENTING A CASE TO THE GENERAL COURT

Achieving specific legislative action is a goal that eludes presidents and pressure groups, and for which there is no sure set of guidelines. There is no certainty even that a final vote will be taken. What follows, therefore, is not a prescription but only one set of experiences.

The most important process goals of any legislative effort are to understand the motives of political actors and to have as much information as possible. With these basic thoughts in mind, the following experiences are offered.

ASSUMPTIONS AND GOALS

Legislative Action

The Resolve which created the Special Commission allowed the Commission to
recommend steps to correct abuses and assumed that legislation would be the primary form of remedial action."

The Commission, believing at the outset that administrative change might be sufficient, did not share this assumption at first but came to accept it after much research, investigation and strategic planning.

The first issue, then, is whether legislation is required to achieve the desired outcome. It may be easier to influence the decision of one well-placed administrative official than ninety-one representatives, twenty-one senators, various legislative aides, the governor, the governor's advisers, and -- often as not -- the same well-placed administrative official. Moreover, legislative change does not automatically result in a change in the ways things happen.

Nevertheless, the Commission concluded that statutory reform was needed for a variety of reasons including the flaws and loopholes found in existing laws, the depth of organizational change needed in executive departments, the role played by the legislative process itself in building planning and budgeting, and the assumption that the legislature would be more responsive to public and media attention than would mid-level executive officials. In addition to these considerations, deciding to pursue legislative change requires a judgement of the timing with which events can be made to occur, or pressure exerted, and the resources that can be brought into play. Resources include staff, constituent groups and media.

**Timing a Legislative Campaign:**

Timing is a key element in the decisions of whether and how to approach a campaign of legislative change. Recent Massachusetts political history suggests that major changes in state government operations often occur as a result of crisis. That has been so with public housing in Boston, maintenance of mental health facilities, and the MBTA. The experience of this Commission is now an added example. But while a crisis is important as a catalyst for change, it is also quickly forgotten.

The Commission was originally to complete its work and make recommendations by the end of 1979. Even had the Commission been able to conduct effective investigations in such a limited time, evidence would have been before the public in the fall of that year, months before the legislature would have considered the recommendations. The original timetable the Commission would not have been available to work with the legislature or advise the public on the intent, intricacies or effects of its proposals or of amendments to them. Finally,
1970 and 1980 were distinguished by one essential political fact: 1980 was an election year for all state senators and representatives. Because of these factors, the Commission sought to concentrate its efforts in 1980.

**Active or Passive Change Agent**

Legislative change usually takes years. The Commission's achievement is exceptional in that the legislature acted positively on the Commission's proposals in six months. If the beginning of this effort is dated back to the earliest revelations about UMass/Boston in 1971, however, then this case is more typical. The essential difference between the Commission's work and other legislative efforts by commissions and interest groups is the short time from development of specific proposals to their adoption. It happened that way because the Commission conceived its role as an active force for change rather than as a passive, information-gathering body. Given the Commission's ad hoc purpose, short life span and assumptions about crisis timing, this role held the best chance for achieving something.

Another element in the Commission's decision to be an activist body was its perception of its constituency. In a strict sense, the Commission's client was the General Court itself. The Commission's constituency, however, was the public concerned with government spending, integrity in government operations, and the quality of public buildings as places to live, work or be treated. Although there are organized groups that base their work on these concerns, no group exists whose specific purpose is to improve the public building system. Only Common Cause of Massachusetts had made the issue of corruption in contract awards a priority on its agenda; it had been instrumental in the formation of the Commission. With the exception of Common Cause, the Commission's constituency was not organized or easily mobilized, although it was potentially very large.

The breadth, but thinness, of the Commission's constituency meant that the Commission could not rely on an established network to do the activist work of legislative reform or even to communicate the Commission's case to the entire, potential audience. This pushed the Commission into the activist role of recruiting existing public interest organizations to form a supportive coalition, of conducting its own lobbying along with other members of that coalition, and of generating and holding public attention through the mass media. (The Commission's news media strategy and operations are described below, in the "News Media" section.)
DEVELOPMENT OF PROPOSALS AS A POLITICAL PROCESS

Developing specific legislative proposals was the first task facing the Commission once it had decided to pursue an activist strategy timed to make a presentation to the legislature in 1980. The content of the research effort was affected slightly, if at all, by these decisions, but the style of that effort was shaped by anticipated legislative events. That is, regardless of when or how the Commission's recommendations was to be presented to the legislature, the foundation of these recommendations was to be evidence from investigations, empirical data on performance of the building process. The Commission chose to regard the form which data gathering and analysis took as itself an important part of advocacy. How the Commission gathered its information and made its analysis, who was involved in doing so, and how the case for specific recommendations was made were political tactics that were important to the success of the Commission's advocacy.

The Basics: Getting Information and Help

The Commission's research program depended on interviews and on consultations with experts who volunteered their services. The condition of state record keeping made reliance on documents futile. The disparity between formal procedures -- those that are written in laws and regulations or in agencies' descriptions of themselves -- and informal reality is a chasm. It is most readily bridged through interviews of actors in the process. The interview format also fit neatly with the format of public hearings, which was the way the Commission planned to present most of its findings.

A "resource group" of volunteer consultants was recruited from universities and private business. The participants were chosen on the basis of their expertise in the management of the design or construction process or in institutional procurement of design or construction services. Other resource groups were organized among architects, general contractors, sub-contractors, public managers, and others with interest in and knowledge about the subject of the Commission's inquiry. As described in the chapter of this report on the "History of the Commission," the group provided both information and analysis and helped to formulate the Commission's reform proposals. Commission staff served as staff to the resource group, offering an agenda for each discussion, presenting staff findings, and taking notes of the group's discussions and conclusions. After the group's eight weekly meetings, individual participants continued to be available to the Commission for consultation. Several group members gave public testimony at subsequent Commission and legislative hearings.
There are many benefits of assembling such a group. The group brought together a great deal of expertise in a short time. This filled a gap between the Commissioners’ time and the staff’s experience. The group’s meetings created a forum more suitable for discussion than Commission meetings, which were more formal. Because the members of the group were not participants in the state’s construction system, their opinions were regarded as credible and objective by the Commission. This group gave the Commission expertise and perspective beyond its budgetary limit to purchase.

In addition to interviews and consulting help, the staff relied on reports and correspondence about other jurisdictions and private sector procedures. These reports were gathered from construction procurement offices and trade, law and academic journals.

Planning Backward and Forming Coalitions

The news media have a diffuse but widespread impact on legislators’ voting constituents. But legislators also have four types of special, organized constituencies which affected their actions on Commission proposals. The first of these groups is the professional, trade and labor associations, whose members each live in some legislator’s district, who often care passionately about issues affecting their livelihood, and who may contribute to election campaigns.

Second, are the government officials (sometimes called bureaucrats or public managers) who administer programs and fill the jobs voted on by the legislators, any many of whose portions are approved by the legislature. Although they are executive department agents, these officials often have close relationships with certain legislators. This is probably true of most legislatures and bureaucracies, but it is certainly true in Massachusetts, given the intimate role played by the General Court in executive affairs.

The third group, far less influential than the first two, is composed of public interest groups, sometimes known as advocacy groups, who have relationships with legislators similar to the trade associations, but with important differences. The public interest groups, at least those with which the Commission dealt, usually have fuller agendas than the trade associations, but less money with which to support their interests. Their multi-issue concerns often mean that their members care less passionately about a single issue than do their trade association counterparts, and are less apt to vote for or against a legislator because of a vote on one piece of legislation. The Commission’s experience is that this is the perception of these groups held by most legislators.
The fourth group with a special relationship to individual legislators is other legislators. Leaders, chairpeople, office-mates, committee-mates, rivals, mavericks, party colleagues and others can each mean as much, or more, to a legislator than the media or a set of district residents.

The way the Commission put together its proposals reflected its anticipation that these groups would have special influence with legislators. People in each of these groups had something important to offer the Commission in terms of an understanding of how the public system worked, why it worked the way it did, what people expected from it, and how procurement or development is done in other jurisdictions or in the private sector. In addition, each of these groups could take a positive or negative part in the legislative process. It only made sense to make use of both the information and political help such people could offer.

The research effort of the Commission therefore reached out to people in each of these categories through interviews or by inviting them to be in a working group modeled on the resource group of consultants. In the process, the Commission gained information and insight, found out who its supporters and opponents would be, removed whichever causes of opposition could be removed without compromising its proposals, and strengthened its ties with supporters by increasing their involvement in producing what they were being asked to support.

An important point the Commission’s staff kept in mind throughout this process is that lines had to be drawn on both sides of such participation. Merely giving the appearance of involvement would have been perceived by the people involved, as co-optation, which is insulting. Genuine involvement, however, had to be limited by the understanding that the Commission’s recommendations were ultimately up to the Commissioners.

It is not accidental that legislative staff members were omitted from the groups listed above as having special influence on legislators. Many individual staff persons to legislators play a major role in shaping those legislators’ attitudes and information base. As a generalization, however, the Commission staff perceived that legislators do not view staff as an important source of information or judgment. The Commission staff made efforts to meet with legislative staff during the proposal development phase of the Commission’s work. The result was usually more of a gain for the Commission than for the legislature because of the limited role the legislators allowed most members of their staff.
Timing a Compromise

Every legislative advocate must face the questions whether, when and how to compromise. The understanding that compromise may eventually be unavoidable makes it desirable to consider the question of compromise even while a legislative proposal is being developed. Regardless of the Commission's policy on compromise, those who would have changed the Commission's recommendations knew that in the long run there were two ways to get the changes they wanted: by advocacy and by political muscle in the legislature. They also knew that the recommendations were not law until signed by the Governor and that, at each step along the way, new or further changes were possible. In addition, the Commission had to face questions of compromise or confrontation on purely tactical questions having to do with timing or form in the legislative process.

The incremental nature of the legislative process (discussed below) means that opportunities for success or failure -- or compromise -- are numerous. That is intentional in the design of a parliamentary system as a way of resolving disputes among political interest groups. Power and time, however, must be weighed carefully in deciding when and how to compromise. Power is not constant over time, which means that the type of compromise one can get varies over time. Assuming that one has arrived at a position one believes to be correct, and assuming the alternatives proposed are less acceptable than that position, then agreeing to anything other than one's original position usually comes about because one is forced to, or in order to gain something else. All these factors meant that the Commission had to know the process that lay ahead in order to have a sense of timing, had to know its own power and that of others, and had to have priorities in order to be able to trade among the things it might gain and those it might lose.

The experience of the Commission was that compromises in the legislature that occur through political force do not make opponents into supporters. Compromises based on reason are most appropriately made in the internal research and proposal development process. Such compromises should consolidate coalitions and reduce the unnecessary rough points that opponents can seize on to pick away at marginal supporters or neutral participants. This type of compromise is a streamlining process. Awareness of "bargaining chips" is appropriate at this development stage in order to build in low priority items that can be offered away later on.

Compromises based on political force, the Commission found, are inappropriate prior to entering the legislative arena. This is so because, by the nature of many political compromises, opponents are never satisfied; they regard what has been bargained away as already "theirs." Every point that opponents have not won remains on the bargaining table to be the subject of a future compromise. As
long as there is another increment in the process -- another round, so to speak -- compromise with opponents does not make sense, except if survival of the legislation itself is at stake. Only if such compromise enables one to continue on to the next round does it make sense. This holds until the final step in the process, and because there really is no final step in the legislative process (there is always next year) it never makes sense to compromise unless forced to.

The above discussion assumes a situation in which there is sufficiently intense conflict to create clear sides, neither of which will retire from a conflict until its position prevails.

A different set of rules seemed to apply when third parties injected a pet issue not essential to the Commission's recommendations. Under such circumstances, bargaining is possible because there is something for both sides to gain. The assumption is that whichever stage in the process is chosen by the third party to inject their pet issue will be the only time they raised it if a compromise can be made. Such third parties offer votes in exchange for inclusion of their pet issue in the legislative vehicle. The problem with this approach is that there may be opponents on the other side of such pet issues who will become opponents of the whole vehicle as a result of the compromise.

**Drafting Completeness and Accuracy**

The language and form of legislation are regarded with horror by most friends of the English language. Nevertheless they are art forms, requiring meticulous care of those who would make something happen through legislation. There are exact forms with which legislation must comply. Despite the Commission's attempts to adhere to such forms, we were not entirely successful. Care must be taken to spell the numbers of certain chapters and sections of the laws in certain references, but arabic numerals can be used in other situations. The history of a statute must be traced in order to refer to it accurately and to avoid giving a new statute the number once used by a now-repealed law (an error committed by the Commission). Misplacing a comma can create unintended meanings or ambiguities in a law which will necessitate years of litigation to unravel. Drafting a statute requires as much or more care than drafting any other legal instrument.

The House Counsel's office in the State House is an indispensable resource for all drafters. In addition to gaining their technical assistance, it is worthwhile to try to get a reading on how this office and Senate Counsel view the legislation being proposed.
Leadership Structure

The fundamental organizing principle of the General Court is the primacy of the House Speaker and Senate President in their respective branches. The Committee structure revolves around the leaders, with a committee chairman appointed by the leadership. The salaries, perquisites and patronage available to legislators depend on their relationships to the leadership; so does career potential for most legislators. The most important information about any bill is what the leadership's position on it is. To vote against the leadership is to court reprisal; to support the leadership is to do one's duty and to accrue political capital.

Anyone who would bring about legislative change must take these facts into account. The leadership can be successfully challenged but cannot be ignored. Every step in the legislative process places the Speaker or President or one of their appointees in prima facie control of the progress of legislation. The clerk assigns bills to committees. The committee chairpeople set hearing dates. The reception and tone, at a hearing, are set by the chairpeople. The timing of the Committee's report is usually set by the leadership or chairperson. The Ways and Means Committees, Rules Committees, and Committees on Third Reading are leadership committees into which every piece of legislation must enter and through which many do not pass. The timing of the end of a session is in the leadership's hands, and, as the Commission found, prorogation has a profound effect on a bill's survival.

At each of the many stages of the process, the rules of both branches allow for an overturning of the leadership's position. The burden is overwhelmingly on those who challenge leadership. While procedural votes are important tests of loyalty to the leadership, they are largely ignored and incomprehensible to the voters at election time. Challenging the leadership on procedural questions therefore involves great risks with little chance for reward.

The overwhelming power of the leadership does not mean that such power is beyond reason or challenge. It does mean that there are few comparable powers within state government to balance the leadership in that the leadership holds the legitimacy of the entire legislative branch. Outside state government, as well, there are few powers capable of challenging leadership in the legislature. One such power is the press. Those in the legislature who would challenge the leadership must ally with or use one of these other power centers, such as the press. When a member of the legislature does so, however, he or she is often accused by the leadership of pandering, selling out, or seeking personal
aggrandizement. Leadership cannot be successfully challenged without such tactics.

**Ritual**

For those who approach the legislature as outsiders, a sense of ritual is important. The culture of the legislature affects the propriety of whom one speaks to, when one does so, and how. The hierarchy established by the leadership structure requires that many communications start at the top. For example, it was suggested to the Commission that the proper way for its staff to work with a certain committee's staff was for the chairman of the Commission to speak with the Speaker and the President, and ask whether it was appropriate for the Commission to work with that committee. Then, if the leaders assented, the Commission's chairman was to speak to the committee chairpersons, again to ask permission for the two staffs to talk.

The manner of communicating is also important. As noted in the "History of the Commission," the presentation, by the Commission chairman to the Speaker, of a written list of target dates for legislative action was reported to be a source of great irritation to the Speaker. Had the same request been conveyed orally its impact would have been entirely different.

**Rumors**

Rumors are the most common information source at the State House. Most effective communication at the State House is oral. Rumors are bits of unsubstantiated information that circulate in informal oral channels. The Commission found that people at the legislature spend much time trying to keep up with the latest events and to guess the motives for other people's actions. There is no written medium that fulfills these functions. Rumors often take the form of hypothesis or "trial balloons." People will state a hypothesis as if it were a fact to elicit a reaction or further information.

The pernicious nature of rumors is that they carry misinformation, sometimes willfully, without attribution. Some of the Commission's greatest frustrations came from rumors which alleged fantastic effects to be expected from its legislation. For example, it was particularly difficult to counteract the rumor that the construction reform bill would have abolished the MBTA.

**Sponsorship**

The Commission proposals for consideration in the 1980 legislative session were filed by House Speaker McGee and Senate President Bulger. As noted in the "History of the Commission" chapter of this report, this sponsorship came about
as a way of maximizing the "official" status of the Commission's recommendations without filing a report with the Clerk (an act which the Commission's staff lawyers felt might terminate its existence under the terms of its enabling resolve).

The Commissioners weighed the merits of sponsorship by the legislator available with highest leadership rank versus sponsorship by the legislator most dedicated to the legislation. Sponsorship by a chairman is tempting. Given the power of leadership, such sponsorship offers the allure of assured favorable treatment.

The problem arises when a chairman agrees to sponsor a bill to which he or she is not thoroughly committed. It is common as a courtesy for legislators to sponsor bills which they do not actively oppose. To be more precise, a legislator may file a bill while not thinking of himself or herself as a sponsor. When opposition develops, such sponsors are less apt to use political capital on behalf of the bill. Moreover, legislators who do care about the bill may not fight on its behalf. They may be reluctant to work for a bill which bears another legislator's name or because their ability to set policy about the bill is pre-emoted by the sponsor's role. The Commission was advised of past instances in which legislators sponsored bills precisely in order to undercut support for the bills at a crucial juncture in the legislative process.

The Written and Spoken Word in the Legislature

The Commission produced extensive written materials in support of its legislation but found these to be disappointing in their effectiveness. Oral advocacy was found to be an incomparably more useful medium in lobbying. Legislators have many concerns and little time. Some legislators do not devote their full time to legislative affairs. Staffs are too small, often underqualified, and occasionally underutilized. The usual means of communication in the State House are oral, as exemplified by the minimal nature of legislative records.

The Commission therefore relied primarily on talking to representatives and senators. The one-to-one meetings proved to be the most productive kind. Legislators seem to want to see the people behind the legislation they are considering, as if to measure the proposal by the proponents. Despite the importance of the leadership, or perhaps because of it, individual legislators react warmly to personal attention. Such attention conveys to the legislator that his or her opinion and support is important enough to merit a visit. People advocating for the Commission had the sense that the "blue ribbon" publicity accorded the Commission in certain quarters made this personal contact all the
more important. Few statements by legislators convey a stronger adverse reaction that "They have never even spoken to me about it!"

Oral advocacy is also important because it is the way legislators' constituents get most of their political information. An issue that cannot be explained orally in one minute cannot be explained on the television news or in a speech to the local civic association. If proponents cannot state their case convincingly in person to the legislator, then they cannot do so to the legislator's constituents. The perception of the issue changes dramatically if there is no way to present the issue in brief orally. The best example is the filed sub-bid law and the need to repeal it. To the extent that legislators found the issue hard to understand, they knew that few of their constituents would understand it or take a position on it. It is unlikely that this sort of issue can affect an election unless a way is found to explain it.

As a supplement to the spoken word, the Commission showed a slide presentation (illustrating defective buildings) several times at the State House. A member of the Commission or its staff narrated the show and answered questions. Had more time been available, the Commission would have prepared a portable visual presentation on a cassette in order to combine the impact of pictures with the personal attention of private sessions.

**Identifying the Votes**

Targeting of the lobbying effort was made necessary by the size of the legislature compared with the number of people available to the Commission with the time and expertise to explain the legislation. Some lobbyists can target their efforts by working through the leadership. The Commission, like most, found it necessary to communicate directly with the membership.

A great deal of time can be spent preaching to the converted and the unconvertible. Instead, the Commission targeted its efforts by reviewing previous votes of the legislature on an issue judged similar enough to the Commission's to identify the legislators most probably pre-disposed to the position advocated by the Commission. Several past roll calls were used. Working with legislators and seasoned legislative observers, the Commission developed a list of legislators whose positions could not be determined but who would listen to advocacy. Lobbying was then focused on this group.

Some legislators misunderstood this process and resented it. They felt that the Commission was categorizing them. Most objectionable to some was the notion that their vote might be taken for granted. Such perceptions can be extremely harmful. One way to avoid them is by involving likely supporters in the kinds of working groups and coalitions described above.
Dividing the Work

Even with a target group of legislators, the Commission's advocacy work had to be divided among many people. The division of labor had several effects. More people could participate, which meant an increased sense of involvement for those who did. Different constituencies and expertise were focused on different legislators, so that different aspects of the legislation could be stressed. Most legislators were seen more than once by someone propounding the Commission's cause, often by more than one person.

The persistence paid off, not only due to sheer repetition, but also because legislators' decisions may be as delicately timed. Typically, a legislator may postpone a decision as long as possible, then make it quickly. Catching at the moment of decision (when his or her short but intense span of attention focuses on the issue being advocated) can change a vote.

The division of labor required that everyone representing the Commission's position meet frequently to exchange information and tactics. In addition to gaining a vote, the benefit of personal meetings with legislators is what can be learned from them. The pooling this information often led to insights into the mood of the legislature or into opponents' tactics.

Cards and Letters

One thing the Commission advocates learned the importance legislators attach to their mail. Mail from constituents was sometimes linked to the news coverage: even one letter from a constituent was proof to the legislator that information about the Commission's work was getting through to the folks back home. A mailing by an interest group to constituents was occasionally seen as poaching on a legislator's private preserve. An expression of this attitude gave great encouragement to those producing such mailings because it indicated that their efforts were having an effect. The Commission's efforts were probably impeded by a lack of letters to legislators about the Commission's hearings and proposals.

Staff Back-Up

During the progress of its legislation, the Commission constantly required further staff research and drafting. It would have been a critical error to suppose that the expertise that went into research and development was no longer necessary after bills were filed. Every suggestion to modify the Commission's proposals necessitated careful review by staff and, at times, a counter-suggestion.
Committee Mark-Up

The "mark-up" is the meeting at which the legislative committee votes on the bill before it and any proposed amendments. The mark-up is usually an open session and may or may not involve debate. Proponents of various points of view are occasionally called on to answer questions; at times a negotiating atmosphere develops. The mark-up is the first step in the process at which a bill may die.

For the Commission, the mark-up sessions were the culmination of three months of personal lobbying and a month of legislative committee meetings. They were the first arena of overt parliamentary contest. The events and votes at these mark-up sessions are described in the "History of the Commission." For the Commission, the only successful mark-up negotiations were those conducted outside the formal sessions. The public, formal sessions do not provide an ideal forum for experimenting with new ideas because the participants do not want to be observed changing their minds or subject to pressures from interest groups. The formal sessions also allow too little time to explain or discuss a complex item.

The greatest exercises of creativity during the mark-up came in parliamentary maneuvering. Some advantage or loss can be determined by how a question for a vote is put, which language is the main questions and which is the amendment, and in what order questions come up. A simple example of this calculus involves amendments. Assume that there are three votes reflecting three positions on an issue labeled "X:" pro-X; anti-X; and "would accept X-l." Whichever side, the pro-X or anti-X, can win over the swing vote will win. As a general proposition, the swing vote does not want "X" as it stands originally. If the vote comes first on "X," yes or no, then the swing vote is "no." But, if the vote comes first on the "X-l" amendment, then there is room to maneuver. If the "pro-X" side can accept "X-l," or find a middle ground with "X-l," then the "pro-X" side should throw its votes to the amendment, allowing the amendment to win and become the main question. Then the coalition around "X-l" outnumber the "anti-X" force.

A lot of creativity can go into cutting issues so finely as to bring over the swing vote. This also opens up a strategy for someone who is really "anti-X" but does not want to admit it. This person can stake out the position of being for "X-l," taking the "pro-X" position a step further than its true proponents. The person in this posture can then vote against "X," "X-l," and any position short of the extreme "X-l." The possibilities are endless and a substantial body of literature exists on voting theory as a branch of game theory.
Roll Call Votes

All votes are not equal. A basic dividing line between different types of votes is the roll call. Only roll calls result in a written record of how a legislator voted. Votes in committee, voice votes, and standing votes all can decide the fate of legislation but do not "count" on a legislator's voting record. Constituents only hear about roll call votes, and those interest groups that rate legislators do so solely on the basis of roll call votes.

Many important decisions about the Commission's legislation were made without a recorded vote. The major exceptions were procedural votes, but as noted above, procedural issues are rarely noted by constituents and are poorly understood. An unusual reversal of this situation occurred in the congressional campaign of state Representative Barney Frank. Frank had voted with the leadership on only one of numerous procedural questions involving the speed with which the Commission's bills would come to the House floor. Frank's opponent in the congressional race used this one vote to assert that Frank had been opposed to the Commission's work, which was not the case. In this situation, the obscure nature of procedural votes made it hard for Frank to effectively counter this attack.

The Commission had theorized early on that if its investigations were successful in finding corruption, the legislature would have to react by passing some sort of reform measure. The nature of the legislature's reaction, however, was by no means assured. During the legislative process, it became likely that a majority of the legislature would vote for the Commission's proposal in a series of final roll call votes. It also became clear that the content of the Commission's proposals might be drastically altered at various stages in the process by unrecorded votes. Nevertheless, when the legislation passed, almost every legislator was able to point to their recorded "yes" vote on a whole Commission bill. Such recorded votes can be used during reelection campaigns to assert that the legislator had fought on behalf of a bill when he or she had played no role or had taken a negative position on unrecorded votes.

The length and complexity of the Commission's proposals produced several roll calls on points within each bill. Ironically, there were so many of these votes that they served only to confuse the record as to legislators' positions and to make the final vote more significant in the public view.

An example that includes several of these features of voting is the vote on the repeal of filed sub-bidding during floor debate in the Senate. It will be recalled, from the account in the "History of the Commission" chapter of this
report, that an amendment repealing sub-bidding won on a first standing (unrecorded) vote. Then came a motion to reconsider. Had the reconsideration motion failed, the bill would have included the amendment to repeal sub-bidding. Voting for reconsideration, therefore, meant that a senator was willing to reopen the question and allow a new result (i.e., defeat the amendment and keep filed sub-bidding). Voting against reconsideration meant that the senator wanted the first standing vote to be the decisive one.

The crucial decisions on this issue were procedural. The first was the ruling that the vote on the repeal amendment would not be by roll call, but rather by standing vote. This procedure seemed to please both sides on this question, perhaps because few legislators cared to be recorded on either side of the question. The second crucial decision was on the motion to reconsider the first standing vote on the repeal amendment. Unlike the vote on the substance of the amendment, the procedural vote on reconsideration was by roll call. In this way, no one was recorded on the substance, only on an obscure parliamentary point. The vote on reconsideration cannot be conclusive proof of a senator's position because the senator can cite numerous reasons to vote for reconsideration such as that he or she always believes in letting the deliberative process play itself out to the fullest.

**Timetable**

The event known as prorogation -- the adjournment of a session of the General Court -- was a defining event of the entire legislative session during which the Commission's proposals were being considered. The first important aspect of prorogation was its existence as an unknown deadline by which all action had to be taken on the legislation. A certain number of steps have to be taken before a bill becomes law, and each of these steps each takes time. The time these steps took for the Commission's bills was irrelevant in the abstract, but of the essence in relation to when the session would end.

No one, not even the Speaker and President, knows when prorogation will happen. This is not to say that these two people, and many others, do not know when they want it to happen or plan to try to make it happen. A great deal of energy went into the guesswork around when the leadership hoped to prorogue and when they could prorogue. Much of this guess work centered on the legislature's ability to dispose of those items on the legislative agenda which absolutely had to be done before the session ended. Chief among these agenda items is the state's operating budget, and, therefore, many eyes were trained on how quickly the House Ways and Means Committee was proceeding with the budget. Observers who tried to guess on prorogation also tried to sense the other high-priority legislative items.
The second feature of great importance about prorogation was its character as an event that stretches over a period of time during which the tempo of legislative action accelerates daily up to a last, hectic, lightning-speed session. State House history has it that this period used to be a time of revelry and carousing, but no more. For the Commission's efforts, prorogation meant a pressure-cooker atmosphere in which distinctions tended to blur, endurance became paramount, and the normal time one would need to attend to details and consider actions was simply unavailable.

The sense that "the end is at hand" accelerates all negotiations. The certainty that a moment is rapidly approaching after which it will be too late to obtain anything puts pressure on the participants to change their calculations of what has priority and what can be done. Prorogation itself takes on more power than any single issue or bill, so that an issue that threatens to hold up prorogation or monopolize the shrinking time available before prorogation stands in danger of being pushed aside by the multitude of other issues and bills whose opponents fear being left out in the cold when the prorogation door slams shut. To the extent that the Commission's bills became an agenda item which credibly threatened to delay prorogation, these bills were highly unusual.

**Honey or Vinegar**

While the Commission itself tried to present a positive case to the legislature in a fashion which assumed good will on both sides, many supporters of the Commission used more confrontational tactics. Those who used such tactics felt that they were necessary to make the more positive approach effective. Supporters of the Commission debated this proposition at length. The Commission made strenuous efforts not to involve itself in these debates, not because it agreed or disagreed with one tactic or another, but because the tactics of the Commission's supporters had to be theirs alone, just as the Commission's tactics and decisions had to be the exclusive responsibility of the Commission.

The one thing that can be said with assurance about confrontational tactics is that they make the non-confrontational group look easier to deal with to those on the other side of the issue. The considerations that go into compromising would suggest here that confrontational or non-confrontational tactics can be thought of in the same light. Those who opposed tactics which forced people into showing their positions, or which forced legislators into positions for or against the leadership, argued that these tactics alienated legislators who were otherwise neutral and lost votes in the long run. Those who felt that such tactics were effective held that forcing an issue had two salutary effects. First, it gave a series of tests of strength and identified the swing votes.
Second, it demonstrated to opponents that Commission supporters would not let its bills recede from the forefront of the legislature's concerns. Whatever the merits of this view, confrontation exacts a high cost on those who practice it, in terms of their relations with their colleagues. Few legislators are willing to incur these costs.

**Conference Committee**

The conference committee is one of the last stages of the legislative process at which the substance of legislation can be changed. It is also one of the burring grounds for legislation opposed by the leadership. The leadership appoints the conferees. There is no record of what takes place at their meetings. If they cannot agree on dissimilar drafts of the same bill, that have come from the House and Senate, the bill just sits in the conference committee. If the legislature prorogues while a bill is in conference, the bill is dead.

Although the experiences of the commission in attending a conference committee (described in "History of the Commission") may sound frustrating, it is far better to be present at the conference committee meeting than not. Under other circumstances, it is possible that a legislative advocate can play an important advisory role during the committee meeting. In retrospect, the Commission's experience suggests that discussions with the leadership on the membership of the conference committee before they are appointed would be at least as fruitful as trying to influence the actions of the committee afterwards.

**Third Reading**

The Committees on Bills in Third Reading acted on the Commission's legislation solely through the offices of House and Senate Counsel. The Third Reading Committees never actually met on the Commission's bills. According to one member of the committee (in a speech on the floor), they never meet. The counsel's offices have as much power over legislation referred to them as almost any other actor in the process. The progress of a bill through the counsel's offices bears close attention and participation by a legislative advocate.

During prorogation, the time spent in these offices can be decisive, if for no other reason than because a bill in the counsel's office when the legislature prorogues has not passed. Moreover, counsel may want to make technical changes in legislation which, in its author's view, would alter its substance. Anyone concerned with piloting a bill through the process must take great care to observe what, if any, changes are made to a bill in the counsel's office.
The last point cannot be stressed too strongly. To preserve the text of a bill through the entire process, the working, marked-up copy itself must be kept under constant scrutiny wherever it is physically located. The printed copy may not be the one on which legislative action is taken. At any moment undesired changes may be made in the text. Watching a bill during prorogation is a 24-hour-a-day job which involves literally staying with the bill and proofreading it again and again as it moves from one legislative stage to the next.

The Governor's Signature

When a bill is enacted by the legislature, it is too late to present one's case to the executive branch. Executive action can be swift or slow, but there are no steps built into it at this point that require public participation. Therefore, it is necessary to create channels of communication with the Governor's office prior to the legislature's action and to use those channels both before and after the legislature acts.

One thing the Commission did periodically while awaiting the Governor's action on its legislation was to contact the Governor's chief secretary and legal counsel to ask for the latest information or thinking on its bills. These calls produced information on when the Governor planned to turn his attention to these bills, and, therefore, provided the Commission with a sense of what, if any, other means of communication were worth using.

Prospects for 1981

During its two years of work, the Commission identified and assembled a core of individuals and groups with common interests in the Commission's goals of well managed and responsible government, fair and diligent investigation and law enforcement, and accessibility to the political process. Those goals attracted cross section of qualified individuals, many of whom worked tirelessly for the Commission's legislation. After the Commissioners and their staff rejoin the ranks of those private individuals, the prospects for passage of the Commission's remaining legislation and for implementation of the bills already enacted will rest partly with this informal network. While the Commission believes that campaign finance reform, repeal of the filed sub-bid system, and improvements to legislation already oassed make their own case, what remains after December 31, 1980 is the continued personal commitment of its former members. Together with those who have shown their concern in the past, the Commissioners plan to meet their ultimate legislative objectives.
NEWS MEDIA

Piloting legislation through the State House requires some motive force to power a bill through each stage of the legislative process. In the case of the Commission's legislation, the news media supplied that power. The foregoing discussion indicates the extent to which such power is needed and how it can play a role at key moments in the life of a bill.

A workable relationship with the media was necessary to accomplish the Commission's goal of reform. That followed from the Commission's view of its mandate not only to investigate corruption and maladministration in a system but to bring about changes to the system. If the Commissioners had viewed their role purely as a fact finders called forth to use their expertise to evaluate an existing situation and then merely to offer suggestions for improvement, they could have done so without reference to the media.

The media were indispensable if the Commission was to bridge the gap between the two sides of its mandate and make them complementary. The Commission's investigators could crack stupendous cases; its attorneys could propose systems with fail-safe incentives for positive performance. But both operations would have been futile without the active involvement of an informed press to educate the legislature and the public: an interested and aroused public was essential to the passage of the Commission's bills. For every column inch of informed coverage of the public hearings, for every foot of videotape devoted to the newest revelation of corruption or to the latest crippled edifice found by consulting engineers, the Commission gained an increase in public awareness of the problems it sought to solve. The following section reports on relations between the media and the Commission and describes the Commission's procedures for dealing with the media.

One Voice

First, it was important that the Commission appear to the public with a single image or voice. Conflicting public views within the Commission or its staff, or contradictory statements by those associated with the Commission, could have caused irreparable damage. A strong, united front is essential in a sophisticated political environment. No one policy or system could have made this automatic, as the numerous individuals associated with the Commission were involved in an immense variety of projects, all involving a degree of public visibility. Thus, the best method of insuring unity was frequent communication to create a common understanding of the Commission's projects and goals.
Other means were employed to this end, however. During periods which did not involve constant contact with the media, the Chairman acted as spokesman for the Commission, and the Chief Counsel or his designee fulfilled the same duty for matters of staff concern. Any media inquiry involving more than a routine informational request was referred to one of these individuals. Frequently, these requests were then delegated to other members of the staff for action, but only after review at the Chief Counsel.

**Press Secretary**

During periods of ongoing exposure to the media, however -- such as the public hearings, the weeks leading to prorogation, and the expiration process -- one individual on the staff was assigned the duties of press secretary. Throughout these periods, processing information for the media and handling requests of reporters grew to more than a full-time job. The press secretary acted as a coordinator rather than a spokesperson on major issues affecting the Commission. His job was to maintain frequent communication with reporters, to help them obtain requested information and interviews, and to answer routine and informational questions.

**Timing**

One aspect of relations with the media cannot be overly stressed. No matter what medium a reporter deals in, he or she works under a certain deadline in compiling a story. The press secretary had to be familiar with the deadlines of the various publications and programs. No news was released by the Commission without considering those deadlines. Likewise, the Commission attempted to space the issuance of its announcements to assure maximum coverage. A dramatic revelation in a public hearing would receive good coverage any day, but a release concerning reform of the filed sub-bid system would be buried on a prime news day. Since most of the Commission's public activity occurred during a presidential campaign year, competition for news slots was fierce.

The Commission was careful to bear in mind, as well, the demands and characteristics of different media outlets. Though release for a Sunday edition might elicit greater circulation, its effect might be lost on a legislature which convened the next Wednesday. While a major Boston newspaper might have only slight interest in a report of major design defects in a building in Haverhill, the local press might devote lead stories to the situation. A radio station in Amherst might have little use for information about detailed legislative proposals concerning state construction, but a newscaster could generate interest by disclosing the cause of major construction defects on the UMass library.
Frequent calls were received from press in outlying towns needing general information about the Commission and its work; calls from outlets with State House bureaus tended to be specific and exacting.

**Monitoring coverage**

The Commission retained a clipping service to locate all newspaper articles in which there was any reference to its work. In this fashion, the staff was able to assess the extent and quality of coverage and to correct any serious inaccuracy in reports or editorials. A television and a radio were available in the Commission's offices to review broadcast coverage.

**Forms of News Issuance**

A variety of means may be employed in issuing news. The decision whether to use a news release, an interview, a press conference, or a series of telephone calls was based on the components of a given situation.

The news release is the most conventional form of announcement. The Commission relied on written releases as the standard means of communicating with the press. An effective release is concise in its summation of an action or event. It is typed on official letterhead, and a name is listed at the top as a "contact" for further information. Since reporters and editors are apt to be swamped by releases each day, it is essential to draft the announcement in a form that will gain attention. The release should be titled with a short, underlined heading, similar to a headline.

The more closely a release resembles the structure and tone of a conventional news story, the higher will be its credibility. A reporter knows the sound of a well-written news article. A poorly drafted release will be received as an annoyance. Some smaller outlets which lack the resources to verify and develop an account may even run a nicely composed release verbatim. The structure should follow the pyramid form of a conventional news story, with the most important facts first and successive statements diminishing in importance as the account progresses. The release should be written in the third person. As in news writing, the lead sentence presents the crux of the issue. It identifies the major actors and their relationships with one another, and pulls the reader into the story. Paragraphs are short and well contained. Direct quotes are frequently successful, as a rewrite person will leave at least their message intact, constructing an account around them. Quotes should not be wasted on relating the story -- rather they are most effective when they offer commentary or color.
The Commission distributed releases in the State House press offices and mailed them to outlets around the state. Letters receive the most attention when they are addressed personally to the appropriate editor or reporter.

The Interview

Interviews were frequently requested by reporters, sometimes encouraged by Commission staff and sometimes spontaneous. Whatever the advisable to agree on guidelines for the conversation. Whenever possible, Commissioners and staff spoke "on the record" to media representatives. This term establishes that all statements made during the conversation may be quoted directly from a named individual. Under these conditions, the subject of the interview will serve both himself and the reporter well if statements are kept brief, clear, and to the point. Quotable conversation is animated and direct. Long, rambling statements introduce ambiguity, leaving both the subject and the interviewer unclear on the shape of the report that will result. Subjects will gain most success when they enter an interview with a strong message clearly in mind. They should be prepared to encounter skillful reporters accustomed to posing tough questions that yield results. Each question must be considered carefully: on occasion, reporters attempt to secure information by continuing to ask the same question in different ways.

In certain conditions, interviews held on terms other than "on-the-record" are appropriate. The subject is always free to impart information classed "not for attribution," "background, or "off the record." Reporters will usually accede to such terms to secure information. Adherence to the terms is an unwritten, but ironclad, rule. A reporter breaking the terms imperils his reputation and his future ability to gather news. Under the terms, statements delivered "not for attribution" may be used in an article -- even quoted verbatim -- but may not be attributed to a named individual. Some discussion should follow of how the declarations will be attributed. Options which preserve a degree of anonymity include: a staff member, an informed source, an individual close to the Commissin, etc.

A tactful columnist can bring out information purely as fact. In most cases, though, news facts must be attributed to some source. Information released as "background" may be published by a reporter without attribution and it may be used by him for assistance in obtaining further information. Statements delivered "off the record" may not be used in an article in any form. They are issued to aid a reporter in covering a story or for the reporter's personal edification. However, the information in such statements may be confirmed by the reporter from another source and then used in a story.
Use of these various degrees of attribution should not be viewed as devious or underhanded; rather their presence as an informal code should be understood as a means for delivering to the public information not otherwise possible to impart.

The Press Conference
When the Commission wished to make a particularly significant or controversial announcement, or when it felt the subject matter of an announcement was complex enough to warrant detailed and careful explanation, it held a public press conference. Often, a short statement, read at the outset of the conference and distributed to the press in writing, served to define the subject and focus the discussion. On more spontaneous occasions, the Chairman delivered an extemporaneous statement.

The chief advantage of a press conference is that it allows for give and take between sources and members of the media. It also provides a setting from which a television reporter can file a story, bringing to life a development which does not otherwise lend itself to pictorial representation. In a press conference, all statements are made on the record for attribution.

Press conferences can also be useful because they can be held jointly, illustrating an agreement between two or more parties.

The Background Story
"Color" stories often worked to enhance public understanding of the Commission's work, attracting a different readership than hard news. On occasion the Commission suggested background topics to reporters. When the technical staff inspected public facilities with particularly serious defects, newspeople were encouraged to write about the predicaments of users and residents.

As the public hearings progressed and as the staff developed day-to-day working relations with reporters, television crews were occasionally informed a day in advance of opportunities for background footage under an embargo system. At certain points during legislative consideration of the Commission's bills, the staff contacted local radio and newspaper personnel in key legislative districts, informing them of issues and votes and of specific buildings to be used as examples of the system gone awry.

Leaks
Involuntary release of some information may be unavoidable during more than two years spent handling highly controversial and sought-after material. Notwithstanding, the Commission never experienced a direct leak to the media. When case material reached the press contrary to the Commission's policies, it
did so through means beyond the panel's control -- as in an instance in which a witness informed reporters that he had been questioned by the Commission at a closed hearing.

Because material handled by Commissioners and staff could injure careers and reputations, strict precautions were taken to preserve confidentiality. All staff members were briefed on the importance of security. Sensitive information was shared only among those concerned with a particular project. The Commission was successful in its record of confidentiality because of the high degree of commitment of all personnel.

Public Hearings

The Commission's public hearings on corruption were held in the spring of 1980 in Room 436 of the State House. Every effort was made before the hearings began to arrange their presentation so as to facilitate coverage.

The Commission's press secretary met with representatives of the State House press corps to discuss the arrangements, emphasizing two objectives. The Commission needed to conduct its proceedings in a fair and dignified manner, without interruption from the media or any outside factor, but it also intended to facilitate coverage. Discussion of these two objectives at the meeting of reporters resulted in an arrangement of the hearing room satisfactory to the Commission and the media.
The Commissioners sat behind a semicircular desk, the chief counsel to their left and the attorney conducting the questioning to his left. The witness sat at a table beside his or her counsel. An easel stood behind the Commission's counsel on which to display enlarged photographs and exhibits. The Commission sought to supplement the lengthy testimony it presented with visual material. Whenever possible, counsel and witness used blown-up photos of places mentioned in testimony or of glaring building defects, enlargements of checks or evidentiary documents, models, blueprints, and other exhibits. Visual presentation of evidence always improved coverage, especially by television crews.

Television cameras and equipment were placed to the right of the Commissioners, providing a direct view of the witness and the examining attorney and opportunities for shots of the audience and over-the-shoulder shots of Commissioners. Kleig lights, supplied by the television crews, shone toward the witness and the Commission supplied a sound system with a "multi-box" outlet for radio and TV plugs.*

In this fashion, the interruption of numerous microphones, wires, and technicians moving equipment was avoided. Seven microphones, each with an on-off switch, rested on the semi-circular desk; one microphone was placed on the witness table. An additional "lavelier" microphone was available for the use of Commission counsel. Sound was projected from the back of the room through public address speakers and a separate speaker broadcast proceedings into Room 437 for monitoring purposes.

*The first hearing was delayed when one television crew plugged defective equipment into the box, creating disturbance in the broadcast. Whenever possible, equipment should be hooked up for a trial run before the first of a series of hearings.
Seating was provided for the media and the public as indicated on the chart. A Capital Policeman stood at the door to regulate access; no standing was permitted during the hearings. A separate access, through a partitioned section of Room 437, was available to reporters. Staff made handouts available at the entrance immediately prior to hearings. The handouts consisted of exhibits, charts and chronologies pertinent to the expected testimony.

Reporters were barred from access to the staff preparation area in Room 437 and from behind the Commissioners' desk. Use of flash equipment was prohibited during the proceedings. Still photographers were allotted two minutes prior to hearings for close-up shots; during hearings they were confined to the designated area.

At the height of the public hearings, approximately 70 reporters and other media personnel attended. The Boston Globe alone assigned five reporters to the hearings at certain points. The Boston Herald American on occasion had four reporters covering stories related to the Commission's hearings. Channels 4, 5, 7 and 2 all covered the hearings, as did the Associated Press and United Press International and newspapers, radio stations and cable networks across the Commonwealth.

Information Provided

The Commission's staff held briefings for the media to announce developments or explain exhibits. Transcripts of testimony were available on a daily basis from the stenographer.
Room 437 of the State House, adjoining the Commission's hearing room, was always busy with staff activity and with the preparation of transcripts of testimony on a "daily copy" basis.

The Final Report

The Commission prepared a press summary of its final report to present the highlights of the full-length report to the media. Both the report itself and the summary were made available to the public on December 31, 1980, the last day of the Commission's existence. Prior to issuance of the final report, the staff met with reporters during December to assist them in planning coverage.

The Commissioners held a press conference on December 31 to announce the filing of the report and to answer questions about their work. They announced their personal availability for interviews following the Commission's expiration.

Performance of the Media

Without media attention, the Commission's legislative proposals would not have been enacted. When Wendell Phillips said, "we live under a government of men and morning newspapers," he could not possibly have foreseen the power of the press to shape the beliefs of the public 100 years later. The manner in which the media used that power during the Commission's life deserves a closing note.

The great majority of reporters covering the Commission were conscientious and well informed and had a clear sense of the implications of the story they had been assigned to cover. In some cases, a rapport developed between reporters and members or staff of the Commission which aided the panel's work. Since reporters were the Commission's best informed and most immediate audience, their reactions
and insights were often sought and valued. Both the Commission and the media were "outsiders" to the political system, both involved in attempting to ascertain facts about that system and then to advocate change. Not once, however, did the closeness which sometimes developed in day-to-day work with the media change the professional character of the relationship. Reporters still asked probing questions and columnists still voiced criticism.

Given the influential position of the press, however, two related observations are in order. First, there is an ongoing relationship among reporters and politicians which colors coverage of the State House. Reporters have a cynicism toward reform which tends to move quickly from a healthy to a pronounced state, inclining the media toward agreement with the status quo. This attitude appears to pervade the press rooms; it can dampen the prospects for success of a reform proposal before the idea is even considered by the public.

While ultimate tone of a published report will usually reflect the editorial leanings of the outlet rather than this attitude, the initial news reporting is often tinted by it.

An example is the attitude of some reporters toward the prorogation process. That process is characterized by all-day and all-night legislative sessions, debate at 4:00 a.m. on important measures with millions of dollars at stake, and the almost complete inability of an outsider to learn when any measure will come before either house for debate or action. Those conditions fall far short of how a democratic and deliberative legislature should function. But the prevailing view of the media toward this process is that it is a necessary evil at worst and charming at best. Many news stories during prorogation focus not on the fact that the process is appalling, but on which members fell asleep when, where legislators went to take a shower at 5:00 a.m., and the like. The Commission's observation is that long exposure to the process makes reporters so close to it that the way it operates is the way they believe it must operate.

Secondly, with notable exceptions, the media often failed to pick up calls thrown by the Commission and run with them on their own. Much evidence surfaced during the public hearings which merited further research. The fact that the research was never conducted is hardly the fault of the reporters, considering the sheer volume of information released by the Commission. It is understandable, but still unfortunate, that the interest of the media is mainly in fast-breaking headlines rather than in-depth coverage of the political process. More attention could be devoted to the implications of the continuing process of government in Massachusetts.
Having made these observations, the Commission must add that it appreciates the unique nature of its own role in comparison to that of the media. After conducting its investigations and working on its proposals for over two years, the Commission will cease to have an ongoing, official identity. It will break up, leaving its members and staff at liberty to resume other pursuits. Members of the press, however, will stay on, continuing to fill the role the Commission for a time helped to fill — that of independent investigator, the outside seeker of truth with the power to advance the cause of reform.

Finally, it must be said that the media was by far the most important force in the passage of the Commission's legislative proposals. Without the attention the media gave to the Commission's hearings and to the legislative progress of its bills, the bills would not have passed. In that respect the media share whatever success the Commission has achieved. The Commission gratefully acknowledges that fact.
THE SPECIAL COMMISSION IN COURT
The Resolve establishing the Commission* empowered it to summon witnesses to produce documents and to appear before the Commission and testify under oath. These summonses were to be served in the same manner as summonses for witnesses in criminal cases and were to be governed by the same rules of law which govern such cases. The Resolve further provided that the Commission could apply to a justice of the Superior Court or of the Supreme Judicial Court to compel the attendance of summoned witnesses and the production of evidence. The Commission was also granted authority to apply to the Supreme Judicial Court for an order granting immunity from prosecution to a witness who refused to testify on the grounds of the constitutional privilege against self-incrimination.

Ten of the witnesses who were summoned by the Commission to produce books and records or to give testimony disputed their legal responsibility to do so. In five cases the Commission initiated litigation to enforce the summons upon the witness's refusal to comply with it. Three witnesses initiated the litigation themselves by filing an action to quash the Commission's summonses. One witness opposed the Commission's application for immunity. The tenth case consisted of two related actions: a petition for declaratory and injunctive relief initiated by the witness and an enforcement action initiated by the Commission.

The majority of the Commission's court cases arose in the context of the public hearings the Commission held in the spring of 1980, beginning on March 20. Some witnesses, whether or not they had previously testified at a private hearing, were particularly opposed to testifying in public.

Litigation proved to be expensive and time consuming. In the last year of the Commission's life, several staff lawyers spent significant parts of their time on the ten court cases. The Commission prevailed in all of these actions. However, the time and effort necessary to litigate the issues required sacrifices in investigative efforts. Moreover, judicial resolution in favor of the Commission did not always secure the evidence the Commission sought. Some witnesses, when they eventually testified, were afflicted with poor memories; two went to prison rather than testify.

The chapter which follows will review the litigation in which the Commission was engaged during its two and a half year existence. Those cases in which issues of particular interest were raised will be emphasized. In each case, appropriate identifying information is provided for those who may wish to locate the papers filed with the court.

WARD v. PEABODY

The Commission's first court test concerned the enforcement of a summons served on Endicott Peabody, former Governor of Massachusetts. Peabody had played a significant role in helping the MBM firm to obtain the construction management contract for the University of Massachusetts Boston campus, the one contract the Commission was expressly mandated to investigate. He had previously testified at the federal trial of Senators MacKenzie and DiCarlo, as well as before the Post-Audit Subcommittee of the General Court, which had begun an investigation of the MBM contract prior to the establishment of the Commission. His testimony at those proceedings conflicted in several respects with the testimony of other witnesses and with certain documentary evidence available to the Commission.

As part of an effort to resolve the conflicts in testimony and thereby to unravel the process by which MBM obtained the UMass contract, the Commission sought Peabody's records concerning his role in MBM's Massachusetts business. Peabody preferred not to be summoned, so the Commission made an effort to negotiate his voluntary compliance with its request. When these efforts produced only a small fraction of the requested materials after nine months of discussions the Commission issued a summons to the former Governor.

The summons required Peabody to produce documents relating to eleven specified subjects from the 14 expandable file folders which Peabody had said constituted his entire MBM files. The subjects were: (1) billings of MBM by Peabody's law firm, including summaries of services rendered; (2) billings of MBM by others; (3) Peabody's investigation of and advice regarding new business possibilities for MBM; (4) negotiations of contracts for MBM; (5) former investigations of MBM or its activities; (6) Peabody's contacts with government officials regarding MBM; (7) payments or promises thereof made by or on behalf of MBM to government officials or candidates for office or members of their immediate families; (8) MBM contacts with Peabody's gubernatorial administration (1963-65); (9) 74 named persons in connection with MBM; (10) Peabody's election to the board of directors of the parent company of an MBM competitor; and (11) any financial interest of Peabody or his partner in MBM.

Counsel for Peabody came before the Commission and moved to quash the summons on the grounds that it was overbroad, that he had already substantially complied with it, and that the documents were protected by the work-product doctrine and the attorney-client privilege. When the Commission denied the motion to quash and Peabody still refused to produce the documents, the Commission instituted an action to enforce the summons. The action was initially filed on November 16, 1979 in the Supreme Judicial Court as the Resolve authorized the Commission to do. But the single justice transferred the case that same day to the Superior Court.
The case was argued before Superior Court Justice Vincent R. Brogna on December 4, 1979. Memoranda of law were filed by both parties.

The Commission, relying on previous Massachusetts cases holding investigative summonses enforceable unless they called for documents which were "plainly irrelevant," discussed the relevance to the Commission's work of each category of document requested. Earlier decisions had established that "plainly irrelevant" standard because "the relevance of requested documents is peculiarly within the knowledge of the possessor."

Peabody argued that the summons was overbroad. He claimed that without his testimony, which he said he was willing to give (but without producing the documents) at any time, the Commission had no way of knowing what documents were relevant.

Perhaps the most novel issue in the case concerned the applicability of the work-product doctrine to Peabody's MBM-related papers. That doctrine was established in a 1947 Supreme Court case, Hickman v. Taylor, 329 U.S. 495. That case concerned pre-trial discovery in civil litigation. The plaintiff suing the owners of a tugboat for the drowning of one of the tug's crew members, requested that the defendant tug owners provide copies of reports and memoranda prepared by their lawyers. The Supreme Court affirmed a lower court ruling that the information sought by the plaintiff was the "work product of the lawyer" and not available to the opposing party, at least not without a showing of adequate reasons.

The Commission argued that the work-product doctrine applied only to activities requiring legal skills and that therefore Peabody's efforts to help MBM obtain contracts, since they did not require legal skills but rather salesmanship of a particular kind, were not activities protected by the doctrine. The Commission further argued that even if some of Peabody's work for MBM involved the use of legal skills, none of this work involved the litigation context in which the doctrine was intended to apply. The Commission emphasized a line of cases holding that work product does not protect a lawyer's papers when it is the activity of the lawyer himself which is at issue.

Finally, the Commission argued that because the information was important to the its mandated investigation and could not be obtained from any other source, it had shown sufficient cause to obtain the documents even if they were work product.

Peabody argued that his papers were protected by the work-product doctrine. He urged that although Hickman v. Taylor concerned litigation, its principles applied as well to the work he did for MBM, even though none of that work involved litigation. Peabody also argued that the Commission had failed to establish sufficient reason to overcome his work-product privilege to withhold the documents.
In his argument before the Superior Court, Peabody raised an objection to the summons which he had not raised in the motion to quash. He argued that insofar as the Commission's investigation might seek to call into question events related to the federal trial of Senators DiCarlo and MacKenzie, such an investigation was precluded by the Supremacy Clause of the United States Constitution.

The Commission disagreed. It cited decisions of the United States Supreme Court establishing that the Constitution does not preclude prosecuting a defendant in state court for the same acts for which he has already been prosecuted in federal court.6 The Commission argued that if the Constitution does not preclude dual prosecution, certainly it does not preclude dual investigation, particularly of a person who had never even been indicted much less prosecuted in federal court.

During the argument on December 4, 1979, the judge referred to an article in that day indicating that on that day the Commission would be filing legislation to reform the system of public construction. The judge asked whether, having submitted the legislation, the Commission would have any further need for Peabody's evidence. Counsel for the Commission responded by saying that the December 5 filing did not constitute the Commission's entire package of legislation and that in order to determine what other legislation might be required, the Commission needed to learn more about how the current system might have been manipulated. The Commission then had until June 30, 1980 to finish its work.

On January 24, 1980, six weeks after the hearing, Justice Brogna filed his findings, rulings, and order.7 He ruled that having filed its legislation in December, the Commission no longer had a valid reason to investigate because the filing had fulfilled the prime purpose of the Commission. He also found that the investigation concerning Peabody violated the Supremacy Clause. The order denied enforcement of the Commission's summons.

The court also made alternative findings and rulings on the specific categories of documents required by the summons in case the order denying all enforcement were overturned. The alternative order denied production of the contract documents and records of possible payments to officials on the grounds of work product. The court stated that "there should be little or no part of a lawyer's file which is not protected from invasion, absent the showing of good cause." And the court ruled that the Commission could not show good cause because the documents required [1] could not be used to draft legislation, since the legislation had already been filed; [2] could not result in criminal prosecution because the statute of limitations had run as to the acts in question [3] were requested in order to investigate possible perjury charges against Peabody, and
[4] were related to the Commission's "potential... misuse [of] its forum in a fashion reminiscent of the McCarthyism of the 1950's." The court also disallowed production of documents related to Peabody's relationship with MBM when he was governor. Sections requiring production of billing documents, preliminary drafts of contracts, financial interests in a competitor of MBM, telephone calls and letters to and from named individuals were allowed.

This order, as well as all the papers and memoranda filed in the case, was impounded, i.e., it was not available to the public. But the implications for the Commission were grave. Not only had Judge Brogna denied the Commission's request that Peabody be required to produce the documents summoned by the Commission, but he had held that the Commission no longer had the power to investigate anyone. Impounded or not, word was sure to spread, and any witness who preferred not to testify or produce documents would refuse to do so on the grounds not advanced by Peabody but supplied by Judge Brogna.

The Commission sought immediate review in the Supreme Judicial Court. On January 28, 1980, it filed a petition requesting that the Commonwealth's highest court use its discretionary powers of superintendence over lower courts to hear the case immediately. Pursuant to the Commission's petition, the case was transferred to the Supreme Judicial Court on February 5, 1980. Both sides submitted briefs and the case was argued on February 8, 1980.

Urging that Judge Brogna's order be reversed, the Commission argued that the order was based on a finding that the Commission had drafted all its legislative recommendations and that this finding was erroneous, unsupported by any evidence of record, and contrary to the uncontroverted representation made by the Commission's counsel in answer to the court's question at argument. Further, the Commission argued that even if the December legislative filing constituted the Commission's entire recommendation, the holding would still be reversible because the legitimate purposes of legislative bodies are not confined to the drafting of legislation, but also include investigations to determine whether existing laws adequately cover offenses that may be found to exist,8 to learn about the administration of existing laws,9 to enable the legislature to inform the public of the workings of the government,10 and to expose corruption, inefficiency or waste in governmental departments.11

Peabody argued that his situation was consistent with a line of old cases holding that legislative investigations could not be used to disguise what was really the investigation of the private affairs of a single individual. He described the Commission's investigation of MBM as a "collateral attack" on the verdict in the federal MacKenzie--DiCarlo trial. Peaobdy argued that the Superior Court was therefore correct in holding that the Commission's investigation of him was in violation of the Supremacy Clause.
Peabody agreed with the Superior Court that the work-product doctrine applied to his papers but he urged that the court's standard of "good cause" to overcome application of the doctrine was too lenient. He argued that a party should be required to show "substantial need" for the documents and inability to obtain their substantial equivalent "without undue hardship."

On February 14, 1980, less than a week after hearing oral argument, the court issued a three-page order finding that:

1) It was error for the [Superior Court] judge to hold that the Commission had lost its power to conduct investigations because of the filing of proposed legislation on December 5, 1979. 2) It was error for the judge to hold that the Supremacy Clause applied in any respect as a limit on the Commission's summons or on its power to conduct investigations; 3) The summons should be enforced according to its terms except as it is shown that any document called for is plainly irrelevant to the investigations the Commission is authorized to conduct, so that the production of the document would be an unwarranted intrusion on the witness's personal privacy. More specifically, the fact that a document could be characterized as work product would not be a basis for denying production of the document for the present purpose. (It is understood that the respondent does not claim the attorney-client privilege or the privilege against self-incrimination.)

The court went on to hold seven paragraphs of the summons immediately enforceable and to order an expedited hearing on the other four whose enforcement had been denied in whole or in part in Judge Brogna's alternative ruling. The court directed that the standard of enforcement enunciated in paragraph 3 of its order should be applied at the expedited hearing.

The hearing was never held. Peabody produced the fourteen expandable file folders.

The opinion in Ward v. Peabody, written by Justice Benjamin Kaplan, was filed in June 1980. After stating the procedural history of the case the court reviewed the importance of the MBM investigation in the Commission's mandate, the previous proceedings at which Peabody had testified, the Commission's efforts to obtain MBM-related documents from Peabody, the actions of the court below, and its own order.

In its discussion, the court reviewed the factors to consider in summonses enforcement: relevance to power to legislate, preservation of constitutional and common-law privileges (e.g., attorney-client), and privacy interests. In finding that the Commission had not lost its power to investigate with the filing of the legislation, the court referred to the Commission's statement which accompanied its December 5, 1979 filing and which indicated that it had not yet completed drafting and submitting legislation. But the court also said that it was far from suggesting that the Commission's investigatory power would have lapsed even if the December filing was the final submission, because the results of investigation could be used in a final report which might still be useful to the legislature.
The court also rejected the Supremacy Clause argument, relying on cases cited by the Commission, and concluded that the policy underlying that clause would in no way be undermined by enforcement of the summons to the Peabody.\textsuperscript{14}

The court also rejected the argument that Peabody's papers were protected by the work-product doctrine. The court determined that the "field of operation" of the work-product rule is preparation for litigation and said that there was no indication that the "material called for had the necessary relation to litigation."\textsuperscript{15} Moreover, the court noted that the "occasions for the writing of these papers are now long past" and that substantial equivalents were not available elsewhere.\textsuperscript{16}

The court also found that the fact that the words and deeds of the attorney were themselves a subject of relevant inquiry by the Commission brought the case outside the policies of Hickman. The court found that "several factors cumulate to render 'work product' an inadequate basis for excusing ... production."\textsuperscript{17}

In passing, the court noted that it had not yet seen a decision in which work product had been applied in the context of a legislative investigation.

\textbf{PUBLIC HEARINGS: KELLY, THISSEN, DOE AND GREENE}

In its public hearings, the Commission heard evidence of corruption in the award of building contracts within its mandate. Based on that information, the Commission sought public testimony from others, particularly current or former public officials whose names had been mentioned in connection with favoritism, influence, or payoffs. Half the Commission's litigation involved such individuals who declined to appear and testify in public.

In these cases, the witnesses advanced a number of legal theories to oppose the Commission's efforts to secure testimony. The issues of particular interest concerned (1) how long a Commission summons remained in effect so that a witness could be required to testify pursuant to it and (2) whether the Commission had a legitimate purpose in calling a witness to testify in public even if the witness had previously indicated that he would refuse to give any substantive testimony and would instead rely on his constitutional privileges against self-incrimination. Some of the other issues turned on the meaning of the Resolve's requirement that private hearings be governed by the same provisions of secrecy which govern proceedings of a grand jury.

\textbf{Ward v. Kelly; Ward v. Thissen}

The issue of the continuing validity of the Commission's summonses arose because two of the witnesses whom the Commission wanted to call to appear at the public hearings had left Massachusetts and remained outside the jurisdiction.
Since these witnesses could not be served with new summonses to appear at a public hearing and had refused through their lawyers to appear voluntarily, the Commission sought judicial enforcement of the summonses previously served on them.

These two witnesses were James A. Kelly, Jr., the former State Senator, and David Richard Thissen, Jr., head of the architectural firm of Desmond & Lord. The Thissen and Kelly actions were filed by the Commission in the Supreme Judicial Court on the same day. Both actions were transferred by a single justice of that court to the Superior Court, where they were consolidated. In each case, stipulations of fact and memoranda of law were submitted. Oral argument was heard before Justice Samuel Adams.

Sen. Kelly, the former chairman of the powerful Ways and Means Committee, had been named an unindicted co-conspirator in the DiCarlo-MacKenzie case. He was also an accountant who had, according to public testimony before the Commission of Frank and William Masiello, accepted payment for minimal or non-existent accounting services in exchange for the influence of his office in procuring design contract awards for the Masiello firm.

The Commission issued two summonses to Kelly, one in January 1979 and the other in March 1979. Each required Kelly to testify and to produce certain records. Pursuant to the summonses Kelly appeared at private hearings before the Commission in February and March 1979. At each of those hearings, he refused to answer questions and to produce any documents on the basis of his Fifth Amendment privilege. At the conclusion of each of these hearings, the Commission's presiding officer informed Kelly that the hearing was continued until a future time to be agreed upon and that the summonses were to continue in full force. Kelly's counsel objected to the continuance of the hearings and the summonses. In April 1980, the Commission notified Kelly's counsel that it required his client's appearance at a public hearing on April 15, 1980. Through his attorney, Kelly refused to appear.

David Richard Thissen, Jr., the non-architect owner and president of Desmond & Lord, Inc., a firm which received numerous public design contracts, first appeared before the Commission pursuant to summons in November 1978. A second summons, which called for additional documents, was served in January 1979. Thissen again appeared before the Commission at private hearings in January and February 1979.

At the hearings, Thissen testified at length about his activities as head of Desmond & Lord. He invoked his Fifth Amendment privilege in response to certain other questions.
Subsequent to these appearances, the Commission served two additional summonses on Thissen, calling for documents whose production had not previously been requested. No hearing was ever scheduled pursuant to the third and fourth summonses. Thissen produced many of the contract documents summoned by the Commission but he refused to produce others.

In April 1980, the Commission notified counsel for Thissen that it would require Thissen's testimony at a public hearing. Through his counsel, Thissen replied that although he would appear voluntarily at a private hearing, he refused to appear at a public hearing.

In the ensuing litigation Kelly and Thissen argued that the summonses the Commission was seeking to enforce were no longer in effect because the Commission's failure to recall them sooner served to terminate the summonses.

The Commission argued that the witnesses had a continuing duty to comply with the summonses.

Both sides cited essentially the same few cases which they agreed were all the legal precedent that existed on the issue of the continuing validity of a summons.18 None of the cases was from Massachusetts. In these cases, several of which involved a prosecution for criminal contempt for failure to comply with a summons, either the witness had agreed to remain on call and then refused to appear, or his appearance had been continued to a specific date and he failed to appear.

Kelly and Thissen argued that the cases therefore stood for the proposition that a summons had continuing validity only when there was a continuance to a time certain in the near future or an agreement to remain on call. Since in their view the Commission had made neither arrangement with respect to them, they argued that the summonses were not enforceable.

The Commission argued that nothing in the cases cited by both sides precluded the enforcement of its summonses. It cited language in the cases explicitly stating that the power to continue a summons is an essential aspect of the power to secure testimony under oath. The Commission pointed out that although there may have been specific arrangements in the cases cited by both parties which were relevant to a conviction for criminal contempt, nothing in the cases suggested that absent these arrangements the summonses would have been unenforceable.

Further, the Commission emphasized that it had a limited life, that it was not unreasonable to expect a witness to remain available upon reasonable notice, and that to allow a witness to determine when his testimony was complete would in essence require that the Commission rely on voluntary testimony.
Kelly alone also argued that the Commission had failed to follow its rules of procedure requiring that notice of its meetings be filed with the Clerk of the General Court and that therefore all its actions as to him were void. The Commission argued that any such violation was de minimus since there was no prejudice to Kelly and that all the Commission's proceedings involving him were conducted in executive session which no one outside the Commission, its staff, the witness and his counsel could have attended in any case.

Both witnesses (but particularly Thissen) also raised issues relating to, legitimate legislative purpose and grand jury secrecy. These issues were also raised by a third witness seeking to quash a Commission summons requiring public testimony. They will be discussed below.

"Doe v. Ward"

The third witness seeking to avoid public testimony was a former public official whose fundraising activities in connection with the award of public design contracts had been described at public hearings by witnesses associated with him. The official had appeared voluntarily at a private hearing before the Commission in January 1980. At that hearing, he had answered some questions and refused to answer others. His refusals were based on the assertion that the Commission had not specified whether it wished to question him pursuant to its efforts to recommend reform, or its investigation of corruption. He later gave constitutional reasons for his refusal to testify, including, inter alia, the privilege against self-incrimination.

On May 2, 1980, he was served with a summons requiring him to appear and testify at a public hearing. Four days later, while the Thissen and Kelly cases were still being heard, he filed an action to quash the summons. Because the judge refused to impound the case, he filed it under the name of John Doe. (Thissen and Kelly had also sought unsuccessfully to have their cases impounded.)

"Doe" argued that when he testified at a private hearing in January, the Commission made an irrevocable decision to keep his testimony secret. He urged that at any public hearing the Commission was prohibited from using his private testimony or inquiring into matters considered at the private hearing, at least without a judicial determination that such use was necessary. Thissen made a similar argument. These arguments were based on language in the Resolve requiring that rules of grand jury secrecy govern the Commission's private hearings.

The Commission responded by emphasizing that its Resolve mandated public hearings, making private hearings the exception to be held only upon a majority vote. It also distinguished the Commission, a legislative body, from a grand
jury, which is an appendage of the court. The Commission also pointed out that even in the grand jury context, the rules of grand jury secrecy do not preclude questioning a trial witness about the same subject matter as to which he may have been questioned before the grand jury, so long as no questions regarding what was actually said to the grand jury are asked. 18

Kelly, Thissen and Doe had all stated to the Commission that if required to appear in public, each would refuse to give any substantive testimony but would instead rely on his privilege not to give testimony or evidence that might tend to incriminate him. Each argued that in view of that stated intention, the Commission had no valid legislative purpose in calling him to testify and wanted only to expose and embarrass him. Therefore, they argued, the summons should not be enforced.

The Commission argued that it did have a valid legislative purpose in calling even a witness who firmly intended to invoke the Fifth Amendment privilege, and that this purpose in calling such witnesses, the Commission argued that when allegations about an individual have been made, it must call that individual to testify in order to give the witness an opportunity to respond to the allegations and to inform the public as to its investigation. 20 The Commission asserted that if a public figure, particularly a public official, chooses not to discuss his role in the award of public contracts but to rely on his Fifth Amendment privilege, the public has the right to know that. In the Doe case the Commission also argued that the witness had waived the right to assert the privilege against self-incrimination by giving testimony as the private hearing.

As to the countervailing interests of the witness in his reputation and his privacy, the Commission argued that neither of these interests is of constitutional dimension. 21 In response to the citation of a Supreme Court dictum that a witness could not be subject to "exposure for exposure's sake," 22 the Commission pointed out that despite that often-quoted language, no case had ever excused a witness from testifying on the grounds that he was being summoned merely for exposure's sake.

In the Matter of Harold Greene

Just prior to the Thissen, Kelly and Doe cases, a former patronage official named Harold Greene, whose files had yielded records containing notations suggesting political influence in the awards of contracts, filed an action in Superior Court on April 14, 1980 to quash a summons requiring his appearance at a public hearing. Greene had not previously appeared before the Commission. In his complaint, Greene raised 15 paragraphs of objections to the summons, some of which ran counter to long-established principles of legislative investigation.
After filing an answer to Greene's allegations, the Commission filed a motion to dismiss Greene's entire complaint.

Daniel J. Burke

Toward the end of the public hearings, Daniel J. Burke, a former Essex County Commissioner who had allegedly received campaign contributions in exchange for contracts and who had previously testified in private, was summoned to appear in public. Burke refused to appear and the Commission petitioned the court to enforce the summons.

Legally, the Commission prevailed in all five of the cases. Thissen, Kelly, Doe and Greene were all ordered to comply with the Commission's summonses and to appear at public hearings before the Commission. Burke, whose case came later, agreed on his own to appear once the hearings were completed.

In the Greene case, the court denied Greene's motion to quash on April 24, 1980. On May 27, 1980 it ordered him to appear before the Commission at a public hearing. Greene refused to comply with the court order.23

Meanwhile, on May 2, 1980, the Supreme Judicial Court issued a rescript in the case of Commonwealth v. Winer holding that an order to produce evidence before a grand jury is appealable only when the witness refuses to comply and is found in contempt.24 The Commission, believing that the rule of Winer applied to its proceedings, moved to have Greene held in civil contempt. When Greene refused again in court to testify, he was ordered imprisoned in the Suffolk County Jail until he agreed to testify or until the Commission's legal existence terminated, whichever came first.

About a week later, after unsuccessfully seeking relief in the state appellate and federal courts, Greene agreed to testify, purportedly in order to gain his release so that he could attend the funeral of a friend who had died while he was in jail. He testified at public hearings on May 29, 1980 and June 24, 1980.

In the Doe, Thissen and Kelly cases, the court order to testify was accompanied by a discussion of the issues. Judge Adams issued combined findings, rulings and orders in the Kelly and Thissen cases on June 6, 1980.25 He ordered both Kelly and Thissen to "appear before the Commission pursuant to the respective summonses issued to them at a time to be specified by the Commission, no sooner than seven (7) days after this order enters." He added: "Respondents failing to obey this order will be held in contempt of court."

The court ruled that Kelly and Thissen were bound by the respective summonses because the duty to respond to a summons is a continuing duty. In order to be released from this continuing duty, the court said that a witness should file a
Persons subpoenaed as witnesses by competent authority have certain minimum duties and obligations, which are necessary concessions to the public interest in the orderly operation of legislative and judicial machinery. A subpoena has never been treated as a game of hare and hounds, in which the witness must testify only if cornered at the end of the chase. If that were the case, then, indeed, the great power of testimonial compulsion so necessary to the effective functioning of courts and legislatures would be a nullity.26

The court acknowledged that the passage of time in the Kelly and Thissen cases was unprecedented and termed the duration of the summonses "unfortunate" but a "reasonably necessary consequence of the Commission's task. In view of the necessarily piecemeal inquiry, and respondents' prominence in this investigation, respondents should not have been surprised at the Commission's asserted need for additional testimony.

The court then proceeded to consider "whether the Commission is entitled to compel public testimony pursuant to these summonses." The court found that the provision of the Resolve requiring that private hearings be held only upon majority vote of the Commission indicated that a private hearing was a device for the Commission's benefit, not that of the witness, particularly in view of the fact that the Commission could force testimony about criminal activity through application for a grant of immunity.

Finally, the court ruled that even if the Commission intended only to elicit the witness's invocation of his privileges against self-incrimination, its purpose would be legitimate. The Commission could construe its task not only to report on the extent of corrupt practices and maladministration but also on the extent to which it was able to investigate. Such information would be useful to the legislature in assessing the Commission's report. The court found that "on balance, the Resolve requires reputational interests give way to the public's right to know." The claims of the witnesses about pre-trial publicity and possible release of their private testimony were held to be speculative and not ripe for judicial determination.

After a week of unsuccessful attempts to appeal immediately and to gain a stay of Judge Adam's order, the witnesses appeared at public hearings before the Commission: Thissen on June 24, 1980; Kelly on June 27, 1980. Each invoked his privilege against self-incrimination in response to all the Commission's questions. Thissen also claimed that certain of the questions posed at the public hearing were beyond the jurisdiction of the Commission under the Resolve in effect at the time the initial summonses were served on him.
After his appearance, Thissen continued to pursue an appeal of Judge Adams's order. This appeal is still pending in the Appeals Court at the time of the expiration of the Commission.

In his appeal, Thissen claims that despite his appearance, the case is not moot because by continuing the summons again at the conclusion of the public hearing, the Commission indicated its intention to recall him. He further argued that Commonwealth v. Winer did not apply to the Commission and that therefore the order was immediately appealable. Finally, he reargued the substantive issues concerning the summons.

On July 3, 1980, the Superior Court ordered that Doe appear and testify before a public hearing of the Commission. However, by that time the Commission's public hearings had been completed. Doe never testified in public.

In the memorandum accompanying the order, the court considered the issue of grand jury secrecy in the context of the Resolve. After noting that a grand jury is an appendage of the court, whereas the Commission is an agency of the legislature, the court said that the legislature had delegated to the Commission the power to make discretionary decisions about whether hearings should be public or private and when or under what circumstances testimony adduced at a private hearing might be publicly disseminated.

In rejecting Doe's argument that the Commission had no legitimate purpose in calling him to testify in view of his professed intention to rely on his Fifth Amendment privilege, the court cited the earlier opinions of the Supreme Judicial Court in Ward v. Peabody and of the Superior Court in the Kelly and Thissen cases. It found that the valid legislative purpose of the Commission outweighed the privacy concerns of the witness. The court rejected the Commission's argument that Doe had waived the right to invoke the privilege against self-incrimination.

OTHER CASES

David B. Coletti

The case which took longest to litigate involved David B. Coletti, a principal in the firm of Coletti Brothers, Inc., Architects, of Quincy. In connection with an investigation of the firm, which had been awarded a number of public design contracts, the Commission summoned Coletti in March, 1979, to testify and produce documents. Coletti appeared at a private hearing before the Commission on April 11, 1979, but refused to produce documents and to respond to most of the Commission's questions on the grounds of his privileges against self-incrimination.
In June 1980, the commission applied to the Supreme Judicial Court for an order of immunity for Coletti. Although counsel for Coletti raised objections at the hearing on the application, the court granted the order.

Shortly before Coletti was due to appear before the Commission pursuant to the order, he filed an action in Superior Court in early July seeking a declaration that the summons and immunity order were no longer in force because the legislation extending the life of the Commission from June 30, 1980 to December 31, 1980 and appropriating money for the Commission had been unconstitutionally enacted. Both sides submitted briefs and on July 21, 1980 the court adjudged that the act had been validly enacted, that the Commission still existed, and that the summons and order of immunity remained in effect.27 Following the judgment, Coletti appeared but refused to testify despite his failure to obtain relief from the appellate courts.

Because neither the grant of immunity nor the declaratory judgment appeared to be self-executing or immediately enforceable by a contempt action, the Commission filed suit in Superior Court on July 30 seeking a direct order that Coletti appear before the Commission and give evidence.

Coletti's answer reiterated the objections to the immunity order which had been rejected at the hearing before the Supreme Judicial Court, as well as the claims that the Commission's extension had been invalidly enacted which had been rejected by the Superior Court. The answer also alleged breach of grand jury secrecy, challenged the jurisdiction of the Superior Court to hear the Commission's complaint, and alleged that the Commission had no valid purpose in seeking Coletti's testimony because it had already filed its legislative package. The court, per Judge Joseph Ford, the same judge who had heard Coletti's first action, ordered on August 28 that Coletti appear and testify before the Commission pursuant to the summons and the order of immunity.28

Coletti appeared again before the Commission but again refused to testify. Consequently, the Commission petitioned the Superior Court to hold Coletti in civil contempt. On September 26, Coletti was found in contempt and committed to jail until he agreed to testify or until the Commission expired, whichever occurred first. Coletti's efforts to secure an immediate stay were unavailing and he was incarcerated.

However, three weeks later, on October 21, a three-judge panel of the Appeals Court granted Coletti a stay. The stay was granted on the ground that on appeal Coletti had a reasonable likelihood of success on the merits of his claim that the legislation extending the life of the Commission had been invalidly enacted. That is, the court suggested that the Commission might not exist.29
The next day, the Commission received word that the Supreme Judicial Court had decided on its own motion to review the case immediately. Briefs were filed on November 4 and the court heard oral argument on November 13, the Supreme Judicial Court issued an order affirming the judgment of contempt and vacating the stay. An opinion was to follow. It had not yet been filed at the end of the Commission's life.

Coletti returned to jail on November 14, 1980. Despite the grant of immunity, he never gave substantive testimony before the Commission.

Impounded Cases

Two of the Commission's litigated cases were impounded and can therefore be discussed only generally. Both involved orders of immunity.

The first case began with a witness's motion to quash a Commission summons on the grounds that the Commission had failed to provide adequate notice. The court rejected the claim because the Commission was willing to reschedule the hearing at the witness's convenience. When the witness appeared, he invoked the privilege against self-incrimination. The Commission then applied for an was granted an order of immunity for the witness.

Following the grant of immunity, the witness declined to appear at various times directed by the Commission. Therefore, the Commission initiated a contempt action. After the complaint was filed, the witness agreed to testify. But when he finally appeared, he remembered very little of the matters in which the Commission was interested.

Another witness opposed the Commission's application for immunity. The witness was an employee of a firm which was under investigation. The employee was represented by the same lawyer who also represented the firm and its owner. Eventually the Commission obtained an order of immunity for the owner as well, and the owner eventually provided the Commission with substantive information about payments to public employees and officials.

Ward v. Manzi

Finally, the Commission litigated Albert P. Manzi's claim that he was mentally and physically unable to comply with the Commission's summonses. Manzi claimed that the cancer surgery from which he was recovering had so depressed him that he was incapable of appearing before the Commission or of producing any documents.

Two days of evidentiary hearings were held in Superior Court to determine Manzi's competence. His internist and his psychiatrist testified at length. An expert witness retained by the Commission, a psychiatrist with considerable
forensic experience, also testified. The expert had examined Manzi on two occasions at the request of the Commission.

Following the hearings, Judge Peter Brady, who presided, visited Manzi at his home to ascertain Manzi's condition. Following this session, the court ruled that Manzi was competent to testify but laid out certain ground rules about the permissible frequency and duration of the hearings which Manzi was ordered to attend. At a public hearing held at a place near his home, Manzi appeared and invoked his privilege against self-incrimination in response to the Commission's questions.

CONCLUSION
The Commission anticipated the possibility that it might have to seek judicial enforcement of some of its summonses. Accordingly its staff counsel considered making efforts to arrange an expedited court procedure to govern applications to enforce and motions to quash Commission summonses. Preliminary discussions were held with Superior Court personnel which envisioned the assignment of a particular clerk to be responsible for processing the cases.

However, the Commission's first court actions (the Peabody enforcement action and a witness's motion to quash) were not filed until more than a year thereafter. By then, the Commission felt it might be too late to put such procedure into effect. In retrospect, further efforts should probably have been made to do so.

Instead, the Commission's cases were filed in the Equity Motions Session of the Suffolk Superior Court, and assigned along with the other cases in that session. Most of the judges who heard the Commission's cases appreciated the need for dispatch and made efforts to give the Commission's cases prompt consideration. Nevertheless, between the time normally required to draft papers and prepare briefs, and the apparent interest of the witnesses in delay, most of the Commission's cases consumed two months or more. Those in which appeals were taken went on much longer.

While most litigation in Massachusetts takes years, not months, even these days were harmful to the Commission because of the acute time limitations under which it had to work, especially after public hearings began. The process of litigation also cost the Commission valuable time and staff energy which should otherwise have been devoted to investigative work.

Despite the cost, the Commission had little choice but to seek judicial enforcement of its summonses. It could not have operated effectively if it had avoided litigation, because such conduct would have invalidated many of the Commission's official acts or even its legal existence. The Commission often
found itself litigating for its life as well as to compel the production of evidence by a particular witness. The validity of the Commission's position was ultimately upheld on each litigated issue. In those decisions, the courts reaffirmed existing Massachusetts precedent that legislative acts are accorded a strong judicial presumption of validity and that the power of the General Court to conduct investigations and gather facts as a basis for legislative action is an important one.
Final Report
To The General Court
Of The Special Commission
Concerning State And County Buildings

December 31, 1980

Created by
Chapter 5 of the Resolves of 1978
as amended by Chapter 11 of the Resolves of 1979

VOLUME 9
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THE COMMISSION'S NARRATIVE

SEPARATE VIEW
THE COMMISSION'S NARRATIVE

Introduction

Events Leading to Proposals for a Commission
- December Appeal
- Calls for a Commission
- Commission Bill Filed
- Hearing Date Set
- Judiciary Committee Hearing
- The Curtin Memo
- Commission Bill to House Floor and Passed
- Senate Passes Bill: Governor Signs

Constitution of the Commission
- Commission Constituted
- First Interim Report

Commission Faces Delays

Assembling Data on State Contracts
- Investigations Initiated
- Commission Evaluates Investigative Alternatives

Consideration of the Budget

Revisions to the Commission's Enabling Resolve

Approval of Provisions

The Struggle for the Budget and the Amendments

The Interim Report

The Commission Submits an Application for a Federal Grant

Meeting with Governor King

Manzi/Masiello Trial

The Federal Grant

The State Budget

Agreement with the Governor

Amendments to the Resolve

Discussion of Hearings

The Systems Reform Program
More Budget Delays

Governor Recommends Funds 60
Plans for Reform 62
Budget Problems Loom Again 63

Debate of the Proposed Amendments

Amendments Approved By House 66
Amendments Passed: Sent to the Governor 70
Executive Message to the Legislature 71
Amendment Rejected: Governor Signs 74

Back to Business: Development of Proposals

Preparations for Filing 77
Investigative Methods 78
Campaign Law and Campaign Finance Reform 84
The Filing 86
Committee Consideration 88
Further Campaign Research 90
The Administration Committee Hearing and the Debate Whether to Debate 92
The Public Hearings 97

Campaign Bill Drafting Begins 100
Administration Committee Work on the Legislation 101
DiCarlo Appears in Public Hearing 103
Legislation Moves Slowly 106
Public Perception of the Hearings 107
Harold Greene Challenges Commission Subpoena 109
Still No Commitment on the Legislation 111
Campaign Reform Bill Filed 113
Calls For Action on Bills 114
Decision to Request Extension of the Commission 117
Meeting With Legislative Black Caucus 119
Testimony on the Inspector General Concept 120
Testimony of William V. Masiello 124
Extension/Inspector General Voted Out 128
From Ways and Means To Prorogation 129
Resolution Not To Prorogue 130
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>$300 Million Repair Estimate</td>
<td>131</td>
</tr>
<tr>
<td>Ways and Means Hearing on Inspector General</td>
<td>133</td>
</tr>
<tr>
<td>MacKenzie Testifies</td>
<td>133</td>
</tr>
<tr>
<td>Manzi to Testify</td>
<td>134</td>
</tr>
<tr>
<td>Peabody Ordered to Comply</td>
<td>136</td>
</tr>
<tr>
<td>Testimony on Defective Buildings</td>
<td>137</td>
</tr>
<tr>
<td>Compromise and Conflict on the Inspector General Bill</td>
<td>138</td>
</tr>
<tr>
<td>Greene to Charles Street Jail</td>
<td>140</td>
</tr>
<tr>
<td>Calls for Admission of Campaign Bill</td>
<td>141</td>
</tr>
<tr>
<td>Inspector General Passes the House</td>
<td>142</td>
</tr>
<tr>
<td>Greene Appears Before Public Hearing</td>
<td>143</td>
</tr>
<tr>
<td>Campaign Bill Admitted</td>
<td>143</td>
</tr>
<tr>
<td>Construction Reform Reaches the Floor</td>
<td>146</td>
</tr>
<tr>
<td>Commission Meets With Leadership</td>
<td>147</td>
</tr>
<tr>
<td>Election Laws Hearing on Campaign Bill</td>
<td>148</td>
</tr>
<tr>
<td>Prorogation</td>
<td>152</td>
</tr>
<tr>
<td>House Passes Construction Bill</td>
<td>153</td>
</tr>
<tr>
<td>Committee Work on Campaign Bill</td>
<td>154</td>
</tr>
<tr>
<td>Senate Passes Construction Bill</td>
<td>155</td>
</tr>
<tr>
<td>Conference Committee on the Inspector General</td>
<td>155</td>
</tr>
<tr>
<td>Conference on Construction Reform</td>
<td>158</td>
</tr>
<tr>
<td>Bills to the Governor's Desk After Surreptitious Alterations</td>
<td>161</td>
</tr>
<tr>
<td>Bribery Bill to King</td>
<td>162</td>
</tr>
<tr>
<td>House Votes Down Campaign Reform</td>
<td>163</td>
</tr>
<tr>
<td>Coletti Challenges the Commission</td>
<td>165</td>
</tr>
<tr>
<td>King Signs Criminal Bribery and Construction Bills</td>
<td>165</td>
</tr>
<tr>
<td>The Final Months</td>
<td>166</td>
</tr>
<tr>
<td>The Final Report</td>
<td>166</td>
</tr>
<tr>
<td>Referrals</td>
<td>172</td>
</tr>
<tr>
<td>Conflict of Interest Laws of Massachusetts</td>
<td>173</td>
</tr>
<tr>
<td>Campaign Finance Laws of the Commonwealth</td>
<td>174</td>
</tr>
<tr>
<td>Perjury</td>
<td>175</td>
</tr>
<tr>
<td>Federal Hobbs Act</td>
<td>175</td>
</tr>
<tr>
<td>Federal Mail Fraud</td>
<td>176</td>
</tr>
<tr>
<td>Other Relevant Criminal Statutes of the Commonwealth</td>
<td>176</td>
</tr>
</tbody>
</table>
Volume IX, continued

THE COMMISSION'S NARRATIVE, continued

Ongoing Investigations 177
Legislation 177
Events in Court 178
Inspector General Appointment Deadlocked 180
Legislation for Consideration in 1981 180
Coletti 180
Campaign Report 180
Final Report 180
Financial History of the Special Commission 181
Staff Photograph 184

SEPARETE VIEW

Separate View of Commissioner and Attorney General
Francis X. Bellotti 186
THE COMMISSION'S NARRATIVE

The following section recounts the story of the Special Commission Concerning State and County Buildings, from the initiating events which precipitated calls for its creation to the release of this final report. This chapter traces the process by which the Commission was constituted, the manner in which it initiated investigations, and the process by which it elicited suggestions for reform of the system and began to develop specific proposals.

The struggle to obtain funding for the Commission's work is described; formulation and filing of legislative recommendations is discussed; court challenges to the Commission's authority by subjects of its investigation are noted.

The chapter proceeds to describe the public hearings on the award and management of public design contracts in the Commonwealth, on a case study of one firm's use of bribery and corruption to win public contracts, on examples of fraud and mismanagement in the construction process, and on the MBM case. Finally, the completion of investigations is reported; referral of evidence to prosecutorial agencies is described; and the filing of further legislation and the final report are recounted.

In the telling of its own story, the Commission has attempted to be thorough in detail because the Commission believes the account covers a remarkable period in the history of the Commonwealth, a time born of crisis in all areas of state government. The Commission hopes that the telling of its historical record will contribute to citizens' understanding of their Commonwealth, thus advancing the prospects for further reform.

EVENTS LEADING TO PROPOSALS FOR A COMMISSION

The indictment and subsequent trial of two Massachusetts State Senators, Joseph DiCarlo and Ronald MacKenzie, in the fall of 1976 and spring of 1977 for extorting money from the construction management firm of McKee-Berger-Mansueto (MBM) to fix a legislative investigation of MBM's performance as Supervisor of Construction at the University of Massachusetts Campus in Boston set in motion the chain of events which led in the spring of 1978 to the creation of the Special Commission.

On February 25, 1977, one month after the beginning of the trial, the jury handed down guilty verdicts for both defendants on one count of violating the Hobbs Act - the federal law which prohibits extortion by public officials - five counts of violating the Travel Act, and two counts of conspiracy, one to violate the Hobbs Act and one to violate the Travel Act.

- 7 -
DiCarlo resigned as Senate Majority leader on February 28 but did not resign from his Senate seat, claiming that he would not unless he was legally compelled to do so. DiCarlo and MacKenzie were sentenced on March 23 to serve one-year prison terms and fined $5,000 apiece. MacKenzie resigned officially from his Senate seat on March 31, while DiCarlo waited until after April 1, when the Senate Ethics Committee voted to recommend that he be expelled.

Despite the jury's verdict, the trial left many questions unanswered. Governor Michael Dukakis disclosed two days after the trial's end that his office was probing "various allegations made during the trial of possible wrongdoing by state employees who were not necessarily involved in the so-called conspiracy case." Midway through the trial, the Governor had requested Attorney General Francis X. Bellotti to investigate the possibility of kickbacks to firms and individuals involved in state construction contracts. The Attorney General's investigation concerned in particular the identity and political connection of the unnamed individual was Albert "Toots" Manzi, a one-time political fundraiser for former Governors Volpe and Sargent.

Governor Dukakis ordered a simultaneous investigation into the Bureau of Building Construction (BBC), prompted by the testimony of Frederick J. Kussman, Coordinator of the Bureau's Designer Selection Board (DSB). Kussman had testified that he had performed outside consultant work in Chicago for MBM in 1972 while he was a member of the DSB. In addition, Kussman was one of five BBC officials who spent a week in 1974 cruising the Caribbean aboard a yacht chartered by William Masiello. Masiello, the head of a Worcester architectural firm which had been awarded a substantial number of public contracts, had been named at the trial as having advised MBM to make a $10,000 political contribution to a "Mr. X." The investigation into Kussman and the BBC faltered in April, but the question of Kussman's association with Masiello remained.

December: Appeal

In December 1977, the MBM scandal was charged up again as new defense lawyers for the convicted state senators filed briefs on appeal claiming that their clients had not received proper counsel, because the original lawyers had "divided" allegiances and were controlled by Beacon Hill. The briefs charged that former Massachusetts Governor Francis W. Sargent, Senate President Kevin B. Harrington, and Boston Mayor Kevin B. White received payments or contributions from MBM prior to the legislative investigation of MBM.
On January 14, 1978, State Auditor Thaddeus Buczko released a draft of an audit report of the construction of the UMass Boston campus. The report said that at least $3 million would be needed to correct defects in the four-year-old complex. Buczko's efforts continued to focus on questions of the legitimacy of the firm's contract with the state. According to a draft of an investigator's report for the Legislature's Committee on Post Audit and Oversight, the BBC had paid MBM $457,272.48 for "services never received by the Commonwealth." Buczko said, "the contract should have been renegotiated... it was a sweetheart deal... a gold mine for that company." Buczko ordered on January 22 an investigative audit into the state's financial relationship with MBM. "It was an open-ended contract," he said. "The more money that would be spent on the contract, the more MBM would get out of it... there was no inducement for them to be efficient."

The next day, Governor Dukakis ordered Max Volterra, the governor's legal counsel, to open a "factual inquiry to determine if the state acted properly" based on allegations that the state had paid upwards of $450,000 for work that was never done. Meanwhile, the Legislature's Committee on Post Audit and Oversight reopened its investigation into the contracts and payment agreements at UMass Boston. Among other matters, the Post Audit committee decided to investigate $914,000 in change orders approved by Walter J. Poitras, the director of the BBC, who authorized the modifications over the objections of several of his senior staff.

An array of allegations remained unanswered. Meanwhile, the approaching expiration of the statute of limitations on several of these matters left the state in an uncertain position.

A Boston Globe editorial of January 20, 1978, recommended that a federal grand jury be called to pursue the charge of conspiracy. Since, by law, the proceedings of a grand jury would be kept secret, the editorial suggested that the United States Attorney's office file a report, based on the findings, to be made available to the public. The Globe emphasized, "the interest is not prosecution, which appears all but impossible, but in knowledge." Another option suggested in the editorial was action by the Senate Ethics Committee. Either way, the editorial stressed, "the air must be cleared...If there are state officials who have violated state laws in the past, whether still legally liable or not, they should be identified on proven facts in order to lift the cloud of corruption that inescapably hangs over the entire law-making body in Massachusetts."
In response to the Globe editorial, US Attorney Edward Harrington pointed out in a letter to the editor that the federal statute of limitations was beginning to take effect in matters relating to the DiCarlo-MacKenzie trial. The only allegations still susceptible to investigation, he wrote, related to political contributions said to have been made to Albert Manzi in the amount of $10,000 and to Senator James Kelly in the amount of $1,000 during the campaign of 1972. Harrington had turned over his evidence regarding these allegations to the Attorney General, as they fell under state jurisdiction, and a probe was in progress. Harrington observed that in light of these circumstances, the Globe's call for a federal grand jury was inappropriate; rather, he suggested, a state political corruption commission with subpoena power should be constituted to hold public hearings and "inquire into allegations relating to campaign contributions which are beyond the statute of limitations."

Calls for a Commission

Attorney General Francis X. Bellotti was the first person to make a strong public statement in favor of a special commission which would look into political corruption relating specifically to construction and design contracts. "There should be an inquiry, starting with how that contract (to MBM) was awarded in 1969," he said on January 30. Though the public had legitimate interest in full knowledge of the MBM matter, Bellotti stated that he was reluctant to devote the limited resources of his Criminal Division to investigate matters that occurred beyond the statute of limitations and thus had no prospect for prosecution. In addition, Bellotti noted that the various probes underway were overlapping in some areas: he labeled them "a total waste. It's insane the way it is now."

At that point, five probes were in progress. In addition to the Post Audit subcommittee investigation, the U.S. Attorney's probe, and Bellotti's own investigation, State Auditor Thaddeus Buczko was continuing his investigation and Dukakis' legal counsel Max Volterra was investigating the MBM contract.

Former governor Endicott Peabody had flown to Boston on January 30, in fact, to meet with Buczko and deputy auditors Robert J. Ciolek, John Kelleher and Peter Gavrilles. After the meeting, Peabody and his law partner Jeremiah Lambert held a televised press conference "to clear the air and because I was disturbed by the innuendoes that occurred in the press last week." Peabody fielded a battery of questions and said he considered the contract executed and negotiated by MBM with the state "a good deal."
On the same day, two state representatives, Andrew H. Card (R-Holbrook) and Philip W. Johnston (D-Marshfield) issued a statement calling for establishment of an independent commission and demanding the resignation of Bureau of Building Construction Director Walter J. Poitrast. The two legislators stated:

Recent developments in the McKee-Berger-Mansueto case show a clear pattern of corruption in the Commonwealth's bidding and contract procedures. Clearly, the Administration and the legislature have a responsibility to take immediate action to make absolutely certain that all charges which have been made in this case are investigated thoroughly and that safeguards be instituted at once to assure that all construction contracts with the Commonwealth be entered into under strictly enforced guidelines.

They voiced their extreme concern over the charges that Poitrast approved numerous change-orders on the UMass project despite recommendations to the contrary by BBC engineering staff. The legislation filed by Card and Johnston called for a nine-member commission: two members from the Legislature, two to be appointed by the governor, and five to be individuals -- perhaps architects and engineers -- from outside of state government. Walter Poitrast told the press that he had done nothing improper. "To the best of my knowledge, there is nothing involving corruption here. I will not step down; there is nothing to justify such action." A Boston Globe editorial noted the redundancy of the different investigations and said, "a blue ribbon panel named by the governor and granted full subpoena powers by the Legislature could coordinate the separate investigations and carry them further if they fail." The editorial discussed the charge of such a commission, saying

unlike a crime commission, the panel's investigation should be limited to the case at hand. But its mandate should be broad enough to get out all of the facts, to allow examination of the state's procedures for drawing contracts, provisions for oversight and record keeping in connection with campaign funds. And, not incidentally, it should study why the system failed so that it became necessary to establish an outside body .... Above all, it must have full administrative and legislative backing, including financing, staffing and full power to subpoena individuals and documents.

Governor Dukakis endorsed the proposal on February 2, the same day Common Cause wrote a letter to legislators urging "the creation of an independent Blue Ribbon Commission with subpoena power to investigate the continuing controversy involving allegations of irregularities in the state awarding of construction contracts." Jay Hedlund, Executive Director of Common Cause, said that "the continuing allegations, speculation and rumors involving public officials surrounding the construction of the University of Massachusetts' Boston campus have shaken public confidence in state government."
While observers theorized that most legislators would have difficulty opposing creation of a commission in an election year, Johnston and Card encountered initial opposition from the House and Senate leadership. Speaker McGee told the two that he would oppose a grant of subpoena powers; Senate President Harrington found himself in a difficult position with regard to issuance of subpoena powers since he himself had been accused of receiving a $2,000 check from MBM.

Johnston and Card developed a press strategy, working especially closely with WMEX talkmaster Jerry Williams, who became a prime advocate of the proposal. The announcement of intent to file legislation drew sudden attention; the idea, at least, was in the air.

Commission Bill Filed

While the bill was late-filed on February 6, there were reports of efforts to scuttle or at least delay consideration of the proposal. Harrington was reported to have urged his colleagues to refuse to consider the bill; it was said that he telephoned McGee in an attempt to block the measure in the House, since he believed that he could not stop it if it reached the Senate. McGee reportedly felt that the House membership would force the bill through even if the leadership tried to stop it there. Just as it appeared the day after the filing that there might be a lengthy debate on admission, McGee adjourned the House in the face of the massive snowstorm that went on to develop into the infamous "Blizzard of '78."

While some lawmakers remained stranded in the State House during the snowstorm, the debate over the proposal continued. Proponents had hoped for a vote on admission on the day the legislature returned from the recess brought on by the snowstorm. But the informal status of the day's session prevented a vote on the matter.

The House did admit the bill on February 15. The original Card/Johnston proposal as admitted called for a commission to:

investigate and study as a basis for legislative action the existence and extent of corrupt practices concerning contracts related to the construction of state and county buildings from January 1, 1969, to the present; the existence of conditions which tend or may tend to permit the occurrence of said practices; and the existence of limitations on the power of those charged with the duty of approving, supervising or overseeing said contracts or with the enforcement of laws related thereto.

The Commission was to consist of 11 members:

One member of the senate to be elected by a majority vote of the senate, one member of the house to be elected by a majority vote of the house, the attorney general or his designee, the state auditor or his designee, and seven members to be appointed by the governor. Six of those members appointed by the governor shall not hold any public office except that of justice of the peace or
notary public or be a member or employee of any political committee. Of said six members, one shall be a registered architect, one shall be a member of the state bar, and one shall be a registered professional engineer.

The proposal called for subpoena power relating to both books and papers and testimony under oath of witnesses, power to request grants of immunity, provisions of grand jury secrecy to extend to private hearings, and power to refer evidence to appropriate prosecutorial agencies.

While the bill awaited admission in the Senate, Governor Dukakis announced on February 22 that he had ordered the cancellation of the state's 17 contracts with William V. Masiello's Worcester architectural firm, Elm Park Associates. According to Max Volterra, the Governor's legal counsel, Masiello was refusing to cooperate with investigators from the governor's Office of Special Investigations who were evaluating allegations of illegal campaign contributions. The value of the Masiello contracts totaled above $11 million. Most of them involved architectural plans for construction and renovation projects at the Massachusetts Correctional Institution at Concord; others entailed designs for the Springfield Mental Health Center and for MDC buildings at Wollaston Beach in Dorchester.

The quest for truth about MBM intensified as every revelation increased public awareness of the extent of the problems. In a February 17 letter to Chester Atkins, Common Cause Director Jay Hedlund requested that the Senate use his influence to have the commission bill admitted as soon as possible. The proposal continued to command attention and support from the media.

When on February 23 the Senate admitted the bill, Card and Johnston wrote to Kevin Harrington, saying that it would in be in the best interest of the Commonwealth and the legislature if the Senate President were to remove himself from further involvement in the legislative process concerning their proposal. They wrote,

Removing yourself from participation in the legislative deliberations of the Card-Johnston proposal and refraining from the use of your position as President of Senate to in any way influence or restrict a free discussion and normal consideration of the legislation would provide greater public confidence in the General Court's action concerning the bill. Knowing that you, too, favor the suspension of individuals facing allegations or misconduct until full investigations can be conducted, we hope that you will apply the same standard to your activities.

The two sent a similar letter to Senate Ways and Means Chairman James A. Kelly, Jr. who said in response he would not step down, adding, "I think what they've done is questionable ethics." Harrington said in a statement, "I will not dignify the insulting request with a comment."
Hearing Date Set

When McGee and House Chairman of the Judiciary Committee Michael F. Flaherty set the hearing date for March 23, the committee's Senate Chairman, Alan D. Sisitsky, said that he saw no reason for the month's delay. The late date prompted an angry response from Johnston and Card:

We are outraged by the arbitrary decision of the Speaker and the House Chairman of the Judiciary Committee to delay the public hearing on our bill until March 23. This decision is directly contrary to the commitment given by the Speaker on February 6 that a public hearing would be scheduled within 3 weeks. We fail to understand why the Judiciary Committee cannot support Senator Sisitsky's view that the hearing should be held on March 10. Clearly, there is absolutely no legitimate reason for this delay. We can only hope that this decision by the legislative leadership does not reflect any calculated attempt to ensure the defeat of our bill, thereby thwarting once and for all a full investigation of charges against persons involved within state government. We continue to urge that the Judiciary Committee move forthrightly on this bill which is of major importance to the credibility of our state's political system.

On the same day, Walter Poitrast appeared before the Post Audit Committee and testified that he did not recall speaking to former Governor Endicott Peabody about the selection of MBM for the UMass Columbia Point contract. Committee Chairman Gerald M. Cohen maintained that Poitrast was "stonewalling." In an editorial, the Boston Globe pointed to the BBC director's testimony as a strong argument for constitution of the blue ribbon panel, because it showed the legislative committee did not have the power to compel revealing testimony.

While the Globe complimented the committee, it concluded,

The committee simply lacks the professional expertise, the investigative staff, the budget required to do more than pinpoint areas of abuse in the state's construction contract system. The MBM question requires the reinforcement of money and technical help, the prestige and credibility that a blue ribbon panel armed with subpoena powers would bring to an MBM investigation.

Cohen met with McGee and with Post Audit staff Director William H. Finnegan on March 2, after which the Speaker suspended Finnegan for altering records dealing with the unconcluded 1973 investigation of MBM. The next day, Card and Johnston issued the following statement:

The public should no longer tolerate the delaying tactics of the House leadership regarding our bill to create an independent commission to investigate charges of political corruption in the state's building and construction system. There can now be little doubt in anyone's mind about the direction the leadership plans to take in this matter -- it is to stonewall the issue and to search desperately for alternatives they hope the public will accept.

One such alternative, we understand, is the appointment of a special counsel or prosecutor to the Committee on Post Audit and Oversight to handle the M.B.M. case. This idea is being floated by those who fear a truly independent investigation. We will oppose it vigorously. It would be completely inappropriate for a legislative committee, which is ultimately responsible to and controlled by the House Speaker and the Senate President, to conduct an investigation relating to charges against members of the legislature. Rep. Cohen should continue his very effective
hearings on the M.B.M. contract, the suppression of the Post Audit Report and the tampering of records within the Committee. But a truly independent investigation must be voted by both branches in order to restore public confidence in the integrity of state government.

The leadership's refusal to hold a public hearing swiftly forces us to re-introduce our order to move up the hearing date. We intend to introduce it on Monday and perhaps on subsequent days. We will seek a roll-call vote on each day. If we believe the leadership is continuing its efforts to thwart the bill as it moves through the legislative process, we will begin moving for discharge on the floor.

In a March 6 statement, McGee promised that he would see the commission bill to the House floor by April 10:

The order calling for the creation of a special blue ribbon commission to investigate contracts issued by the State Bureau of Building Construction was admitted by the House of Representatives on February 15.

After some time, the admission process was completed by the Senate, and a public hearing date of March 23 was promptly announced.

The holding of a hearing on the 10th of March, as some have suggested as an alternative date, would have placed an unreasonable burden on the Judiciary Committee. This week -- the week of the 10th -- that committee will be occupied with another matter of high public priority, the long awaited reform of the judicial system.

I have consistently stated from the outset that while I may have serious philosophical reservations concerning some aspects of the blue ribbon proposal, no attempt would be made, or tolerated, to prevent or delay the orderly operation of the legislative process in this matter.

I believe the March 23 hearing date is a reasonable one. But, additionally, I want to assure all parties interested in the blue ribbon bill of the following:

I have spoken to the House Chairman of the Judiciary Committee and to the Chairman of the House Ways and Means and have made known to them my desire that this matter be out of their committee and on the floor of the House ready for debate by April 10, if not sooner.

They have promised me they will meet this deadline.

Meanwhile, the blue ribbon commission's original supporter, Attorney General Bellotti, voiced his misgivings concerning the direction of the proposal. "It's incumbent that we have some sort of a concisely organized group that can investigate this," said Bellotti in an interview of WEEI's Bay State Forum. But he said,

I'm not particularly in favor of this bill as it stands because it's very far reaching and it raises expectations of things that can never really happen. It investigates every contract, really, as I understand it, from 1969 forward. You can't accomplish that, because you can't have the resources to do that in the first place, and in the second place, it becomes a witch hunt."

Bellotti suggested the bill should restrict the investigation to the UMass construction contract involving MBM. But Johnston stated, "to limit the
investigation to the MBM matter would miss the central point of the MBM case which is that it is symptomatic of the way building and construction contracts are handled."

Bellotti and Johnston were continuing a debate that had begun at the time commission legislation was first filed. Proponents of the commission argued that the body should be endowed with strong powers which would enable it to get to the bottom of charges of corruption once and for all; others pointed to the experience of the 60's crime commission that indicted officials who were eventually acquitted or never brought to trial. A Globe news analysis observed on February 26:

Already the contending factions are hardening against each other.

Those supporting a commission are pictured as reckless dissidents more interested in toppling the legislative power structure than in uncovering corruption.

Those opposed to a commission are portrayed as participants in a venal system, more interested in saving their own hides than protecting civil liberties.

The resolution of this debate lay in the wording of the resolve that was to create a commission. Whereas the former crime commission's mandate was extremely broad - "to investigate...the existence and extent of organized crime within the commonwealth and corrupt practices in government at state and local levels..." - proponents of the new commission emphasized the narrower scope of their proposal and the suggested diversity of its composition. "We want to have some political accountability without political motivation," said Card.

On March 7, the same day that Peabody appeared before the Post Audit Subcommittee, Kevin Harrington responded to McGee's April 10 timetable commitment by saying the Johnston-Card resolution should move through the Senate within "48 hours" after it passed the Lower Branch, even if that required suspension of the rules.

As the hearing date for the commission bill (House Bill No. 4632) approached, the Post Audit hearings continued in full swing. McGee sent a letter to Representative Cohen on March 8 relaying the suggestion of Representative Gregory W. Sullivan (D-Norwood) that the original documents relating to the subcommittee's investigation be secured in a safe deposit box.

**Judiciary Committee Hearing**

Senator Sisitsky brought the hearing on the commission bill before the Joint Committee on the Judiciary to order at 9:30 a.m., March 23, in Gardner Auditorium. Attorney General Bellotti was the first witness, and confined the bulk of his testimony to the legal issues involved in the proposed resolution.
Though he supported in general the creation of an independent blue ribbon probe, Bellotti cited recent admonitions of former Crime Commission Chairman Alfred Gardner to avoid overly broad commissions, and said "the scope of the inquiry contemplated by the Johnston-Card resolution is much too broad." Bellotti felt that review of each and every contract during the period of suggested study was impractical and he said that a generalized inquiry would interfere with pending criminal and civil cases. The Attorney General had further reservations concerning requirements in the bill for his office to release information to the commission which he felt would be impossible due to statutory and ethical constraints. He recommended, in addition, that the Committee devote further attention to the immunity provisions contemplated by the bill, first determining whether a grant of such power was appropriate and then, if so, specifically delining the circumstances under which it would be exercised.

Bellotti advised the Committee to exercise care in its decision whether or not to allow public hearings to be held by the commission. "Open hearings to a great degree may serve the public's right to know," he said, "but the publicity generated by such hearings may prevent fair trials and sometimes interfere or at least inhibit prosecutions and in many cases prevent them." Bellotti said that the provision of the resolution granting power to the Commission to make direct presentments to a grand jury "is abhorrent to the doctrine of separation of powers and must be stricken."

Governor Dukakis addressed the committee, saying that the institution of an independent commission was necessary to restore public faith in the way state contracts had been handled and to make a considered judgment about how they should be handled in the future. There was discussion among the governor and committee members concerning the suggested scope of the commission and the time limit proposed in the bill. Dukakis noted that the mandate could be extended if the commission needed more time to finish its work. The governor said that he approved of the membership composition as set forth in H. 4632 and that he supported extending to the commission the option of holding public or private sessions at its own discretion.

Senator Sisitsky took the witness stand to state his support for the commission. He voiced his opinion that the committee should exercise care in the creation of a commission that would "protect the civil liberties and reputations of innocent individuals who could easily be damaged by indiscriminate and unfounded accusations."

Representative Flaherty then stated that the Joint Committee on the Judiciary must draft the charter of the commission and improve the public opinion on the standards to which we hold persons who are involved with these contracts and on the reputations of these
persons and indeed, the reputations of others not so involved. We must tread carefully before investigation is undertaken which may render ineffective as well as to irreparably harm the reputation and civil liberties.

State Auditor Thaddeau Buczko testified in support of the creation of a commission to examine the extent of corrupt practices, abuse of public positions, and poor management in the contract award process. He felt that the panel should examine all contracts at the state and county levels, and he included some specific suggestions concerning legislation that could emerge from such a study.

Representative Alfred Saggese, Jr. (D-Winthrop) testified in support of a proposed amendment creating a special prosecutor to aid, assist and direct the commission. Representative Mark E. Lawton (D-Brockton) stated his support for this amendment, which was to "provide an independent commission with independence of prosecution."

Representative Johnston testified that in sponsoring H. 4632 he desired a commission with an investigative scope that would be broad, yet at the same time significantly narrower than that of the old crime commission. He said that it was important to include contracts besides the MBM contract in the investigation. Subpoena power was absolutely necessary, according to Johnston, for an effective investigation. Likewise, he said, provisions allowing request of immunity for witnesses should be retained. Johnston declared that an eleven-member commission should be created speedily so that it could begin its work with dispatch.

Representative Card defended the 1969-to-present scope of investigations and suggested certain buildings for attention. He spoke against the move to grant prosecutorial powers to the commission, but he noted the importance of a grant of subpoena power and a grant of power to seek immunity for witnesses. Card felt that commission meetings should be held in public whenever possible, but that provisions should be included for private sessions to be held at its discretion. The main thrust of the proposal, according to Card, was that it would direct the commission to recommend legislation.

Representative Francis Hatch (R-Beverly) stated his support for a commission with a mandate for investigation to extend beyond the MBM contract. Specifically, he said, attention should be devoted to the Middlesex County Courthouse.

WMEX talkmaster Jerry Williams testified that he appeared before the committee as a "surrogate" for 8,432 people who had written letters in support for the creation of a commission. He produced 1500 pieces of mail and read seven letters into the record.
Representative Robert B. Ambler (D-Weymouth) stated his support for a commission and said that he was opposed to legislators sitting on as it members. Nine other representatives testified as did representatives of public interest groups and members of the general public. Written testimony was delivered to the committee.

The Curtin Memo

The Committee on the Judiciary heard testimony of John J. Curtin, Jr., Esq. on March 27 concerning legal questions arising out of H. 4632. Curtin had been retained as special counsel by Speaker McGee to review the legal questions raised by the proposal to create a commission. In his memorandum entitled "Legislative Investigation Regarding State Construction Contracts," Curtin discussed in detail prosecutorial functions, pending investigations, mandating cooperation, scope of investigation, composition and appointment, summons power, summons enforcement and procedure, oath and procedure, immunity, and hearings. The committee members relied heavily upon "The Curtin Memo," as it came to be called, in their deliberations; it had a substantial influence on the final form of the bill (then H.5463) as reported favorably out of committee.

The changes that resulted from the work in committee may be summarized as follows:

H. 4632 H. 5463
1. Time
   Line 5 - "from January 1, 1969 to to the present."

2. Membership
   Lines 16-26 - "shall consist of one member of the senate to be elected by a majority vote of the senate, one member of the house to be elected by a majority vote of the house, AG or his designee, state auditor or his designee and 7 members to be appointed by the Governor."
   Six shall not hold public office. One shall be registered architect, member of MBA, registered CPA and registered professional engineer.

3. Chairperson
   Lines 35-36 - Commission shall elect chairperson from among eligible members.

4. Assistance
   Line 51- "Commission may request assistance of AG, state auditor and Commissioner of Public Safety."

   Lines 32-33 - Member appointed by governor shall be chairperson.

   Lines 16-26 - "shall consist of one justice retired from SJC or Superior court, one lay person, both to be appointed by Sec'y. of Commonwealth, the AG or designee, dean of law school in the Commonwealth or President of a private institution of learning located in the Commonwealth to be appointed by Governor, Pres. elect of MBA or another member of MBA designated by him, registered architect and registered professional engineer both to be appointed by auditor of the Commonwealth."

   Line 54- "Commission may request reasonable assistance of AG..."
5. Public Safety Assistance
   Lines 54-56 - "Commissioner of Public Safety shall assign such assistants and investigators to said Commission as it may request.
   Deleted.

6. Agency Cooperation
   Lines 57-58 - "The Commission may require the cooperation of all agencies of the Commonwealth and any of its Political subdivisions." Deleted.

7. Immunity
   Lines 81-85 - "The Commission may seek an order under the provisions of s. 20C through 20I of c. 233 of G.L., granting immunity with respect to transactions, matters or things to such persons as it deems necessary to carry out the purposes of this resolve.

8. Hearings - Nature of
   Lines 86-90 - "All Hearings of the Commission shall be public, provided, however, that the Commission may, by a recorded majority vote, hold private hearings and the same provisions with reference to secrecy which govern proceedings of a grand jury shall govern all such proceedings of the Commission." Lines 91-114 - "If any person summoned to testify or produce evidence before the Commission refuses to testify or produce evidence on the basis of his privilege against self-incrimination, the Commission, upon a majority vote, may apply to a justice of SJC for an order granting immunity to said witness. Notice of such application shall be sent to the Attorney General, all District Attorneys in the Commonwealth, and the U.S. Attorney for the District of Massachusetts, any of whom may file an appearance and have the right to be heard with respect to such application. The justice may, after hearing, order the witness to answer the question or produce the evidence requested and, if he so orders, he shall also issue an order granting immunity to the witness with respect to the transactions, matters or things concerning which he is compelled to testify or produce evidence. A witness who has been granted immunity as provided herein shall not be prosecuted or subjected to a penalty of forfeiture for or on account of any action, matter or thing concerning which he may be required to testify or produce evidence following the grant of immunity, except for perjury committed while giving testimony or producing evidence, giving a false statement or otherwise failing to comply with the order. The provision of the second clause of the first sentence of s. 1 of c.268 G.L. shall be applicable to testimony under oath before the Commission."

Lines 119-128 - "Witnesses shall testify only at private hearings and the same provisions with reference to secrecy which govern procedures of a grand jury shall govern all proceedings of the Commission. Otherwise, the Commission shall hold its sessions in public on matters concerning procedure, rules and regulations for conducting its investigation and may call expert witnesses who shall limit their testimony to advising the Commission..."
9. End of All Prior Investigation
No like provision

10. Report Dates
Lines 111-172 - Report dates - "The Commission shall so file interim reports not later than 9/1/78 and 4/1/79 and shall so file a final report not later than 12/31/79."

Lines 145-154 - Chairman of Commission shall notify general court when Commission is ready to begin. At that time, all prior legislative investigations of MBM will end, and all records turned over to the Commission.

Lines 156-160 - Report dates - "The Commissioner shall file interim reports with the clerk of the house of representatives on or before 7/17/78 and on or before 4/4/79 and shall file the final report of its investigation and study and its recommendations, if any, together with drafts of legislation to carry its recommendations into effect, with said clerk on or before 12/31/79."

These changes were instituted in a series of informal votes by the members of the Joint Judiciary Committee on April 3.

On the same day, Johnston and Card issued yet another call for Poitrast's resignation. "Developments in the McKee-Berger-Mansuetu, UMass Boston case, and recent disclosures in hearings conducted before the Post Audit and Oversight Committee have shown a clear pattern of corruption and maladministration in the state's bidding and contracting procedures," they wrote. "Should Mr. Poitrast fail to voluntarily step down, we urge that the governor initiate the necessary action to have the current director of the BBC removed...We have no desire to prejudge Director Poitrast -- but the fact remains that, as Director of B.B.C., he was ultimately responsible for all cost increases and construction on state and county projects."

Commission Bill to House Floor and Passed

The bill reached the House floor on April 6 where it underwent amendments as follows:

H.5463 (Out of Committee)

Membership - Lines 16-17 - said Commission shall consist of one justice retired from SJC, or from superior court, one lay person....

H.5463 (Amended on the floor)

Membership

Lines 21-23 - ...[T]he president-elect of Massachusetts Bar Assoc. or another member of that association designated by him....

Lines 15-17 said Commission shall consist of one justice retired from SJC or from superior court, one lay person, who shall not at any time have served as a member of the general court...

Lines 22-24 - ...[T]he president-elect of Mass. Bar Association or another member of that association designated by him to be appointed by the Governor.
Representative H. Thomas Colo (D-Athol) was voted down three times in his protracted effort to secure more appointments for the governor. The bill was sent on to the Senate Ways and Means Committee; Chairman Kelly pledged to hold a hearing Monday, April 10, and report it out for debate in the afternoon.

**Senate Passes Bill: Governor Signs**

The Senate did vote in favor of the measure that day, 37-1. Senators John Parker (R-Taunton) and William Salstonstall (R-Manchester) pressed Senator Sisitsky during the debate to defend the membership granted the attorney general, suggesting that Attorney General Bellotti might face a conflict of interest. The lone dissenter in the Senate, Robert A. Hall (R-Fitchburg), argued that the Post
Audit investigation would be put off by the formation of a commission; he voiced his opposition to launching yet another probe of the situation. Kevin Harrington left the chamber as soon as debate began on the proposal. He and Senator Robert L. Bernashe (D-Chicopee) did not vote on the measure.

Mr. Poitras notified the governor on April 10 that he would resign effective May 31.

Governor Dukakis signed the commission bill into law on April 12. "My hope is that we can get the investigation underway with a minimum of delay, and that it will be full, thorough and responsible," he said. The governor said it was critical that adequate funds be made available so that the commission could hire a professional staff and he said he looked forward to the panel's recommendations "to strengthen what I believe is already a much improved construction process."

The final version of the resolve, as enacted, read as follows:

RESOLVE PROVIDING FOR AN INVESTIGATION AND STUDY BY A SPECIAL COMMISSION RELATIVE TO CORRUPTION INVOLVED IN CERTAIN STATE AND COUNTY BUILDING CONTRACTS.

RESOLVED, That a special commission to consist of seven members is hereby established to investigate and study as a basis for legislative action the existence and extent of corrupt practices and maladministration concerning contracts awarded no earlier than January first, nineteen hundred and sixty-eight related to the construction of state and county buildings; the existence of conditions which tend or may tend to permit the occurrence of said practices and maladministration; and the existence of limitations on the powers and functions of those charged with the duty of approving, supervising or overseeing said contracts or with the enforcement of laws related thereto. Said investigation and study shall include but need not be limited to consideration of the awarding, implementation and the subsequent events concerning the contract between the firm of McKee-Berger-Mansueto, Inc. and the commonwealth relating to the management of construction of certain buildings on the Boston campus of the University of Massachusetts.

Said commission shall consist of one justice retired from the supreme judicial court or from the superior court, one lay person who shall not at any time have served as a member of the general court, both to be appointed by the secretary of the commonwealth, the attorney general or a member of his department designated by him, a dean of a law school located in the commonwealth or a president of a private institution of higher learning located in the commonwealth to be appointed by the governor, the president-elect of the Massachusetts Bar Association or another member of that association designated by him to be appointed by the governor, a registered architect and a registered professional engineer, both to be appointed by the auditor of the commonwealth. No person who currently has or within the past five years has had any direct or indirect financial interest in a contract with the commonwealth or with a county related to building construction, nor any member of the immediate family of such person, shall be eligible for appointment to or shall serve on or be employed by the commission.

Said dean or president of such institution appointed by the governor shall be the chairperson of the commission. The member who is a retired justice shall not in any way perform any judicial duties while serving on the commission. Any vacancy on the commission shall be filled by the appropriate appointing or designating authority, unless there is at the time of such vacancy no such authority, in which case by the governor. Such vacancy shall not affect the powers and duties of the commission. A quorum of four members shall be necessary to conduct the business of the commission. A majority vote of the commission shall mean a majority of the members authorized to be appointed to serve.

The members of the commission shall serve unless otherwise provided herein without compensation but shall receive their necessary expenses incurred in the discharge of their official duties. The commission shall be provided with offices.
The commission may employ an executive director, legal counsel and such other assistance as it may deem necessary, subject to appropriation. The commission may accept and expend any appropriations, grants of money, professional services, clerical or other services and supplies from the commonwealth in the course of its investigations. The commission and its staff may travel within and without of the commonwealth.

The commission may request reasonable assistance from the attorney general, the state auditor and the commissioner of public safety, and said officers shall furnish the commission with any relevant information in their possession which is requested by the commission. Any justice of the supreme judicial court or of the superior court may, upon application by the commission and such application having been made to such officer who shall have an opportunity to be heard in opposition thereto, compel compliance with a request by subpoena for such information.

The commission may require by summons the attendance and testimony under oath of witnesses and the production before it of books and papers relating to any matter being investigated by it pursuant to the provisions of this resolve. Such a summons may be issued by the commission only upon a majority vote of the commission and shall be served in the same manner as summonses for witnesses in criminal cases issued on behalf of the commonwealth and all provisions of law relative to summonses issued in such cases shall apply to summonses issued under this resolve so far as applicable. Any justice of the supreme judicial court or of the superior court shall compel the attendance of witnesses summoned as aforesaid, the giving of testimony under oath and the production of books and papers before the commission in furtherance of any investigation under this resolve in the same manner and to the same extent as before the supreme judicial or superior court, and any witness so compelled may, if he so desires, make and file, before the court any questions theretofore put to such witness by the commission; in the event that such justice shall compel the giving of testimony before the court, he may, upon motion of the court or upon application of the commission, order that the public be excluded from such sitting of the court and may impound all papers and documents and reproductions thereof, relating thereto.

Every person who behaves in a disorderly or contemptuous manner before such commission shall be deemed guilty of a misdemeanor punishable as provided in section twenty-eight A of chapter three of the General Laws.

If any person refuses to testify or produce evidence on the basis of his privilege against self-incrimination, the commission, upon a majority vote, may apply to a justice of the supreme judicial court for an order granting immunity to said witness. Notice of such application shall be sent to the attorney general, all district attorneys in the commonwealth and the United States attorney for the district of Massachusetts, any of whom may file an appearance and have the right to be heard with respect to such application. The court, either at the request of the witness or against his will, shall order the witness to produce the evidence requested and, if he so orders, he shall also issue an order granting immunity to the witness with respect to the transactions, matters or things concerning which he is compelled to testify or produce evidence. A witness who has been granted immunity as provided herein shall not be prosecuted or subjected to a penalty or forfeiture for or on account of any action, matter or thing concerning which he may be required to testify or produce evidence following the grant of immunity, except for perjury committed while giving testimony or producing evidence, giving a false statement or otherwise failing to comply with the order. The provisions of the second clause of the first sentence of section one of chapter two hundred and sixty-eight of the General Laws shall be applicable to testimony under oath before the commission.

The commission shall establish rules of procedure governing the conduct of its hearings which shall be made available in printed form to each witness prior to his testimony. Witnesses shall have the right to be represented by counsel for the time being testifying before the commission.

All hearings of the commission shall be public, however by a majority vote of the commission membership present, the commission may, at any time, conduct a private hearing. Private hearings shall be governed by the same provisions with reference to secrecy which govern proceedings of a grand jury.

Upon order of the commission, its counsel shall, under conditions of confidentiality, submit to the attorney general, a district attorney or other law enforcement agency, such evidence which has come to the attention of the commission as is in commission warrants or presentations of submission. Any evidence of misconduct by an employee, officer or official of the executive branch of government shall be presented to the governor; any evidence of misconduct by a member, officer, or employee of the general court; and any evidence of misconduct by a licensed or regulated professional shall be presented to the appropriate professional disciplinary body; provided, however, that such presentations may be limited to evidence which, in the opinion of a majority of the commission, is reasonably credible.
The chairman of the commission shall notify the general court when all appointments have been made and the commission is ready to commence its investigation. Upon such notification, all legislative committees which are conducting an investigation and study of said contract and related events between McKee-Berger-Mansueto, Inc., and the commonwealth shall terminate in an orderly manner their investigations and studies thereon, and make a report of their findings and conclusions to the general court, and turn over all of the records of their proceedings to the commission in an orderly manner.

The commission shall file interim reports with the clerk of the house of representatives on or before July seventeenth, nineteen hundred and seventy-eight and on or before April fourth, nineteen hundred and seventy-nine and shall file the final report of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect, by filing the same with said clerk on or before December thirty-first, nineteen hundred and seventy-nine.

The commission shall cease its investigation and study upon filing its final report and, except as otherwise provided herein, shall forward all records and documents, including stenographic notes, to the state secretary. The secretary shall be the custodian of such records, which he shall place in a separate and segregated vault in the archives division and he shall seal the same. Said records shall not be public records and shall be available only upon a court order. The state secretary shall retain said records and documents for seven years after receipt.

All appointments required under the provision of the second paragraph of this resolve shall be made not later than thirty days after the effective date of this resolve.

Nothing in this resolve shall be so construed as to preclude any individual from cooperating with any investigation into matters covered by the provisions of this resolve.

Representatives Johnston and Card wrote a letter to Dukakis on April 18 requesting him to instruct the Secretary of Administration and Finance to begin immediate publication of all contracts to be awarded by the Commonwealth. They pointed to the federal government's Commerce Daily as an example of a publication that provided a complete listing of government contract opportunities in an open and fair manner. This listing is mailed daily by the U.S. Department of Commerce to engineers, architects, and others seeking contracts. William Montouri, chairman of the Massachusetts Association of Land Surveyors and Civil Engineers, said that under the present plan, if you don't have someone at the State House all the time talking to the agencies, you have no way of knowing what contracts are available. Everyone interested should be notified. The two-man firm in Adams should have the same shot at a contract as the 500-man Boston firm -- as long as public funds are being used.

**Constitution of the Commission**

Later that Spring, members were chosen for the new commission. Governor Dukakis named John William Ward, president of Amherst College, chairman of the panel in an announcement May 12. Ward, a former professor of History and American studies at Amherst, had seen the private, liberal-arts institution through the turmoil of the Vietnam war era, as well as the move to open the campus to women beginning in 1975.
State Auditor Buczko announced his appointment of Peter Forbes to fill the position for a registered architect. Forbes was then a founding partner of the architectural firm of Forbes, Hailey, Jeas, Erineman, Inc., of which he had been president and chairman of the board since 1972. In accordance with the dictates of the enabling legislation, Forbes and his firm had engaged in no state or county work.

Auditor Buczko announced Walter J. McCarthy as the engineer member of the Commission. Since 1973, McCarthy had been Professor of Civil Engineering at Southeastern Massachusetts University in North Dartmouth where he guided implementation of the first higher education program in construction management engineering in the eastern United States.

Frances Burke was named by Secretary of the Commonwealth Paul Guzzi to fill the position reserved for a person who had never served in the Legislature. Burke was chairman of the Department of Public Management and Administration at Suffolk University's Graduate School of Administration. She had taught at Boston University, Metropolitan College, Stonehill College and Tufts University, and had worked as a management consultant to business, industry and government.

The Governor appointed Daniel O. Mahoney to the Commission upon nomination by the President-Elect of the Massachusetts Bar Association. Mahoney was a senior partner in the Boston Law firm of Palmer & Dodge, where he had been engaged in the general practice of law since 1953.

Secretary Guzzi also appointed Lewis H. Weinstein, senior partner in the Boston law firm of Foley, Hoag & Eliot, to the Commission on June 29. Weinstein had lectured in Trial Advocacy at Harvard Law School for 16 years and in Law of Land Use and Planning at MIT for eight years. His legal career included four years as assistant Corporation Counsel for the City of Boston where he worked on cases claiming refunds by former Mayor James M. Curley. Weinstein's appointment was delayed because a judge answering the statute's description could not be found. The definition was changed to "layperson."

Francis X. Bellotti became a member of the Commission by virtue of his position as Attorney General of the Commonwealth. He was elected to that position in 1974. Bellotti previously held the position of Lieutenant Governor of Massachusetts from 1963 to 1964.

Even before the Commission was fully constituted, its first members began a series of interviews to select a Chief Counsel. Mr. Ward set down on paper some reflections on the nature of the Special Commission and its work:

The first paragraph of the legislature's resolution succinctly sets forth the charge to the Commission. We are to investigate and study as a basis for legislative action the existence and extent of
corrupt practices and maladministration related to the construction of state and county buildings since 1968, including but not restricted to the MBM situation.

More broadly, we are also to consider the "existence of conditions" which affect corruption or maladministration, including limitations on those who are charged with the responsibility of overseeing the construction of buildings or of enforcing the law in relation to such construction.

Clearly, the intention of the legislative mandate is to inquire into the past in order to make recommendations for the future. It might have been possible to establish a commission to do the latter, that is, to propose ideal policies and procedures for building contracts, without reference to the former. One surmises that it is not because the legislature has an empirical imagination that it yoked the two major charges to the Commission, but because it wished to do two things at one and the same time, two things which do, of course, relate to one another.

The mandate is a broad one. The power conferred upon the Commission is considerable. The Commission has complete independence. The three qualities, taken together, add up to large responsibility.

The members of the Commission should agree among themselves, I think, on certain characteristics which will define its sense of itself so we present a single image to the public and to the legislature.

First, we will do both tasks which the legislation mandates us to do. But we will do the first task, investigation into corruption and maladministration (and, needless to say, the two are not synonymous), thoroughly and responsibly, with an eye toward correction in the future and not just punishment in the present. If we uncover corruption or flagrant maladministration, we will report it to the proper office, as the "Resolve" mandates us to do.

Second, we will conduct ourselves and the work of the Commission in a manner which inspires confidence in the integrity of our work. We should, in effect, offer a model of what citizens of the Commonwealth may expect of their servants. The power granted us is a temptation if not guarded against. We should not lightly use it because we may easily destroy reputations and careers. If, humanly, we err, we should be strong enough to say so publicly and at once, so no innocent person is harmed by us. We need, in sum, to be tactful and judicious.

Third, we must agree to act as "a Commission," a corporate body. It will not be possible, obviously, to say absolutely nothing to members of the press or the media, but we must individually be cautious about speaking for the Commission itself. When the Commission speaks, it should through its Chairman. When the Chairman does so, he, too, will be cautious and especially on important matters will, if at all possible, discover the consensus of the Committee before making any announcements or pronouncements. Finally, to act as a body means a commitment to attend all meetings so far as humanly possible. We must not appear to be well-intentioned private volunteers who abandon their task when the work begins to press.

In addition to the ongoing general discussion among the new Commissioners at this time concerning the mission and objectives of their work, the members had communication with the various organizations which had been conducting related investigations.

Commissioners contacted individuals in other state departments to gain information about the Commonwealth's construction and design process and to begin to collect data to be used in investigations. Commissioners McCarthy and Burke, for instance, met with Assistant Attorney General Paul Good, an expert in the
Contracts Division, to learn of public construction and design contracts in general, agencies involved in the process, knowledgeable individuals in the field, and information on specific suits as well as potential areas for investigation. The panel reviewed an audit of the Bureau of Building Construction provided by Deputy State Auditor Robert Ciolek as specific information that would be helpful to investigations and as an introductory sample of the tremendously complex and confused system the Commission was about to confront. The members began to develop a sense of the scope and breadth of their mandate through examining items such as magnitude of extra work orders allotted, extensions of time granted, and outstanding claims.

Commission Constituted

A July 10 letter from Ward to House Speaker Thomas McGee and Senate President Bulger informed the General Court that the Commission was officially constituted. At a meeting of the Special Commission on July 14, First Assistant Attorney General Thomas Kiley reported that office space would be ready shortly and the members continued to discuss plans for acquiring personnel and for drafting a set of rules, regulations and procedures.

Chairman Ward asked First Assistant Attorney General Kiley to recommend a budget for the Commission. Kiley recommended and drew up a budget request proposing a staff of three lawyers, two investigators and administrative and clerical support, for a total budget of $338,000.

On July 14, the Commission received its initial appropriation in the amount of $300,000 in the supplemental budget for fiscal year 1978. This initial appropriation was specified to cover the period extending to December 31, 1978. Chapter 42, Acts and Resolves of 1978.

In the meantime, the Commission members had begun to search for staff. Applications for staff positions were received by the Commissioners when the Commission was constituted, but the Commission was determined to conduct a search for staff beyond those persons submitting applications. Chairman Ward and members of the Commission met with practicing lawyers and law teachers, design professors and practicing designers, prosecutors, government officials and public managers to solicit recommendations for staff positions and particularly the position of chief counsel. Candidates were interviewed by members of the Commission first and then by the Commission as a whole.

On July 18 the Commission made public its choice of Bancroft Littlefield, Jr. as its Chief Counsel. Littlefield was a Lecturer in Law at Harvard Law School and was granted a leave by the school to take the position. From 1972-1976, he had been an Assistant United States Attorney for the Southern
District of New York, specializing in prosecuting fraud and narcotics cases in the Criminal Division of the United States Attorney's Office. He was a 1964 graduate of Harvard College and a 1968 graduate of the University of Pennsylvania Law School.

First Interim Report

The Commission addressed a letter to Wallace C. Mills, Clerk of the House of Representatives, on July 17 as its first interim report. It was stated that the Commission was in operation, that funds had been appropriated, that Chief Counsel had been selected, and that it was working in office space on the 21st floor of the John W. McCormack State Office Building. The report also described a letter sent by Attorney General Bellotti to the Attorneys General in all 50 states, soliciting information from them on any work done in their states on investigations of corruption or maladministration in connection with public construction projects and any programs for legislative reform of procedures for awarding and administering governmental construction contracts.

Littlefield stated in a report to the Commissioners on July 14 that his first order of business would be to assemble candidates for the staff. An extensive search was made by Commissioners and Littlefield for lawyers, accountants, investigators, and individuals with construction or contracting backgrounds. The Commissioners' intention was to speak with people at law schools, in private firms, and in government criminal and civil offices in Massachusetts and outside to locate candidates.

The Commission members interviewed all applicants with a view toward a balance in their staff. The goal was to assemble a staff with varied but complementary skills, training and work experience. For the investigative staff, lawyers with prosecuting and trial backgrounds were sought as were lawyers with extensive big case civil litigation experience. Lawyers were sought for the systems reform effort with experience in legislative drafting and familiarity with the state design and construction contracting system. Investigators with experience auditing financial records were sought, as were experienced investigators to conduct investigative interviews. Public managers and design and construction professionals were sought to provide construction and governmental operation expertise. In addition, the Commission sought an administrator and clerical support for the investigative and systems reform staffs.
By September 1978 the Commissioners and Chief Counsel Littlefield had completed the initial search and screening program and interviewed and selected five lawyers: Natalea Skvir was a staff attorney with the Massachusetts Senate Committee on Ethics; Michael G. Tracy practiced with the Boston law firm of Gaston Snow & Ely Bartlett; A. John Pappalardo was an Assistant District Attorney in Norfolk County; Michael L. Tabak had been a law clerk for Chief Judge Irving R. Kaufmann of the Second Circuit Court of Appeals, and practiced with the New York law firm of Davis, Polk & Wardwell; and Barbara A. Milman was a Boston defense attorney and Assistant Director of the Harvard Center for Criminal Justice. Also, three State Police investigators were made available to the Commission by the Secretary of Public Safety and early in the fall State Auditor Thaddeus Buczko assigned two auditors from his office to work with the Commission.

**Commission Faces Delays**

Even in its efforts to become established, the Commission encountered the first of a series of obstacles and delays which, whether conscious or coincidental, hampered its work and plagued it during its entire existence. The first of these delays came with a process as mundane as payment of employees.

The following events are recounted because they are typical of the bureaucratic difficulties faced by the Commission and undoubtedly by any new agency in state government. At the least, they were an inconvenience and distraction and needlessly occupied many hours of staff time. At the worst, because administratively the positions or salaries could not be readily established, the Commission was delayed in hiring its staff and was thereby delayed in starting its investigation. With a limited period of time to conduct its work, months lost from investigations at the outset were never regained over the life of the Commission.

Although some staff members had begun work in July, they received no salary payments from the State until the end of November. On July 25, Natalea Skvir, who doubled as investigative attorney and administrator, talked with the Comptroller's office to find out the necessary procedures for getting a payroll computerized and operational. She was told that it was necessary among other things to obtain position title codes from the Personnel Department. Skvir talked with the Personnel Department and was told that the Commission positions were "unclassified," meaning that they would have to be authorized by the House and Senate Committees on Ways and Means, and forwarded by Ways and Means on a list to the Personnel Department to become classified. The Personnel Department said it would check to see if Ways and Means had done this.
On July 27, Personnel reported back that Ways and Means had a personnel schedule for the Commission pursuant to the new budget, but that the schedule showed nothing pertaining to the Commission. Therefore, Skvir was told to write a letter to House Ways and Means staff, listing the desired positions, and requesting authorization for them. During the next week, Littlefield and Skvir developed a final list of positions to be authorized. Skvir was told that she might encounter some resistance from Ways and Means, since the legislative branch did not like to be told what to do by an executive agency or legislative commission. Skvir again inquired of various officials whether there might be a more efficient means to begin a payroll, but they all agreed that this was the way it would have to be done. So Skvir met with Ways and Means staff on August 3, giving them the list of positions with a cover letter explaining what the Commission needed. Skvir telephoned Ways and Means on August 8; the list had not been approved. She telephoned Ways and Means on August 9, and was told that there would be difficulty in getting approval for the regular state employee positions (termed "O2" account) in the near future since they had to be authorized by both Senator Kelly and Representative Finnegan at the same time, and the two were not at the State House regularly then since the session was over. Ways and Means next suggested that Skvir confer with another staff member of House Ways and Means about the possibility of entering the positions in the "O3" (consultant) account. Skvir pointed out to the second Ways and Means staff member that most of the Commission's funds were in an O2 account; she understood that money could not be freely transferred between the O2 and the O3 accounts, since she had been led to believe by Ways and Means that such a transfer would require the approval of both Ways and Means chairmen. Subsequently she was told that a letter of authorization from the Secretary of Administration and Finance would suffice.

Skvir then went back to the Comptroller's Office to learn of the process through which O3 workers were paid. The Comptroller's Office was very suprised to learn that the Commission had been advised to seek payment from the O3 account because it was most unusual. The Comptroller's staff suggested that perhaps the Ways and Means staff was unaware of O3 requirements which stated that an individual could not bill for services until a form had been filed with the Comptroller authorizing the individual to do so. Both officials felt that it would be foolish to create an O3 payroll, particularly since the budget appropriation specified that the salaries should come primarily from an O2 account and thus legislative intent was clear in this regard. Moreover, the two confirmed Skvir's earlier information that O3 employees did not receive health insurance and tax withholding.
Littlefield and Skvir then sought advice from other sources and ultimately were referred back to A&F, since the Commission's appropriation was listed technically under that department's jurisdiction.

A&F made clear that an O3 payroll was simply not viable since Littlefield and Skvir, among other staff, had already been hired and the account prohibited retroactive payment. It was suggested at A&F that it might be possible to secure an O2 payroll via the "excess quota" method, which created a mechanism for one fiscal year, although such procedure would also require Ways and Means approval.

Commission staff met with A&F on August 16 and again on September 5 to discuss excess quotas. In the second meeting, Skvir was told that the Personnel Department had recommended that instead of excess quotas, the Commission should be established in "unclassified slots" with an expiration date. A&F requested a letter from the Commission recommending the positions and salaries, which letter was immediately provided to A&F and forwarded to Ways and Means requesting that the position be unclassified, temporary.

Finally, on September 25, Ways and Means approved the payroll; however, the employees were not paid until the end of November after the information had been entered in the personnel computer. The Commission staff worked for almost four months before receiving any pay.

The same types of problems were experienced by the Commission in obtaining office space, although the resolve establishing the Commission stated that office space would be provided to the Commission. Through July and August, the Commission worked out of offices of the Attorney General, offices of individual Commissioners and Littlefield's Harvard Law School Office. In September the Commission obtained two rooms on the 21st floor of the McCormack Building. A month later the Commission, then with a staff of 15, moved to a larger suite of six offices on the same floor of the McCormack Building. In January 1979, however, the Commission's space on the 21st floor was taken over by the Secretary of Public Safety, and the Commission, cramped for space anyway, moved to larger quarters on the 5th floor of the McCormack Building. It was not until May 1979 that the Commission finally obtained adequate space on the 16th floor of the McCormack Building. Thus, during its first ten months, the Commission moved offices four times in a search for better and adequate space. Each move not only took time from investigative work, but required elaborate planning because of the importance the Commission placed on the security of its records, which were maintained in specially designed "safe" rooms equipped with electronic security devices. A new agency would be well advised to bargain early for adequate office space or risk undergoing the repeated dislocation the Commission faced over most of its first year.
The John W. McCormack State Office Building

While these several starting up administrative problems were being solved, in mid-July Commission members began to work with staff to begin gathering information on public construction contracts and establishing a data/information bank. A group of Commission members met with the State Comptroller on August 10 to arrange a review of all the payment cards issued by his office on construction projects during the preceding ten years.

Assembling Data on State Contracts

In its interim report to the General Court on January 15, 1979, the Commission described its program for gathering and organizing data on public contracts, a process which was essential for its work on investigations and system reform.

Study of the Legislative and Administrative Systems for State and County Construction Procurement

To recommend meaningful reforms in the system by which the state and counties construct buildings, the Commission first had to collect data on current practices and procedures and analyze the universe of construction contracts awarded since January 1, 1968. Both projects have turned out to be complex. Over 10 state agencies and 14 counties construct a wide variety of
buildings, such as hospitals, prisons, and libraries. The Commission estimates that over 4,000 separate contracts, worth billions of dollars, have been awarded to architects, engineers, special consultants, and contractors by the state and counties since January 1, 1968. The Bureau of Building Construction alone awarded approximately one billion dollars' worth of contracts during this period, and the Bureau has responsibility for less than one-third of all state and county building construction in Massachusetts.

Early in its work the Commission discovered that there exists no one complete central source of information on state and county contracts. A source of information available to the Commission has been the State Comptroller's Office which maintains records of payments by the state on approximately 3,000 contracts for state building construction. From these records and those from many other sources, such as the 14 counties and state agencies whose contracts are not recorded in the Comptroller's Office and the State Treasurer, the Commission has developed a computerized system for analysis of state and county contracts. Examples of information which will be produced in this analysis are: data on how much public construction worked, measured both in terms of dollars and in terms of numbers of contracts, has been awarded by each agency; data on how well public construction projects have conformed with contractual price limits and completion dates; data on the quality of work done by architectural, engineering and construction firms, measured by delay, cost overruns, and repair and maintenance costs; data on whether any firms appear to have obtained an unusually large amount of the work for any agency, any locality, or any type of building; and other aggregate data on the building contracting field. This aggregate data will include the total number of contracts awarded since January 1, 1968; the total number and types of construction contracts awarded by each agency, their total cost to the state and the total of cost overruns and delays.

This information provides an empirical basis for the Commission's deliberations and recommendations. It serves to identify projects which should be investigated because of unusual delays, cost overruns, or other problems. It identifies firms receiving a substantial number of contracts so that the Commission can examine the factors which led to the award of these contracts. The study also will assist the Commission to develop a model for a permanent source of information on public construction and a data base for future construction planning in Massachusetts. The Massachusetts Institute of Technology, although in no way participating in decisions about the use of the data, has generously given, pro bono publico, professional counsel and machine time for the creation and use of the computerized data base.

The members of the Commission and the staff are also gathering information on the procedures of state agencies involved in public construction and on the laws and administrative regulations which govern such work in the state. The Commission has focused its initial study on the Bureau of Building Construction and the Designer Selection Board. Contracts awarded by these agencies have been analyzed in detail. Officials of both agencies have been interviewed. Other public officials from such agencies as the Department of Environmental Management, Department of Corrections, Department of Public Safety, Department of Mental Health, Department of Youth Services, Registry of Motor Vehicles and the State Colleges and Universities, members of bar association groups, representatives of professional and trade organizations from the construction industry, and members of the public with knowledge and interest in the Commission's investigations have also been interviewed by the Commission concerning the work Bureau of Building Construction and the Designer Selection Board.

The Commission has also interviewed officials in other state agencies involved in public construction to develop information on the procedures employed by these agencies and to compare them with the procedures used by the Bureau of Building Construction. Included are such agencies as the Department of Public Works, Metropolitan District Commission and the
Department of Community Affairs. The Commission has also collected budget records to examine budget appropriations for public construction projects, financial reports and annual reports of agencies involved in construction, and annual auditor's reports on such agencies, as well as the State's annual building inventory maintained in the Comptroller's Office.

The Commission has also conducted an in-depth analysis of the procurement laws and regulations in Massachusetts. It has contacted the attorneys general in the 49 other states for information about their construction procurement laws and practices and about any experiences other states may have had with investigations similar to those being conducted by the Commission. The Commission is also studying federal procurement practice and comparing the procedures of several federal agencies with those in Massachusetts in developing its reform proposals. The Massachusetts Subcommittee of the American Bar Association Committee which has been working on developing a model procurement code for state and local governments has offered to consult with Commission staff members and to provide the Commission with advice from its permanent staff in Washington.

By mid-September, a small staff of state troopers was completing the initial task of gathering public documents, reports, budgets, and contract forms from the state agencies, the Legislature, and the state library. The Post Audit Subcommittee had turned over documents related to the MBM investigation. Work-study eligible law students, available to the Commission at a cost of approximately 75 cents per hour, were beginning document review tasks to assist in investigations as well as legal research assignments concerning the scope of the mandate. The Commission was well under way with the process of entering data into the computers which had been donated by MIT and Digital Equipment Corporation. Several public management interns were involved in the difficult task of compiling this data from the sources scattered throughout the government.

The Commissioners began work on the Commission's rules of procedure in early September, assisted by staff discussion, research, and memoranda. The goal of the Commission on drafting its rules was to promote effective and fair investigations and to protect the rights of witnesses before the Commission. The Rules were adopted by the Commission after public notice and a hearing on November 1, 1978. They were provided to all witnesses appearing before the Commission and others at their request. A copy of the Rules of Procedure is included in the Appendix to this report.

As walls were constructed in the offices surrounding them and as secretarial staff and equipment arrived, the Commission began work on the MBM investigation and commenced study of Designer Selection Board practices.

Investigations Initiated

On October 11, 1978, the Commissioners met in executive session and by unanimous vote authorized and directed the issuance of their first summonses. These concentrated on financial and contract documents from related architectural
firms for use in checking for cash generation. The investigative work of the Special Commission had begun in earnest.

The process which led to the issuance of these summons is described in greater detail elsewhere in the final report. In simplest terms, however, the Commission reviewed all design contracts awarded by the state during the period of its mandate. Among other factors, it considered which firms had received the most contracts from selected agencies, which had received the highest total design fees, which had designed the greatest number of large projects with high fees, which had received the most contracts and also were sued most frequently by the Commonwealth for design errors, as well as information from the computer output on such questions as a firm's history of cost overruns, change orders, and fee increases on jobs, delays in job completion, quantity of repair work after completion, and also an analysis of how open and competitive was the awarding process by which an individual firm was selected. The Commission also included in its analysis information it had received from interviews with persons involved in the award of design contracts and management of state construction. After analyzing all of this data the Commission ultimately selected three design firms to begin its investigations.

The Commission described the early months of its investigative work in its interim report to the General Court on January 15, 1979.

Investigations to Detect and Expose Corrupt Practices and Maladministration

In addition to studying systemic problems, the Commission is conducting a number of intensive investigations designed to uncover specific examples or patterns of corruption and maladministration. The Commission has begun its work in this area by designating certain representative subjects for intensive analysis, including design and construction firms which received a substantial number of state or county contracts, individual building projects and selected state agencies. The Commission is also reviewing the performance of governmental personnel responsible for decision-making in the award and management of construction contracts.

The work involved in conducting these investigations in a manner which is sufficiently thorough to support legitimate findings and conclusions is extremely costly and time-consuming. The books and records for ten years of any single representative private firm or governmental unit engaged in design and construction fill many file cabinets. An attorney or auditor easily spends months merely obtaining, inventorying, and analyzing thoroughly the financial records of one firm. Thorough study of these records also requires substantial effort by engineers, public managers and financial investigators. Only after records have been carefully reviewed, and conclusions drawn on the basis of the review, is the Commission actually sufficiently knowledgeable to conduct interviews of persons involved in the firms, projects, or agencies under study. These interviews of scores of individuals involved with each firm also are time-consuming and require thorough preparation and reports when completed. The information received from the records and interviews must then be organized systematically so it can be retrieved by other attorneys and investigators.
In addition to its review of books and records, the
Commission has also met with individuals who have provided
information about instances of alleged misconduct in the
construction process. The staff seeks to identify more persons
with such information and to encourage them to talk with the
Commission on a confidential basis. To this end Commission
members and staff members have met with industry groups and
public officials to encourage such disclosures. Necessarily,
the conditions under which such disclosures are made require
careful consideration by both the individual involved and the
Commission in connection generally with its investigations and
specifically in developing leads to persons with information
relating to the investigations, the Commission has received
extensive cooperation, as permitted by laws of disclosure, from
the criminal division of the State Attorney General and the
United States Attorney for Massachusetts, local district
attorneys, the Federal Bureau of Investigation and the Internal
Revenue Service.

As stated above, the Commission cannot reveal the names of
individual agencies, projects, firms, or persons being studied
at this preliminary stage. Only one investigation can be
mentioned specifically. The Commission is required by the terms
of its Resolve to investigate the contract awarded to
McKeen-Berger-Mansueto ("MBM") in 1969 for construction
management of the Boston Campus of the University of
Massachusetts. Revelations concerning MBM were the catalyst for
the formation of the Special Commission. Two state senators
were convicted of extorting money from MBM officials; a
high-ranking state official and the head of a successful
Worcester architectural firm were indicted for another alleged
extortion scheme involving MBM. A legislative investigation
uncovered other payments by MBM to public officials and raised
many questions concerning the contract upon which MBM was
ultimately paid several million dollars. The Commission is
devoting part of this investigation, both to satisfy the
justifiable public demand for a resolution of the questions
raised by this contract and to provide the Commission with a
case study of potential problems inherent in the present system
of public construction.

Although the Commission has developed leads and information
on which it can speculate about the existence of patterns of
corrupt practices in the state and county construction process,
it is unable at this early stage to draw conclusions as to the
truthfulness of such allegations. The process of detecting
misconduct is long and arduous. Neither the person who took
money illegally or received favors for the conduct of his public
business nor the person who paid such money is likely to come
forward voluntarily to produce such information before the
Commission. There are many methods by which wrongdoers may
conceal illegal transactions. The Commission recognizes that it
must set in motion the chain of events which lead to such
disclosures by methodically studying public and private
financial records, by encouraging persons with knowledge of such
misconduct to meet with Commission investigators, and by
systematically identifying and interviewing participants from
all parts of the construction process.

The investigative initiative necessitated a flood of legal and administrative
support activities. A professional security consultant was engaged to provide
advice on a system that would be adequate to protect documents and investigative
files; an interior "safe room" was already in construction in the offices. More
secretarial equipment arrived after some delay. A photocopy machine was
installed. Legal research projects concerned the scope of the Commission's
mandate, legislative history surrounding the Commission resolve, issues
surrounding the rules of procedure, forthwith summonses, summons, scope and
grounds for issuance, form, signature, manner of issuance and service, methods of
response, and procedures for enforcement, statutory requirements applicable to
the BBC and DSB, computer litigation support, and possible sources of future funding. A
group of over 20 work-study and volunteer law students undertook much of this

ground work.

Commission Evaluates Investigative Alternatives

By November, as the data collection process yielded results as to magnitude
of the Commission's area of study, as existing investigations grew more complex
and as new areas for study were identified, Commissioners and the Chief Counsel
reached the point at which they were able to make informed judgments as to the
need for increased personnel. A number of options were available in conducting
investigations:

1) focus on the state agencies responsible for building projects by
examining in detail the method of operation of the BBC, the Designer Selection
Board, and of some or all of the agencies or authorities involved in constructing
their own buildings, the input of A&F and the input of the legislature;

2) study in depth the business operations of representative private firms,
architects, engineers and contractors;

3) study in depth all phases of particular building projects as
specifically mandated with UMass-Boston;

4) focus on specifically identifying individual acts of criminality,
misconduct, or conflict of interest in the system. For example, spending a
substantial block of time interviewing possible witnesses, contacting industry
groups, and making public appeals for people with knowledge of such acts to come
forward:

5) select specific individuals engaged in the construction process, either
in state agencies or in private firms, and prepare thorough analyses of their
financial condition with the purpose of identifying specific instances of
misconduct and then obtaining the individual's cooperation with the Commission's
investigation;

6) consider complex ongoing investigations into the construction process;
for example, by following the example of the New York City Commission on
Investigations which created its own demolition company. For three years that
company operated as a business, engaging in the same corrupt patterns of
operation that dominated the demolition industry, and at the same time making and assembling proof to support criminal cases.

These options were combined and three different possible types of investigations emerged. First, the Commission could undertake a thorough study of a private firm's business operations within the state, of particular building projects and/or of individuals involved in the construction process by summoning and examining books and records. A second approach could have been to search for random specific incidents of corruption or misconduct. Or third, the Commission could have used undercover operations within the system.

The Commissioners had already initiated the first type of study. They knew that it would take months of work and require enormous staff resources. The crux of the problem posed by this type of investigation was that, unlike a normal criminal investigation, the investigators had no knowledge of a crime having been committed. The crime would have had to be found in each case through an exhaustive search of books and records, even before interviews were conducted. Thus this approach entailed a dilemma. While it afforded the advantage of thoroughness, it opened the Commissioners to the substantial risk that months of exhaustive analysis of records would yield no evidence of a crime. Most successful, white-collar political corruption investigations with which they were familiar -- including the investigations undertaken by the United States Attorney's Office in New Jersey under United States Attorneys Lacey, Stern, and Goldstein in New Jersey and the Agnew investigation in Maryland -- were conducted in such a fashion. In these cases, every relevant record was located. Accountants and financial investigators worked hour upon hour scrutinizing the records. Chronologies and charts were prepared comparing inflow of money, outflow of money, expense vouchers and invoices, meetings with participants and events in the contracting process. Cash transactions were identified. Invoices submitted to the state were double-checked to learn whether the services billed had actually been performed. Months later, one level of witnesses was questioned, and then only with respect to matters then familiar to the investigators. When the witnesses admitted wrongdoing or perjured themselves, indictments were obtained. Some of the witnesses cooperated with the investigation and provided information about others. Further documents were obtained to corroborate statements, and more witnesses were confronted who in turn yielded further information. This was the model that the Commissioners had begun to follow because of its own proven success; they knew that they would need additional resources in order to see it through.
The second possible approach of actively soliciting and waiting for leads to individual acts of wrongdoing and following them up had been instituted as well and was beginning to meet with some success. Investigators were pursuing specific incidents of criminality, misconduct, and conflict of interest in the public construction system. They had leads to examples of isolated payoffs and kickbacks, favors and conflicts of interest and possible perjury.

Of the three possibilities, infiltrating the construction process with undercover operations was the investigative technique that offered the greatest potential in terms of solid evidence of ongoing corruption in the system. But such investigations seemed to the Commissioners the most difficult to set up, required more time than the Commission had been given to complete its work, and would undoubtedly be the hardest to sustain in the face of strict requirements of confidentiality.

The Commissioners determined the first approach to be the most consonant to their mission as established by the General Court. Comprehensive study of books and records was worth the gamble since it ensured fair selection of investigative targets and offered a solid precedent for success. Tracking down isolated instances of corruption could have yielded faster results and could have led to cooperative witnesses and eventually to exposure of patterns of misconduct. But it would have been a haphazard approach, providing no basis for systemic analysis.

Along with the reaffirmation of intent to orient investigative approach to exposure of systematic problems came a reiteration of the original decision to undertake a study of the governmental system for its own sake in preparation for determining what, if any, changes were needed in the public construction procurement process. The Commission determined to continue to

a) concentrate on the current computer project to organize data on all the buildings constructed by the state and counties and then analyze where money was spent and maladministered,

b) to focus on the contracting process itself, starting at that point to study contracting legislation and practice in other states and at the federal level, interviewing participants in the Massachusetts construction contracting process, and working with the Massachusetts Subcommittee of the American Bar Association Model Procurement Code to present a thorough overhaul of the legislation in the construction contracting area, and
c) to establish a procedure to receive professional advice on legislative proposals from interested persons and industry representatives across the state through interviews, meetings with industry groups, and public hearings.

The Commissioners considered as well at this time the manner in which their findings -- both investigative and systemic -- could be publicized. A staff memo suggested:

We should establish target dates for our first public hearings and consider the agenda for such hearings. The hearings could start with background on the system as a whole and the operations of specific agencies responsible for construction. We could continue with testimony to demonstrate the disproportionate amount of architecture contracts that are awarded to firms with extensive political contacts. We may also want to include specific instances of maladministration to dramatize shortcomings in the system. A second set of public hearings would be held at a later date, when we extensively will document our findings with respect to the political influence in the system, the inefficiency of the BBC and the Designer Selection Board, and describe the legislative structure of other states or the federal government for construction of buildings. Hearings in the Fall could be directed at legislative reform proposals for Massachusetts. Criminal cases, of course, should be referred, as they are developed, to the Attorney General or other law enforcement agencies.

As events turned out, this early proposal underrated the magnitude of the findings the Commission would make as to the need for wholesale reform of the system and the scope of corruption in it.

Consideration of the Budget

On December 6, the Commissioners approved a budget proposal for calendar 1979, designed to sustain the legislative and investigative mission they envisaged. It contained the following items and was submitted to the Governor and Legislature on January 15, 1979, together with the request that in view of the Commission's limited lifetime this budget be acted on as soon as possible.

The Commission sought inclusion in deficiency or supplemental budget which could be acted on by the legislature upon the recommendation of the Governor before the general budget for the fiscal year. The general budget would not be enacted before the end of June 1979.

02 - Salaries

Current staff - 8 lawyers, 2 secretaries, 1 investigator

Additional Staff -

Investigators: 6 financial investigators

- at $23,000 each

- 12 accountants at $18,000 each

- 10 paralegal or recent accounting graduates at $13,000 each

- 3 construction engineers

(1 at $30,000, 1 at $25,000)

and 1 at $20,000

Legislative drafting 1 draftsman at $30,000

and Systems analysis: 2 paralegals at $13,000

273,420

138,000

216,000

130,000

75,000

30,000

26,000
Administrative, clerical: 1 office and information systems manager 16,000
4 secretaries at $11,440 ea. 45,760
950,180

03 - Consultants. Court Stenographers
Maximum of 40 work-study student for 15-20 hrs./wk. (including summer work-study students at 40 hrs./wk.) 40,000
Court Stenographer, 2 days/wk. for 6 hrs./day 40,000
Temporary clerical help 20,000
Expert witnesses 20,000
Computer consultants and services 150,000
270,000

10 - Travel
Boston - New York 10,080
Other staff travel 16,000
Auto mileage, in-state 4,200
Commissioners' expenses 5,000
35,280

11 - Advertising and Printing
Printing of reports, advertising of hearings 8,000

12 - Maintenance, Repairs, Replacements
3 - Typewriter service contracts at $66.00 ea. 198

13 - Special Supplies and Expenses
Procuring evidence 20,000
Security devices for office (safe, locks, etc.) 10,000
30,000

14 - Office and Administration Expenses
Postage 6,000
Telephone - staff - $2,000/mo. 24,000
chairman - $75/mo. 900
Stationery, office supplies 5,000
Law reference books 100
36,000

15 - Equipment
39 desks at $180 each 7,020
4 secretarial chairs at $95 each 380
35 stackable metal chairs at $32 each 1,120
100 used 4-drawer legal file cabinets at $80 each 8,000
4 30 X 60 tables at $150 each 600
Dictating equipment 2,000
19,120

16 - Rentals
1 Xerox 4500 copier for 12 months 9,600
5 IBM Selectric correcting typewriters at $50/mo. each for 12 months 3,000
12,600

The total estimated amount required was $1,361,378.00. Funds on hand from the previous allocation totaled $193,921.06. Thus the total budget for the twelve calendar months of 1979) approved on December 6 was $1,167,456.94.

Revisions to the Commission's Enabling Resolve

On the same day, the deadline for filing legislation for the 1979 session, the Commissioners, along with Representative Johnston and Card, filed legislation to amend their original mandate. These revisions related to operating
procedures, clarification of the scope of the Commission's work, and an extension of that date of the final report of the Commission by six months until June 30, 1980 and were necessitated by developments during the first five months of the group's work.

The first clarification concerned the Commission's jurisdiction over certain contracts awarded prior to 1968 which nevertheless were related to contracts awarded after January 1, 1968. The original resolve had stated that the Commission was "established to investigate and study as a basis for Legislative action the existence and extent of corrupt practices and maladministration concerning contracts awarded no earlier than January first, nineteen hundred and sixty-eight related to the construction of state and county buildings...." The Commission proposed the addition of the phrase "...and concerning design, survey, boring, soil exploration, and feasibility contracts and other investigative study contracts awarded before January first, nineteen hundred and sixty-eight which relate to construction contracts for state and county buildings awarded on or after January first, nineteen hundred and sixty-eight...." The original wording had proved restrictive when the Commission began to identify numerous instances in which delays of several years had occurred between completion of a design for a building and the award of the construction contract. In addition, key investigative clues often surfaced from a study of the initial stages of design and preparation. This is best explained by use of the following example.

Suppose the Commission decided to investigate a contract for construction of a state building awarded to a general contractor in 1971; it was likely that some of the preliminary study and designs contracts for this building would have been awarded prior to January 1, 1968. The Bureau of Building Construction had, during the period from 1968 to that time, often allowed periods of several years to elapse between initial authorization and design of a building, and its construction. If, in this example, a question arose during the investigation as to whether certain construction problems were, on the one hand, caused by the general contractor's errors or omissions, or, on the other hand, by faults in the original design, or by inadequate soil testing, the Commission would have needed to look into the original design and soil study contracts, even if they were awarded prior to January 1, 1968. Otherwise, a complete study of the 1971 construction project would have been impossible. It was the Commission's view that, in these circumstances, the Legislature intended to and already did confer authority to investigate pre-1968 contracts upon the Commission as a necessary adjunct to the authority to investigate contracts awarded on or after January 1,
1968. The purpose of the proposed amendment was to make this authority explicit, so as to avoid the confusion and delay which might result if unnecessary challenges were brought to the Commission's jurisdiction.

The second revision pertained to the scope of the investigation, redefining the word "state" in the resolve to mean "the commonwealth and public instrumentalities established under general or special laws." In this proposed amendment, the Commission sought a clarification that its jurisdiction included investigation of contracts awarded by state authorities. The Commission intended to study contracts awarded by the authorities as part of a systemic analysis of state and county building design and construction as well as investigatory purposes. Preliminary investigation by the Commission disclosed that some state agencies used two different procedures for building construction. Some of their buildings were constructed by the Bureau of Building Construction, while others were constructed by a special building authority. Southeastern Massachusetts University was one example of an agency with such a dual practice; the University of Massachusetts another. These agencies provided an ideal means for comparison of different administrative mechanisms for construction of public buildings. Such comparison was invaluable in evaluating alternative proposals for legislative reform. Moreover, authorities such as the Massachusetts Port Authority and the University building authorities had undertaken substantial construction programs involving firms which had also been involved with BBC projects.

The third change sought by the Commissioners pertained to the chairmanship of their panel. Ward had announced his resignation from the presidency of Amherst College the previous fall, effective at the end of the academic year in the spring of 1979. Thus the description of the Commission chairman as "a dean of a law school located in the commonwealth or a president of a private institution of higher learning located in the commonwealth" needed to be changed to read "a person who at the time of his or her appointment is..." etc.

Under the original statute, a quorum of four members was deemed necessary to conduct the business of the Commission and thereby to conduct private hearings. The Commission proposed a change that "... upon a majority vote of the commission a private hearing may be held before a single member of the commission." Often the testimony taken at private hearings was of a ministerial nature. Summons had been served to produce certain books and records and witnesses were then questioned in detail about their compliance with the summons. Extensive background information was received at hearings to lay a foundation for the investigations undertaken and legislative recommendations to be proposed by the
Commission. It was therefore impractical for the staff to schedule such hearings on a regular basis if at least four members of the Commission had to be present, each of whom had heavy responsibilities at their regular jobs and served on the Commission without pay. The Commission was determined to continue to act as it had to date as a corporate body of seven Commissioners. All seven Commissioners fully intended to participate actively, as they had until then, in all substantive matters before the Commission. But the intended change was designated to bring increased efficiency to the operation.

Finally, the Commission sought a six-month extension of its mandate to June 30, 1980, instead of the original December 31, 1979. The decision to request an extension was prompted by the realization of the enormity of the Commission's task. It was as well the result of the delays in constituting the Commission itself and in delays in resolving administrative problems such as obtaining salaries for the staff, authorization to hire additional staff, obtaining office space and security for commission records. Individual Commission members were torn in making the decision, since they were asking to extend a commitment that had already taken more energy and time from their personal and professional lives than they could have imagined at first. But the extension was absolutely necessary if the panel members were to respond to their legislative mandate, and every expectation was that they would be able to do so in a complete and responsible fashion by June 30. With an adequate budget, sufficient office space, and further support from the General Court in procedural matters surrounding the investigative and legislative mandate, they reasoned, the job would be completed by the time the legislative session ended in the spring of 1980. All these revisions were contained in H.3123.

Approval of Positions

The first matter at hand was purely technical, but it materialized as a precursor to the months of constitutional and financial ambiguity the Commissioners were to suffer. The Commission had selected two additional lawyers and one financial investigator for its staff. The three additional staff positions were approved by A&F on November 10. The positions were Deputy Chief Counsel, to be filled by Thomas Dwyer - former Chief Counsel for the Suffolk County Special Investigative Unit; Associate Counsel, to be filled by Richard J. McCarthy, former Assistant United States Attorney in the Southern District of New York and former attorney at Gaston, Snow & Ely Bartlett; and financial investigator to be filled by Richard Reale, former I.R.S. supervisor.
Mahoney, Ward, and Littlefield met with Representative Finnegan in his office at 4:30 p.m. on December 15. The group told him of the need for approval of the three positions. He said that the Commission's budget was $300,000 for 18 months and that he could not authorize the positions because then spending would be occurring at a rate which would total in excess of $300,000 by the time the 18 months ended. Ward noted that the budget request had been for a 12-month period and that even with the three positions, the Commission would have spent below the total by the end of the 12 months. Littlefield stated his understanding that the appropriated money could be spent within the 12 months, then if more money was not appropriated out of the deficiency budget he would have to lay off employees. The three made clear that they intended to request a deficiency appropriation.

Finnegan said that he did not want to know the size of the request at that time, though Mahoney said that it was very large. Finnegan said that if the Commission switched funds from the "03" account to the salary account, he would approve the positions. He instructed an aide, Joseph Burke, to arrange the transfer and approval Monday morning, December 23. With respect to the new budget request, Finnegan instructed the Commission to sit down with the new administration and have the Governor's staff put it into their deficiency budget request. He said that he foresaw no problem with whatever they (the new administration) recommended in this regard. Littlefield explained that the request would total in excess of $1 million, but Finnegan again made it clear that he did not wish to discuss the substance of the request at that time. He also said, however, that he would supply a member of his staff to work with the Commission to prepare the budget in the proper fashion. He made this commitment for staff assistance while making clear that this did not entail any commitment on his part regarding the substance of the request.

That Monday, Skvir met with Burke and arranged the paperwork for the approval of the positions. On Wednesday, December 20, she received a copy of a letter from Senator Kelly and Chairman Finnegan to the Comptroller approving the positions. The letter was dated December 14.

In the meantime, the staff continued to face distracting obstacles in the course of its investigative work. A December 16 memorandum from Associate Counsel Tracy to Chief Counsel Littlefield noted the continued "obvious and serious problem of document storage and security." Tracy wrote of the unusual crowding in the offices and suggested inquiries into the condition of the McCormack Building's fifth floor, the proposed site for the Commission's new office space, and an area rumored to have inadequate
ventilation. The staff faced a backlog of typing, photocopying, and general clerical work, according to Tracy. He inquired about the possibility of further personnel loans and said "we could also use more auditors; perhaps also people with expertise in construction and/or government operations to help us study the system. How about loans of lawyers, tax investigators,..." Tracy also suggested that the Commission should approach the Office of Campaign and Political Finance to stop destruction of records there. He closed on this note: "red tape - Can we find someone to help us now or later to cut red tape which constantly seems to hamper our requests for money, space, support, etc.?"

The Struggle for the Budget and the Amendments

Ward and Littlefield met with Speaker McGee and Representative Murphy in the Speaker's office at 1:40 pm on December 20. They showed the amendments to the Commission's resolve and the budget requirements to the two legislators. McGee said that he had invited Murphy to the meeting because he would handle the amendments. After each of the amendments was reviewed with Murphy, Murphy said that he understood them and that there should be no problem with them because they were largely housekeeping amendments. It was agreed that the issues be clarified so that the Commission would not have to face protracted court challenges with respect to its authority. Murphy said the amendments should be referred to the Judiciary Committee and that public hearings would have to be held, but he said this could not happen before the end of January, and he asked if the Commission could continue to function without the amendments for the time being. Ward told him that it was feasible, but particularly because of the limited length of the Commission, they needed the clarifying amendments as soon as possible. When McGee rejoined the meeting, he confirmed that the amendments should be sent to the Judiciary Committee for hearings. The Speaker said that the Commission had been created by the Legislature and that there was a commitment to give the panel the resources it needed to complete its work. He said that the Commission's job was big, and he emphasized that support would certainly be forthcoming to accomplish it.

Acting on Representative Finnegan's advice to talk with the new administration about the budget, Ward, Burke, and Littlefield met with transition director Paul Guzzi in his office at the State House at 2:30 pm on December 20. They advised Guzzi of the Commission's immediate budget needs of over $1 million for calendar year 1979, and they informed him of the consensus of legislative leaders that the fastest way to obtain funds would be through a deficiency request by the governor.
Ward and Littlefield met with Representative Finnegan on December 18, and with Senator Atkins on January 10 to discuss the Commissioner's budget request and the amendments to the resolve.

At 3 pm the same day, Ward, Mahoney and Littlefield met with Edward Hanley, the new Secretary of Administration and Finance. Budget Director McLean joined the meeting at Hanley's request. According to McLean, there would be no deficiency budget until April at the earliest; the administration wanted to stall as long as it could in submitting the budget so that the deficiency would diminish as each day passed. McLean told the Commission group to prepare a copy of the budget proposal, making sure to split the request into amounts before June 30 and after June 30. As soon as he received this version, McLean said, he would put a budget analyst to work on it so that it could be included in the deficiency budget. A copy of the interim report was given to Hanley, along with a copy of the 12 month budget, and the group informed him that they would submit the proposal formally on January 15. Hanley said that he had been through the same problems with the District Attorneys and with other agencies, and he emphasized his responsibility to the Governor to cut the budget.

On the advice of McLean and the Ways and Means staff, the Commission filed the 12 month deficiency/supplemental request on January 15. At the same time, because of Hanley's position, a split budget was prepared that distinguished between projected costs prior to June 30 and after June 30. Communicating the urgency of the request, Ward said in a letter to Acting Budget Bureau Director John J. Kenneally:

Because the Commission presently is scheduled to complete its work and file its final report by December 31, 1979, it is important that the requested funds be appropriated promptly so that as little time as possible is lost before the needed investigators can be hired. Also because of the December 31, 1979 termination date, and to ensure that this appropriation is consistent with our original appropriation, it should be noted on the appropriation that the funds are expendable until December 31, 1979, rather than only through the end of the current fiscal year.

Even if the governor was to decide against submission of a request for the money, either the House or the Senate would have been able to make the request for more funds through legislation. Johnston told the Globe, "when the legislature approved the Commission, there was a commitment from the legislative leadership and Governor Oukakis that the Commission would be provided whatever resources it need to carry out its mandate. One would hope the King Administration would take the same position."
Meanwhile, the Commission had anticipated a delay in submission by the new governor of its deficiency budget and had prepared an application for a grant from the Law Enforcement Assistance Administration (LEAA) as a stop-gap measure, to hire investigative staff.

The Interim Report

On January 16, 1979 the Commission released its Interim Report To The General Court Of The Special Commission Concerning State and County Buildings. The 12 page report discussed the two mandates of the Commission; it reviewed the establishment of the Commission and its staff; it described the work of the Commission since its formation; and it stated a program for the future.

The report closed with a brief discussion of the proposed budget and of the amendments. The members wrote: "In view of its limited lifetime, the Commission believes that the budget and amendments must be acted upon as promptly as possible." But no immediate action was in sight from the Governor's office.

In the meantime, Attorney General and Commissioner Bellotti announced two lawsuits filed by the state to recover damages from design firms responsible for designing two of the more notorious examples of faulty building projects in the Commonwealth. Bellotti announced first that the Commonwealth was suing the architectural firm of Desmond & Lord to recover over $3 million for damages caused by design errors at Cape Cod Community College in West Barnstable. (See the section in Volume 6 of this report on design and construction defects on Cape Cod Community College.) On February 6, Bellotti filed suit in Suffolk Superior Court for over $7 million against Jackson & Moreland, a large engineering company charging that the firm "negligently misrepresent(ed) the capacity of the steam system it designed" to heat buildings at the UMass/Amherst campus. The suit concerned the $10 million Tillson Farm Power Plant which had never worked since the day it had been completed five years before.

On the budget front, a Globe editorial of February 2 reported that both the Special Commission and the Ethics Commission were in dire need of funds and called on Governor King and the Legislature to appropriate them. "Failure to provide the money," it said, would do far more than stifle investigations. It would also signal that state government is now indifferent to the abuse of power and position and now prefers to turn its back on the corruption of the past and the dangers of the future. The fast buck operators would know that the barriers are down once again in Massachusetts and that sleazy old games that gave this state such a sorry reputation can be played once more, with no questions asked....

If the money for the staff is left out of the deficiency budget, the commission would be impotent until the regular budget is approved this summer. It would then have only a few months to live -- too short a time to produce results.
Breathing easier will be those with an interest in keeping corruption under the rug. The losers will be those who hoped Massachusetts learned enough from the MBM mess to see to it that such scandals didn't recur.

The Commission Submits an Application for a Federal Grant

Because of the continuing uncertainty surrounding the Commission's funding, application was prepared for a federal grant from the Law Enforcement Assistance Administration (LEAA). The application was submitted January 20 and described the Commission's program and proposed its continuation in the following manner.

A. Personnel

((i) Investigative

The investigative staff will include over thirty financial investigators. There will be six Senior Financial Investigators, Twelve Accountants, and Ten Financial Investigators. Present staff includes one Senior Investigator. The remaining five positions will be filled by retired Internal Revenue Service Special Agents from the Intelligence Division. Each agent will be required to have extensive experience in the investigation of white-collar crime and political corruption. The Senior Financial Investigators will each head a team of two Accountants and one or two Financial Investigators. Their responsibilities will include consultation with Chief Counsel and Executive Director, supervision of the analysis of all public documents as well as private documents subpoenaed by the Commission, review of all investigative reports, coordination of witness interviews and training. In addition, each Senior Investigator will provide a monthly projection of intended objectives and submit a follow-up report on results obtained for his team.

This application requests funding for the remaining five senior positions and ten entry level positions. These positions will be filled by recent graduates of accounting programs. The funding period is limited to four months -- March 1 - June 30, 1979. These positions will then be funded under the anticipated state appropriation.

((ii) Information

It is anticipated that Commission staff will review hundreds of contracts between private firms and the state government over the past ten years. Based on that review, several dozen firms will be selected for more intensive investigation as outlined in the Interim Report. In addition, staff investigators will generate thousands of reports relating to document reviews and witness interviews. In an effort to effectively manage this information we intend to employ automated data processing systems. In our opinion, the intelligence system and management system that is necessary for this office is analogous to that employed in any district attorney or attorney general's office which is committed to white-collar crime investigations. We must be able to retrieve and collate a substantial amount of information in a relatively short time in order to meet our deadline.
We are in the process of reviewing law enforcement agency experience in this area. The success of the system employed by the Watergate Special Prosecution Force has been considered as well as the present system being employed by the Anti-Trust Division of the Texas Attorney General's Office. It is anticipated that software development costs will be at a minimum. We intend to lease a program that is utilized in the Texas office. This figure should not exceed $10,000. The additional $10,000 figure, listed within the contractual services category, will be utilized for consultant services in supervising data entry. program manipulation retrieval. This contract will, of course, be subject to the approval of the grantee.

The clerical personnel requested will be assigned to data entry and retrieval tasks. We have two terminals at present. One will be tied into the MIT Computer Center, which is now processing a complete list of all building contracts since 1968. The second terminal will be tied into a computer center of a state university. This latter center will be utilized for the above-described information system.

(iii) Research

The goals of the Legislative Research Project are set forth on pages 4-8 of the Interim Report. A detailed methodology and work plan is now being developed. This plan will include hundreds of interviews within the state, a review of the procedures in several other states as well as within agencies of the federal government. This application requests funding for three attorneys who will be assigned full time to this project. They will work under the direction of a staff attorney who is familiar with present procedures and those system problems that are revealed by the investigative phase of Commission operations.

8. Contractual

(i) Information System

As discussed above, the Commission intends to employ data processing as an investigative tool in order to expedite the analysis of thousands of documents. These documents include contracts, change orders, cancelled checks, invoices, expense vouchers, telephone records, diaries and other data. The system desired must be capable of performing data organization, document retrieval and data manipulation functions. We are familiar with the NOAA Evidence Tracking System and intend to consult with the project director of that grant with respect to the development of our system. We are confident that the system which we develop will be readily adaptable to other law enforcement agencies which specialize in political corruption investigations.

We have allotted $10,000 to the software development phase and $10,000 for the supervision of data entry and data manipulation. This latter amount will be expended for a computer consultant experienced in white-collar crime investigative techniques.

Because of confidentiality, a more detailed explanation of our data processing intentions will be provided under separate cover if desired.

(ii) Evaluation

We are now developing an evaluation methodology. This task will be accomplished within the next 30 days. It is our intention that this grant be subjected to an Intensive Project Evaluation with that objective in mind. The requirements of Section 7 of that Appendix will be met.

The figure of $21,000 is included within this
Meeting With Governor King

By early February the Commission had heard nothing from the Governor concerning its funding for almost a month, other than a public statement by King that in his view the request was not an emergency and therefore didn't belong in a deficiency budget. Ward asked to meet in person with the Governor. On February 7, Ward and Littlefield met with Governor King, his legal counsel, Neil Lynch, and Chief Secretary Paul Guzzi. Ward began the meeting by informing the Governor that he wanted to advise him about the work of the Commission, to convey to him the urgency of the budget request, and to tell him that the Commission did not want to be placed in a position adversary to that of the Governor. In his initial statement Ward explained the two sides of the Commission's mandate, stressing that emphasis had been placed on the longterm recommendations to reform the process, and that the Commission was not interested in creating scandal. He noted the panel's professional staff operating under strict procedural rules of confidentiality. Ward said that he and Littlefield wanted to be available to answer any questions.

King asked what the Commission had found during the construction system study, and Littlefield reviewed the process from the appropriation through the construction phase and also discussed the DSB.

From the beginning, the Governor said that he was not familiar with the Commission and that he had not had time to study the interim report. Ward continued to return to the question of whether he could emerge from the meeting with a commitment from King to support the budget request. There was a discussion of whether the request was an "emergency request." King indicated that he did not feel it was an emergency, but said he could certainly understand that it might be considered high priority. Ward continued to emphasize the fact that it was an emergency to the Commissioners since the mandate extended only until the end of the year, or, at best, six months into the following year if the extension were approved. If funds were not received soon, he said, the Commission would have to cut back on the proposed scope of its investigations and in effect would be stopped from following through on its mandate. King said he understood the point and would make the same argument if he were in the Commission's shoes.
The Governor asked why it was that the District Attorneys and the Attorney General could not conduct these investigations; he noted that both had applied for increased budgets. Ward explained that the Commission had been created because of public cynicism concerning the ability of a political agency to investigate the MBM case impartially. It was noted that Guzzi had himself made two of the appointments and that he had made a statement at the time of his appointment of one of the members, Lewis Weinstein, "that the work of the Commission was of paramount importance to the public."

When Hanley joined the meeting two thirds of the way through, there was a discussion of whether there would be a deficiency budget. Hanley said he was going to work on the fiscal budget first, which was due February 28. Littlefield said that the Commission had understood that there was going to be a deficiency budget soon; Hanley said that was not his understanding. When Littlefield asked about emergency storm expenses and fuel costs, Hanley said both were covered sufficiently in the fiscal year budget and so would not in themselves require submission of a deficiency budget. Hanley raised the same questions as he had during the first meeting in January, namely, why the legal staff was so large and why the Commission hadn't received full funding from the start. King said he would have been much more familiar with the Commission had it been created during his governorship.

Ward asked whether King could tell him when he could let them know whether the Commission would be included in a deficiency budget and when that would be filed. King, Guzzi and Hanley all said they would get back to Ward when they could; Ward emphasized that the Commission was searching for any budget vehicle that would enable it to obtain funds for the investigation at the earliest point.

In a letter to King dated the same day, Ward thanked the Governor and again impressed upon him the urgency of the request. The written budget request was set forth and explained at that time as follows:

The Commissioners have agreed that in order to fulfill both the legislative reform and investigative sides of the mandate they will designate specific projects from several categories for study by the staff. The following list describes the categories from which the projects for study are being chosen and the staffing requirements for each group of projects.

(a) State agencies and counties responsible for building construction, including the Bureau of Building Construction and the Designer Selection Board. (Four projects.)
   2 Investigators $23,000 each
   2 Auditors 18,000 "

(b) Representative private architectural firms, engineering firms, contractors and subcontractors doing business with the state or counties. (Four architectural or engineering firms; four general contractors or subcontractors.)
   2 Chief Financial Investigators $23,000 each
   6 Accountants/Auditors 18,000 "
   6 Recent graduate Accountants or Paralegals 13,000 "

(c) Representative individual building projects including the UMASS-Boston contract. (Two state projects, two county projects, and MBM-UMass-Boston.)

2 Chief Financial Investigators $23,000 each
4 Accountants/Auditors 18,000 each
4 Recent graduate Accountants or Paralegals 13,000 each
3 Construction Experts including Architects and Engineers at average  25,000 "

(d) Specific individual acts of misconduct. (Four projects.) No additional staff.
(e) Specific offices held by governmental personnel having responsibility for key decision-making in government construction projects. (Four projects.) No additional staff.
(f) Development of a broad survey of ten years of state and county building construction. (One project.) No additional staff.
(g) Construction procurement practices in other states at the federal level and in private organizations. (One project.) No additional staff.
(h) Consultation with and recommendations by participants from all phases of the state construction process. (One project.) Total staff requirements for projects (f), (g), and (h):

1 Legislative Analyst, Draftsman $30,000 each
2 Paralegals 13,000 each

We have agreed that in conducting its investigations the staff will follow the method of first reviewing in depth books and records relating to the subject of the investigation. After the documents have been analyzed, the staff will conduct interviews with individuals participating in or connected to the work of the subject of the investigation. The staff will employ summonses and private hearings in the initial phases of its work. Public hearings will be conducted only after the background work has been completed by the staff. Each investigation will be conducted by a team of lawyers and auditors or investigators supported by state police and paralegals.

Following Ward and Littlefield's meeting with the administration, Representatives Card and Johnson late-filed a bill to grant funds to the Commission.

The press reaction to King's attitude toward the Commission was critical. In a February 10 editorial, the Herald called on King to file for the Commission in a deficiency budget, concluding "...the concern about the Commonwealth's commitment to the investigation could be calmed by a decision to provide the funds to launch it--now." An editorial in the Haverhill Gazette observed that "'no decision yet' is close to replacing 'can do' among State House slogan watchers,...King's actions and those of his aides do nothing to erase the cynicism that pervades the State House." And George B. Merry wrote in his column, "an inadequately funded, short-staffed, and time-squeezed probe might accomplish little more than wasting money - and in the process perhaps create the impression that things may not have been all that bad."

Manzi/Masiello Trial

The next Tuesday, February 13, the jury-waived trial before Justice Joseph R. Nolan in the prosecution brought by the Attorney General against Albert Manzi and
William Masiello began in Suffolk County Superior Court. The defendants were charged with extorting $10,000 from MBM in May of 1972. The trial, its aftermath, and relation to the MBM case is described in detail in the MBM section of this final report. (See Volume 2.)

The Federal Grant

On March 6, 1979, the Commission received notice that LEAA would award funds in the amount of $209,507 as part of the "Procurement Anti-Fraud Program." (Grant Number 790F-AX-0039). The budget was approved originally as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Federal</th>
<th>Non-Federal</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Law Enforcement Personnel</td>
<td>0</td>
<td>23,279**</td>
</tr>
<tr>
<td>B. Other Personnel</td>
<td>170,250</td>
<td>23,279**</td>
</tr>
<tr>
<td>C. Consultants</td>
<td>2,884</td>
<td></td>
</tr>
<tr>
<td>D. Travel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>E. Office</td>
<td></td>
<td></td>
</tr>
<tr>
<td>F. Equipment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>G. Indirect Cost</td>
<td></td>
<td></td>
</tr>
<tr>
<td>H. Other/Fringe</td>
<td>36,373</td>
<td></td>
</tr>
<tr>
<td>I. Totals</td>
<td>209,507</td>
<td></td>
</tr>
</tbody>
</table>

The Final Revised Budget Was:

<table>
<thead>
<tr>
<th>Category</th>
<th>Federal</th>
<th>**State Match</th>
</tr>
</thead>
<tbody>
<tr>
<td>B. Other Personnel</td>
<td>130,000</td>
<td>23,279</td>
</tr>
<tr>
<td>C. Consultants</td>
<td>49,207</td>
<td></td>
</tr>
<tr>
<td>F. Equipment</td>
<td>1,500</td>
<td></td>
</tr>
<tr>
<td>H. Other</td>
<td>28,800</td>
<td>209,507</td>
</tr>
</tbody>
</table>

"Other Personnel" included those investigators and attorneys who entered the "03" Account when the State Budget was approved. "Consultants" included computer and technical experts. "Equipment" included all computer-related purchases and rentals such as an acousticoupler and word-processing supplies. "Other" included temporary clerical workers and computer time over and above the amount donated. The official award date was March 6.

Without the invaluable assistance of United States Senator Edward M. Kennedy, his administrative aide Kenneth R. Finberg, and Commissioner Bellotti in stating the Commission's dire need and expediting the award, the Commission's program might have floundered.

The State Budget

In executive session on February 14, the Commission established a target date of March 7 for a commitment on the budget from the Governor, which was one week after the fiscal 1980 budget would have been filed. The Commissioners decided to announce this date publicly if further scheduled meetings with the Governor produced no result. At the same time, other possible avenues were discussed, including the bill filed by Johnston and Card. Some question remained on the constitutionality of the bill. The members also discussed the option of seeking a legislative
resolution calling upon King to submit a one-item deficiency budget. They discussed the possibility of attempting to amend the fiscal year budget and move a portion of it to the floor of the House for approval, and agreed prospects were unlikely. They resolved to explore the possibility of amending the "tax cap" bill introduced by King which included a provision for fiscal management assistance to cities and towns that could perhaps be used as a budget vehicle.

In a meeting with Bellotti on February 15, King asked the Attorney General to name the bottom-line figure of the Commission's budget needs and left Bellotti with the impression that the Commission would be included in the deficiency budget. Then on February 17 Commissioner McCarthy met at the Governor's request with the Governor for one hour in private to discuss the Commission's program and its importance. McCarthy again explained why the budget had to be submitted immediately and respectfully requested a response by early March as to whether the Commission would be included in the Governor's deficiency budget.

In a press conference on February 23, King repeated his assertion that the Commission's budget was not an emergency.

Commissioner McCarthy sent a letter by hand to the Governor on March 1, thanking him for the meeting and saying:

I want to re-emphasize that the Commissioners seek your support for our work. Reform of the procurement system for the construction of State and County buildings is an important and necessary task we are charged with the responsibility to investigate, report to the General Court, and recommend proposals for legislation to eliminate or reduce any corruption and maladministration in State or County building construction. The life of our mandate is short. The task is an enormous one -- to examine representative contracts from over 4000 public contracts involving more than five billion dollars over ten years. We are convinced that our success depends in no small measure on our obtaining the support of the executive branch. It is our aim to make executive, legislative and administrative recommendations which will save the Commonwealth substantial sums of money -- many, many times the requested budget -- and will ensure that monies expended on State and County construction are spent honestly, effectively and efficiently. We invite you to join with us to work toward our mutual goals: cost-savings in State and County construction, and honesty in government.

On March 6, the Joint Judiciary Committee held a hearing on H. 6354, the bill amending the Commission's mandate. Ward addressed the Committee as follows:

Senator Sisitsky and Representative Flaherty: Mr. Chairman, Members of the Joint Committee on the Judiciary, it is a matter of personal and public importance to me that I thank you for the opportunity to speak to you, to be in your presence. I am, as your Chairman has indicated, Mr. John William Ward, President of Amherst College, Chairman of the Special Commission Concerning State and County Buildings. I have brought with me Mr. Bancroft Littlefield, our Chief Counsel.

I must admit to you a certain nervousness. Never before in my life have I found myself in the position I do now, speaking to those who are responsible to me as a citizen, and to those to whom I am responsible as their agent. It is a curious and double role.
You will notice I refer to the "Special Commission." In the press, we seem to have become known as the "Blue Ribbon Commission." I resist the title because of its association with county fairs and blue ribbons for chickens and cattle. We are none of these. We are your creation. We are a "special" commission, created by the Governor because of the public's deep concern about allegations of corruption concerning multi-million dollar contracts awarded by the state. You created the commission which I now serve. The particular moment which brings me before you concerns the Commission's desire to amend particulars of the Resolve which you, in the Senate and the House, passed to bring us into being, to create us as a Commission.

Before I turn to those particular amendments, which are your immediate business, I want to speak for a moment generally about the Commission itself. There is, I know, no need for me to stress the importance of the Commission itself. The Senate voted to establish it with only a single dissenting vote, and that gentlemen - Senator Hall - having lost on principle has been generous enough to write the Governor of the Commonwealth to urge that our work be supported by the Governor through his endorsement of our request for funds to carry out our work. The vote in the House was unanimous. Therefore, with unanimous support of the work of the Commission, one might feel confident and see no reason to make any comment about its general importance.

Yet, I do. When I say "I" do, please remember I speak for the entire membership of the Commission, the seven members who were appointed to the Commission. I am uneasy because I am not confident about the commitment of the General Court, the Senate and the House, or the Executive Office, the governor and his staff, to what the Legislature has mandated the Commission to do.

Why? Let me answer by an anecdote. A television reporter recently asked me whether in my work as Chairman of the Commission I had discovered anything which surprised me. My answer was, no. I imagined that almost any citizen of the Commonwealth of Massachusetts would expect to discover exactly what the Commission has discovered, a widespread pattern of favoritism, ambiguous dealings, outright illegality in the generations of cash, and probable corruption. But who would be surprised at that in Boston or Massachusetts? There is, as James Joyce once said of Dublin, a special odor of corruption which pervades the city and state.

Perhaps you, as legislators, are beyond shocking. I am not. I am shocked that it is necessary for the Commonwealth of Massachusetts to spend any money at all on the work of the Commission, shocked that it requires a special resolve of the Legislature to inquire whether people who do business with the state, or people who are responsible for the conduct of the business of the state, need to have a special body to insure whether they are responsible to their professional ethics or their public trust. Architects and contractors are paid to do a job. That job is not being done. You know it. That is why the vote was nearly unanimous to create the Commission itself. But there in this Commonwealth are people who already know more than the investigative staff can discover, people smug in the confidence we can never discover their betrayal of a public trust.

Beyond them, in the general public, there is, to put it brutally, cynicism. I and other members of the Commission have spoken about our work before Chambers of Commerce, Rotary Clubs, the Massachusetts Bar, other professional associations, and students at colleges and universities in the state. The response is interested, but - to put it softly - wholly skeptical that we in our work will make any difference at all in the conduct of public life in this state.

There is no need for me to tell you about the work and the program of future work of the Commission, if we can finally find support for the work we have to do.
Although not required, we submitted an "interim" report to you on January 15, 1979. I will not repeat it here. What I will tell you here is that the Commission, the commissioners themselves and the staff they have recruited, is wholly dedicated to one single thing. We will do our work in a way which wins - one would like to say, restores - the confidence of citizens in this state that someone actually does care for the public good. That is what lies behind that pat phrase, pro bono publico. That means we serve without pay. It means far more than that. It means we serve the public good. That is an antique notion in the conduct of professional and public life in these United States. It is. One feels almost a fool to say it, to say one is wholly committed to it, willing to give time and energy, all one has to it. We are citizens, we are bound together in a public body. Given the recent history of our public life, there is no greater cause to which as a citizen one may devote one's self. At the risk of sounding a fool, in the face of skepticism about government and elected officials, about almost anyone who exercises any power or influence in the day-to-day life of our society, I will flatly say to you that the work of the Special Commission Concerning State Buildings engages, in its small way, the single most important issue which confronts this state and this country: the capacity of the ordinary citizen to believe the social order is decent and fair.

Our highest hope for ourselves is that we will remind you and the public that it is possible for individuals, private and public, to care for what happens to our common life, the Commonwealth of Massachusetts. That is our resolve. Your resolve created us. We ask for amendments to which in particular, are rather dry and ordinary. Behind them lies the larger and general purpose which animates the work of the Commission. That is why I impose myself upon you to speak about that general purpose. I think that far too often people lose sight of what they are about when they are caught up in the particulars of their daily life and of their jobs. The Commission does not intend to allow that to happen in its work. Speaking to you, I do not intend to allow that to happen in my remarks about particular amendments which happen to be before you today for your consideration.

As to the particular amendments to the Resolve which created the Special Commission, I would like to speak briefly to each in the order of their appearance. Generally, may I say, the first three are clarification of what we believe are already implicit in the power of the Commission. We seek clarification by way of amendment as a practical measure to avoid undue delay if someone were to engage in a legal challenge to the authority we have.

1. The insertion in the first paragraph after the words, "related to the construction of state and county buildings," the following words:

"and concerning design, survey, boring, soil exploration and feasibility contracts and other investigative study contracts awarded before January 1, 1968, which relate to construction contracts for state and county buildings awarded on or after January 1, 1968."

Behind the language lies a simple problem, one which an example may best illustrate. We have discovered there is often a lapse of several years between initial authorization, design of a building, and the eventual award of a contract for construction to a general contractor in 1971. There is every likelihood that preliminary study and design contracts will have been awarded prior to 1968. If a question arises whether a problem is caused by the work of the general contractor or whether the fault lies with the original design, we would have to look at contracts awarded prior to 1968, because they bear on a building contract awarded after 1968, which is the intent of the legislative mandate to the Commission. We believe the power to investigate construction after 1968 would entail the power to look into all associated contracts, but wish to avoid any ambiguity on the matter.
Please be aware we do not intend to expand the chronological period of our investigation. The task we have been given is huge enough, and we have no appetite to take on more.

2. The insertion at the end of the first paragraph, the following sentence:

"When used in this Resolve, the word state shall mean the Commonwealth and public instrumentalities established under general or special laws."

Once again, the Commission believes it has the power to investigate the procurement system for state and county buildings whatever the particular institutional device is employed by the state to manage construction. If the building is paid for by the taxpayers' dollars, it is a state building.

Further, more importantly, the Commission is charged by the Court to make recommendations for the future to improve the system of procurement. Clearly, we cannot make a systemic analysis if we are to be excluded from study of major state agencies and instrumentalities. For example, as important as the Bureau of Building Construction may be, of $740 million in construction contracts awarded in 1978 by seven state agencies in the consolidated construction program only 7 percent was awarded by the BBC.

For a different example, one may see on the campus of Southeastern Massachusetts University two buildings side by side, one built by the BBC, the other built by the university's building authority.

Finally, any analysis of the procurement system will have to compare the relative efficiency of the BBC as an instrument with a particular authority for specific purposes.

The Commission is confident any court would sustain a challenge to its competence to investigate any of the instrumentalities created by the state for the construction of state buildings, but is also realistic enough to recognize that some individuals may wish to challenge its power and the Commission wishes its mandate to be unambiguous in order to avoid costly delays in the work it has in hand.

3. The third amendment, the addition of the words "a person who at the time of his or her appointment is..." is a matter of some small embarrassment to me personally. Some of you may know that I have resigned as President of Amherst College as of June 30, 1979.

My act caused some consternation among the legal staff of the Commission who foresaw that some smart lawyer might challenge the constitution of the Commission when I was no longer the President of a private college. On this possibility, we asked a private law firm to give us an advisory ruling. The judgment was strongly that there was no problem but in the world of lawyers there can be no such thing as certainty. So we decided to ask for an amendment to the Resolve to be certain.

Perhaps I should add that I intend to live in Boston after June 30, and my circumstances will allow me to be even more deeply involved in the work of the Commission.

4. The fourth amendment adds the words, "provided, however, that upon a majority vote of the Commission a private hearing may be held before a single member of the Commission."

The present language requires a majority, that is, at least four members of the Commission to be present to conduct a private hearing. It is a compliment to the dedication of the Commissioners that we have been able to plan our lives so that four are always present when necessary. But there are many long and tedious hearings which are devoted wholly to the authentication of documents. We explored the possibility of taking such testimony by deposition, but our Chief Legal Counsel is a strict constructionist and cautious and has preferred not to open any legal challenge to the records. So, we ask for the amendment as an enabling device to proceed...
more expeditiously in our work. I would call your attention to the language which requires that a majority of the Commission must vote to allow a hearing for a single Commissioner. We have a splendid staff in which we have great confidence, but the Commission intends to keep a firm hand on policy and direction of the work of the staff.

5. Finally, the fifth amendment asks for a six-month extension of the life of the Commission to June 30, 1980.

When we drafted our requested amendments to the Resolve, our intention at that time in requesting an extension was wholly because we foresaw an immense job of writing a final report to the General Court which also embodied drafts of recommendations for legislative changes. That is still our intention. We hope mightily to have completed any investigative work by January 1980 with perhaps some investigations to be tied up or completed. At least, among the Commissioners, we have agreed we would not initiate any new investigations after January 1980.

That was our intention at the time of the submission of the amendments and, as I say, still largely is. But I must be candid with you and say that recent events have left me uneasy, indeed. We have several investigations well under way. You, the Legislature, have given us an enormous task to perform, and we mean to perform it well. But here it is March already and we are still embroiled in the bureaucratic process of securing the necessary funds to continue and complete our work. You must remember the Commissioners all serve pro bono. We have other lives to live, other responsibilities. We have a truly dedicated but small and now inadequate staff. Time is pressing upon us now in a way, in my political naivety, I had simply not foreseen.

Our budget request is not before you, I know, but it bears upon the Commission's request for a six-month extension. We have already been slowed down far more than the Commission had foreseen and the extension of time has, therefore, become far more pressing than it appeared to us when we asked for the extension for space in which to do a competent and effective job of drafting a final report.

I thank you for your time and your attention, I would be pleased to answer any questions you may have, Mr. Chairmen.

House Committee Chairman Michael F. Flaherty (D-South Boston) told the Globe that he did not see many problems with the amendment requests. He said he saw no problem with the request for a six-month extension. Harold B. Dutton, a spokesman for the Governor, said of the budget proposal, King would "take a real hard look at the request in the next few days." The Globe editorialized, "If the money is not forthcoming, maybe Ward will have been correct in thinking himself a fool--a fool for imagining that citizens can really make a difference, that the Beacon Hill crowd might change its ways, that public servants should really be interested in serving the public."

Two days later, Bellotti and First Assistant Attorney General Thomas Kiley met with King and Guzzi. The Governor made the commitment to Bellotti to include the Commission budget request in his deficiency budget. Further, the Governor specifically designated Lynch to act as a liaison to the Commission to negotiate the budget, and agreed that Lynch and Littlefield would work out the amount. Ward met with Speaker McGee and Majority Leader Keverian on the same day
and went over the amendments in detail, receiving assurances that they understood them and that they would be approved. For a brief moment, the Commission's troubles seemed over.

Agreement With the Governor

Littlefield reached Guzzi by telephone on March 12 and stated that the federal grant would tide the Commission over a short period and enable hiring of the additional staff needed to conduct investigations. However the grant money would only cover the Commission temporarily, Littlefield said, and so state funding was still needed as soon as possible. Littlefield said that the Commission would like to diffuse the tension that had been building in the media between itself and the Governor, and therefore proposed that King agree in a public statement to a commitment to include the request in his deficiency budget in early April. Guzzi said that the idea was a good one, but he said that he didn't think the deficiency budget would be ready for early April. Guzzi stated that there was no doubt that there was a commitment by King for some amount of money in the deficiency budget. He also said that he expected the Governor would not enter the full amount of the Commission's request; instead the panel would have to go the Legislature to get it increased. He said he would check on the situation and get back in touch.

An hour later, Guzzi telephoned Littlefield to say that it would be all right to issue a release containing the Governor's commitment to include the Commission in the deficiency budget. It remained clear that the commitment extended to funding for the period of time beyond June 30.

Guzzi and Littlefield worked out the exact wording of the release on March 14. The Commission released the statement on March 15. It read:

The Commission announced today that Governor Edward J. King has agreed to include a budget request for the Commission in a deficiency budget expected to be filed by the Governor with the Legislature in April. Governor King and Commission members agreed that the Commission staff will confer with the Governor's Chief Legal Counsel Neil L. Lynch next week to review the specific details of the Commission's budget request.

King himself confirmed to the press that he had made the agreement. He was quoted on WEII: "The Governor will fund the Special Commission." The Governor announced that part of the funding would come from federal funds and part from state funds.

In the same release, the Commission outlined the details of the LEAA grant. "I am pleased with the obvious commitment of the Federal government to honesty in government and the elimination of fraudulent practices which result in the waste of tax dollars," said Ward. Bellotti said, "this grant will allow us to catch up
with our investigative timetable pending the enactment of our deficiency request." The Commission announced that it had established a special telephone line (617-227-7556) to receive any information from past or present employees and members of the public that might be relevant to the investigation. Likewise, an address was publicized (Box 8249, JFK Station, Boston, Mass., 02114) for receipt of any evidence of corruption.

Overy and Littlefield met with Lynch on March 20, presenting the following budget for 14 months from May 1, 1979 through June 30, 1980.

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>02 Salaries</strong></td>
<td>$1,108,543</td>
</tr>
<tr>
<td>Original estimate for staff salaries, 12 mos.</td>
<td>$950,180</td>
</tr>
<tr>
<td>Adjustment for 14 months (+ 1/6)</td>
<td>+158,363</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,108,543</td>
</tr>
</tbody>
</table>

| **03 Consultants**          | $120,000     |
| Original Estimate           | $270,000     |
| Elimination of information system component, covered by LEAA grant | -150,000    |
| **Total**                   | $120,000     |

| **10 Travel**               | $35,280      |
| (Unchanged)                 |              |

| **11 Advertising and Printing** | 8,000       |
| (Unchanged)                  |              |

| **12 Maintenance and Repairs** | 231          |
| (Unchanged)                   |              |

| Original estimate for 12 mos. service contracts | 198          |
| Adjustment for 14 months (+ 1/6) | +33          |
| **Total** | 231          |

| **13 Special Supplies and Expenses** | 30,000       |
| (Unchanged)                           |              |

| Original estimate for 12 months | 36,000       |
| Adjustment for 14 months telephone (+ 1/6) | +4,150       |
| **Total** | 40,150       |

| **14 Office Administration Expenses** | 19,120       |
| (Unchanged)                           |              |

| Original estimate for 12 months | 12,600       |
| Adjustment for 14 months (+ 1/6) | +2,100       |
| **Total** | 14,700       |

| **Total Estimated Budget for 14 Months** | $1,376,024   |
| Less: Estimated funds on hand from previous state supplementary grant (1/3 of January 1, 1979 estimate) as of May 1, 1979 | $64,640      |
| Remainder of LEAA grant as of 5/1/79 (i.e., 3/4 of original 4-month grant starting 4/1/79) | $157,125     |
| **Total Financial Deficiency for 14 Month Budget** | $1,154,259.00* |

* Budget based on the original 12-month request previously submitted on January 15. The total is derived after subtracting the credit from the original state grant and the LEAA grant. It was requested for the remainder of the Commission's life, assumed to be through June 30, 1980.
Lynch was very receptive to Dwyer and Littlefield's presentation. They reviewed each category, explaining in each case why the money was needed for staff and other categories. Lynch said he wanted to avoid a public conflict between the Governor and the Commission and that he hoped an agreement could be reached on the amount because it would do King no good to be viewed as obstructing the Commission. Lynch said that he would get back in touch with the Commission counsel shortly.

The Amendment to the Resolve

The next day Littlefield called Representative Murphy to remind him of the Speaker's commitment that the amendments would be approved. Murphy said that he would check with McGee, but that he understood there remained some redrafting to be done; he said he understood the Speaker believed limiting language was to be written into the extension amendment specifying that no new investigations would be started beyond January 1, 1980. Though this addition had never been discussed with the Commission, Littlefield said that such a limitation would be agreeable. Murphy said that the amendments would not be on the calendar that day, instead they might be entered the next. In two subsequent telephone conversations, Littlefield and Murphy discussed whether the amendments would be on the calendar the next day and what the agreement had been with McGee regarding the redraft.

Card notified Littlefield on March 23 that Flaherty had told him the amendments would be out of the House on April 2; Card said that they could then be out of the Senate on April 5. In a meeting with the State House press on the same day, Bellotti reflected upon his work with the Special Commission, concluding that public funding of political campaigns was the only way to stop corruption. "Until you have public funding," said Bellotti, "you're going to have a system of government where people who give want something in return. Without public financing, "you create a system that breeds problems." Asked by a reporter whether the findings of the Commission thus far had surprised him, Bellotti quipped, "I haven't been surprised since I was 12 years old," but he said that it had become clear to him that "the system needs massive correction."

On March 28, 1979, Manzi and Masiello were acquitted. Meanwhile on April 3, the Judiciary Committee did not report the amendments out. Flaherty told Card the bill would go out of the Committee exactly as written, but would not say when.
He said he awaited word from the leadership on the timing. Ward called McGee and pointed out that the bill was still in Committee. McGee agreed to make an inquiry.

Lynch returned Littlefield's call on April 5 and said that he would contact the Commission concerning the budget within a week.

Ward called McGee the next day and received assurances that the bill would be out on the House floor in one week with no changes. On April 18, the Judiciary Committee did report the bill out favorably with no changes.

On April 24, Littlefield spoke to Lynch on the telephone about the budget. Lynch stated that he would arrange to see King that day and let the Commission know by the next day; the Governor would be making the decision. Littlefield told him that the Commissioners were meeting the next day at 1 p.m. and needed to know the answer by then. Lynch said that he would be in touch by 1 p.m. April 25. He said the date for filing the deficiency budget was still May 1.

Lynch did call at 12:30 p.m. April 25, saying that he would have the exact figure to be included for the Commission in the deficiency budget. So at their 1 p.m. meeting that day, the Commissioners remained in a state of uncertainty over both their budget and the amendments. The members pressed on with their discussion of plans for public hearings, however, setting a target date of mid-September.

Discussion of Hearings

At a Commissioners' meeting on May 2, 1979, the Commissioners discussed and agreed on principles which would guide the conduct of public hearings. The Commissioners had considered this subject in discussion throughout the Commission's existence. Commissioner Mahoney circulated a memorandum which served as the starting point for the discussion. At the conclusion of this discussion, the Commission directed staff to begin preparations for public hearings in the fall.

It was established that Commission witnesses would testify only on matters which the Commission had thoroughly investigated. Staff investigators were to seek to coordinate every detail of testimony. The Commissioners would review evidence prior to the public hearings and determine whether it met the standards of credibility and had sufficient corroboration to be presented at public hearings. As a normal practice, witnesses were to be questioned at private hearings before being called to testify at a public hearing. The Commission was to present evidence which included criminal conduct as well as conduct which, though falling short of criminal conduct, revealed an example or pattern of corruption or maladministration exposing a need for legislative or administrative
action. The Commission was not an established public law enforcement agency. It was a legislative agency of limited life and limited power. Therefore it was established that it would investigate, study, and report - and above all, disclose. All concerned knew that they would have to do so with extreme caution, after review of the evidence by the Commissioners. Individual rights of privacy and legitimate needs for protection of witnesses would have to be considered by the Commission on a case-by-case basis before public hearings were held.

The Systems Reform Program

At the conclusion of the discussion the Commission focused on topics for possible reform recommendations including designer selection, contractor selection, construction supervision, the organization and management of construction agencies in the Commonwealth, the planning process, and ways and means of preventing and detecting cases of corrupt conduct. The Commission initially set out for itself a four step process:

1) Determine what current Massachusetts law and practices are;
2) Find out what the problems have been with these laws and practices;
3) Analyze law and practices in other jurisdictions, look at model statutes, reports, and other literature in the area;
4) Make recommendations.

The Commission proceeded to implement this plan by studying the designer selection process first. The examination included the following: interviews with all present and former members of the designer selection board, undertaking a thorough review of all DSB documents and records, review of the selection processes for agencies not within the jurisdiction of the DSB, and analysis of the procedure and standards for the award of hundreds of design contracts.

By April 1979, it had become clear on the basis of the Commission's initial investigations and research that extensive reforms would be required in this area alone but also that extensive reform would not be easily achieved. The Commission discussed at that time the possibility of filing the recommendations while the Commission was still in existence rather than at the end of its mandate. At this time, the Commission anticipated that the amendments to its resolve which extended the Commission's existence by six months, to terminate at the end of June 1980, rather than at the end of December 1979, would pass the legislature. The Commission discussed the possibility of filing recommendations in December 1979 in order that they might be considered by the Legislature in its 1980 session. A corollary of this idea was to hold the public hearings which would present the Commission's investigative findings during the time that the Legislature would be considering proposals for reform. This timetable would presume that the Commission would make recommendations at the end of its tenure.
in addition to those proposed in December of 1979. No definitive strategy was adopted, but foremost on the minds of Commissioners and staff was the example of the Crime Commission Report of the 1960's. The recommendations of that Commission were issued at the end of that Commission's life and most were never adopted.

While the Commissioners discussed long-range plans, their staff moved that day from their cramped quarters on the McCormack Building's fifth floor to offices on the sixteenth floor.

More Budget Delays

Meanwhile, the Commission budget request had still not been acted on. There was no recommendation from the Governor and the Federal interim funding would soon run out. On April 26, 1979, Associate Counsel Skvir received word from the Budget Bureau of A&F that the Secretary had requested A&F Budget staff to review the Commission budget with Commission staff. After reviewing all the budget items with Chief Counsel Littlefield and Associate Counsel Skvir, Jack Spellman, of the Budget Bureau staff, stated that he would recommend funding in the amount of $630,000 for the period of time until December 31, 1979. He said that he could not recommend beyond that time because the amendments had not passed, but if they did he would recommend an additional $700,000 dollars for the six-month period in 1980. Littlefield told Spellman that the request was agreeable to the Commission because it was very close to the submitted amount.

At 1:30 p.m., Spellman called back and asked to see Littlefield and Skvir again immediately. He came to the office with Phillip Doherty of the Budget Bureau; they said they were acting as emissaries for the A&F Secretary. Spellman said that after leaving the Commission offices in the morning he had delivered the Budget Bureau recommendation of $630,000 dollars to Hanley. Hanley had sent Spellman back to work on it with some suggestions. When Spellman had returned to see Hanley at 2:30, Hanley said he had decided the Commission could not be included in the deficiency budget at all because the deficiency would only be used to provide funds for the fiscal year and the Commission was not in a deficiency position between that time and June 30, 1979. Spellman said that should the Commission anticipate an actual deficiency before June 30, 1979, Littlefield should have forms filled out and submitted by the next morning. However, he said the deficiency could be used only if the Commission had overspent, and it could not be used for new positions. Littlefield responded that the Commission had not overspent because it had known it was required to stay within the $300,000 budget as increased by the federal grant.

Spellman stated that the A&F secretary would consider including the
Commission in an addendum to the fiscal year "House One" budget, but he could not tell Littlefield at what amount or when such an addendum would be filed. Littlefield told Spellman that this position violated the commitment the Governor had made to the Commission. Littlefield declared that it was legal and customary to use the deficiency budget as a vehicle to provide appropriations beyond the fiscal year; in fact, the Commission's own original appropriation had been designated and extended beyond fiscal year 1978 in exactly this fashion.

After Spellman left, Littlefield called Lynch to tell him what had happened. At the instruction of the Commission Littlefield said that the Commission considered King and Lynch to have reneged on their commitment, since the latest decision completely violated the agreement. Littlefield said that it was not true that the supplemental/deficiency budget could not provide funds beyond the fiscal year and referred specifically to the case of the Commission's own original appropriation. Lynch said that Representative Finnegan had told the administration in a meeting just one half hour before that the deficiency budget could only appropriate funds for the fiscal year. He said that there must have been a mix up and that he would get back in touch with Littlefield.

Lynch called back at 6:30 to say that the administration would place an amount in the deficiency budget in accordance with the Budget Bureau recommendation of funds needed through June 30, 1979. He said that an additional request would be added to House One for the fiscal year, but he could specify neither the amount nor the date this addition would be made. Littlefield brought Chapter 442 of the Acts and Resolves of 1978 (the deficiency budget for fiscal year 1978) to Lynch's attention, noting that there were 27 different items in it which were appropriated to be spent beyond the end of the fiscal year 1978.

Littlefield called Lynch on the 27th to say that he had spoken with the Commissioners and they believed they were being strung along. He conveyed the Commission's request to the Governor that he include the $630,000 recommended by the Budget Bureau in the deficiency budget and then place $700,000 more in the deficiency budget as soon as the amendments passed, as well as entering the full request in House One. Littlefield asked Lynch if he could give the Commission a response on Monday, April 30.

Bellotti was told on May 1 that the deficiency budget would be filed the next day or the day after and would include a substantial sum for the Commission -- not the full amount of the request, but a sum designed to carry the Commission beyond June 30.
Governor Recommends Funds

On May 2, 1979, the Governor announced in a press release that he had "recommended $415,710 in additional funds for the Special Commission Relative to Corruption Involved in Certain State and County Building Contracts." King said, "I realize that this is not technically a deficiency for the current fiscal year and might well be included in the appropriation act for the 1980 fiscal year. However, providing funds at this time will allow the Commission to plan its programs for the remainder of its existence." The Governor stated publicly that he would recommend additional funding if and when the Legislature extended the Commission's existence.

Ward issued the following statement on behalf of the Commission in response to the Governor's release:

The Commission is pleased the Governor has submitted to the Legislature a budget recommendation for its work. Unfortunately, the amount he has recommended is not sufficient to meet the urgent needs of the Commission.

The Commission has a tremendous responsibility to the public which it must fulfill within a limited period of time. Its original budget request was the result of careful deliberation by the seven Commissioners. The amount requested is necessary, given the scope of the Commission's work and the fact that the Commonwealth has spent more than four billion dollars for the construction of public buildings over the past ten years. Further, uncertainty about the Commission's budget for the past four months has delayed the start of important investigative activities. We must have the resources now to do our work.

The Chairman of the Commission has met with the Speaker of the House, Mr. McGee, and has received his assurance that all matters concerning the Commission, including approval of its extension for six months to June 1980, and the budget for the life of the Commission will be resolved in the next few weeks.

Plans for Reform

The Commissioners met on May 2 to begin planning the substantive legislative proposals called for in the mandate. As of May 10, 1979, the staff had recruited a new team of lawyers to undertake the Commission study of the Commonwealth's construction procurement system, and to develop specific proposals for reform of the system under the direction of attorney Jonathan M. Bockian, former Executive Director of the Social and Economic Opportunity Council of the Commonwealth of Massachusetts and attorney Larry Beeferman, formerly a law teacher and practitioner with a Harvard Ph.D. in applied physics.

The Commission set about to study thoroughly the existing public building system and its known flaws. The procedure used was to try to fully describe the system based on research in prior studies about public buildings in Massachusetts, on discussions with persons directly involved in the government's construction procurement agencies, on the Commission's investigation into allegations of corruption, on the insights of professionals with expertise in the design and construction fields but outside of the state system, and on the expertise of the various Commissioners. The staff had produced a series of
memoranda describing the fundamentals of the Commonwealth building process. At the same time two outreach programs had been instituted. The first was to set up a series of meetings between the Commission and a committee appointed by the Massachusetts State Association of Architects (MSAA) to serve as a liaison with the Commission. The second was to establish the Resource Group, composed of experts in various aspects of construction.

Staff memoranda were prepared for the Commission and resource groups based on intensive review of the available literature and on approximately 500 staff hours of interviews. The review concentrated on prior studies of the Massachusetts system, judicial interpretations of relevant statutes, published regulations and procedures of state agencies, existing surveys of other state and federal systems, and studies of systems in other selected jurisdictions. Those interviewed had included all persons then employed in key decision-making positions at the Bureau of Building Construction (BBC), several former BBC officials, legislative staff persons familiar with the budget process, attorneys expert in the procurement law of Massachusetts, present and former high officials in public authorities in the state other than the BBC (such as MDC and MassPort), policy-making officials of those agencies operating buildings, representatives of organized professional and industry groups, and representatives of the consumers of services offered in public buildings (e.g., patients, students). During this time, from March of 1979 through the summer and fall - and all through the legislative process - Commissioners and staff met frequently with Edward Vaughn, Deputy Commissioner for Central Services (which includes the BBC and DSB) in the Executive Office of Administration and Finance. Staff reviewed their findings with Deputy Commissioner Vaughn and described proposals for reform that had come to the Commission's attention. Vaughn's questions and reactions proved useful to the Commission, and many of the ideas put forward by the Commission staff found their way into A&F policy.

As these memoranda were completed, they were distributed to the pro bono participants in the resource group. The members of this group met with Commissioners and staff over the period from July to October to discuss the content of the staff memoranda, comment on their accuracy, and explore ways in which the state system might lend itself to poor administration or corruption. This effort generated almost 200 hours of invaluable pro bono consultations, and a consensus emerged as to where Commission reform efforts should be focused.

Budget Problems Loom Again

By May 9 the budget question was still not resolved. A memorandum from Director of Administration Nancy Earsy to Chief Counsel Littelfield described the
financial pressures now faced by Commission staff four months after the initial attempt to gain additional funds. "We are running extremely tight on state funds," she wrote.

The,...year-end spending budget shows only the minimal expenditures absolutely required to operate the Commission's Investigation through June 30, 1979.

The restraint shown in this spending budget is exemplified by some of the items not included in it. The $2,000 allocated for installation of a security system covers only surveillance equipment. It will also be necessary to install physical barriers in certain areas and we are counting on using funds from the deficiency budget for this purpose. The funds allotted for furniture and file cabinets are very minimal. Even though we do not have enough desks or tables for our current staff, there is no money allotted for purchase or rental of additional furniture. Instead, $500 is budgeted to pay for the cost of moving government surplus furniture which we hope to get free. Negotiating for and locating government surplus is uncertain and takes time. Although our staff has been inconvenienced by the lack of furniture, we have held back in making other arrangements in order to save money in this account. Similarly, the limited budget allocated for file cabinets does not fully meet the Commission's document storage requirements, but only alleviates the worst current problems. This budget also does not cover overdue bills for emergency 03 services incurred last fall. Bills for $271.25 and $99.90 to pay for temporary secretarial services, plus a bill of $1,881 for the services of a computer consultant await legislative approval.

We will be fortunate if we end FY 1979 with a balance of $940. Increases in Xerox and telephone costs could put us in the position of delayed bill payment. This could easily happen, because of the pace of investigative activity has increased with the new staff and it is very difficult to limit these support services without impeding the Investigation.

The federal grant cannot fill in the gap....

On May 13, 1979, Littlefield spoke with House Whip Murphy on the telephone concerning the amendments. Murphy reported that there were no objections regarding the pre-1968 contract change, the Ward amendment, or the extension. He requested a draft of language which would limit the single member of the Commission holding hearings to addressing only procedural matters relating to summonses. Littlefield submitted language to Murphy. Murphy stated his belief that the Committee would report the bill out on May 14. When Ward spoke with McGee on the telephone the next day, the Speaker confirmed that the bill would be out of committee on May 14.

On May 16, in response to a request received from Senate Ways and Means Chairman Atkins to provide further data to support the deficiency budget request, Littlefield restated the Commission's request that the Committee increase the amount recommended by the Governor to the full amount necessary. "It is urgent that the full funding request be approved at the earliest possible date," wrote Littlefield, "either through the supplemental appropriation to the fiscal 1979 budget or through the fiscal 1980 budget, so that the investigations can be conducted in a professional and meaningful manner."
Debate of the Proposed Amendments

During a Commission meeting on May 16, Bellotti telephoned McGee. The Speaker returned the call at 1 p.m. and told Bellotti that there was concern over the amendment regarding instrumentalities. Ward and Littlefield met with McGee, Keveryan, Finnegan and Representative Piro at 4 p.m. After discussion of several of the amendments, McGee stated that they had decided to approve the amendments as they stood. He said, however, that they did want to include the additional language on the single Commissioner amendment. Their reasoning for this decision, as earlier stated by Finnegan, rested on the experience with the runaway 60's Crime Commission, because Finnegan did not want to create a situation in which one Commissioner with a certain hostility to an individual or firm could recommend indictments where there was insufficient evidence, as had occurred before.

Ward inquired about the Commission's budget and Finnegan said a hearing would be held on the deficiency budget the week after next, since he would finish work on the House One budget the next week. Littlefield expressed concern over continued delay on Commission funding; McGee said not to worry, the Commission would get funds. He did not specify the amount of funds, saying that this decision was up to Finnegan. The Speaker said the amendments would be voted out of the House on May 21 and he anticipated no trouble in the Senate.

The amendments did not appear on the House calendar on either May 21 or May 22. On the 22nd, Associate Counsel Skvir talked to Representative Murphy, who told her that he was redrafting the amendments so the bill would not go to floor that day. Murphy told Skvir the redraft would include a ban against initiation of new investigations after January 1, 1980, and other points as well. That evening Murphy gave Littlefield a copy of a redraft which took the Commission amendments and inserted them into the contents of the entire Resolve, but also contained language stating that the Commission "shall not initiate any new investigation or study after January first, nineteen hundred and eighty." Another completely new addition stated that the records of the Commission would be turned over to the Attorney General upon termination, rather than to the Secretary of State.

Littlefield advised Murphy the next day that the Commission could not accept the limitation on new investigations after January 1 and that the Commission had made no such agreement with the Speaker. Littlefield added that he was unaware of the idea of changing the ultimate custody of the records from the Secretary of State to the Attorney General. Murphy said he had mentioned this change to Bellotti and it was fine with him. He said he had spoken with McGee during a meeting Tuesday afternoon and the Speaker had thought such
language had been agreed upon, but Keverian was not sure of this. Littlefield repeated that the Commission had not agreed upon such language, and he said he would see the Speaker first thing that morning to straighten it out.

Ward and Littlefield met with McGee at 9:15 am. He said he had no problem with reverting to the original language of the Resolve; Littlefield gave him a retyped copy of the 15th paragraph. He agreed to this language and said he wanted it approved as soon as possible -- that day or the next. Ward then asked him about the budget and he said he had been thinking about it and firmly believed the deficiency budget would be the best route since he felt that the fiscal budget would be highly controversial and therefore slower to pass. The deficiency budget, he said, would not be controversial and probably would be enacted before the fiscal year budget. Later in the day Littlefield spoke with Murphy who said everything was agreed and would be voted on the next day.

Amendments Approved By House

The bill amending the Commission's resolve was approved by the House on May 24 and engrossed with Speaker McGee presiding. The House Journal recorded the procedure, which took a matter of seconds.

The House resolve relating to the special commission relative to corruption involved in certain state and county building contracts (House No. 3123) was read a second time.

The amendment previously recommended by the committee on Ways and Means - that the resolve be amended by substitution of a Resolve relating to the special commission established to make an investigation and study relative to corruption involved in certain state and county building contracts. Sent to the Senate for concurrence.

The substitute resolve (House No. 6354) then was ordered to a third reading.

Under suspension of the rules, on motion of Mr. Flaherty of Boston, the resolve (reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time forthwith; and it was passed to be engrossed, its title having been changed by said committee to read: A Resolve relating to the special commission established to make an investigation and study relative to certain state and county building contracts. Sent to the Senate for concurrence.

Following the House action, Ward and Littlefield met with Senate President Bulger. They told him that the amendments had been approved in the House and were on their way to the Senate. Bulger expressed his view that they ought to be on the calendar and approved in the Senate on May 29. He also agreed that the deficiency budget was the best budgetary vehicle since he believed it would go through faster than the fiscal year budget.

The Senate Committee on Ways and Means reported H. 6354 favorably on May 29 and the bill was sent to the Senate floor.

H. 6354 was read a second time in the Senate on May 30 and ordered to a third reading. The bill made no further progress the next day.
The Senate did not take up the bill. Meanwhile, members of the Commission contacted representatives and senators in preparation for the budget hearing before the House Ways and Means Committee the next day to make sure they all understood the Commission's request.

Ward delivered the following address before the Committee:

Mr. Chairman, Members of the Committee:

I am the Chairman of the Special Commission, Mr. John William Ward. I would like to introduce other members of the Commission who are here. They accompany me for two reasons: First, we work together as a Commission, as a single body. Though I have the privilege of speaking because I have the good fortune to be the Chairman, we wish to act out the fact we do work together, we are one body, the Special Commission. Second, and more practically today, if you have questions for the Commission, there is a distribution of talent among us. One or the other may be more responsive to a particular question. We have with us also our Chief Counsel, Mr. Bancroft Littlefield, Jr.

We seek full funding for the life of the Special Commission Concerning State and County Buildings, popularly known as the "Blue Ribbon" Commission. In H.6134, the supplementary or deficiency budget presented by the Executive Office, the Governor has requested a budget of $415,740 to fund the Special Commission from May through December 31, 1979. In his recommendation, the Governor said that, if and when the life of the Commission were extended, he would support further, additional funding. The House has voted to extend the life of the Commission to June 30, 1980.

The detail of our request is spelled out in our written presentation. The Governor's request for six months, when doubled to meet the extension of the life of the Commission, is $830,000. At the same time, we strongly request that you restore us to the full funding of our original request. The Commission's careful calculation of its needs is $1.2 million dollars, less approximately $70,000 which will remain from the Federal grant from LEAA (Law Enforcement Assistance Administration). In sum, we urge you to recommend a budget of $1,135,000 for the full life of the Commission through June 30, 1980.

We are confident you will support our request for the simple reason that we are your agent. The Legislature created us and gave us our mandate. We ask you now give us the tools to carry out that mandate. The task the Legislature has assigned us is large, complicated, and important. We mean to do it carefully, thoroughly and professionally. With your support, we will.

The budget we place before you is based upon a careful analysis by the Commission of the work required. Our request for a budget was submitted in January. Only a Federal grant has kept out investigative work alive the past months. We have a limited amount of time in which to complete our work.

With a limited life, we cannot afford delay or the weakness of an inadequate staff. What we need is what we ask for, no more, no less. With your support for full funding today, we will have no further requests to make. We will be able to turn our energies wholly to the task before us.

Thank you. That is all I wish to say, Mr. Chairman. The Commission members would be pleased to answer any questions you or any member of your Committee may have.

Among others to offer testimony was Secretary Hanley, who did not object per se to the increase sought by the Commission over the amount recommended by the administration, but instead said the amount requested belonged in the fiscal year 1980 budget rather than in the deficiency budget. Commissioner Weinstein, Representative Card and Jay Hedlund spoke in favor of the request.
The headline of a front page story in the next day's Globe announced, "Finnegan backs contract provers." The Chairman had told the press, "I will recommend to the members of the committee that the Commission be given the full amount -- that's $1.35 million -- what they asked for." Finnegan's recommendation was tantamount to committee acceptance.

The Commissioners directed the staff on June 6 to request the Legislature to transfer jurisdiction over their budget from A&F to the Attorney General's office.

By June 11, the Senate had taken no further action on the Commission's bills, and the Commission had been encountering slow response from A&F in obtaining administrative approval for personnel matters. Senator David Locke (R-Wellesley) proposed a Senate resolution calling on the Governor to provide full funding. The resolution was tabled on a 26-8 vote. Meanwhile the House voted on the same day approval of the $10.3 million deficiency budget (H.6464), including full funding for the Commission and sent it on to the Senate.

On June 25 the Senate Ways and Means Committee reported the budget (S. 1963), including the Commission's full funding, out favorably.

Commission staff were told on June 26 that the amendments were going to the Senate floor that day with changes. When Littlefield reviewed the version of the bill as it had been sent from the House, he found that the reference to public instrumentalities had been struck. In addition, a proposed amendment was attached which called for the Governor to appoint an eighth commissioner who was a retired Justice. Littlefield immediately called Ward to report the deletion of the reference of public instrumentalities.

Ward telephoned McGee and told him about the public instrumentalities amendment having been deleted. Ward noted that the amendment had been included in the version that was voted and said that somebody had doctored it. He requested advice from McGee as to exactly what might have happened to the bill between the time it was voted and the time it was sent to the Senate. McGee responded that he could not believe that there had been a change since the House had voted what was printed. He said he was furious and said again that he didn't believe it. McGee said that he would have his clerk deliver the correct, printed copy by hand to Bulger. Since the Senate debated the deficiency budget that day, the amendments did not receive consideration.

Ward and Littlefield were advised by House Counsel Paul Menton on June 27 that he had removed the section concerning public instrumentalities without telling the Speaker because he thought it was "surplusage." Menton stated he had authority to correct wording and that in this case he had done so because the particular section was "surplusage, excessive and not a substantive change." The
term "state" included public instrumentalities, according to Menton. Ward explained that the Commission agreed with Menton on this point, but it wanted to avoid court challenge to its jurisdiction over public instrumentalities, particularly in view of its limited life.

Menton said the alteration had been entirely his doing and in fact that this kind of thing could be done anytime, even after a bill had been voted. Menton then telephoned Senate Counsel McIntyre, and said that he agreed to reinsert the reference. As far as he had been concerned at the time Menton said, the reference had not been substantive, so McIntyre could just go ahead and reinsert it. McIntyre refused.

At 7pm the bill finally reached the Senate floor. Senator Arthur J. Lewis (D-Boston) moved adoption of the amendment to create an eighth member of the Commission for appointment by the Governor. Lewis' motion was to amend the first sentence of the second paragraph by adding the words:-

"...and a retired justice of the court of the commonwealth to be appointed by the governor."; and in the third paragraph by inserting after the first sentence, the following sentence:- "The member who is a retired justice shall not in any way perform any judicial duties while serving on the commission."

Lewis also proposed the following language in place of the last paragraph:

The Commission shall cease its investigation and study upon filing its final report and, except as otherwise provided herein, shall forward all records and documents, including stenographic notes, to the attorney general. The attorney general shall be the custodian of such records, which he shall place in a separate and segregated vault and shall seal the same. Said records shall not be public records and shall be available only upon a court order. The attorney general shall retain said records and documents for seven years after receipt thereof.

The Senate engrossed the bill with the Lewis amendments and sent it to the House. The "public instrumentalities" phrase was included in the version sent to the House.

Representative Card, who had stayed with the bill all evening, told House Whip Murphy that it was essential to delete the amendment which added the new member. At 10 pm Littlefield and Card confirmed that the latest version of the deficiency budget placed the Commission under the jurisdiction of the Attorney General, contained the correct expiration date and included language accounting for the federal grant money. The House and Senate adjourned at midnight.

Littlefield and Card met with Senate staff members on June 28 concerning the amendments. Representative Card said that he would ask Speaker McGee to have the House concur but strike the new member addition and send the bill back to the Senate.
Amendments Passed: Sent to the Governor

Ward and Littlefield met with McGee and Murphy at 11:30 am. Murphy urged McGee to strike the new member provision, saying, "The Commission doesn't need a new member one year later; they already looked for a judge and couldn't find one." McGee agreed and both the legislators resolved to have the House concur with the "records to the Attorney General under lock and seal" amendment, but not concur with the new member amendment, and send the bill back to the Senate quickly. The House did so at 2:30 pm. The Senate received the bill at 4:30 pm.

The bill went before the Senate at 5 pm on June 29 and the Senate concurred with the House. At 6 pm, the amendments were retyped in the Senate Clerk's office; Littlefield proofread them at 9 pm. With McGee presiding, the House enacted the bill at 11:30 pm; the Senate enacted it at 11:45 and it went to the Governor's desk. The supplementary budget passed the next day, and Governor King signed it into law as Chapter 342 on June 30, 1979.

No action was forthcoming from the Governor concerning H. 6354 (the amendments) by July 8.

In a July 10 Boston Globe column, "The mystery of the eighth man," Robert Turner wrote:

"The Third Man" is the title of a 1949 classic film starring Joseph Cotten about espionage in foggy central Europe. "The Eighth Man" is the title of a two-week old minidrama about skullduggery in the middle of the night, in the brightly lit Massachusetts Senate.

The two presentations have virtually nothing in common except for one characteristic - mystery.

Who is the eighth man? And who wanted to add him to the Special Commission on State and County Contracts? And why?...

Did King ask for the change? "I didn't talk to Ed King," Lewis said...

The most logical reason for adding an eighth commission member after the Commission has been working for nearly a year would seem to be communication - that King or someone else wanted to have someone at the commission who would talk about the investigations are going on.

King aides yesterday denied any knowledge of gubernatorial initiative for the eighth man amendment.

"I wouldn't know" if it came from the governor, said Chief Counsel Neil L. Lynch. And Chief Secretary Paul Guzzi, while acknowledging that King is not overly enthusiastic about the commission generally, said, "to my knowledge ... (the amendment) honestly hasn't come from here...."

A full answer to the eighth man mystery may never be known; Card, for instance, said he has not been able to determine an ultimate source for the amendment, "but my feeling is that the proposal was made in King's interest."

Rep. Philip W. Johnston (D-Marshfield), co-sponsor with Card of the original bill, said he thinks it is "highly inappropriate" to add a new member after the commission has been at work for a year - "particularly one who is accountable to the governor. The whole point is to make it as independent as possible."

Johnston characterized the entire incident as "very bizarre."

This may not be the stuff of which high drama is made, but "The Eighth Man" is the kind of theatrics that the
Legislature is good at, particularly near the close of the session.

Executive Message to the Legislature

King submitted the following message to the Legislature on July 12, six hours before his deadline for action on the bill:
TO THE HONORABLE SENATE AND HOUSE OF REPRESENTATIVES:

In accordance with the provision of Article LVI of the amendments to the Constitution, I am returning, herewith, House Bill 6354, entitled "RESOLVE RELATING TO THE SPECIAL COMMISSION ESTABLISHED TO MAKE AN INVESTIGATION AND STUDY RELATIVE TO CERTAIN STATE AND COUNTY BUILDING CONTRACTS."

This resolve makes certain changes in the resolve that passed the legislature last year creating a special commission to investigate and study corrupt practices and maladministration in the awarding of contracts. This commission has been publicly referred to as the "MBM Commission." The changes brought about by the resolve are, in summary, as follows: The period that the commission may concern itself with is extended beyond the six years open under the earlier resolve; the scope of the commission is expanded to include contracts of public instrumentalities that were not previously the subject of scrutiny; the present chairman of the commission is permitted to remain in office, although he is no longer the president of an institution of higher learning located in the commonwealth; a new provision is added allowing single-member sessions in certain instances; the existence of the commission is extended six months until June 30, 1980; and the attorney general is substituted for the state secretary as the repository of the records of the commission.

One of these changes causes serious concern. There seems to be little justification in extending the period subject to inquiry by the commission beyond the original ten year period. (It should be noted that the period has now become eleven and one-half years.) Limitation on the time within which the judicial examination of facts can take place has traditionally been a part of our judicial process both civilly and criminally. Although exceptions abound in the area, the most common civil and criminal periods of limitation are not in excess of six years. The rationale for such rules is both reasonable and fair. After the passage of prolonged periods of time memories dim, witnesses die or disappear, documents become lost, and the interpretation of events becomes difficult where the context within which they evolved is no longer known or is obscure. Even the meanings of words change with the passage of time.

In this context, the provision of this bill extending beyond eleven and one-half years the period subject to inquiry by the commission is primarily to investigate and recommend legislation to correct abuses in the awarding of contracts. Surely events occurring no more recently than eleven or twelve years ago can be of little or no aid to the commission in suggesting remedial legislation to the legislature. If events have occurred, within the eleven and one-half year period, that are of interest to the commission, it would seem to serve no purpose to go further into the history of such events especially when the time, effort and expense of such research is considered.

An additional duty of the commission is to submit evidence of wrong doing to appropriate law enforcement agencies. Surely the extended period can be of no efficacy in fulfilling this mandate since any applicable criminal statute of limitations would long since have prevented prosecution for acts occurring more than eleven and one-half years ago.

I am, therefore, recommending that House Bill 6354 be amended as follows:

The first paragraph of Chapter 5 of the resolves of 1978, as being amended by House Bill 6354 is hereby stricken out and the following paragraph inserted in place thereof:-

That a special commission to consist of seven members is hereby established to investigate and study as a basis for legislative action the existence and extent of corrupt practices and maladministration concerning contracts awarded no earlier than January first, nineteen hundred and sixty-eight related to the construction of state and county
buildings; the existence of conditions which tend or may tend to permit the occurrence of said practices and maladministration; and the existence of limitations on the powers and functions of those charged with the duty of approving, supervising, or overseeing said contracts or with the enforcement of laws related thereto. Said investigation and study shall include but need not be limited to consideration of the awarding, implementation and the subsequent events concerning the contract between the firm of McKee-Berger-Mansueto, Inc. and the commonwealth relating to the management of construction of certain buildings on the Boston campus of the University of Massachusetts. When used in this resolve, the word "state" shall mean the commonwealth and public instrumentalities established under general or special laws.

Respectfully submitted,
Edward J. King
Governor

Chairman Ward announced to the press the next day that he would ask the Legislature not to accept King's proposed deletion. Ward stressed that although King had objected only to the provision relating to pre-1968 design and other preliminary contracts for post-1968 construction projects, the effect of his action was that none of the amendments, including the extension of the Commission's deadline, had yet become law. Ward said that the Commission was gravely concerned that the Governor's action rejecting the entire package of amendments once again meant delay in its work.

Ward sent the following letter to the Governor:

Dear Governor King:

The Commissioners and the Staff of the Special Commission greatly regret your recommendation to the Senate and the House to delete language from House ... No. 6354. We further regret that neither you nor any member of your staff discussed the matter with us so we could have explained our understanding of the intention of the language and, thus, have avoided the swirl of publicity now going on around you and us.

By now, you will know that we are asking the legislature not to accept your recommendation and to return to you, for your signature, the bill as originally presented.

The Special Commission has no intention of expanding the chronological period of its investigation and we believe your interpretation of the language you wish to have deleted is not correct. We wish simply to clarify our power (we believe we have the power) to examine any document or evidence which related to the construction of any state and county building after 1968. The construction process is such that there is often a lag of several years between the design phase and the construction phase of a building. It is not possible to separate the two. The Legislature has mandated us to investigate the construction of state and county buildings. The language you have deleted was a clarification of the Legislature's intention. The Legislature approved the clarification so the Commission might fully carry out its intention.

Further, by returning the legislation to the Senate and the House, you are imposing still further uncertainty and delay upon us.

I am not being simply polite when I say that I am confident if we had the chance to consult with you, you would not have returned House...6354 for the reasons you name in your
Common Cause called on the Legislature to act quickly to send the bill back to King unchanged, terming King's action "irresponsible and a blatant obstruction to the independence and effectiveness of that Commission."

King rejected the charges that he wanted to limit the investigative scope as "unfounded and immoral" on July 13, and declared that he would sign the bill even if the Legislature were to turn down his amendment. Representative Cohen concluded, "The governor, since he took office, has been consistent: consistently obstructionist when it come to the work of the Special Commission."

Herald staff writer Robert L. Hassett discussed the annual prorogation ritual in an article on July 15, pointing out that

there are still those of Beacon Hill who agree with the Colonial adage that no man's life or property is safe as long as the Legislature is in session. With only the Governor's signature needed to give the commonwealth a budget after a long, bitter struggle, thoughts turned to an end of 1979 legislative activity at the State House.

At the end of last week though, no one was ready to bet a Mike Dukakis campaign button on when that might occur.

There are a number of important bills to be acted on before a House-Senate committee goes before Gov. Edward J. King to tell him that the people's business is completed and that they and their colleagues want to go home.... Whatever the day or the hour, prorogation when it comes is true to be heralded by some roguish activities.

The Globe editorialized on July 16:

There is a final issue of overriding importance. Even if the Legislature rejects the governor's proposed amendment, the process will delay final action on the bill. And depending on legislative timing, it could leave the governor in a position to pocket veto the entire legislation without a chance for an override. That would not only deny the commission authority to investigate any pre-1968 preliminary contracts, it would deny the commission an urgently needed six-month extension in its life to next July 1 and leave foggy its powers to investigate certain state-created agencies, such as Massport and various building authorities.

The Legislature must not allow that to occur. The very integrity of state government, the confidence of the electorate in the elected depends upon a complete and thorough investigation by the special commission. If that investigation is derailed, if it is even unduly hampered, the credibility of state government could be devastated.

Amendment Rejected: Governor Signs

On that day, the House and Senate each took less than 30 seconds to reject King's amendment. McGee presided over its demise in the House -- on a voice vote with no debate -- early in the afternoon. When it came before the Senate in the
late afternoon, no member even formally offered King's amendment. "There being no amendment offered," said Bulger, "the bill will be sent to the House for reenactment." Representative William F. Galvin (D-Brighton) concluded, "The reason the leadership acted so quickly and decisively is that the amendment was beyond the pale."

On July 18 Ward and Bellotti attended a meeting in the Governor's office with Governor King arranged by Chief Secretary Paul Guzzi. Ward said of the meeting, "it was a very pleasant exchange. We talked about our different interpretations of the Legislation. And he agreed that our interpretation was correct." King's chief spokesman Ronald C. Brinn acknowledged, "maybe if this meeting had preceded the submission of the amendment last week, the controversy might have been avoided."

King signed H. 6354 into law on July 23, over seven months after the Commission had requested the amendments to its resolve.

Back to Business: Development of Proposals

With the long awaited resolution of the amendments to the resolve and with the Commission's funding, the members were able to turn their full attention to the progress of investigations and to development of legislative proposals.

The Commission met at the end of July 1979 to again discuss strategy for legislative reform. At this time, the matters under consideration were whether it would be appropriate for the Commission to reach out affirmatively to potential supporters and opponents of reform in the Government, the private sector, and among various public interest groups concerned with government operations and integrity. The inevitable lapse of the Commission's mandate, combined with inability to predict the length of the 1980 legislative session, also led to a discussion of whether a group of persons or organizations would carry on the Commission's legislative work if the Commission ceased to exist before its legislative recommendations had been acted upon. The fact that 1980 was an election year raised the possibility that the legislative leadership would find it in the interest of the members to address and dispose of proposals for reform long before the election. It also raised the strong possibility that the 1980 legislative session would be shorter than it would have been in a non-election year. The question facing the Commission was how to take advantage of this thinking in order to advance the cause of reform. It had become likely that the Commission's legislative recommendations would be extensive and would be difficult to prepare for the bill filing deadline of the 1980 legislative session, December 5, 1979. The Commission tentatively reached a consensus that it would be preferable to file recommendations in December with the possibility
of revising them in the spring; it was reasoned that all bills in the legislature
go through a series of redrafts to remove technical imperfections and as a result
of negotiations between interested parties.

The Commission also decided that while a full-scale lobbying effort was
unnecessary, a gauge was desirable of the support and opposition for various
reforms among government officials, the industry, and public interest groups. It
was determined that the staff should actively seek out interested parties to
discuss potential reforms with them and determine cases in which additional
resource groups should be composed of persons to take an active role in the
legislative process. In this way the research and development effort coincided
with the political effort, and a series of groups was established. A public
managers group of government personnel in policy or decision making positions
directly related to public building planning, design, construction, or operation
was assembled.* This group reviewed original staff memoranda describing the
system and refined the problems and proposals generated by the original Resource
Group.** The public managers group met weekly for six weeks in the fall of 1979.

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*The members of the managers group were: Edward Capodilupo, Esq.,
contracts attorney for the Massachusetts Port Authority; Anthony Cicere,
engineer, Contracts Administrator for the Port Authority; Stephen Demos,
Chief Architect for the Department of Community Affairs; Foster Jacobs,
engineer, Director of Physical Plant at Southeastern Massachusetts
University; James Kerr, Chief Engineer for the Department of Mental
Health; Stuart Lesser, architect, Director of the Bureau of Building
Construction; John J. McGlynn, then Supervisor of Public Records in the
Secretary of State’s Office; David Nee, Director of Development for the
Department of Corrections; Frederick Putnam, Director of Development for
the Cambridge Housing Authority; John Sneedek, former Commissioner of
the Metropolitan District Commission; James Tierney, Deputy Chief
Engineer of the Department of Public Works; Edward Vaughn, Deputy
Commissioner for Central Services, Executive Office of Administration and
Finance; John vonScheegell, representing the Executive Office of Human
Services; Stephen Weiner, Chief Engineer, Massachusetts Port Authority;
and Dr. Albert Whitaker, Director of the Archives Division of the
Secretary of State’s Office.

**The original Resource Group consisted of:
Julius Abrams, general contractor, owner of Abrams Construction Co.
and a former member of the Designer Selection Board; Sumner Abrams,
enengineer, former Director of Physical Plant at Brandeis University and
former member of the Government Center Commission; Urs Gauhat, Architect
and Associate Professor of Architecture at the Harvard School of Design;
Edgar Gilbert, engineer and Senior Project Manager with the firm of
Arthur D. Little, Inc. of Cambridge; John Kennedy, engineer and
construction manager with firm of Walsh Bros., Inc.; Dr. Raymond E.
Levitt, engineer, Associate Professor of Civil Engineering at
Massachusetts Institute of Technology, and head of the Construction
Engineering and Project Management groups at MIT; William Murphy,
enengineer, former Director of Physical Plant at Harvard University, and
Vice President of New England Mutual Life Insurance Co.; Mayer Spivack,
Director the Unit of Environmental Analysis and Design at the Laboratory
of Community Psychiatry at the Department of Psychiatry of the Harvard
Medical School.
A comparable group for the private industry was established in cooperation with the Massachusetts Construction Council, the single largest umbrella organization in the field. This group served a parallel function to the public managers group but with expertise focused on the vendors' needs and experience. The six members of this group also met weekly for six weeks. Meetings were also held with representatives of the Associated Subcontractors of Massachusetts. The Commission had heard research findings indicating that the Commonwealth was poorly served by the state's filed subbid system for selecting subcontractors, and was considering a variety of reforms to that system. It was commonly known that the Associated Subcontractors' General Counsel, Joseph Corwin, was an active lobbyist on behalf of the filed subbid law and would likely be an opponent to any serious attempt to revise it. In addition, liaison was established with a committee of the Massachusetts Construction Council, the largest construction trade association umbrella group in the state.***

During the fall of 1979 two meetings were also held with representatives of public interest groups concerned with the needs of the public which used state facilities. The meetings that had begun in the spring with the MSAA liaison committee continued through the summer. In total, these additional resource group meetings generated over 350 person hours of discussion and advice for the Commission's consideration.

Preparations for Filing

While Commission staff labored to produce a definitive set of options for consideration by the Commission and to subsequently turn the policy options selected into legislative drafts, several additional issues regarding the filing of the legislation presented themselves to the Commission. Among these issues were: whether to file one large omnibus bill or several smaller bills each dealing with separate aspects of the construction system; whether or not legislative sponsorship was necessary for Commission recommendations and if so who the sponsors might be; whether or not there would be a choice as to which chamber of the legislature would consider

***The Construction Council Liaison Committee members were Pat Alibrandi, Chairman of the Mass. C.I.C. Committee, President of Interstate Electric Service, Co., and representative of the Associated Builders and Contractors; Albert Bonfotti, representing Associated General Contractors, and President of Bonfotti Construction Co.; Philip Mitchell, representing the Construction Industries of Massachusetts; Leo Reed, Executive Secretary of the Building Trade Employees Association; and Douglas Cole Smith, representing the Massachusetts State Association of Architects.
a bill or bills first and if so which would be preferable; what would be involved in a late filing (both politically and technically); and whether or not the Commission's legislation would have to face the "Contracts Commission." The "Contracts Commission" was in essence a subcommittee of the legislative Committee which dealt with public buildings, the State Administration Committee. It was also generally known at this time that the House chairman of the State Administration Committee, Representative Charles Buffone (D - Worcester) was probably going to be appointed to the position of superintendent of state buildings (an area that was within the state administration committee's jurisdiction). If that appointment were to materialize, a new House chair would be selected.

**Investigative Methods**

As the result of summonses voted by the Commission in October 1978, and the decision made in November and early December 1978 on the types of investigations to be undertaken by the Commission and the investigative strategy and methodology to be employed, the Commission's corruption investigations were well under way by the summer of 1979. There were two investigative plans -- one concerned the investigation of the award of contracts to design firms, consultants and suppliers, and the second concerned investigation of the performance of contractors and sub-contractors.

The Commission took as its working hypothesis that corruption involving public officials was most likely to occur at the points where discretion was exercised by a public official, and where substantial sums of money and profits were to be made by private firms who were the beneficiaries of the public official's discretionary decision. In the case of designers -- architects and engineers -- the first point of discretion was the award of the design contract by the public official to the private firm. In contrast, the construction contract was competitively bid. The area of greater discretion by public officials existed in the supervision of the contractor's performance. The contractor who knew he could get away with incorporating inferior materials in the project and cutting corners on his performance because the supervision was lax knew he could bid low and win the contract because he could still make a profit by saving on performance.

The Commission developed investigative programs designed to uncover public corruption involving both designers and contractors at the points described above. Each investigative program involved exhaustive financial auditing of company records to identify instances of cash generation -- the tell tale sign of political corruption.
It is a simplification, but a truism and an operating assumption of the Commission's investigative program, that legitimate businessmen do not conduct their legitimate business affairs in cash. Bribes are not paid in checks which can be traced; they are paid in cash, because the transfer of cash from a businessman to a public official cannot be traced. All the investigator can do is identify the generation of cash, and then attempt to track down, by questioning witnesses, what happened to the cash. Unexplained cash generation in amounts in excess of $500 raised questions in the eyes of Commission investigators and set in motion the interviewing phase of the investigative plan.

The Commission looked for cash generation in the records of the selected businesses engaged in public work because bribes to be paid to a public official by a person seeking business with a public agency are better (from the firm's point of view) taken out of the company's funds as a deduction for tax purposes, than paid out of the personal funds of the company official. As an example, assume a $10,000 bribe is to be paid for a company which pays 50% of its income in taxes by a company official who himself is in the 50% tax bracket; if the $10,000 is generated out of company funds in a manner which can be deducted on company tax returns, the net cost of the bribe is $5,000. If the $10,000 were to be paid out of the personal funds of the officer of the company, it must first be paid to him as income, in which case taxes must be paid on it, and the net cost of the bribe is $15,000.

Investigative teams were established and assigned to the cases selected by the Commission for investigation. Each team was supervised by a senior attorney and included a senior financial auditor, several junior auditors, and one or more investigators whose primary responsibility was to conduct interviews of witnesses on the basis of questions developed during the financial audit by the auditors. The federal grant received in March 1979 provided the funds which were used in part to hire for the short term the initial group of financial auditors. After July 1, 1979, when the state budget was approved, these auditors were transferred to the Commission's state payroll.

The Commission developed a standard audit program designed to uncover instances of cash generation as a prelude to questioning witnesses involved in the cash generation. Examination of records of designers was focused on the time period around which a firm received a contract from a public agency, and was paid its fee on the contract by the public agency. In summary form, the audit program required eight stages of financial analysis:

1. Review profile of contract selected for audit;
2. Target date period for examination of records;
3. Inventory available records (financial);
4. Obtain listing of general ledger accounts;
5. Obtain access to accountants' work papers;
6. Verify receipt of incoming checks from Government agency and verify their classification as income;
7. Review paid checks concurrently with examination of related entries in check disbursements journal;
8. Review and analyze general ledger accounts for selected examination period, as warranted:
   (a) Exchange account or other clearing accounts
   (b) Legal fees
   (c) Loans to officer account
   (d) Inter-company accounts
   (e) Commission expense account
   (f) Accounts re: consultants
   (g) Travel and entertainment expense
   (h) Loans receivable account
   (i) Payroll accounts.

The analysis of payments to consultants provides an example of the extent to which companies would falsify their records to cover up cash generation. The officer of the Company (Tier I), seeking to generate cash, would write a corporate check to either a fictitious party or an existing company which in fact had performed no services and charge it against the company's consultant account. The first level consultant was described by Commission investigators as Tier II. (Others in Tier II were company employees and other recipients of checks directly from the company.) The so-called consultant in turn would write a check to a third party (Tier III), which might or might not be fictitious. The third party might in turn write a check to a fourth party (Tier IV) which would cash it and return the cash to the original payor. To track down the cash generation, Commission auditors had to follow the paper trail through the Tier I company, into the records of the Tier II and Tier III companies until the cash was identified. It was a time consuming process, but as the audit program was executed time and again cash generation was identified, questions were formed for persons involved, and the Commission ultimately developed testimony which led to the discovery of bribes and contributions in return for public work.

The construction investigation program was based on the operating premise that opportunities for corruption involving contractors exist primarily in the post-contract award phase of the contract. These post-contract award opportunities for fraud or corruption are available through additional payments authorized by change orders, through significant restructuring of the contract by means of change orders, and through the general contractor's failure to perform in accordance with the terms of the contract.

The Commission sought to identify instances of collusion between a designer and general contractor. Did the architect's specifications operate to favor any
one contractor or sub-contractor? Did the designer in effect rewrite a portion of his specifications by a change order which (agreed upon prior to bidding by designer and contractor) allowed a contractor to substitute cost-plus work for work which the contractor had estimated at an unrealistically low cost in bidding the job? Did the contractor submit for approval as an "or equal" material the inferior product of a manufacturer chosen at the designer's behest? The Commission sought evidence of collusion between the general contractor, clerk of the works, and the public employees responsible for a particular project. Was the amount of a change order inflated to provide the contractor with funds for making illegal payments? Did a BBC employee hold up approval of payments under the contract or make unreasonable demands at the job site until the contractor offered a bribe? Did a BBC employee or clerk of the works look the other way when supervising construction as a quid-pro-quo for payments from the contractor? Did a BBC employee modify designer's specifications during the design phase to assure that a particular sub-bidder or manufacturer would get the contract?

The Commission sought evidence of fraud by the contractor by short-changing the Commonwealth in the materials or work supplied on a particular job. To find such evidence the Commission developed a program to identify in selected projects parts of the specifications or of change orders which specifically described quantity and composition of materials, and to determine whether these materials or quantity of work were included in the building by the contractor. Materials which do not relate directly to the soundness of the structure, and which are not easily visible, were believed to provide the best prospects. For example, specifications for a correctional facility might require that a six inch thick steel plate be inserted inside exterior walls for security reasons. Whether this was done or not ordinarily would not be detected unless there was an attempted break through that wall, or the facility was remodeled. To identify instances where such fraud could exist, the Commission prepared a questionnaire which was sent to all building superintendents or supervisors of physical plants who are responsible for maintaining the Commonwealth's buildings. The purpose of the questionnaire was to obtain budget information concerning repair and maintenance costs of these facilities, and to obtain an evaluation of each building's failings from the person who has day-to-day contact with the facility and with the people who use it. It was expected that one survey would identify contracts and contractors for further investigation based upon possible fraud in constructing or repairing the building. In addition, the Commission sent technical investigators to over 60 public buildings in the Commonwealth to identify examples of fraudulent performance by contractors.
Initially, six contracts and contractors were designated for investigation based upon a confluence of factors on which the Commission, after a review of several hundred contracts and contractors, determined the potential for corruption was high. All post-1968 financial records of the six contractors were subpoenaed and the investigation focused on the two or three-year time period closest to the dates during which the contract was awarded and performed. The financial audit followed the procedures set forth in the audit program previously prepared for designers.

By the end of the summer of 1979, the Commission had issued over 270 summonses and conducted over 70 private hearings. The investigative program for the life of the Commission was in place. The program broken into separate stages was as follows:
Commission Investigative Program

1. Review of Contracts
   - Computer Analysis
   - Informed Sources

2. Selection of Subjects of Investigation *

3. Analysis of Government Contracts and Payments **

4. Summons Books and Records * **
   (Compliance Hearings)

5. Inventory **

6. Auditing Field Work **
   - a. Interim Audit Report
   - b. Investigative Research
       Preliminary Interviews

7. Discuss Findings - Team: Attorney
   - Auditor
   - Investigator

8. Decisions as to Disposition *

9. Interviews Attorneys and Investigators

10. Additional Audit Work

11. Summons to Individuals *

12. Private Hearings *

13. Continued Interviews and Audit

14. Discuss Findings *

15. Public Hearings *

16. Reference to Law Enforcement Agencies *

17. Final Report to General Court *
Campaign Law and Campaign Finance Reform

Preliminary investigative results yielded evidence that public officials had used contributions to political campaigns as criteria for decisions on awards of state contracts. Therefore the Commissioners authorized preliminary study of the state campaign finance system. Staff legal assistants, working under the direction of Richard Read, conducted research on the history of campaign finance law in Massachusetts. Read met with experts in Washington, D.C. to discuss attempts for reform of the federal system. He submitted a memorandum to the Commissioners on August 1 discussing the Massachusetts system, procedures in other states and in foreign countries, the theory of public finance of campaigns, and the prospects for reform on the state level. The Commissioners held preliminary discussions concerning the feasibility of recommending reform in the area. Since the Commission and staff were consumed with the task of developing other proposals, the members decided to postpone action in the campaign area pending completion of further work in the construction and procurement areas and pending further investigative results.

Over the summer two events occurred which turned the public's attention to the serious problems the Commonwealth faced with its public buildings. On August 9, 1979, State Auditor Thaddeus Buczko reported that repairs to Cape Cod Community College would cost taxpayers at least $1.6 million.

On August 31, UMass Chancellor Henry Koffler closed the UMass Amherst library after an engineering report warned that design deficiencies in the ironwork posed a "catastrophic" threat to life and property. Senator John W. Olver (D-Amherst) called on the Special Commission to investigate the situation. "This should be looked at in the whole context of problems that have developed in the structure and design of buildings all over the Commonwealth," Olver said. "It's not just a UMass problem. Construction work goes through the same process in all state buildings."
The trustees of the University of Massachusetts toured the Amherst Campus on September 5 to inspect structural problems encountered in buildings. They issued a statement on September 4:

We call upon UMass Building Authority and other appropriate state agencies, including the executive office and the Legislature, to take immediate steps to provide the university with the financial resources necessary to remedy the deficient conditions existing in the Amherst buildings.

And further, we direct the university staff to work with the UMass Building Authority and the Attorney General to vigorously press claims against any and all parties responsible for the defects.

With its decision made to file legislative recommendations by the December 5 filing deadline the Commission in late summer turned again to the question of public hearings. Evidence of corruption and mismanagement in the public contracting system had been developed, but the major cases were often only in the development stages after only few months of investigation with staff at full strength. Moreover, if the Commission were to file legislation it had to devote most of the fall to the process of developing the outline of the legislation, and drafting it. The Commission therefore made the decision to hold public hearings on systems issues with the view of preparing its legislative recommendations by December 5, and to postpone public corruption hearings until after the legislation had been prepared. During the fall of 1979, when the intensive period of Commission work on the legislation was under way, however, the Commission continued its corruption investigations, following the investigative
program developed earlier. Between September and December 1979, another 40 private hearings were conducted by the Commission.

In early November, the Commission again discussed legislative strategy with an emphasis on the immediate decisions at hand having to do with filing. The Commission recognized that the ideal route would be legislative sponsorship. Sponsorship however, meant that the Commission's recommendations would be identified with names of individual legislators, thus creating the possible appearance of partisanship or factional political alliances by the Commission. It was decided that Commission Chairman Ward would seek a meeting with House Speaker McGee to agree on the best approach. The Commission also determined in early November to file as few bills as possible.

William Masiello was granted federal immunity at the request of U.S. Attorney Edward Harrington and began testifying before a federal grand jury on November 20.

Quoted in a November 25 Boston Herald American article, Ward said he personally favored a broad interpretation of the Commission's role which would allow it to address legislative questions beyond the area of construction. Shelly Cohen reported:

The Commission overall, however, is expected to confine its proposals to tinkering with the existing system for building contracts rather than address the larger issue of the "Climate of Corruption" referred to in an earlier probe. The Commission members have long been split over how far to go in their legislative attempts to reform the system, which has bred such scandals as the McKee-Berger-Mansueto contract which sent two state senators to federal prison...

The legislative package is due to be filed by Dec. 5, but Ward indicated the bill as presented might be only an outline of the direction the commission wants to go in, rather than a complete detailed bill....

"We've been pushing for controls on lobbying in the executive branch, public financing (of elections) and civil service reform," said Jay Hedlund, executive director of Massachusetts Common Cause. "As time goes on however, we've seen less and less interest in those things," he added. "My best guess is they won't recommend legislation in that." "My feeling is if they don't address the environment in which decisions are made, there will still be intense pressure to destroy it." Hedlund said.

The Filing

Beginning in September the Commission held a series of public hearings which served the function of further informing it about the operations and weaknesses of the present system, as well as establishing a formal record. Fifty-three witnesses testified for over 35 hours during nine public sessions before the Commissioners beginning September 6. Transcribed testimony covering 1,934 pages dealt with the subjects of planning and programming, designer selection and design review, contractor selection, construction oversight, fiscal controls, the operations of the BBC and the DCA, mechanisms for preventing and detecting fraud and corruption, campaign finance laws, and the views of elected officials,
industry, labor, and the general public.

Commission staff began meetings at this time with staff of the State Administration Committee in the hope of benefiting from their recommendations while at the same time apprising them of the Commission's thinking. The committee assigned staff members Carolyn Kuklinski and Peg Ireland as liaison with Commission staff. The benefit of these meetings for both the Commission and the Committee was diminished subsequently when the Committee gave neither Ireland nor Kuklinski leading staff roles during subsequent deliberations on the legislation.

Commission staff distilled the findings and recommendations resulting from the various resource groups, hearings and other research efforts, into a series of policy options for the Commission. The Commission held a series of meetings in October to discuss these options and to narrow them down. Commission staff members Bockian, Beeferman, Nancy Dolberg, Jane Alper, Terry Mond, and a group of work-study students then prepared draft legislation for the Commission's consideration which included alternative drafts on those areas which Commissioners chose to hold for further discussion. While staff completed and refined these drafts during November, the Commission made public a position paper describing the basic content of what would become its initial reform recommendations. In November, the Commission held a meeting to which representatives of government, industry and the general public were invited to give their reactions to this position paper. With the benefit of these reactions, the Commissioners concluded their discussions. After an all day meeting, they adopted a series of specific legislative recommendations.

The week before Thanksgiving 1979, Ward and McGee met. The result of that meeting was the Speaker's decision to sponsor the legislation. The reasoning behind that decision on the part of both parties was that such sponsorship would be the best way to carry out the intent of the Commission's Resolve, that is, to automatically put the Commission's recommendations before the legislature. At the same time, the Speaker's sponsorship would prevent what he and Joseph Lawless termed, "the politicization" of the issue or the appearance that the Commission had sought other sponsors because of a rift with the Leadership. This agreement depended upon Senate President William Bulger likewise agreeing to sponsorship, which he subsequently did. The Commission received requests from other legislators to cosponsor its bills but referred these requests to the House Speaker who declined them. The only drawback that was perceived to this prestigious sponsorship was the possibility that the sponsorship was based more on procedure than the substance of the legislation and that the sponsors might ultimately not actively support the bills. A bill without an active supporter is not likely to fare well, and it was equally unlikely that legislators other than
sponsors would work hard for the passage of legislation that would not bear their names. The basis on this concern proved to be well founded but the Commission's supporters and legislators were not deterred by the absence of their names on the legislation.

House Speaker McGee and Senate President Bulger filed legislation on December 5 containing recommendations of the Commission. The legislation was H.5619, "An Act providing for the establishment of Inspector General," H.5620, "An Act to improve the system of public construction in the Commonwealth," H.5567, "An Act creating civil and criminal and fraudulent acts affecting the Commonwealth; commercial bribery." The construction reform bill and the Inspector General bill were both assigned to the State Administration Committee for their consideration. The commercial bribery bill was assigned to the Judiciary Committee. The only surprise in this was that the Inspector General bill was not assigned to the Judiciary Committee, where law enforcement legislation would ordinarily go. State Administration dealt only with construction procurement and the bill concerned all state procurements. It was not clear if this reflected a political decision, a misunderstanding of the scope of the Inspector General bill, or if this assignment foreshadowed subsequent events.

The Legislature reconvened on January 2, 1980, following their two month recess, to begin consideration of nearly 8,500 bills filed by the deadline.

Shelly Cohen reported in the January 16 Boston Herald that the Commission was ...

...now sending state investigators across country tracking down the original actors in a drama that has yet to see its final curtain.

Investigators from the Special Commission Concerning State and County Buildings have been tracing the principals in what has become known at the MBM (Mckee-Berger-Mansueto) scandal to Houston, Detroit, West Palm Beach, Philadelphia, Louisiana and New York....

The same investigators have already received permission to travel to Puerto Rico, Great Britain and Switzerland in connection with the probe, according to state records.

The article featured further details of places visited as well as speculation concerning witnesses contacted. Since Cohen had evidently obtained the information from travel records submitted by the Commission to the Comptroller's office, the Comptroller agreed that the Commission would submit travel vouchers thereafter by amount only.

Committee Consideration

On January 20 McGee named Representative Angelo Marotta (D-Medford) the new House chairman of the State Administration Committee. Senator Sharon Pollard (D-Lowell) continued as Senate Chairwoman. Of the 15 committee members, six were
Senators and nine were House members. Committee members frequently follow the lead of their respective chairs on matters of importance to the Leadership. But because Representative Marotta did not become House Chairman until this date, the Commission had been unable to involve him earlier in any discussions or deliberations. The Commission had been in closer contact with Senator Pollard through Committee staff. In fact Senator Pollard had arranged a briefing session for the entire Committee staff and those members who chose to attend for January 21. The new House chairman was not present, having come on the job 24 hours before. The chief of staff of the committee was a former state representative who had served the committee for many years.

The Commission faced a challenge to its continuation and very existence in late January when it sought enforcement of a summons for documents of former Governor Endicott Peabody. Superior Court Judge Vincent Brogna held in a January 24 decision that the December filing of the legislation fulfilled the principal purpose for which the Commission was created and therefore signified termination of the panel's investigative powers. With remarkable speed the Supreme Judicial Court of the Commonwealth heard the expedited appeal of the case, *Ward et al. v. Peabody*. On February 14, the Supreme Judicial Court filed an order upholding the continuation of the Commission's work and ruling that the summons to Peabody should be enforced according to its terms, except for certain items.

In an unrelated development, the next day on February 15, the Attorney General's office filed suit against the estate of Edward Durrell Stone, the architect who designed the UMass-Amherst library and where contract was awarded during the Peabody administration. Bellotti's office initiated the litigation against the estate of the architect and his firm, Edward Durrell Stone & Associates, under the direction of Assistant Attorney General Mitchell Sikora who headed the office's new public construction unit. Meanwhile, 200,000 books had been removed from the library through an underground tunnel, so that they would continue to be available at another facility to students at UMass.
Hay bales protect underground access tunnel from possible projectiles falling from UMass Library

Commissioners and staff held numerous meetings with individual State Administration Committee members during January and February to explain the legislation and ask for their support. Only Senator Francis Doris was willing to commit himself to a favorable position at this time.

Further Campaign Research

In early 1980, the Commissioners gave further consideration to the possibility of making recommendations for campaign reform. The members reviewed a study conducted by Read of costs of state legislative campaigns, and discussed staff recommendation that they advocate proper funding of the state public finance program with expansion of the system to include House and Senate candidates. The Commission reviewed public finance proposals advanced in other states and they considered the idea in light of the evidence generated by their investigations. Some members voiced misgivings concerning the Commission's expertise and available staff resources, saying that a major proposal in this area would be beyond the Commission's means, as well as providing a possible political liability to the existing legislative package. However, because of the compelling investigative evidence in the area, the Commission resolved at a meeting on January 16 to address the subject of political campaigns in some fashion, either through submission of legislation or through its final report to the Legislature. Staff, under Read's direction, assembled a resource group of Massachusetts elections law experts, and he, Beeferman and Alper began weekly meetings with the group. The Commissioners asked the volunteer group to prepare
a consensus proposal for comprehensive reform of the campaign system to be drafted in the form of legislation.*

Bockian held discussions with Greg Jarbow of Senator Pollard's staff in early February concerning the date of the Committee's formal hearing on the construction legislation. Bockian initially requested the earliest possible hearing date and Jarbow assured him that everything possible would be done to comply with that request. The Commission conducted further discussions after filing the legislation to determine whether its recommendations could be refined and improved. Meetings were held and informal negotiations conducted with representatives of the administration, industry and individual legislators. Secretary Hanley presented the administration's views regarding the proposed legislation at a Commission meeting on January 25. Hanley asserted much of what the Commission proposed could be accomplished administratively at lesser cost. Deputy Commissioner Vaughn, Budget Director McClain, and BBC Director Stuart Lesser accompanied Hanley to the meeting. Hanley told the Commission that his staff had prepared figures indicating that the Commission's proposals would require from 300 to 400 additional A&F employees. This additional staffing, Hanley said, was out of the question. The Commission's reaction to Hanley's statement was shock and dismay; dismay at his attitude toward legislative reform and shock at the personnel figure he stated. In a subsequent letter to the Secretary, Ward characterized Hanley's personnel estimate as "off the wall."

As a result of a meeting between Bockian and Pollard, Commission staff recommended that the Commission amend the proposal regarding filed sub-bidding in a way that would make it less objectionable to subcontractors. The Commission agreed with this proposal, as the sub-bid issue appeared to be the most controversial section of the construction reform bill. The Commission continued to adopt numerous revisions to its own construction reform legislation in an attempt to streamline the proposed administrative structure that was being proposed while accommodating some of the concerns expressed by industry representatives. When Jarbow informed Bockian in early February that a hearing date as early as February 20 might be possible, Bockian suggested during a phone

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conversation that the Commission would not have prepared the revisions by that
time. He emphasized that these revisions would not affect any basic proposals
but nevertheless would be extensive. Subsequently, Jarbow informed Bockian that
the hearing would not be held on February 20. He said he could not predict when
it would be scheduled because the House Ways & Means Committee had reserved the
Gardner Auditorium in the State House (where the hearing was to be held) for
several weeks in February and March for budget hearings. By the end of February,
the Committee scheduled a hearing on both the construction reform bill and the
Inspector General bill for March 19.

At a Commission meeting on March 5, the members decided to begin their public
corruption hearings on March 20, and adopted the following Resolve:

That the Staff of the Special Commission Concerning State
and County Buildings shall prepare for public hearings to
commence on March 20, 1980. These hearings will be held
pursuant to Chapter 5 of the Resolves of 1978, as amended by
Chapter 11 of the Resolves of 1979, as part of the Commission's
ongoing investigation and study. In accordance with the Resolve
establishing the Commission, the hearings will present
information about the existence and extent of corrupt practices
and maladministration concerning construction related contracts
awarded no earlier than January 1, 1968; the existence of
conditions which tend or may tend to permit the occurrence of
such practices and maladministration; and the existence of
limitations on the powers and functions of those charged with
the duty of approving, supervising or overseeing these
contracts. The Commission intends that this information aid the
General Court in determinations concerning the enactment of
proposed legislation or administrative reform.

The Administration Committee Hearing and the Debate Whether to Debate

In preparation for the March 19 public hearing, Bockian met with Pollard to
develop a format. Ordinarily at public hearings of the Legislature, after
elected officials are heard by the committee, proponents of the legislation are
offered an opportunity to present their case. When they are done, opponents are
offered a similar opportunity. Pollard asserted that the realities of media
coverage dictated that witnesses who spoke after the first hour would not be
afforded much public attention because the media would not remain in attendance beyond
that time; when the media left, most legislators would leave as well. Pollard
therefore insisted the hearing be structured with a morning session and an
afternoon session and that the morning be divided equally between the Commission
and opponents of the Commission's legislation. There was little the Commission
could do but agree to this structure.

The Commission presented a revised version of the construction reform bill
and made it public on March 12. On March 19, Chairman Ward addressed the public
hearing.

Senator Pollard, Representative Marotta, distinguished members
of the Joint Committee on State Administration:
I am John William Ward, Chairman of the Special Commission Concerning State and County Buildings. The two bills before you today, H. 5620 and H. 5619, were jointly filed by the Speaker of the House, Mr. McGee, and the President of the Senate, Mr. Bulger, on behalf of the Commission. The legislative proposals the bills embody are the work of the Special Commission.

The Special Commission appears before you in the same spirit which led the Speaker of the House and the President of the Senate to sponsor our legislation. The Commission is intensely aware it has put before you a detailed and far-reaching re-organization of the way in which the Commonwealth administers its important work in the construction of capital facilities. The Commission shares with the Speaker and the President the conviction that the need to impose order and efficiency in a crucial area of the state's business deserves your full and careful consideration. We thank you for your invitation; we are before you today to offer whatever comment and advice we may to assist you in your important deliberations.

Before I make a general comment, may I say two things which may be helpful to the members of the Joint Committee on State Administration, and to other present at this hearing, as we proceed.

First, H. 5620 as printed by the House was filed on December 5. Since then, in consultation with your Committee and its staff, with members of the Executive Office (especially Secretary Hanley and his staff in Administration and Finance), with other legislators, and with many interested private parties in the industry, so to speak, as well as by its own further analysis and deliberations, the Special Commission has revised its initial submission of H. 5620. Copies of H. 5620, as revised, are available to you and the Commission has distributed over three hundred copies to interested parties. The guiding principles, the major concepts, remain the same; the revisions represent an attempt to make the administration more simple and more flexible, to reduce the number of reports to those which are essential so as not to impose too burdensome a flow of information, and to leave the cities and towns the freedom to choose, rather than to require, how they participate in certain procedures. In effect, the legislative purpose remains the same: the means to reach it have been amended somewhat to make the document more effective. I do not think confusion will result because, as I say, the broad, general issues are the same and I suspect your questions would be the same whichever document you use, but my hope is that you will put aside H. 5620, as printed, and refer to H. 5620, as amended.

Second, from the beginning, now almost two years ago, the Commission has worked together as a group, a single body, each member lending his or her special competence to the realization of a general and shared consensus. It has been a truly remarkable experience. So, in the fashion of our work together, as Chairman, I will begin with a general comment; then Commissioner Frances Burke, a professor in public management, will define the essential principles of our legislation, and Jonathan Bockian, a lawyer from our legislative staff, will discuss how those principles are embodied in the particular details of our proposals; then, Commissioner Daniel Mahoney, a lawyer, a member of the firm of Palmer and Dodge, will comment on House Bill 5619 and the establishment of an office of Inspector-General; Commissioner Walter J. McCarthy, a professor of Civil Engineering at Southeastern Mass. University, will conclude the Commission's presentation with illustrated remarks on the imperative need for change in the way state and county buildings are constructed.

So, here we are. When the General Court created the Special Commission, it gave it two mandates: to investigate corruption and maladministration in the construction of state and county buildings. The legislature could, of course, have asked us to do one or the other, and not both tasks. That is, the legislature could have said, ignore the past and simply study the administration of contracts. Or, it could have said, investigate corruption only and suggest ways to prevent it. But the mandate given the Commission includes both. Today, we address the system, if you will, the way in which the
Commonwealth administers the massive amounts of capital it spends on its plant, on schools, hospitals, housing for the elderly, jails, courthouses, buildings which impinge directly on the lives of most citizens and indirectly on all citizens through the taxes which pay for them.

Tomorrow, the Commission begins the public hearings which grow out of its investigations into corrupt practices. We have found corruption. The General Court has mandated the Commission to present its findings through public hearings. We will, both to inform the Legislature during its deliberations on the need for reform, and to assure the public that it is possible to conduct a responsible and impartial investigation of malfeasance in public life. The Commission has no appetite for scandal. Our hearings are not designed to be exposure for exposure's sake. We mean to present facts and to show cause why legislative reform in the award of contracts is necessary.

In a general sense, the Commission's two mandates are the opposite sides of a single coin; that is, the way the state does its business allows for manipulation, ranging from simple favoritism to outright corruption, and corrupt practices argue the need for change. But for caution's sake, let me stress that there is no one-to-one correlation between the Commission's particular recommendations for change in the system and particular acts of wrong-doing. To put it another way, once the Commission undertook the task of reviewing the need for change in the administration of state and county building contracts, that enterprise became an analysis of management which proceeded on its own.

There is an old country saying, "If it ain't busted, don't fix it." Some will argue against the breadth of our proposals by saying they are too sweeping and suggest, instead, that we improve here and there what we now do. But it is not that the Commonwealth has no system at all. It is not a matter of adjusting this or that detail. It is, much more basically, a matter of putting in place a comprehensive system of administration which defines responsibility and locates it clearly so the Commonwealth may with assurance say to the public that it does its business well.

When I say there is no system, let me be more particular:

- There is no single responsibility for overall planning which would determine which projects have priority and which projects should be built.

EXAMPLE: In Worcester County, five county courthouses were built within a twenty-mile radius of each other, at a cost of a million dollars each.

- When an individual project is approved, there is no prior analysis of the needs it must meet to determine whether it should be built at all.

EXAMPLE: At Concord State Prison, a designer was commissioned in the early 1960s. The designer was paid, but it was then decided the prison was not needed. A few years later, the same designer was paid for a second design, and once more the plans were shelved. A few years ago, the same designer prepared a third set of plans and was paid for the third time. Today, there seems yet to be no intention to build that project. The state has paid $133,000 to a single designer for three sets of plans for a single building, and still does not know whether it will build it. The example is no way unique: since 1968, the state has paid more than $20 millions of dollars for design plans for buildings which have never been built.

- When projects are built, there is no adequate supervision to see they are built well in a timely fashion at reasonable cost.

EXAMPLE: At the worst extreme is a project which cannot be used at all: the power plant at the University of Massachusetts (Amherst) built at a cost of $11 million has
never worked. But in a less dramatic way the Commonwealth needlessly spends millions of dollars in delays and cost overruns. On average, construction takes 170 percent of the time estimated. In the original contract. Since 1968, over $4 billions of dollars were authorized for buildings by state agencies. One need only read the daily paper on interest rates to understand what almost doubling the time of construction does to costs.

One could go on and on and give example and example. Instead, I would challenge the members of the Joint Committee on State Administration to do two simple things, especially since the administration of the state is your essential business. First, try to find out how many contracts for buildings have been awarded by state agencies in the last ten years. With a fine professional staff, the Commission has been at work for more than a year and a half and is still not confident it knows all the contracts it was charged to investigate. Second, try to find out how many buildings the state now owns or leases. There is no central registry of property which will allow you to do that.

The simple essentials of good information necessary for good administration are not be had in this great state. It is not possible quickly to discover whether new buildings are needed at all. It is not possible to plan whether money should be spent on this rather than that. There is no statement of purpose or need to allow for good design. There is no supervision from beginning to end to insure quality and cost controls. There is no evaluation afterward to see how well a project was done. There is no provision for maintenance and repairs to keep the state's huge plant in shape.

In sum, there is no system of administration for the construction of state and county buildings. We are not asking you to reform a system. We are asking you to create a system. There are bits and pieces, good ideas and good practices here and there, but there is no coherent planning and supervision and evaluation which deserve the name of administration.

There is a parable in the Bible that to bring forth lifegiving water, you must strike the rock hard. Believe me, please, when I say that to criticize the past only has one purpose, to improve the future. The proposed legislation you have before you represents hard work and much thought, but that is just personal. What counts is the quality of the legislation itself. There may be differences of judgment on this or that particular, but the Commission believes deeply its legislative recommendations are sound and right. It is in that general spirit of cooperation that the Commissioners and our staff stand ready to work with your committee and the legislature to create a system for the construction of buildings of which this state can be proud.

Thank you greatly for the chance to appear before you today.

Commissioners Burke and McCarthy addressed the Committee as well, as did staff attorney Bockian.

The Commission presentation attempted to cover all major points in the 200 page construction reform bill and the Inspector General bill. The Inspector General legislation had become the most publicly discussed and controversial measure proposed by the Commission. House Speaker McGee had made public in March his opposition to the Inspector General legislation, based on the extensive powers and broad jurisdiction proposed. The opposition at the public hearing centered not on the Inspector General legislation, but also on the Commission's
proposal to institute a bid listing system for the selection of subcontractors. The opponents led off with union representatives alleging that the abolition of filed subbidding would work to the detriment of their members. It was only after the case against any change in the subcontractor selection system was made to appear as a largely pro or anti union question that the subcontractors stated their case. The supporters of the Commission's legislation included high political officers and construction and procurement experts. Elected officials who offered testimony in support of the creation of the Inspector General and other sections of the bills were U.S. Attorney Harrington, Bristol County District Attorney Ronald A. Pina, Lieutenant Governor Thomas P. O'Neill, Jr., Auditor Buczko, Senator Atkins, Representatives Johnston, Card, and Cohen and State Secretary Michael Connolly. The Commission's supporters included all the constitutional officers except the Governor, who chose neither to comment on the legislation nor to send any representative of the administration to make recommendations. Others offering testimony supporting the Commission were Stephen Finnegan from the Massachusetts Association of School Committees; Lowell Erikson of the Massachusetts State Association of Architects; John Dacey of the Design Professionals Government Affairs Council; Peter Laughlin of the Associated General Contractors; Stephen P. Karll of the Associated Builders and Contractors; Boston Housing Authority Receiver Lewis H. Spence; Massachusetts Commission Against Discrimination member Sam Stonefield; Felix Sanchez of the State Office of Minority Business Affairs; Frederick Putnam, Director of Development of the Cambridge Housing Authority; former UMass Building Authority member Evan Johnston; former Governor's Advisory Commission on Corrections Chairman Robert Palmer; Dean of the MIT School of Architecture and Planning and former DSB Chairman William Porter; Professor Urs Gauchat of the Harvard School of Design; Professor Raymond Levitt of the MIT Department of Civil Engineering; Mayer Spivack, Director of the Harvard Medical School Unit of Environmental Analysis and Design at the Laboratory of Community Psychiatry; John Kennedy, Walsh Brothers, Inc. Construction Manager; Ed Gilbert, Arthur D. Little, Inc. Senior Project Manager; President of the New England Section of the American Society of Cost Engineers John T. Kenny; Polly Jackson of the League of Women Voters: Elizabeth Fay of Common Cause; Robert MacKay of the Citizens Housing and Planning Association; Douglas Phelps of MassPIRG; Richard Durkin of the Massachusetts Teachers Association; and Suzanne Tompkins of the Massachusetts Taxpayers Foundation. The hearing stretched into the early evening hours with witnesses supporting the Commission resuming testimony about 3 p.m.
The Public Hearings

The Commission opened its series of public corruption hearings in the State House in room 436 on Thursday, March 21.

The first two sessions were designed to describe the system of state construction and design, and to outline the first case example involving the Worcester architectural design firm of Masiello & Associates. Staff Attorney Bockian appeared as a witness in the first hearing on March 21, and through questioning by Executive Director Thomas E. Dwyer gave a general explanation of the theory and practice of award of contracts. The Commission stated that the Masiello firm would be used as a case study of how design contracts had been awarded in Massachusetts. Supporting documents showed that the Masiello firm received over $5.4 million in fees to design 132 buildings worth $130.8 million. Work on $49 million worth of the projects was never completed; nearly $1 million in fees was paid for projects never begun.

Staff Investigator Mark S. Demorest testified the next day and presented the Commission's evidence concerning the scope of public work obtained by the Masiello firm and the role played by the Senate Ways and Means Committee in providing appropriations for the firm's projects and in increasing appropriations for the firm's projects at the Massachusetts Correctional Institution at Concord. Demorest told the Commission that the Masiello firm's work at MCI-Concord included all 37 design contracts, and he indicated that the firm continued to receive work even though facilities they designed were plainly inadequate. Using a loophole that allowed a firm to acquire "continued or extended service contracts" by virtue of previous work on a facility, the Masiellos were able to obtain numerous contracts bypassing the Designer Selection Board (DSB). Though the company had acquired much state work despite its poor record before the DSB, which selected it only two times out of 65 applications,
Demorest said that the firm had subsisted on state work, and said that research showed that 95.4 percent of the company's man hours were devoted to public design projects. The company's contracts had included 39 for the Department of Corrections, 23 for local housing authorities, 20 for the Department of Mental Health, 10 for agencies in the surrounding Worcester County area, 8 for the Department of Public Health, and 7 for the state college system.

On March 25, 1980, Frank R. Masiello took the witness stand before the Commission as the first non-staff witness. Under questioning by Associate Counsel Michael G. Tracy, Masiello testified that the Los Angeles architectural firm, Daniel, Mann, Johnson & Mendenhall (DMJM), agreed to pay a $22,000 "political contribution," to a fundraiser for former Governor John A. Volpe in return for the design contract for the multi-million dollar Holyoke Community College. Masiello said that Albert P. "Toots" Manzi had originally specified that a payment in the neighborhood of $70,000 to $80,000 -- ten percent of the contract's estimated worth to the design firm -- would be necessary to secure the design contract. Manzi agreed finally to $22,000 but specified that it had to be in cash. Then A&F Commissioner Anthony DeFalco awarded the contract to DMJM on July 9, 1968 and Masiello & Associates Architects Inc. was listed as the project consultant.

"He (Manzi) virtually assured me that if they did not make a contribution they would not be selected by A & F," said Masiello. He testified that he had explained to DMJM Vice President Stanley Smith that the term "political contribution" was a euphemism for "a payment of money disguised as a political contribution." In response to questioning by the Commission Masiello said it would be correct to describe this payment as a bribe.

On his second day of public testimony on March 26, Frank Masiello described the often painful situation in which he found himself acting as the middle man between DMJM and Manzi. During the protracted process, Masiello had been hounded by telephone calls from Manzi, and in the end he moved to Florida. He described the circumstances of the cash payments, including an occasion in which he and DMJM official Barry Mountain delivered a briefcase crammed with $6,000 in five dollar bills to Manzi at Manzi's Worcester grocery store. Masiello's testimony served as the first dramatic indication of a system in which amounts of political contributions were established as a main criteria for selection of firms to undertake state work.

Commissioner Forbes asked Masiello, "Would you say that your firm was unique in the Commonwealth in its participation in so-called political contributions?" Masiello: "No, I would say it was not unique."

Forbes: "In fact, you said it was impossible or nearly so to obtain state
and county work without so-called political contributions?" Masiello: "On a state level, I would say it was virtually impossible. On a county level and city level it depended on the area in which the firm had its practice. I would say it was a general rule throughout the state ... I shouldn't say that all state contracts were given out on the basis of contributions. On numerous occasions, we did receive contracts in which a political contribution was a part of the consideration." A Boston public relations firm retained by DMJM denied Masiello's charges, saying that the firm's selection was based only on merit and reputation. The statement said the company had decided not to participate in the hearings because of the Commission's refusal to grant the firm "constitutional procedural rights." This statement noted that the Commission's subpoena power did not extend beyond Massachusetts. It also pointed out that DMJM's design of the Community College had won several awards and a 1974 compliment from Boston Globe architecture critic Robert Campbell, who called it "one of the best large buildings recently done in New England."

In testimony on March 27, Frank Masiello described how he gave money to the campaigns of both Governors Volpe and Peabody as insurance in order to continue to secure contracts and so as to extend his existing contracts. In total, Masiello said, he gave approximately $20,000 to fundraiser Manzi during the Volpe administration and to fundraiser Sherwood Tarlow during the Peabody administration. He outlined the fundraising procedures of the Peabody administration in detail, describing a three-room suite at the old Statler Hilton Hotel maintained by Peabody where businessmen interested in state contracts lined up in the parlor waiting to move into the bedroom to meet the Governor and express their interest in contributing and winning contracts. In a third room, according to Masiello, pledges of contributions were recorded. Masiello said that he had helped Tarlow arrange the sessions and that he had invited other architects and engineers to attend.

Masiello said the demands for cash became so intense he decided to sell his home and leave Massachusetts for Florida, finally giving Manzi $10,000 in cash as partial payment for one contract to end the harrassment. Masiello described his reactions to the repeated requests for contributions, recounting his comment to Manzi: "Toots, I am getting sick and tired of this whole darn thing. Every time a new administration comes in it is the same old thing. They're doing you a favor of continuing you on a contract that I have already paid my dues on: I'm getting sick and tired of being taxed two or three times for the same project I received in other administrations." Again Masiello emphasized that political contributions became an integral part of securing contracts.
Commissioner Mahoney asked Masiello if he would tell the Commissioners his reasons for making contributions at that time. A. Well, as simply as I can put it, it is insurance. Q. Well, briefly, if you can expand on what you mean by that. A. Well, I mean I heard from other architects that one of the best ways to insure your continuation on existing contracts ... was to make political contributions when you were asked by the administration in office, and it seemed to work very well so I continued to make these contributions when I was asked.

**Campaign Bill Drafting Begins**

In a break from public hearings on March 28, the Commission reviewed the consensus of the Campaign Resource group and discussed the advisability of recommending public finance legislation. While some members continued to express their doubts concerning the advisability of advancing yet another major proposal before gaining passage of bills already filed, the Commission authorized staff to begin drafting campaign reform legislation. The panel postponed the decision whether to file a bill in the current session or to submit drafted legislation as part of the final report pending review of the proposed bill.

Resuming his testimony on April 1, Frank Masiello said that his firm paid former Senator Kelly $500 per month plus Kelly's personal expenses after Kelly threatened to cancel the Masiello contracts using his role as Chairman of the Senate Ways & Means Committee. Masiello testified that the payments were made to Kelly's accounting firm under the guise of payments for accounting services. They eventually totalled $9,500, according to Masiello, but the firm was "not in fact really providing the accounting services." Masiello said in addition that hundreds of dollars went to Kelly for his own travel, entertainment, and membership expenses in the Boston and Worcester YMCA's from January 1971 to June 1972.

In further testimony on April 1, Masiello said that he gave approximately $6,000 to three Worcester County Commissioners for a contract to design a County Courthouse in Milford. He testified in addition that he agreed to pay $3,000 for a design contract for the Uxbridge Courthouse and $6,000 for design work at the Worcester County Jail and House of Correction in West Boylston. Masiello testified that he agreed to pay $3,500 to win a contract from the Shrewsbury Housing Authority for design of 100 units of elderly housing. According to Masiello, he had been approached twice on behalf of members of two other housing authorities seeking payment in return for other contracts, but he declined to participate in both instances. In each case, Masiello said that officials had described payments as political contributions. But in a meeting with Michael Trotto, Shrewsbury Housing Authority Chairman, in 1966, Masiello
said he had heard "an expression I never heard at this time, it wasn't a
political contribution, it was a finders fee. He thought he was entitled to a
fee ... because it was an unpaid position.... I explained to him if he felt like
that, why did he sit on the board at all.... He felt ... a certain amount of
civic pride." Masiello testified that "Mr. Trotto told me his position was
unpaid and he was rendering a great service to the town. He said if people like
him didn't take a civic interest there would be no housing for the elderly." In
other testimony on April 1, Masiello told the Commission that his brother,
William Masiello, raised "substantial" campaign funds for Kevin White's 1970
gubernatorial campaign. He said that his firm later received several lucrative
design contracts from the White administration. Masiello said that his brother
had engaged in "diligently selling tickets" for a White fundraising dinner.
He testified that his brother was introduced to Boston Deputy Mayor Robert Vey
who had said that he would consider the firm for Suffolk County work.

In testimony offered on April 2 to corroborate testimony by Frank Masiello,
Paul Daoust, former partner in Kelly's accounting firm, testified that he did no
work on the Masiello firm account. A second witness, Matteo Girardi, who worked
as an accountant with the Kelly firm, said that he did only about 60 hours of
work for the Masiellos in return for $9,500 paid to the firm. He said his only
"work product" had consisted of a two-page proposed cost estimate form.
Chief Counsel Littlefield asked Girardi if his services were worth $9,500.
The witness replied: "Not to my knowledge." Another accountant, Herbert
Cohan, recounted that his accounting firm was suspended from work by the Masiello
firm during the time Kelly and his firm were on retainer from 1971 and 1972. He
said that the Masiello records were in disarray when he resumed their work in
late 1972, to the extent that William Masiello had to pay Cohan's firm $40,500 for
accounting work to have the Masiello books corrected and updated.

Administration Committee Work on Legislation

With the State Administration Committee public hearing completed on March 19,
the Commissioners concentrated again on individual meetings with State
Administration Committee members. In general, these meetings revealed that
almost all Committee members had not read the legislation in either its revised
or original form. Most members, however, perceived the Inspector General's
office and the subcontractor selection system to be the only controversial
matters involved. Commission staff felt at this time that legislators were
withholding judgment pending further developments in the Commission's public
investigative hearings as well as Committee deliberations and indications on the
position of the legislative Leadership.
Commission Chairman Ward and Associate Counsel Bockian met with Representative Marotta and Senator Pollard in Marotta's office on April 7 in an attempt to determine how expeditiously and in what form the State Administration Committee would deal with the Commission's proposals. Ward presented the Commission's concern that the proposals not be divided up into several smaller bills and that Committee action be thoughtful but expeditious in light of the probable early proration of the Legislature. The speed with which the House Ways & Means Committee was considering the operating budget gave every indication that speculation of early proration had been accurate. Ward again offered the State Administration chairpeople the services of the Commission staff to answer all questions about the legislation and the research conducted. Senator Pollard raised the question of the cost of what the Commission was proposing, regarding the Inspector General in particular. She indicated that she was not necessarily concerned that the costs might outweigh the benefits, but she noted the question would certainly arise.

Marotta stated that he found the legislation quite complex and proceeded to ask a series of questions about it. Although his questions indicated a familiarity with many details of both the Inspector General bill and construction reform bill, Marotta insisted that his committee needed more time as well as outside assistance to study the legislation. He indicated that he had in mind retaining an outside counsel to advise the Committee on the legislation, and he said he had asked McGee for such counsel. Ward questioned both Marotta and Pollard concerning the possible date by which the committee would report out the legislation. While Pollard suggested the Committee ought to be able to make a report within a week of the normal reporting deadline of April 23, Marotta refused to give any indication of a date by which the Committee would make its report. Under Joint Rule 10 of the Legislature, all committees other than Ways and Means were required to report out legislation to the floor by April 23 with a recommendation for action. Committees could seek an extension of that deadline, but it required a motion on the floor of both chambers of the Legislature to do so. Some representatives had complained in the press of the pressure placed on them by the public hearings. Quoted in the Herald, Representative Marotta said, "Time is ramming this through my committee. If there's pressure on me to come out with just anything, I won't do it. I'll walk away from it." Representative Johnston observed, "the leadership or the governor may attempt to croak the reforms. It will be a huge issue before the Legislature. The bill has to be enacted while there is public pressure, while the hearings are on, or it will never happen."

Polly Jackson of the League of Women Voters, a staunch supporter of the
Commission's legislation, met with Senator Pollard on April 9. The Senator stated in that meeting that while she had substantial problems with the Commission's subbidding proposal, she expected that the Committee would be able to report both pieces of legislation by the April 23 deadline. Jackson reported this to members of the Commission staff, who by this time had concluded that a House and Senate rift had developed on procedure and tactics. The outcome of this contest between the two chairpeople would be dictated in large part by the relative number of Senators and Representative on the committee. If each chairperson were to keep the committee members from their own chamber in line, the House chairman would win any showdown. In order for the Senate side to win the confrontation it would be necessary for three House members to defect to the Senate side, provided all Senators were present and voting with the Senate chair. The absence of any House members would aid the Senate side but Senators are traditionally less disciplined in committee and have poorer attendance records because they have so many committee to sit on.

DiCarlo Appears in Public Hearing

Former Senator Joseph J.C. DiCarlo admitted in public before the Commission for the first time, at the hearing on April 7, that he did receive money from MBM. Testifying under a grant of immunity, DiCarlo said, "I admit receiving $11,500: that money never went into my pocket ... I used it as expenses for the conduct of my political office and political organization. I didn't then nor do I now consider it to have been dishonest." DiCarlo also admitted that when he was Chairman of the legislative committee investigating MBM's performance in 1971, he agreed to revise the report to favor MBM. He denied, however, that the alterations were unethical. He said they were "an honest portrayal of the situation." In a dramatic statement delivered before a crowded hearing room, DiCarlo said "when a man serves in public office, especially in my district, the demands made and fully expected are overwhelming.... They are financial demands. Singly, they are thought to be insignificant; cumulatively, they are overwhelming." He said that the $11,500 payment "never went into my pocket," rather it was used for political ends only. In the course of his testimony, DiCarlo complained that Commission Deputy Chief Counsel Tabak had threatened him with having to return to jail if he did not concede to the Commission's version of the truth. DiCarlo also spoke emotionally of his year's sentence at Allenwood Federal Prison Camp in Pennsylvania, saying that he had witnessed repeated physical violence. He said "under these circumstances, Mr. Chairman, is it any wonder that I would be able to make any admission demanded of me? If I don't concede to your version of the truth, then back to jail I go and again leave my
wife and family."  

Ward responded to DiCarlo's allegations concerning Tabak, saying, "with respect to any allegations that Mr. Tabak threatened or used coercion against the witness, it is his professional responsibility to make clear the probable consequences if witnesses don't comply with orders."  

In the meantime the public hearings continued. In testimony before the Commission on April 7, former Judge Sherwood Tarlow acknowledged that he raised nearly $2 million as chief political fundraiser for former Governor Peabody in a two-year period. Tarlow confirmed Masiello's description of the three-room hotel suite operation: and he said that Peabody did not originate such fundraising tactics. "I guess it was perhaps a continuation of the system," Tarlow said. Characterizing the system as a "you scratch my back I'll scratch yours" system, Tarlow said that he had the power to ensure that contracts were awarded to contributors during the Peabody administration as long as they were competent. He said that "we made sure we chose only qualified architects and engineers, keeping in mind that, everything else being equal, we would consider those who helped us." He talked in detail about the fundraising operation in the Boston hotel. "I would warm up [the architects and engineers] if you will, to feel them out to see what they might consider giving ... I would use anything I could, frankly, as sales talk to get them to either contribute substantially or perhaps increase their contribution." Each potential contributor, according to Tarlow, was approached with a goal in mind. "Many times you have a feel and many times you wait perhaps because you know they were very successful in their field," said Tarlow. "So therefore, we felt perhaps that we should shoot for the maximum $3,000 at the time. But many times, of course, we'd hate to take less than a minimum of a thousand dollars if we could get it." Tarlow said that Peabody "in his own way at times would try to ask the men or the potential contributor for a larger donation or perhaps some other method of paying for that contribution if he, as many times he would, say that the cash flow at the present time doesn't indicate a larger contribution."  

Resuming his testimony the next day, on April 8, Sherwood Tarlow said that former Boston design firm owner, D. Richard Thissen, had been the largest political contributor to Peabody among architects, having contributed between $3,000 and $4,000 to Peabody during the two years in the early 1960's. According to Tarlow, there was "no doubt" that Thissen won more design contracts from Peabody than any other design firm owner. Tarlow also described a fundraising approach in which he would persuade potential contributors who were short of money to secure a bank loan for the contribution. Tarlow said, "If the potential contributor said, 'I would like to give more, but at this time I can't,' or 'I would like to contribute, but at this time I can't,' I would make
the suggestion, 'how about signing a note.' Closing his testimony, Tarlow said, "I as a taxpayer and having been on the other side would like to see that type of control exercised and brought about by your commission." Also testifying before the Commission in public on April 8, James L. Bauchat, a former executive of Kassuba Corporation, offered further corroboration of Masiello's testimony concerning Senator Kelly. He testified that while Kassuba Corporation owned Masiello & Associates, Kelly demanded a $10,000 bribe in 1971 to channel design contracts to the firm. According to Bauchat, the demand was made during dinner at Jimmy's Harborside Restaurant in Boston in March 1971. The former executive testified "that I had never experienced such a brazen approach in my whole business career." But Bauchat said that in a subsequent conversation with Frank Masiello, Masiello responded to Bauchat: "that was the way they did business in Massachusetts." When Bauchat reported the attempted extortion to the company president, Walter J. Kassuba, he was "quite indifferent and led me to believe that he and Frank Masiello were willing to pay on a reasonable basis any amount that Kelly asked." In public testimony before the Commission on April 9th, William Waldron, Peabody's Commissioner of Administration and Finance, acknowledged that "assuming [the architect] was qualified ... then we favored the person who had been one of
the governor's supporters. I make no apology for it." 36 In fact, Waldron said that he rejected as unworkable a suggestion by then State Representative Michael S. Dukakis that the state appoint a panel of experts to choose the best designers for state work. Anthony P. DeFalco, who played the same role in Governor Volpe's administration, testified that he made selection decisions randomly, without political influence. In so doing, he contradicted earlier testimony of other witnesses. DeFalco maintained, however, that "my best recollection is that no one influenced me on the selection of this [the DMJM] firm." 37

Legislation Moves Slowly

The concern within the Commission and among its supporters was growing that the State Administration Committee would not report the legislation by April 23. The danger of a missed report deadline was that if no report were forthcoming or if the report were late enough the legislation could not likely proceed through the many intricate steps of the legislative process in time to be acted on, sent to the Governor, and acted on by the Governor before an early legislative prorogation. Two dates were put forward by Representatives Card and Johnston as probable prorogation dates: Bunker Hill Day, June 17, or July 4. Both were likely possibilities because the holidays would enable the Leadership to hold the members in session against a deadline past which most members would have made leisure plans. The number of steps in the legislative process still remaining for the Commission bills were several, and while the Leadership action could push legislation through these steps in a matter of days under ordinary circumstances, leadership disinterest or opposition to these stages could drag them out for months. Were Leadership opposition to crystalize, it could use these many phases to prevent the legislation either from ever reaching the floor, from reaching the floor in time to be acted on, or from being sent to the Governor. Even following these hurdles, delay could preclude reaction to a gubernatorial veto following prorogation.

The process seemed interminable. After the report from State Administration, undoubtedly, the legislation would be referred to one of the ways and means committees, where it would inevitably sit for several days or weeks; in the probable case that it reached the House Ways and Means, it would then be sent to the House floor for action sometime thereafter; if passed by the House in some form, the legislation would then be sent to the Senate Ways & Means Committee; from Senate Ways and Means the legislation would go to the Senate floor and if passed in any form other than identical to the House version, the legislation would have to go to a conference committee; this committee would be composed of three members appointed from each chamber to resolve possibly complex differences
between versions of the legislation adopted in each chamber. The ways and means committees would face no deadline for action and in fact were traditional burying grounds for legislation opposed by the Leadership. Similarly, the conference committee is often used to kill legislation after the Leadership has given both chambers the opportunity to appear in support of it—a conference committee need never report legislation referred to it. It was the speculation of Card and Johnston around the time of the week of March 7 that all of these tactics would be employed to stall or kill the legislation recommended by the Commission, especially in the case of the Inspector General bill. Card and Johnston also speculated that the Leadership, if it were strongly in opposition to the bill, could prorogue before conclusive action or else adjourn the Legislature in late June and reconvene after the Commission went out of existence which was scheduled to happen on June 30, 1980.

Public Perception of the Hearings

Meanwhile, the public hearings continued to generate headlines across the state. A Clark University poll released on April 10 revealed that public perception of the level of corruption in Massachusetts was on the rise. Nearly one in every four people, 23 percent, interviewed felt the state's government was "very corrupt," and an additional 64 percent said they thought state government was "somewhat corrupt." Scott Taylor, the Associate Director of Clark's Public Affairs Research Center said, "the increase in the level of public perceptions of corruption in state government is clearly attributable to the proceedings of the Special Commission Concerning State and County Buildings." According to the same poll before, 25 percent of all state residents had felt Massachusetts government was more corrupt than government in other states; 27 percent felt it was less corrupt than other states. But in the current poll, 34 percent of the state residents had felt that Massachusetts was more corrupt than other states and only 21 percent felt Massachusetts to be less corrupt. Unlike feelings about state government, perceptions of the extent of corruption on the federal level had remained constant during the year.

As a result of its concern about the fate of the legislation, the Commission sought a meeting with McGee and Bulger to discuss procedural matters. Ward met alone with each of the legislative leaders on April 10. He brought with him a letter proposing a timetable for legislative action based on a memorandum prepared by Bockian. The memorandum had been intended to outline a suggested timetable which would make conclusive legislative action possible prior to Bunker Hill Day; similarly Ward intended his letter to the Leadership as a suggestion, not a demand. The letter outlined a timetable that assumed the House would act
first on the legislation, and which called for the State Administration Committee to meet the April 23 reporting deadline. It was then hoped the House Ways and Means would report the bills out favorably by May 15 with floor action to occur within a week, May 22. The letter went on to suggest a report two weeks later - June 5 - by the Senate Ways and Means Committee, and then Senate action within a week of that date. Recognizing the possibility of a conference committee, the letter suggested two days in which to resolve differences, followed by final legislative action by June 13. The Commissioners intended to make clear that all parties would have to act expeditiously to complete deliberations on the legislation by Bunker Hill Day.

Ward also asked McGee for several commitments other than the timetable. First he asked that the 200-page construction bill not be subdivided into smaller pieces of legislation. Second, the Commission requested that the Inspector General bill and the construction reform bill be referred only to the ways and means committees and not to any other of the possible committees whose jurisdiction touched in some way on the subject matter of these bills. Third, Ward suggested that the State Administration Committee report out the bills by a specific date understood and accepted by all parties. Finally, Ward asked that whatever the timetable, floor action occur in both chambers by a specific, agreed date prior to prorogation. Neither McGee nor Bulger would make commitments to any of these requests, although both assured Ward that the bills would be acted on before the Legislature went home. McGee later contended that Ward's letter presented him with an audacious demand to limit legislative prerogatives.

In view of the Leadership's refusal either to commit itself to a legislative timetable or to promise Ward definitively that floor action would occur before prorogation, Representative Card suggested at a meeting of legislators who supported the Commission's legislation that House members should seek a test vote on the legislation as soon as possible. He also said that it would be important to find ways of assuring substantive success for the Commission's recommendations as early as practicable. To those ends he suggested asking Ways and Means Chairman Finnegan to insert an item in the budget which would fund both the construction reform recommendations and the new office of the Inspector General. Finnegan had the operating budget under Ways and Means consideration at this time; the Committee was expected to report it out on April 10 for floor action beginning April 16. Were Finnegan to refuse the request, Card proposed to move on the floor to insert money for these items.

Card's proposal dismayed the Commission. The members recognized that they could not and should not attempt to dictate procedure to any legislators - whether Leadership or otherwise and they felt that Card's proposal would be
counterproductive. The Commissioners feared that the request to Finnegan on the day he was expected to publish his budget would appear as a purposeful attempt to cast the chairman in a bad light, thus further alienating the Leadership. The Commissioners doubted the validity of inserting money in the budget for agencies which did not yet have statutory authorizations, although "outside sections" of the budget often created new entities which were funded in the budget's line items. The entire re-organization of state higher education was accomplished shortly afterward through an outside section of the budget recommended by John Finnegan. Card ultimately withheld the move.

**Harold Greene Challenges Commission Subpoena**

On the public hearings front, on April 14, Harold J. Greene, the former patronage secretary for former Governor Sargent, filed suit in Suffolk Superior Court in an effort to quash the Commission's subpoena calling him to testify at the public hearing on April 15. The suit challenged the legality of the Commission itself, maintaining that the presence of Attorney General Bellotti on the Commission was unconstitutional since a member of the executive branch should not serve on a legislative commission. Greene also charged that the law firms of Commissioners Weinstein and Mahoney had represented companies holding state or county building contracts and therefore the two Commissioners were ineligible to serve on the Commission. He reiterated the Peabody argument that the Commission had already fulfilled its legislative mandate and was existing illegally since it had already filed its proposals for reform of the state construction system. Greene not only sought to quash the subpoena, but he also sought to subpoena Bellotti, Weinstein, Mahoney, and Ward. Greene's attorney, Thomas C. Troy, criticized the Commission members and the methods of their investigation. "With all the pomp and circumstance of Roman Emperors," he said, "they sit up there on Beacon Hill and pass judgment on public officials and others while there exists the color of impropriety around them and the Commission itself." He declared that, "those so-called blue ribbon hearings are nothing more than self-aggrandizement on the part of the Commission members to further their own personal ambitions."

The Commission expressed dismay at an April 14 public hearing at the refusal of former Lieutenant Governor Donald R. Dwight to appear before it in public session. Ward delivered a statement during the hearing: "The Commission expresses dismay that a man of Mr. Dwight's position, former Commissioner of Administration and Finance and Lieutenant Governor and one deeply involved in the award of contracts for the construction of state buildings, would decline to appear before the Commission although he expressly agreed to do so at his
The Commission then voted to make public Dwight's private testimony delivered before the Commission in January. William I. Cowin and Charles E. Shepard, both of whom succeeded Dwight in the A&F post, testified before the Commission on April 14 and asserted that they alone had made the decision on selection of design firms from the DSB recommendations. Both denied that the check marks and dots appearing next to the names of winning design firms had been put there to indicate whom they were to select for contract awards. Shepard claimed responsibility for making the check marks; Cowin testified that he was unable to say who made the pencil dots.

David M. Marchand, former A&F Secretary under Sargent, testified before the Commission in public session on April 15 that design awards for construction work totalling $6.4 million went to four firms after someone else wrote his initials next to the chosen firm to designate the firms. In response to questioning by Commission Attorney McCarthy, Marchand stated that he was absolutely certain that his initials had been forged in authorization of the contracts which included a contract to the $4.4 million Springfield Mental Health Center awarded to William V. Masiello. During testimony by the fourth former Sargent A&F Secretary, Robert Yasi, the Commission introduced as evidence a document showing that initials or nicknames for Dwight, Manzi and Victor Zuchero, the Sargent Campaign Finance Chairman, appeared next to designer's names on a list located by Commission staff in the files of the Sargent patronage secretary, Harold Greene, and that the initialled designers were, in fourteen out of the fifteen contracts noted on the document, awarded the contracts.

In public testimony before the Commission on April 16, the former Deputy Commissioner of A&F, Albert H. Zabriskie, contradicted the earlier testimony of Dwight and Sargent's four Commissioners of A&F. He said that Dwight controlled the award of state design contracts during his four years as Lieutenant Governor instead of the four officials who had the responsibility to do so. Zabriskie described a system in which he would bring the names of design firm finalists from the DSB to Dwight and that Dwight would place a check mark or dot beside the name of a firm he wanted to have selected. Further, according to Zabriskie, each of the four Commissioners knew of the marks and their intent. The Commission released documents showing that marks had been placed beside the names of 117 of 127 design firms, all of which had received contracts. Zabriskie said that Dwight had instructed him in 1971 to bring lists of three finalists for each contract into the Lieutenant Governor's office so that Dwight could mark his choice. In later testimony on April 16, handwriting expert Elizabeth McCarthy testified that Marchand's initials had in her opinion been forged on the contract award for the Springfield Mental Health Hospital to the firm of Masiello &
Associates. Dwight's attorney Thomas Burns said Dwight would not return to testify before the Commission until the panel cooperated by providing him with certain information. The Commission's rules of procedure, however, did not provide for the Commission to release the requested information, which included the names and addresses of all witnesses who had mentioned Dwight during Commission proceedings.

The Commission presented testimony from four architects listed on the so-called Greene Memorandum offered during the testimony of Robert Yasi on April 17. Their public testimony corroborated Zabriskie's description of political influence in the award of design contracts. R. Scott Quinlan, a Beacon Street design firm owner, contributed at least $300 to Dwight over several years beginning in 1970. Afterward, Quinlan sought state design work in 1972. A state job was advertised on June 22; six days later, Quinlan met with Dwight; on July 26 Quinlan was chosen as one of three finalists for the contract; afterward, Dwight's initials were entered next to his name; on July 28, Quinlan called Dwight aide Marchand; three days later, Yasi picked Quinlan for the job. Architect John Carr told the Commission that although he had been unsuccessful in 100 previous attempts to win a state contract, after he arranged a meeting with Manzi he obtained a contract within two weeks. Carr donated $800 to Sargent, $300 of which went to Sargent after the Governor left office; Carr stated that he made his 1975 contribution since he had won a $40,000 contract in late 1974. Likewise, Abraham Woolf, owner of a Boston consulting engineering firm, testified he received a state contract after a telephone conversation with Zuchero in which he reminded him that he had contributed to the Republican campaign. Woolf testified in addition that he had declined Zuchero's invitation of ten $100 tickets to a Sargent fundraising dinner, after which he did not receive state contracts. A Framingham architect, Edward M. Healy, testified to paying a $1,000 finders fee to William Masiello for Masiello's efforts to obtain a contract for Healy from the Sargent administration. Zuchero's nickname was next to Woolf's name and Manzi's nickname next to Healy's name on the Greene Memo.

Still No Commitment on Legislation

In a meeting with Boston Globe editors and reporters on April 20, Ward noted that the Commission legislation was tied up in the General Court, where, he said, "there is a lack of will to address any complicated problem." Ward said "the Speaker will make no commitment to a timetable for legislative action; I do not think it's because of active opposition; it derives more from the fact that the legislature is not organized to study or comprehend serious legislation." In addition to legislative opposition, Ward said that Governor King and his staff had maintained "an aesthetic distance" from his panel's work and legislation.
The Chairman spoke in favor of the legislative proposals and commented on the status of ongoing public hearings. In a report on April 20, the Globe noted that the King administration had been quietly implementing some of the Commission's administrative recommendations in an attempt to prove Commission legislation unnecessary.

On April 22, Raymond J. Allard, a former employee of Masiello & Associates, testified in public before the Commission that he delivered $3,000 in payment from William Masiello to a member of the Shrewsbury Housing Authority, Louis Frongillo. According to Allard, he had been told by William Masiello that Frongillo was to share the payment equally with authority member John Manzi. Allard said that on "three or four occasions" he delivered sealed envelopes from Masiello's secretary, Audrey Rawson, from the firm to Senator Kelly's State House office during the time Kelly was Chairman of the Senate Ways & Means Committee. In further testimony, Allard said that William Masiello spent in the "hundred dollar" range on restaurant meals at Jimmy's Harborside and other locations for Kelly, DiCarlo and other state legislators. He said that former State Comptroller M. Joseph Stacey often provided information to William Masiello concerning invoices submitted by the company for payment, as well as delivering personally state checks to the Masiello firm in Worcester. He said that William Masiello made cash payments to Vey for vacation expenses during the time that Vey headed the agency that awarded City of Boston and Suffolk County building contracts. According to Allard, William Masiello provided free architectural services to then Suffolk County Sheriff Thomas Eisenstadt for a Cape Cod vacation home. In addition, Masiello, according to Allard's testimony, maintained a Christmas list of names of public officials who received generous gifts of liquor from the firm; and he maintained printing facilities at the firm's Worcester office which were available to reproduce campaign literature at no cost.

Court challenges from reluctant witnesses continued at this time. Troy urged Suffolk Superior Court Judge Andrew R. Linscott to quash Harold Greene's subpoena in a hearing on April 22. Attorneys for Senator Kelly, D. Richard Thissen, and Robert Vey challenged the Commission's summonses and the Commission's right to compel their clients' testimony at a public hearing.

In testimony before the Commission in a public hearing on April 23, Joseph Miller, a former architect with the Masiello firm, said he provided approximately $3,000 in architectural services to Suffolk County Sheriff Eisenstadt. Services -- plans for a new house on Cape Cod for the Sheriff -- were rendered at the time that the Masiello firm was occupied with drawing plans for a proposed Suffolk County jail in 1973. The county was ultimately billed for the services for the Sheriff.
The model was introduced as evidence at the hearing. Miller said that the house was never built because of changes in two zoning laws in Cotuit. Miller said he also drew plans on company time for Manzi, Philip Philbin and Paul Tivnan (both Worcester County commissioners), Senator Kelly and former state comptroller M. Joseph Stacey. Projects ranged from closing in a screened porch at an estimated value of $600, to planning a new bathroom, to designing a new office, to designing an alcove bar, to planning a new garage. Miller was followed at the hearings by two other former Masiello employees: Wayne Salo and Neil Dixon.

The deadline for reporting the construction legislation came and went with no committee report. By April 23, McGee had hired attorney Albert Cullen to advise the Administration Committee on the Commission's legislation.

Rumors circulated through the State House, and were later confirmed, that an attempt would be made to refer the Commission's legislation to a reinstated Contracts Commission. The Special Commission alerted its legislative supporters of the possible referral so that they would be prepared to oppose reinstitution of that Commission. The Commission also communicated to the State Administration Committee the extent to which such a referral would be objectionable. In the view of the Commission, referral to the Contracts Commission, dominated by industry representatives and the BBC, would have placed a chicken in the fox coop.

Campaign Reform Bill Filed

The Commissioners reviewed draft legislation prepared by staff for the reform of campaign laws in detail over a series of meetings. At a meeting on April 23, the Commission decided to late-file this legislation forthwith. The members reasoned that including a proposal for campaign reform in the final report would signify too weak an endorsement of a plan that cut to the heart of the problems increasingly revealed by testimony and evidence. Thus, they resolved to submit the proposal for the formal consideration of the General Court and to endorse it wholeheartedly, according it the same priority as the other proposals. The bill was late-filed on May 14. Common Cause made a public statement in support of the bill, as did other public interest groups. Common Cause called on the Legislature and the Governor to enact the campaign bill that session and said in a press statement:

There is perhaps no other single issue that distorts the environment under which public policy decisions are made, and erodes public confidence and trust in government, more than the campaign contributions made by special interests that have a stake in how those decisions are shaped. One only needs to read the reports of the revelations resulting from the Special Commission's investigations to gain some idea of how campaign contributions to influential public officials can control the fate of important legislation, influence the appointment of sympathetic people to sensitive positions, or generate favored treatment in the award of contracts.
Our present system of campaign financing is stacked against the average citizen or small businessman. You can contrast the idealistic concept of a vague "right" of each individual to make campaign contributions with the reality that less than 3% of the public actually make campaign contributions and the stark fact that the wealthiest 1% of the people in the country give more than 90% of all campaign funds. Observers of the political process well know that among that influential 1% are the special interests who consider their campaign contributions as "investments" which will return handsome dividends to them in favorable legislation and government subsidies. United States Senator Russell Long (D.-LA) has said, "The distinction between a campaign contribution and a bribe is almost a hair's line difference."

Even in the infamous case that led to the creation of the Special Commission, the MBM affair, Senator Ronald MacKenzie, in commenting on the political system in this state said, "The most corrupting thing about it all is the need to finance campaigns. I'm glad the presidential campaign has been taken out of that, and I'd like to see [public financing] extended even to legislators." Indeed his defense rested largely upon the contention that the monies that had passed hands were not illegal payoffs but, instead, campaign contributions.

In a sense, the public is already paying the costs of campaign financing — in a way that is not visible to them. In a system totally dependent on large private contributions, there is a definite cost to the taxpayer. Testimony before the Special Commission has revealed a pattern of building contracts with kickback fees included in the price of the building. Contracts are awarded to those willing to make large "campaign contributions" rather than those most qualified to do the job. The result is a series of public buildings in bad need of repair to the tune of $130 million. These are the hidden costs to the public of campaign financing under the present system. A true system of public financing will remove the dependence of public officials on those willing to contribute large sums in return for government favors.

In order to protect officials from unwanted political pressure that results from campaign contributions; in order to remove the demeaning process of candidates for office having to put themselves on the special interest auction block; and in order to correct a presently undemocratic and scandal-ridden system of campaign financing we urge the state legislature to approve the legislation being filed by the Special Commission today and the Governor to sign it into law.

The House admitted the bill as Docket Number 6323, and a lengthy wait began for admission to the Senate.

Calls for Action on Bills

Representative Marotta and Senator Pollard announced on April 23 that the Committee would not report on that date but would seek an extension to May 21. At a Special Commission hearing then under way in room 436 of the State House, Ward made a public statement calling on the Committee and the Legislature to act quickly. After reviewing the history of the legislation, and noting that the Committee had had since December to study the basic concept of the legislation, and then since March 12 to study in detail the revised recommendations, Ward suggested the time for decision was at hand.

Failure to report these bills by the end of April raises doubt about the Legislature's ability and commitment to act on the Commission's legislation while the Commission is still in
existence so it may lend its expertise to those who are concerned about this legislation.

Without timely committee action, these bills and the movement for reform and proper control of public construction will have been effectively sidetracked...We believe every day of delay after April 30 puts this important legislation increasingly at peril.

The Commission thus attempted to set a public deadline of April 30 for a committee report and went on record in opposition to the actions of the Committee, and therefore of the Leadership.

On April 24, Judge Linscott issued a finding that Greene's legal arguments were "without merit." The Commission asked the State Superior Court, on the same day, to order Kelly and Thissen to honor earlier subpoenas.

Representatives Card and Johnston began an offensive on the floor of the House on Monday, April 28, to dislodge the Commission's bills from the State Administration Committee. What Card and Johnston had to do was to assemble a majority vote to discharge the legislation, but Card's motions failed, receiving only approximately 50 votes.

Landscape architect Robert Arello testified before the Commission in public session on April 28. He said that the state paid $6,553 for the landscaping job on the new Dudley Court House, while the work itself was worth only $3,000. The difference, according to Arello, was kicked back to William Masiello. Arello described a bid-rigging scheme used by Masiello on five separate contracts on which he did work. On five Worcester County court house projects, Arello said he was paid approximately $23,000 by Masiello and that nearly $10,000 of that was given back to Masiello in cash in return for Masiello's assistance in landing him the contracts. Arello explained that he obtained phony high bids from other landscapers to ensure that he would be the low bidder but at an inflated price. In one instance, Arello received a phony bid from PriceWise, a separate company that he himself owned. Bid-rigging arrangements eventually halted following completion of a $4,000 landscaping job by Arello for Masiello in return for Masiello's promise to supply additional public work. According to Arello, Masiello never reciprocated nor did he pay him the $4,000. George P. Sargent, a salesman for Shawmut Hardware of Boston, supplied testimony concerning a similar bid-rigging scheme.

Philip Burne, a former president of the Masiello firm, testified that former BBC official Frederick J. Kussman was paid $2,000 by Masiello to write the 1971 legislative report on MBM, contrary to Kussman's testimony under oath in 1978. According to the testimony of former Masiello firm officers, Senator Kelly
interceded with various state agencies on behalf of the Masiello firm. John Wackell, a former officer of the firm, testified that Kelly received free design of a wall system for his Boston apartment. Kelly also had the use of a credit card in the name of William Masiello, according to Wackell. "Mr. Masiello and I were driving someplace...and he had to purchase some gasoline," 41 Wackell testified, "and we pulled into a station and he went to use his credit card and he didn't have it and he had to pay in cash and he made a comment to the fact that now I got to pay for the gas in cash because I gave my credit card to the Senator and he's out of the country." 42 Wackell corroborated Allard's testimony about the $3,000 payment to members of the Shrewsbury Housing Authority.

In testimony before the Commission in a public session on April 29, four contractors described the method in which the Masiello design firm extracted cash payments, political contributions, and other favors from suppliers and subcontractors in exchange for public work. One sporting goods outfitter, William J. Gulvanesian, owner of Sun Lea Sports Company in Winchester, testified that Masiello got his firm a $29,000 contract to outfit the gymnasium at the new Worcester County jail. The outfitting contract was awarded, according to Gulvanesian, as the result of bid-rigging approved by Masiello. In a telephone call, Masiello had asked Gulvanesian to "take care of" his friend, a "Mr. Kelly." 43 When "Mr. Kelly" later arrived at the store, he and four children selected $1,389 worth of skis, poles, and boots for which neither "Mr. Kelly" nor Masiello ever paid. On another occasion, Masiello ordered $114 worth of hockey sticks. Gulvanesian testified that Masiello never paid him for the hockey sticks either. Gulvanesian described three phony bids that he said he had submitted for athletic equipment for the jail gymnasium. The first amounted to $34,472 and was entered on the letterhead of Lee Chisholm Sporting Goods Store in Malden, owned by a friend; the second was submitted on the letterhead of House of Sports, Incorporated of Waltham, a firm which Gulvanesian owned, and amounted to $31,974. The third was issued on the letterhead of Sun Lea Sports Co. for $29,187.23. This lowest bid was inflated to yield $3,500 for a cash payment to Masiello.

Russell J. Kenney, owner of a Plainfield company concerned with steel and concrete testing for construction projects, testified that during the time he worked as subcontractor for Masiello, Masiello had him pay for tickets to a fundraiser for Kelly and also to a testimonial for the Worcester County Commissioners, as well as $500 in cash for an event at Boston's 57 Restaurant for a senator who Masiello did not name.
Charles Mazzano, former employee of Provost Company, said that his boss, Kenneth Provost, instructed him to call William Masiello to secure assistance in collecting $2,500 for bricks ordered by the general contractor for the new fire station on Dudley Street in Roxbury. Mazzano said, according to Provost, Masiello had promised Provost that the bricks would be paid for if Provost made a $500 contribution to the campaign of Boston Mayor Kevin H. White. Another witness, Robert Hare, formerly a salesman for American Laundry Machinery Company, said that his company bid $29,560 to furnish washing machines for the Worcester County jail in West Boylston. Hare eventually paid Masiello $1,000 in cash of his own money in return for the contract selection.

On April 29, Suffolk Superior Court Judge Samuel Adams denied a request by Kelly and Thissen's attorneys to have the suit against the two men heard in secret and set a hearing for the next Tuesday on whether Thissen and Kelly should be ordered to appear before the Commission.

**Decision to Request Extension of the Commission**

On April 29, Representative Marotta formally sought permission to report the legislation by May 21. Representative Johnston moved to shorten that deadline to a variety of earlier dates, but succeeded in obtaining no more than 62 votes in support. On subsequent days, Card, Johnston and Bruce Wetherbee (D-Pepperell) moved repeatedly on the House floor for a variety of procedural rulings to dislodge the Commission's bills. Again these attempts failed, always falling about 20 votes shy of the 81 votes required for a House majority. As the intensity of the debate increased and the possible prospects for passage of the Commission's legislation grew weaker, Commission supporters within the Legislature and among public interest groups decided to meet on a weekly basis to coordinate strategies and to share the many rumors circulating about the legislation. At one of these meetings, Mass Action Chairman Albert Anderson pointed out that as long as opponents to the Commission's legislation felt that delay played into their hands and brought closer the day when the Commission would be out of existence no more delaying tactics would be used. Anderson suggested that if the Commission were not going out of existence the delaying tactics would cease to have any basis. Bockian reported this line of thinking to the Commissioners, who at the same time had begun to recognize that with more than five important witnesses, including Albert Manzi, Richard Thissen, James Kelly, Robert Vey and Harold Greene, contesting the Commission's summonses in court and refusing to appear to testify at the public hearings their investigations could not be completed satisfactorily by the end of June. Moreover, the Commission was committed to conducting an orderly transfer of its
cases and records by way of referral to appropriate law enforcement agencies and to prepare a complete record of its work as its final report. Reluctantly, the Commission recognized that it could not complete its investigations, prepare referrals of evidence, and write its final report, by June 30, 1980. On May 27, 1980 the Commissioners agreed to request the Legislature to approve a final six month extension of the life of the Commission with a scaled down staff to complete the Commission's work.

Despite the political implications of the delay, the added month of committee deliberations was put to good use. Between April 23 and May 21 the State Administration Committee met three and four days a week for approximately three hours a day to review the Commission's legislation further. In addition to the House and Senate chairs, three or four other members were usually present including the new Special Counsel, Albert Cullen. Such frequent meetings are highly unusual and suggested the committee was serious about the May 21 deadline. Each meeting reviewed sections of the Commission's legislation in detail. The agenda called for treatment of the Inspector General bill first, and then for review of the more than sixty sections of the construction reform legislation. The Inspector General bill received attention for approximately two days in late April. Work on the construction bill required the next three weeks. It would be only after May 14 that the Committee would turn to actual development of their own amended version of the legislation.

Meeting With Legislative Black Caucus

In search of support among legislators for the Commission's proposal on subcontractor bid listings, Bockian arranged a meeting on April 9 with the legislative Black Caucus. Ward presented the case for the Commission's proposal at that meeting. Though the black legislators reactions varied widely, they questioned why they in particular should oppose filed subbidding. Ward and Bockian explained that the filed subbid system had resulted in a very narrow concentration of subcontract work among a small group of subcontractors who were presumably all white, and pointed out that the system also prevented the implementation of affirmative action programs to encourage minority-owned businesses to secure state contracts. The caucus members remained unconvinced and scheduled another meeting for April 15. At that time, they heard from representatives of the State Office of Minority Business Affairs and from the Contractor's Association of Boston, a minority construction contractors' group, both of whom supported the Commission's position that filed subbidding prevents minority business set-aside. At their next meeting on April 29, Black Caucus Chairwoman Saundra Graham (D-Cambridge) made it clear that the caucus could only
support a change in subcontracting procedures if the set-aside provisions for minority businesses were mandatory and strong enough to make a difference. Alper and Massachusetts Commission Against Discrimination Attorney Roger McCloud then met separately to develop an improved set-aside provision for the construction reform bill. The Commission expected the resulting provision would win the support of all the Black Caucus members with the possible exception of Jordan.

At the public hearings, Audrey Rawson, executive secretary to William Masiello, testified before the Commission in public session on May 1. She testified that William Masiello had told her, of an offer by Senator Kelly in 1977
to give $50,000 to Masiello if he were to leave the state and set up business elsewhere. She testified, in addition, that Kelly had received $500 a month in cash payments from the Masiello firm from 1972 to 1976. She said that during the four-year period from 1973 to 1977, she had been instructed by Masiello to raise cash by writing company checks to herself, Masiello or other firm employees for generation of cash that would then be returned to The total amount of cash raised in this manner during the period was $108,154.97. Rawson said that she would place cash, often in denominations of $100, in plain white envelopes which she would then give to Masiello. Rawson said that she falsified Masiello's expense accounts while he extended his generosity to "public officials and anybody that he thought he may be able to acquire some contracts for the firm with." She told the Commission that William Masiello told her to send Christmas cards and gifts, including fruit bowls, six-piece coffee services, wine decanters, hand mixers, candy dishes, canisters, trays, lumber, umbrella stands, fondue pots and liquor, to public officials. Rawson elaborated upon previous testimony concerning Kelly's use of credit cards issued to the Masiello firm. She said that the firm was listed in the Boston telephone directory for two years under a false address on Commercial Wharf and that the telephone actually rang in Kelly's Boston apartment. She said that Masiello used Kelly's State House office as a personal message center and that she would often reach him there. According to Rawson, Kelly "never came to the [Masiello firm] office to do any work" in exchange for the payments and other favors.

MBTA Chairman Robert L. Foster suspended on May 6 final MBTA approval of a contract that had been awarded to the design firm of Daniel, Mann, Johnson and Mendenhall to design a new Columbia Station on the Red Line, a $5 to $6 million project. The initial decision to award DMJM the contract - valued at several hundred thousand dollars - had been made by the MBTA Designer Selection Committee in January before the testimony concerning the firm's involvement in the Holyoke Community College project. In making the decision, Foster said, "it is our hope that DMJM will see fit to cooperate with the Special Commission in order that this matter be brought to a quick resolution."

Testimony on the Inspector General Concept

In testimony on May 5, Commission Investigator James Siracusa said that he had examined a small portion of Governor Sargent's 1972 campaign contribution list and found that as many as 34 of 79 persons in the sample may have been listed falsely. Two $1,000 gifts were attributed to relatives of then State
Comptroller M. Joseph Stacey, who testified that Manzi falsely listed his daughter-in-law as a contributor after telling him that he had a lot of contributors who did not care to use their own names. Siracusa entered further documentary evidence of seven cashier's checks totalling $15,000 from two Los Angeles banks with offices close to the DMJM office. According to Siracusa, one of those checks had in fact been cosigned by Lee Jensen, a DMJM assistant comptroller. Other witnesses on May 5 and 7 testified that their names had been listed falsely on Sargent campaign fundraising reports.

Former Boston Deputy Mayor Vey, identified by his lawyer, Attorney Joseph T. Travaline, as "John Doe," requested Suffolk Superior Court Judge James P. Maguire on May 6 to quash a Commission subpoena for his testimony. Maguire postponed enforcement of the summons pending a hearing the next day.

Victor Zuchero, Executive Director of the Sargent Finance Committee from 1969-1974, testified on May 7 concerning his activities as director of Sargent's political committee. According to his testimony, Greene routinely sent the final lists of three design firms from the Designer Selection Board to the Campaign Finance Office to check if they had contributed and to include them on solicitation lists.

In a public hearing on May 8, the Commission heard testimony from GSA Inspector General Kurt Muellenberg, who spoke in support of the Commission's Inspector General bill and said that auditors in his office had recovered $48 in fraud for every taxpayer dollar spent through his budget. Stanley Lupkin, Commissioner of Investigations for the City of New York, described similar efforts undertaken by his office to recover millions of dollars and to obtain indictments and convictions of city employees and private contractors, as well as reprimands or dismissals of other city employees. Lupkin spoke in particular of the deterrent effect of an Inspector General's office saying, "there is absolutely not one iota of a question that there is a deterrent factor and it is very real."46

On May 8 Attorney General Bellotti announced the formation of a four-member special advisory panel to review evidence forwarded in referrals from the Commission to the Attorney General for possible prosecution. Bellotti said that the group would decide in each case whether the Attorney General's office or a District Attorney's office would assume responsibility. He said the group would have the authority - without input from his office - to review cases in which Bellotti or his office might have a conflict of interest. The members of the group were Stephen R. Delinsky, Suffolk Country District Attorney Newman
Flanagan, Middlesex County First Assistant District Attorney J. William Codinha, and Norfolk County First Assistant District Attorney Robert W. Banks.

The State Administration Committee review of the legislation was complete by the middle of May and the time had arrived for the members to go on record with their positions on the legislation. Speaker McGee had by this time openly declared his opposition to the Inspector General bill, saying that if it passed he would "move to Russia." The Speaker said he was particularly opposed to the subpoena power of the Inspector General, which he claimed was totally unprecedented in any level of government in the United States. McGee noted that even federal inspectors general had no power to subpoena individuals. McGee requested Common Cause Chairman Archibald Cox, former Watergate special prosecutor, to comment in detail on the Inspector General bill. Cox had voiced his general support in a Common Cause press conference in early May. On May 9, Cox wrote to McGee, repeating his support for the legislation, and saying in part:

In my judgment House Bill 5619 (the Inspector General Bill) deserves your prompt and whole hearted support. Its provisions would give Massachusetts a mechanism for dealing with illegality, fraud and abuse within the state government which experience has proved effective in other governments. Any delay in putting an appropriate mechanism into place for dealing with the abuses of the kind illustrated by evidence before the Commission...would result in further unnecessary loss to the taxpayers of the Commonwealth. Any delay would also result in further loss of confidence in the Government, both generally and more particularly in the Massachusetts legislature's willingness to deal with gross abuse upon the part of public officials and their political friends.

Cox's letter featured detailed comments on the provisions of the Inspector General bill in basic support of the Commission's position on all key points. In regard to the subpoena power, Cox said, "To require the Inspector General to prove 'probable cause' or 'reason to believe' that a crime has been committed would be to require him to prove his case before he may conduct his investigation." However, members of the Civil Liberties Union (CLUM) voiced substantial criticisms of the subpoena power provision.

Mark Up of the Inspector General Bill

By May 14 Representative Marotta presented a redraft of the Inspector General bill that had been prepared by Al Cullen, which made substantial changes in the Commission's proposal, including limiting the jurisdiction of the Inspector General and providing no authority for subpoenas to individuals for testimony.
In prior negotiations between the Commission and Pollard, a slightly revised version of the Commission's Inspector General bill had been developed which attempted to address the civil liberties question. With Pollard in support of the Commission's proposal and Marotta in support of the Speaker's proposal as drafted by Cullen, a head-to-head Senate-House confrontation seemed imminent. The House and Senate Committee staff was instructed to round up all committee members for the showdown. Many were out of the building and some were never found. Based purely on the relative numbers of House and Senate members in attendance, it appeared that Marotta's version would win.

The procedural maneuvering began with Marotta succeeding in having his draft placed on the floor as a substitute for the Commission's proposal, with the result that subsequent debate would center on amendments to the McGee-Marotta proposal. The first issue to be considered was the appointment of the Inspector General. The first vote was taken on the question of whether the Governor alone would appoint the Inspector General or whether the Auditor and Attorney General would participate as equal members of a selection panel. As expected, the Senate members present (Senators Doris, Harold, Olver, Pollard, and Amick) voted for the Pollard version which included the Auditor and the Attorney General. In a dramatic moment, two House members bolted from their Chairman's position to side with Pollard. Representative Thomas Lynch (D-Barnstable) and Representative Walter DeFilippi (R-West Springfield) had swung around to the Commission's position. Extensive prior conversations with all committee members had not led Commission staff to depend on either vote, although they had been optimistic about Lynch's support.

With the defection of these two House members, Marotta's hegemony on the committee was dissolved and the seven to six vote that carried the Pollard amendment appeared to mean that each provision would be decided by one vote. And so it was through the day that depending on how these two Representatives voted, the Senate or House versions succeeded or failed. Lynch was consistent in his support for the Commission, but DeFilippi occasionally sided with the House, providing Marotta with several victories. It began to appear that the Senate would steam roll the House on the Inspector General bill as several amendments
were proposed and passed to expand the scope of jurisdiction. After Marotta amended his own version to include buildings built by Massport and the Massachusetts Turnpike Authority, Senator Buell moved to amend the Marotta version to include buildings built by the MBTA. This amendment won by a vote of ten to three. Doris then moved to include MHFA construction, winning by a seven to six vote. The sense of momentum became palpable when Amick moved to include all DPW construction whether buildings roads in the inspector General's jurisdiction. Amick's proposal went extensively beyond Marotta's and won by one vote. Sen. Olver then moved to include all Turnpike Authority construction, which again won by one vote. Amick followed Olver's amendment rapidly with another to include all construction by or under the auspices of the Executive Office of Environmental Affairs. Amick, the Senate chairwoman of the Natural Resources Committee, had a longstanding interest in that office, which oversees hundreds of millions of dollars in construction, including expensive water treatment and sewage facilities. The effect of Amick's amendment would have been to enlarge the inspector General jurisdiction almost to the extent recommended by the Commission. In the most tense roll call of the day, Amick's amendment garnered seven votes with seven votes in opposition. Representative DeFilippi did not vote. The tie vote meant that the amendment did not carry. The momentum of the pro-Commission forces thus broken, the Marotta version prevailed on all other points including absence of subpoena power for the Inspector General. With only three votes supporting the Commission's position on this matter, it appeared that the civil liberties argument had struck home among members who were otherwise Commission supporters.

Representative Andrew S. Natsios (R-Holliston), Chairman of the Republican State Committee, criticized the Governor and his legislative leaders on May 13 for their failure to back the reform packages proposed by the Commission. "This Commission has worked with a degree of independence unusual in the Beacon Hill political arena," Natsios told the Globe. "It has risen above partisan politics and should be given every opportunity to complete its investigation." In an editorial on the same day the Boston Globe urged the Administration Committee to act promptly on the legislation to extend the life of the panel. The Globe pointed out that the extension would give added leverage to the Commission in pressing the Legislature to enact its bills.

Testimony of William V. Masiello

William V. Masiello took the stand before the Commission in public on May 12 and testified, under a grant of immunity, that he was aware of or involved in at
least $78,000 in payments to Manzi in return for state design contracts. In so doing, he reanimated his 1979 extortion trial testimony in which he denied delivering $10,000 in cash to Manzi. Instead, he said that he delivered two $10,000 cash payments in 1972 to Manzi from MBM. Chief Counsel Littlefield questioned Masiello: "At your trial did you testify about that [payment]?" Masiello replied, "Yes. I perjured myself." In an opening statement, Masiello said, "I simply operated within the system that was in existence in Massachusetts during that period of time. I did not invent the system, nor am I naive enough to believe that it ended when I went out of business. As I knew it, there were basically two groups of people who operated within the system. In one group were businessmen such as me who were looking for 'edge' in getting business with the state. The other group was comprised of various levels of public officials who had their hands out for one reason or another." The human tendencies behind that system were quite simple, according to Masiello. "If a hand is open," he said, "someone will find a way to fill that hand for something in return, whether it be access or whatever, and the public will pay. If the hand is closed the game is over before it begins." Masiello corroborated the earlier testimony of his brother concerning payments from DMJM that he delivered to Manzi. In addition, Masiello testified to a payment in November 1972 from DMJM Vice President Stanley Smith that he transmitted to Manzi.

The Commission introduced evidence at the end of the day's testimony of Masiello's entertainment of federal, state and local officials on 880 occasions over a four-year period between 1970 and 1974. "I really don't know how not to pick up a check," said Masiello. "Sometimes I wish I knew how to keep my hands in my pockets, but aside from that, one of the ways that I did, let's say, make friends with politicians, was to take them out, wine them and dine them, etc. It was a good practice and I felt it beneficial to good public relations of Masiello & Associates."

In further testimony before the Commission at a public hearing on May 13, William Masiello said that he paid $2,000 in cash to Lieutenant Governor Dwight in 1974 in return for a state contract. "On election day of 1974," said Masiello, "I walked into Donald Dwight's office and I handed him $2,000 in an envelope in cash. He took the $2,000 and put it on the left hand side blotter and I walked out." The Commission introduced evidence which indicated that the Masiello firm generated the $2,000 on November 5, the same day. The amount originated from four $500 corporate checks, made out to Masiello and three other employees of the firm, cashed that day. "I indicated to him that in the event that he did [win] it was nice to know that I had an open door to his
office."\(^{54}\) said Masiello. "And that was basically the last time I saw Donald Dwight."\(^{55}\)

Masiello also said he made periodic cash payments of approximately $18,000 to Kelly until 1976. Masiello became upset at specific questions by chief counsel Littlefield concerning the details of his payments to Kelly. He called for a recess in the hearing and told reporters, "let's get the Masiellos off the front page. I have an 82-year-old mother and every time I call her she cries...Why make it any more painful? People forget that Senator Kelly and I were personal friends. What are they going to do, send Senator Kelly to jail? He has been hurt enough, and Donald Dwight has already been discredited. These people have families." Masiello went on to testify that Kelly first offered him $25,000 and later $50,000 in 1977 to leave the state permanently.

In public testimony before the Commission on May 14, William Masiello said that he paid between $10,000 and $20,000, mostly in-cash, to Robert Vey between 1973 and 1976 for Mayor Kevin White's political campaigns. The payments were for tickets which Masiello said he never received. The Commission introduced evidence that Masiello & Associates, Inc. had received a contract award to design a new Charles Street jail for Suffolk County as well as a contract to design a fire station in the South End. Masiello said he wanted to make it very clear he received no further contracts from the City after he began buying tickets to White fundraisers. However, it was noted that fees for the contracts were more than doubled during the time the funds were contributed to a total of $366,353. Masiello also described over $6,000 in payments he had made to members of the Shrewsbury Housing Authority in return for two design contracts between 1973 and 1975. Masiello went on to outline the system by which bids were rigged with inflated prices so that subcontractors and suppliers could raise money to give back to him for use for political contributions. According to Masiello, this system cost the Massachusetts tax payers approximately $250,000 in projects designed by his firm from 1970 to 1977.

The Commission received evidence on May 15 that Robert Vey solicited illegal campaign contributions for Mayor White in 1974. Contractor Michael Sabia, through an affidavit filed with the Commission, testified that Vey met him in a First National Bank suite and instructed him in how to circumvent state campaign laws saying, "We'll take as much cash as you can give us."\(^ {56}\) When Sabia contributed $200 by check, he lost his two city contracts. Contractor Francis Falzarano testified that he never won another city contract after meeting with Vey in the same suite and refusing to contribute a requested $1,000. According to
Falzarano, Vey told him that he should contribute, "because I did a lot of work for the city." Sabia said that Vey suggested he surpass the legal campaign cash limit by attributing contributions to his mother, children, brother-in-law, and grandmother. Falzarano said that he was told by Vey of a testimonial for White with tickets selling at $100 each "... He was putting me down for ten tickets because I did a lot of work for the city," said Falzarano, "and I told him I couldn't afford it that year, that there was no way I was going to buy them." 

Patricia V. Vandenburg, Vey's assistant in 1974, said she worked for Vey as a receptionist in the First National Bank suite on city time arranging appointments for numerous contractors, each of whom saw Vey concerning contributions at fifteen minute intervals. The funds raised by Vey at this time apparently went toward White's 1975 reelection campaign during which White reported a total of $382,690 in contributions in 1974. The Boston Finance Commission concluded, in a 1975 report, that 78 percent of those contributing to the White campaign were city employees, city contractors or property owners who had received property tax abatements in 1974.

Another witness at the May 15 hearing, Kenneth Provost, a brick supplier for the Masiello firm, testified that he delivered $218 worth of bricks to the Melrose home of then-DCA Deputy Administrator Edward Mangini, Jr. who never paid for them.

Representatives Card and Johnston held a press conference in the State House on May 16 to warn that, without public pressure on the Legislature, the Commission's bills would be harmed or defeated. Card said, "I hope that Massachusetts citizens will contact their Senators and Representatives immediately to urge support of the reform measures as envisioned by the Special Commission and to express immediate concern for the extension of the Commission so that it can complete its work."

"Clearly there is pressure from the House side to scuttle this legislation," said Johnston. "We hope the public makes its views known to the Legislature."
The State Administration Committee held a formal meeting on May 19 on the legislative proposal of Card and Johnston to extend the life of the Commission from June 30, 1980 to December 30, 1980, and promptly voted to recommend that the Commission be granted the six-month extension. The Committee also formally voted the favorable report of the heavily amended Marotta version of the Inspector General bill. Both the extension and the Inspector General bill were referred to the House Ways and Means committee.

On the afternoon of the 19th, the State Administration Committee held a formal executive session on the construction reform bill. The only outstanding subject of controversy was filed sub-bidding. Reversing the situation with regard to the Inspector General bill, Pollard was known to oppose the Commission's recommendation on subcontractor selection whereas Marotta had in the previous week declared his strong support for the proposal. In contrast to the flurry of activity to gather members together on the Inspector General bill, the committee staff was not sent in search of members to vote on the sub-bidding question. The Commission, however, sought out those Senators and Representative who were possible supporters. Despite attempts of Pollard and Bockian to find a middle ground on the issue, no compromise found support on the Committee. As discussion of possible variations progressed each variation seemed to produce a set of undesirable results, in the view of some members. When it was suggested that filed subbidding be retained but the 17 preordained categories of work be abolished and replaced by a percent of construction costs criterion, the Associated General Contractors lobbyist strongly objected that the effect would be to increase the number of sub-contract categories for which filed subbids would be required. When the question was called, the Commission position had only three supporters: Marotta, Lynch, and Representative Royal Bolling, Jr. (D-Boston). Senators Ooris, Olver, and Representative Gladis did not vote, and nine other Committee members voted against the Commission's proposal. The only change in the filed subbidding to which the committee could agree was a minor one: to recognize the effects of inflation since 1939, and to increase the dollar amount necessary for a sub trade category to require a filed bid from $1,000 to $10,000. Before the final vote on this issue was taken, Marotta asked Bockian if he had any last words. Bockian replied, "All you're doing is performing cosmetic surgery on Frankenstein's monster." The committee then concluded the executive session on the construction reform bill and reported it out with a favorable recommendation. It was referred to the House Ways and Means Committee.
From Ways and Means to Prorogation

A small group of House members convened on May 20 in room 350, the lobby of the Massachusetts House of Representatives. Among them were Representatives Card, Johnston, Wetherbee, Representative Michael Barrett (D-Reading), Representative Mary Jane Gibson (D-Belmont), Representative Lawrence Alexander (D-Marblehead), Representative Leon Lombardi (R-Easton), and Representative Barney Frank. Meeting with them were Commissioners Ward and Burke, and a contingent of Commission attorneys including Littlefield, Dwyer, McCarthy, Bockian, and Beeferman. The group held its first meeting on the suggestion of Johnston that it was then appropriate for the Commission's House supporters to more formally coordinate their activities. The Commission had been wary of allowing the appearance to develop of their serving the interest of a faction within the House, or else of a House member's actions being directed by the Commission. Nevertheless, members and staff attended this and all subsequent meetings of the
group in recognition that without close coordination between the Commission and its supporters, collective efforts would not be as effective.

The agenda for this first meeting called for a discussion of strategy for the period following May 21, the date on which the State Administration Committee was supposed to report out the Commission's bills. The legislators felt they needed a set of activities to pursue whether or not the Committee met its deadline. It was agreed there that the legislators would develop a list of their colleagues who had not voted with them on the procedural maneuvers to force the State Administration committee to report out the bills, but who would might be sympathetic nevertheless to the substance of the Commission's recommendations. Roll call votes on the procedural questions would be compared with a roll call of the year before on an amendment by Alexander regarding public campaign finance. Much discussion was devoted to the appropriate tone of legislators' tactics. It was suggested that the approach taken to date by Card, Johnston, and Wetherbee would not result in more than the hard core of approximately 60 votes that those tactics had won so far. Card and Johnston, for their part, advocated a tactic of forcing the membership persistently to go on record regarding the Commission in every way possible. They reasoned that the membership ultimately desired to support the substance of the Commission's proposals but that the leadership was seeking a delay of any such vote. They reasoned that their tactics would eventually result in the majority of members demanding of the Leadership the opportunity to vote on substance of the Commission's proposals.

Resolution Not to Prorogue

The major accomplishment of this session was agreement to support a recommendation by Frank to circulate a letter among House members urging a vote prior to prorogation on the substance of the Commission's proposals and pledging its signers to vote against prorogation until the Commission's proposals had either been defeated or acted upon by the Governor. It was agreed that using a letter would have the effect of binding those who signed it but would be less subject to criticism by House Leadership as a dilatory tactic. The "Frank letter" ultimately read in part as follows:

We believe that it would be a dereliction of duty for the legislature to use the excuse of early prorogation to prevent full consideration of the package of legislation put forth by the Special Commission....

We, therefore, publicly affirm that we will vote against prorogation until this legislation - reforming state construction projects, establishing a strong Inspector General, providing for public campaign financing, and extending the Special Commission for six months - is finally voted on by both houses, including action on conference reports where necessary, and is acted on by the Governor...
No subject before us outweighs these bills in importance. To allow prorogation before they are fully debated and acted upon would be intolerable and we will, therefore, fight any effort to prorogue before these bills are disposed of by vote of the legislature and the governor.

The signatories of this letter never numbered a majority of the House but its psychological effect was powerful. After several unsuccessful attempts, a resolution passed the House of Representative on June 4, by a vote of 132 to 20 which essentially embodied the provisions of the Frank letter. The vote (roll call number 177 of 1980) was made possible by a successful 106 to 48 vote on a motion by Card to suspend the rules and allow for debate and action on the resolution.

The House voted that:

WHEREAS, public confidence in the government of the Commonwealth is in serious question due to recent revelations of wrong doings by elected officials, government employees and government vendors; and,

WHEREAS, the Special Commission on State and County Building Contracts has made numerous recommendations to the General Court in the form of House Documents: House No.'s 6557, 6575, 6439 and House Docket 6323 in order that further wrongdoings be avoided; and,

WHEREAS, the Legislature should respond to the public's outrage regarding said wrongdoings without delay; and,

WHEREAS, on Monday, June 2nd 1980, more than a majority of House members indicated their unwillingness to consider prorogation before the Special Commission's recommendations have been finally acted upon; therefore be it

RESOLVED, that the House of Representatives makes it known that it should not vote to prorogue for at least fifteen days after the branches have laid each of said documents before the Governor for his action, and be it further

RESOLVED, that should the Governor veto said measures, the House shall take a recorded roll call vote regarding an override of such vetoes, and if the Governor should send such measures back with amendments, the House will not vote to prorogue until such time as all amendments have been considered by roll call votes and an additional period of time be allotted for final action by the Governor and both branches of the Legislature regarding a subsequent veto message and override vote by the branches, and be it further

RESOLVED, that the Clerk of the House shall cause to be transmitted a copy of these Resolutions to His Excellency the Governor of the Commonwealth.

$300 Million Repair Estimate

Meanwhile the Commission after two days off from public hearings resumed hearings on May 20 and heard testimony from Harvard University Professor of Architecture John Woollett, who estimated that building defects could cost Massachusetts taxpayers $300 million to correct. Woollett, an architectural technology professor at Harvard University, said that "the majority of the Commonwealth's buildings are poorly planned, of questionable design, of inferior construction, and have been negligently supervised by the Commonwealth during their construction. In short, the majority of the Commonwealth's buildings built over the last ten years are in deplorable condition, and as a result the current
system has left a legacy of buildings purporting to serve the taxpayers that have paid for them, but in reality are a disgrace.60 He reported on a Commission study in which 65 percent of a sample of 80 facilities visited had major defects including failed concrete structures, falling walls, faulty mechanical systems and leaking roofs. Another engineering consultant to the Commission, John C. Deveney, former Superintendent of Buildings at Harvard University and General Director of Building Construction for John Hancock Insurance Company, testified that he had encountered defects in public construction that were "hard to believe."61 He compared workmanship and inspection criteria used in public and private construction, and he added to Woollett's criticism of state officials for failing to initiate liability suits to recover damages for faulty buildings.

Commissioner McCarthy presented a slide show explanation of the filed sub-bid system during which he spoke in favor of the Commission's proposed reform. McCarthy and Commission Technical Coordinator Thomas Neely presented slide shows on the condition of public buildings in Massachusetts for interested legislators and members of the media frequently in the State House at this time.

Dr. Martin J. Kelly of the Peter Bent Brigham Hospital, a psychiatrist retained by the Commission, testified on May 22 in Suffolk County Superior Court that Albert Manzi was competent to appear and testify before the Commission. Judge Peter F. Brady heard Dr. Kelly's testimony and in a second session on the afternoon of May 27, Judge Brady journeyed to Paxton to preside over a short closed hearing at Manzi's bedside. On the same day, Suffolk Superior Court Judge James P. McGuire ordered Harold Greene to appear before the Commission. McGuire also ordered George Basile, a Dedham contractor, to honor a Commission subpoena.

The House Ways and Means Committee held all of the Commission's bills at that point: construction reform, Inspector General, commercial bribery (which had been reported out favorably by the Judiciary Committee), and the bill extending the commission's life to December 31. On Thursday May 22, Chairman Ward, accompanied by Attorneys Littlefield, Bockian and Beeferman, met with John Finneg an who was accompanied by Joseph Burke and Kathleen Sullivan. Finneg an asked first for a discussion of the Commission's extension request, examining in detail the Commission's budget proposal for the additional six-month period. Finneg an then turned to the Inspector General bill and asked for a summary briefing, which Littlefield provided along with such cost estimates as were then prepared. Finneg an indicated that a hearing would be held on both the extension and the Inspector General bill on the coming Wednesday, May 28. There was no discussion of the construction reform bill other than Finneg an's indication that it would be dealt with later on, probably after his Committee had disposed of the capital
outlay budget for the year. Ward and the Commission staff were extremely pleased with the meeting and left with the expectation that Finnegan offered hope for the Inspector General bill.

Representative Wetherbee sought twice on May 27 to suspend rules on the House floor so that he could introduce orders to insure that the Legislature would act on the Commission's bills. The first motion, defeated by a roll call of 91 to 63, would have required the House to work from Monday through Thursday until the bills were acted upon. But a second motion would have required the same schedule until prorogation and was defeated by a closer vote of 85 to 66. Keverian told the Globe, "Working or not working on Thursdays will have no effect on these bills. It won't guarantee any quicker action."

**Ways and Means Hearing on Inspector General**

On May 28, the Ways and Means hearing on the Inspector General bill and the Commission's extension convened. With Finnegan seated at the center of a crowded table and some 100 spectators jammed into the small hearing room, the hearing began. Testifying in public support of the bill were Ward, Bellotti, Buczko and several Representatives. Also testifying in a rare appearance before a committee hearing was McGee. For the first time, the Speaker said that he supported the concept of an Inspector General and supported the State Administration Committee bill. He also suggested that the jurisdiction should be enlarged beyond that specified in the Administration Committee bill, although he did not recommend jurisdiction as broad as requested by the Commission. His major point of disagreement remained the summons power over individuals, which he said he could not support under any condition. Both the Attorney General and the State Auditor spoke strongly in favor of the summons power.

**MacKenzie Testifies**

The Commission began the MBM phase of its public hearings on May 28. Former Senator MacKenzie admitted that he and DiCarlo split $23,000 in cash payments from MBM in 1972 after they changed the wording in a legislative report on the MBM UMass/Boston construction oversite contract. The total payment was transferred to MacKenzie in the course of three meetings. The first occurred at the bar of the Point After Lounge in Boston in early 1972. According to MacKenzie, MBM president Gerald McKee handed him a plain envelope containing $5,000 in 50 and 100 dollar bills. The second payment occurred a month later in a men's room of the downstairs bar of the Parker House. It was delivered to MacKenzie by MBM official William Harding in a plain, brown envelope
containing $8,000. According to MacKenzie, Harding kept $400 for himself before giving the envelope to the Senator. The third payment occurred later that year after MacKenzie had launched his congressional campaign. MBM official Jack Thomas had met MacKenzie at the Point After for a drink and the two men went to MBM’s Boston office where Thomas handed MacKenzie an envelope containing $10,000 in cash. MacKenzie testified that on each occasion he split the cash in equal amounts and gave one half to DiCarlo. (See the detailed discussion in Volume 2.)

In his opening statement, MacKenzie said that he had been a victim of a system that forced politicians to raise funds from people who demanded something in return. He said:

It is fatuous to suppose that elected officials, having burdensome financial commitments to the political process, can continually be exposed to the fat-cat, wheeler-dealers without some injury being done to the cause of good government. In the face of such an unholy wedding of conditions, the wonder is that it happens with such infrequency. I predict that unless the important remedial legislation proposed by this Commission is combined with a comprehensive plan for the public financing of political campaigns, your successors will be here ten or 15 years hence attempting to remedy new ills produced in large measure by the same old causes.62

In testimony on May 29, consulting engineer Stanley Davis told the Commission that he had been informed that MBM and his employer, as joint venture partners, would have to make a payment of between $50,000 and $150,000 in order to secure the UMass/Boston contract. He said that he did not know whether that amount represented the total payment or just the share of his firm, Seelye, Stevenson, Value & Knecht. But in any case, he said that the president of the firm, William Knecht, who told him of the required payment, withdrew the firm from the joint venture due to the requirement. On the same day, Harold Greene appeared before the Commission and refused to answer fifty different questions, many of which concerned the role Sargent played with Greene in the award of state contracts.

Manza to Testify

Judge Brady ruled in Suffolk Superior Court on May 29 that Albert Manzi was physically and mentally competent to testify before the Commission "with no substantial danger to his health." Brady ordered Manzi to comply with the Commission summons, specifying that the Commission transport Manzi from Paxton to Boston by ambulance and provide a medical team to attend him. Brady limited questioning to periods no longer than one hour at a time and no more than two hours per day and one day per week.

The House agreed on a voice vote on June 2 to admit the late-filed Commission public finance bill. At the same session, Representative Wetherbee made a motion
on the House floor in the form of a non-binding resolution stating that the House intended to remain in session 15 days after all the Commission bills had been enacted by both chambers. The vote to suspend the rules in order to consider this motion was 75 to 71 against. The second motion by Wetherbee, to order the House not to end its session until action was completed on the bills by both the Legislature and the Governor, failed of consideration, 87 to 66.

Former MBM Vice President Daniel J. Shields testified before the Commission at a public hearing on June 2. He said that DiCarlo had demanded a $10,000 payment from MBM in exchange for the award of a Middlesex County Courthouse contract. Shields said that McKee had told him of DiCarlo's additional demand. According to Shields, DiCarlo mistook a $70,000 payment from McKee to be for the Middlesex County contract when, in fact, it was payment for the UMass legislative report. Shields said that, according to McKee, Manzi had been involved in picking MBM. Shields said that McKee referred to Manzi as a "five percentor," meaning that he would receive 5 percent of the fee in exchange for obtaining a project for the firm.

Shields testified of a payment in addition to the $23,000 already acknowledged by DiCarlo and MacKenzie. He said that at a 1972 meeting he and Harding had met with the two Senators, and DiCarlo became "belligerent" in his demands for money for the UMass report. Shields said that he and Harding went to the men's room, where Harding produced an envelope containing $3,000 in $100 bills. The two removed $400 to $600 from the envelope and divided the balance of approximately $2,500 between them, returning to the bar following the transactions. The $400 to $600 was then transferred to DiCarlo who counted it and asked Shields what it was. Shields replied that it was what was in his pocket, and DiCarlo said that "it was an insult."

In testimony before the Commission on June 3, DiCarlo denied repeatedly that he offered MacKenzie $20,000 and other inducements in 1976 before the MBM trial to accept the blame alone for the $23,000 payoff. DiCarlo acknowledged that he did speak with then-Senate President Harrington concerning the possibility of securing a job for MacKenzie's wife in the event that MacKenzie was convicted and DiCarlo was acquitted. DiCarlo also denied offering MacKenzie several thousand dollars within two months of the Commission hearings if MacKenzie would lie before the Commission.

In testimony before the Commission in public on June 4, MacKenzie said that DiCarlo had offered him jobs for his family as well as money in 1976 if he would testify that he alone accepted payments from MBM. MacKenzie also testified that DiCarlo offered another payment as recently as a little more than two months
before that day's hearing to lie to the Commission concerning DiCarlo's share of the $23,000 payment. While MacKenzie said that he rejected both offers, he acknowledged signing a false affidavit in 1977 stating that he passed none of the MBM money to DiCarlo. The affidavit was never used. According to MacKenzie, DiCarlo visited him again in March 1980 and offered him money to testify that DiCarlo had only accepted an insignificant amount of funds. MacKenzie said that he had responded, "No, I couldn't go along with that."66

On the same day, former MBM official William Harding testified that he understood MBM reportedly agreed to pay $200,000 to win the UMass contract, $40,000 to $50,000 of which was eventually paid. Harding testified that MBM promised the payment to a Sargent fundraiser, but failed to remit the full amount because "they didn't have the money."67 Harding said that he learned of the promise of payments after the firm to which he then belonged lost the competition for the UMass contract to MBM. In further testimony, Harding told the Commission that Project Construction Management, Inc. (PCM), a firm that he formed following his departure from MBM, funneled $9,000 in 1973 and 1974 to then-Essex County Commissioner Daniel J. Burke and a Burke aide, Paul C. Gaudet, while Burke arranged county contracts for PCM. However, Harding said that he saw no connection between the $9,000 and the contracts. Burke did not comply with a Commission summons for his testimony on June 4.

Peabody Ordered to Comply

On June 4, the Supreme Judicial Court issued its written opinion in Ward v. Peabody, upholding the Commission's right to continue its investigation and ordering Peabody to comply with the Commission's subpoena, in all but certain respects.

Albert Manzi in the meantime refused to obey Superior Court Judge Brady's order that he testify on June 4. Shields gave public testimony again before the Commission on June 5 relating that Burke asked for $25,000 in return for the award of county contracts to PCM. After PCM paid $9,000 to Burke, however, the company was never paid for the Essex County contract, even following legal action. The Commission introduced checks as evidence showing the $9,000 was paid. Shields testified in addition that around the time the $9,000 was paid, Burke signed another county contract with PCM for approximately $500,000 for county work. This bogus contract was then used by PCM as collateral

Suffolk Superior Court Judge Samuel Adams, in a decision on June 9, ordered Kelly and Thissen to testify in public before the Commission. Both lawyers for the men said that they would appeal the order which was handed down as Deputy Chief Counsel Dywer appeared in another Suffolk Superior courtroom in an attempt to require Harold Greene and Burke to testify publicly.

In a public hearing held in Worcester on June 9, Manzi invoked his Fifth Amendment protection against self-incrimination in response to questions by Associate Counsel Pappalardo. Manzi had been asked to discuss his role in the selection of MBM for the UMass contract and to produce certain documents.

Manzi's Attorney James Reardon addressed the Commission at the end of the session: "Mr. Manzi requests me to say this to you: He wishes to thank the members of the Commission and counsel for the consideration they have shown him in coming here under these unusual circumstances in deference to his condition."68

Testimony on Defective Buildings

The Commission meanwhile turned its attention at the public hearings to the conditions of several recently constructed public buildings in the Commonwealth. Melrose Housing Authority Executive Director Robert L. Nason appeared before the Commission on June 9 at a public hearing in Boston to testify concerning the McCarthy Apartments for the Elderly on Main Street in Melrose. Nason spoke of a faulty fire protection sprinkler and alarm system, a roof that differed in design from original plans for the building and, as a result, was unsafe and leaked; structural weaknesses that necessitated beams to shore-up one of the two seven story buildings on each floor; and other structural deficiencies. Also included were the leaking roof that authorities feared would "blow off"69 due to its incompatability with the rest of the structure; a sewer system that backed up into the apartments since it "went uphill;"70 the tenants' alarm system that was prone to false alarms since CB radios could touch it off; major heating and ventilation deficiencies. Russell J. Kenney testified as an expert hired by the Commission concerning tests he had run on the McCarthy complex that mortar
"barely passed" a test for its ability to absorb water, and that a footbridge between the two buildings was found theoretically "not capable of sustaining its own weight." Kenney also said he had found that steel reinforcing rods inside the walls of the building were unattached to the rest of the structure. According to Nason, the defects have contributed to a shortage in elderly housing and a waiting list of 500 applicants for such housing in Melrose. Nason said that many of the defects were attributable to the subcontractors hired.

Commission counsel noted that each tenant would have to move at least once while his or her apartment was completely renovated to correct faults. The Commission was told that correction of the problems with the apartments would cost $4 million, an amount equal to that of the actual construction cost three years before.

Commission engineer James C. Deveney told the Commission that subsurface gravel had been used in insufficient amounts at the Bridgewater State College athletic field, resulting in huge puddles of water collecting on the facility. He said that the fields would have to be completely rebuilt in order to correct the problems, which included unleveled ground with depressions and hollows at a variety of places throughout the fields, rusting goal posts and bleachers, large rocks scattered around the grounds, and poor drainage.

Bridgewater State Planner Lewis E. Perry responded to questioning of Commission attorney McCarthy concerning the baseball diamond. "So it is fair to say that in order to get from home plate to first base you would have to run up hill," asked McCarthy. "Slightly, yes," said Perry. Kenney said that no one person was accountable for the faults, rather, a whole system with many individuals involved could be held accountable.

On June 12 Superior Court Judge John T. Ronan ordered Harold Greene to jail for contempt of court, but stayed his order until the next day at noon to allow him to appeal the contempt order to the SJC. Suffolk Superior Court Judge Adams, on the same day, stayed the order compelling testimony from Kelly and Thissen, allowing them to take the case to the state appeals court. Massachusetts Appeals Court Chief Justice Allen M. Hale left Greene free until 10 am that Monday so that Greene could appeal Judge Ronan's decision at 9:30 that morning before Supreme Judicial Court Justice Francis J. Quirico. In his ruling, Hale stated that the earlier orders by Judges Linscott and McGuire were "correct for the reasons stated."

Compromise and Conflict on the Inspector General Bill

On June 12th, after a series of meetings between Speaker McGee and Chairman Ward, a meeting took place in the Speaker's office attended by McGee, Murphy,
Keverian, Piro, Al Cullen and Ward, Mahoney, and Littlefield. The purpose of the meeting was to review the areas of difference between the Leadership and the Commission on the Inspector General bill. This meeting followed an earlier meeting the week before as a result of which the Leadership, through Cullen, and the Commission had exchanged memoranda pinpointing the areas of disagreement and the proposals of each side. These areas were: appointment and removal of the I.G., jurisdiction, summons over individuals, and a new provision in the State Administration Committee bill excluding employees, paid or volunteer, of the Special Commission from ever serving as employees of the Inspector General. The Leadership suggested at the meeting that it was prepared to go along with the Commission on the appointment and removal issue. A middle ground was suggested by the Commission concerning jurisdiction wherein the office would cover all services and supplies related to construction and all other supplies but not all other services. The original position of the Commission on jurisdiction had been to include all procurement by the Commonwealth including all supplies and services bought by the Commonwealth. The McGee position at the Ways and Means hearing had been to include all construction-related supplies and services but not supplies or services not so related. The Leadership was adamant on the matter of no summons for individuals and exclusion of the Commission staff from eligibility to work for the Inspector General. Ward and Mahoney agreed to meet with other Commissioners to inform the Leadership of the panel's position on the summons issue.

The Commission met the afternoon of June 12th and agreed unanimously that it was essential for the effectiveness of the Office of the Inspector General to have the ability to summons individuals to testify in connection with its investigations. This decision was reported back to the Leadership, and at the same time Cullen and Littlefield worked on some further compromise on the summons issue which would achieve the Speaker's expressed concern to protect against abuse of the summons and yet retain the essential ability to secure testimony which the Inspector General sought. Cullen and Littlefield met over the weekend and came up with a proposal to have summonses reviewed in advance and approved by an Inspector General council to consist of the Secretary of Public Safety, the Attorney General, the State Auditor, the State Comptroller, a lawyer appointed by the Attorney General from a list of three submitted by the Speaker of the House, and a business or auditing person chosen by the Auditor from a list of three submitted by the Senate President. Littlefield and Cullen suggested that four votes be required from these six to issue a summons. Commission members and the Leadership reviewed this redrafted proposal on June 16, and
another meeting was held between the Leadership and Ward, Mahoney, and Littlefield. Both parties agreed to support the draft, except that the Commission specifically did not agree with the exclusion of eligibility of its staff to serve in the Office of Inspector General, which provision the Leadership continued to insist upon. McGee and Ward held a press conference on June 18 endorsing the new proposal. A press statement was issued at the time in which the Speaker stated that passage of this bill would put the Commonwealth in the forefront in the nation in the ability to detect fraud and abuse in public contracts, and Ward described the summons power as sufficient for the effective operation of the office while protecting against the potential for abuse. The Chairman and the Speaker also publicly stated that the commercial bribery bill would be reported out of Ways and Means and would have the Leadership support in the House.

Greene to Charles Street Jail

At 11:42 am on June 16, Judge Ronan ordered Greene to Charles Street Jail, "until December 31, 1980, or until the expiration of the life of the Special Commission, whichever comes later."

Frank Masiello returned to deliver testimony before the Commission on June 16, telling the panel for the first time in public that, according to Manzi, MBM had made an unspecified financial "commitment" to the Sargent campaign for the UMass/Boston contract. Masiello said Manzi complained to him frequently that MBM was not living up to its commitment. He said Manzi held him responsible for MBM's delay since he had initially introduced Manzi to Anthony Mansueto of MBM. Masiello stated that Manzi told him: "Those deadbeat friends of yours aren't living up to their commitments...I'm under severe pressure from the Governor's campaign committee to get those funds." 75 Manzi threatened to arrange harassment of MBM on the job site at UMass, and Masiello called Mansueto on a number of occasions, but was unable to make contact. Masiello testified that, in addition, MBM was used to making political payments in return for contracts. He said Mansueto "acknowledged the fact that he was familiar with the way these things worked." 76 He alluded to the fact that the firm had done work in Chicago and had made contributions, on occasion, to Mayor Daley's campaign, "and it was not unusual for them to make contributions in New York to further their interests in the hope that they would get work." 77

In public testimony on June 18, former Governor Peabody's law partner Jeremiah D. Lambert told the Commission that their firm was to receive 1/2 percent of MBM's fees from the UMass/Boston construction project. Lambert
testified that the 1/2 percent was not a contingent fee. Appearing after Lambert on June 18, Peabody in an angry opening statement said, "I come here offended at the statements made by your investigator...not only was this $120,000 mentioned, but also it indicated that possibly I had perjured myself, and so this occasion becomes not an occasion to seek the truth, it becomes - and I can see it with the kleig lights and everything else - an occasion to hang a former Governor."78 Peabody said that, "instead of being asked to come in and talk and cooperate...instead I receive your request of documents which takes everything but my skivvies off me...and treats me as though I'm even worse [as though] I'm part of the criminal conspiracy that exists in this Commonwealth."79 Peabody refused to answer certain questions put to him by Deputy Chief Counsel Tabak concerning the practices used in awarding design contracts during his administration on the grounds that the Commission had not given him proper time to prepare a response, and then began his testimony about his role in assisting MBM obtain the UMass Boston contract. On the same day, Massachusetts Appeals Court Chief Justice Hale stayed the Superior Court order directing Thissen and Kelly to testify pending his own decision on whether to grant a longer stay and full appeal to the two men. The next day, U.S. District Judge David S. Nelson denied Greene's petition for a writ of habeas corpus in a ruling that declared Greene "failed to exhaust his state remedies by presenting his constitutional claim to the state courts." Troy had argued that Greene's constitutional right to due process of law had been violated by a promise from Deputy Chief Counsel Dwyer not to press for Greene's jailing until such time as a full appellate hearing on Greene's claim could be completed. Dwyer denied having made any such promise.

Calls-for Admission of Campaign Bill

The campaign reform bill still awaited admission to the Senate at this time, almost five weeks after the original filing. A coalition of public interest groups held a press conference in the State House on June 18 to call on the Senate leadership to admit the legislation. Representatives of the League of Women Voters of Massachusetts, MassPIRG, CPPAX, the Massachusetts National Organization for Women, the Massachusetts State Division of the American Association of University Women, the Association of Massachusetts Consumers, Americans for Democratic Action, Mass. Action, and the United Auto Workers-C.A.P. Council appeared at the conference, which was spearheaded by Common Cause/Massachusetts. Common Cause Executive Director Elizabeth Fay said, "For
the Senate leadership not to admit the bill would be a great disservice to the other members of the legislature and to the constituents they serve."

Peabody appeared on June 19 for a second day of public testimony before the Special Commission concerning MBM and the UMass contract. He denied that he ever advised MBM to make contributions to Sargent's campaign at that time but agreed that he had a series of meetings with top state officials, including Sargent, prior to the award.

In other testimony, Peabody said that state design contracts were used as a matter of course to reward contributors and campaign workers while he was governor in 1963 and 1964. He said this policy was consistent with the practice of administrations both prior to and following his own. "Architectural contracts," Peabody testified, "were an area of patronage in our administration....Patronage to me is not a bad word, patronage is what you give to people who support your campaign, who believe in your candidacy, and who put you in office."80 The former Governor acknowledged that he and Sherwood Tarlow made it known to architects that they would be considered for awards if they helped the Peabody campaign, provided they were competent. The former Governor said that this design award process was necessary because "compromises...had to be made"81 to raise political funds. As a result of the policy, Peabody acknowledged, many of the buildings resulting from the contracts he awarded did not live up to expectations. "The UMass Library I'd always hoped might be called the Peabody Library..." said Peabody, "but after I visited it, I decided I didn't want it to be called the Peabody Library anymore."

Inspector General Passes the House

The Inspector General bill came out of the Ways and Means Committee on June 19 and went to the House floor. After an unsuccessful attempt by Card to expand the Inspector General's jurisdiction, the measure passed in the House, 145 to 4, and the bill was sent to the Senate.

In the Senate the bill was 'immediately referred to Senate Ways and Means Committee which submitted it to the full Senate with a recommendation of 'ought to pass'.

Appeals Court Judge Hale, on June 20, denied motions for an extension of a stay granted to Thissen and Kelly. He wrote in his decision that the two were free to appeal his ruling, but he said, "It is my opinion that the law in this area is so clearly established that there would be no reasonable likelihood of success on appeal." Thissen appeared before the Commission on June 24 in public session and invoked his Fifth Amendment protection against self-incrimination on
any and all questions. Thissen's appearance came after Justice Quirico declined to postpone his testimony.

Greene Appears Before Public Hearing

Harold Greene appeared before the Commission on June 24 at a public hearing after he decided to leave the Charles Street Jail where he had been held for eight days to obey the Court's contempt order for refusing to testify before the Commission. Greene said that he had designated between ten and fifteen of Sargent's political supporters to receive state design contracts between 1970 and 1974. Greene said that, though he reported directly to Sargent, neither Sargent nor Dwight was aware of his involvement in picking the firms. Greene explained, "I thought a part of my job in helping the Governor that I should take advantage of whatever means of what you call patronage to assist friends of the Governor."

Campaign Bill Admitted

The Senate admitted the campaign reform bill on June 24 with a flood of other legislation. It was assigned to the Joint Committee on Election Laws.

William Masiello returned to testify in public before the Commission on the same day, June 24. He told the Commission that Anthony Mansueto told his brother Frank, at a meeting also attended by William Masiello in 1969 at Nick's Restaurant in Boston, that MBM agreed to pay 5 percent of its fee to Manzi in cash in return for the UMass Boston contract.

Masiello also stated that, in 1970, MBM had submitted a $ 4,000 bill the Commonwealth for work the firm had not performed on the Worcester County Jail. Masiello said that the firm split the amount in half, contributing $ 2,000 to the reelection campaign of former Senate President Harrington, using Kelly as a conduit, and the other $ 2,000 paid indirectly through Masiello and Kelly to Mayor White's gubernatorial campaign.

In public testimony on June 25, former Comptroller Stacey said that he provided running totals on an adding machine tape of state payments to MBM on the UMass contract to Manzi on about ten occasions between 1970 and 1972. Stacey said that the information was public record and he said that he never asked Manzi why he wanted the information. Though Mansueto was scheduled to testify before the Commission on the same day, he did not appear and as he was outside of Massachusetts he was beyond the summons power of the Commission.
Former MBM President Gerald McKee, Jr. appeared before the Commission in public testimony on June 26 and denied that MBM agreed to pay Manzi for the 1969 award of the UMass contract.

Senator Kelly appeared before the Commission on June 27 and declined to answer counsel's questions, citing the Fifth Amendment. Greene also returned to testify concerning the process by which he consulted with Manzi before recommending his final selection of design contract firms to Sargent.

Chief Counsel Littlefield stated at the public hearings on June 27 that the Commission had sent the following letter to all those whose reputations could have been adversely affected by public testimony before the Commission, allowing them an opportunity to appear in public before it.

Dear __________________:

It is the policy of the Special Commission Concerning State and County Buildings to offer the opportunity to persons whose reputations may have been adversely affected by testimony before the Commission to appear themselves and testify before the Commission. We have reserved time for you to testify before the Commission at a public hearing to be held in Room 436 of the State House in Boston on Wednesday, May 7, 1980 at 10:00 AM.

If you agree to testify, you will be asked to respond to allegations made before the Commission concerning your role regarding public construction contracts while you were ________[title]. If this time is inconvenient and you wish to appear on a different date, you may notify us of another date that you wish to appear and we will attempt to accommodate you.

At the present time we are not serving a summons upon you compelling you to appear before the Commission but are offering you the opportunity to testify which you may decline to accept.

Testimony before the Commission will be taken in accordance with the Rules of Procedure of the Commission, a copy of which is enclosed with this letter.

Please inform us by Friday, May 2, 1980 of your decision as to whether or not you will accept this opportunity to appear and testify. If you have any questions about this request, please contact us.

Three witnesses -- Walter J. Wagner, John Manzi, and Michael Trotto -- appeared pursuant to the letter on June 27, denying prior testimony that they had requested and received payments from William Masiello during the time they served on the Shrewsbury Housing Authority. Invitations to testify were sent to a total of 30 individuals. Seventeen declined the invitation; four did not convey any decision; three did not respond; three letters were undeliverable or unclaimed and three accepted and testified.

The Commission completed its second series of public hearings on June 27. In the fourteen weeks between March 20 and June 27, the Commission held 43 days
of public testimony and heard 96 witnesses whose testimony covered over 4,000 pages of transcripts.

During the last week in June, Commissioners and staff met individually with the Senate members of the State Administration Committee as well as other Senators in preparation for floor action. Speaker McGee told Ward that he had talked to Bulger about the bill and that the Senate President had accepted the compromise proposal voted on in the House and accepted by the Commission.

The Inspector General bill came before the Senate on June 27. Various Senators offered a series of amendments, none of which the Commission had known of in advance or had been given the opportunity to discuss beforehand. One such amendment would have replaced the Attorney General as one of the three persons appointing the Inspector General with the Governor. That amendment, however, was withdrawn after it had been offered, and a proposal to substitute the Governor for the Secretary of Public Safety as one of the three appointing authorities was approved in its place. The Senate approved five other amendments on voice votes with the Bulger presiding. One of these amendments enlarged the Inspector General council from six to eight members, the additional two appointments to be made by the Governor from a list of three persons submitted by the Minority Leader of the House and the Minority Leader of the Senate. A companion amendment increased the number of affirmative votes required to issue a summons from four out of six to six out of eight. Another amendment proposed by Senator John A. Brennan, Jr. (D-Malden), at the recommendation of the Attorney General's office, dealt with the requirement of confidentiality of matters referred by the Inspector General to the Attorney General. A final amendment proposed by Senator Robert E. McCarthy (D-East Bridgewater) sought to remove the exclusion of the staff members and volunteers of the Commission from ever serving in the Office of Inspector General. Senate President Bulger, on a voice vote, announced the defeat of the amendment, but a roll call was ordered and the amendment passed 21-8. The bill passed well after midnight that evening and was engrossed in the Senate. There were then seven Senate amendments to the House version; either the House would concur with the Senate amendments or the bill would go to a Conference Committee.

The Commission did not support House concurrence with the Senate version because the members were extremely concerned about the addition of two members to the council. They believed that the required six of eight votes to issue a summons was impractical and felt that it would jeopardize confidentiality of matters under investigation.
Construction Reform Reaches the Floor

Throughout the controversy and compromise on the Inspector General bill, the construction bill languished in the House Ways and Means committee. Commission members Burke and McCarthy and staff members Bockian, Beeferman, Dolberg and Alper met frequently with undecided legislators during the month of June in an attempt to line up as many votes as possible in support of the bill and to assess the possibilities for amending the State Administration version by an attempt to repeal the filed subbid law. In the course of these meetings, the Commission learned of a variety of attempts that would be made to amend the construction bill. In a meeting with Representative Louis Nickinello (D-Natick), Chairman of the Transportation Committee, Bockian and Beeferman learned that he was unalterably opposed to any mention of transportation agencies in the construction bill. His stance paralleled the general position of the road industry lobby - the Construction Industries of Massachusetts (CIM). The Associated General Contractors evidently opposed the provision of the legislation calling for prequalification of general contractors. In addition, some legislators alleged that the administration was still not satisfied with the Commission's bill, presumably because it did not allow for fee bidding by designers and because it substantially restructured agencies within A&F. The word around the State House was that the Leadership regarded the construction bill as poorly drafted and filled with technical problems.

Commission staff met with Ways and Means staff on June 20 to answer questions and review provisions of the construction bill. Questions of the committee's staff directly related to the arguments raised by opponents of various provisions of the legislation. Al Cullen, who had acted as advisor to the State Administration Committee during its deliberations on the construction bill, explained the State Administration Committee's reasoning in adopting a variety of the measures in question. During the week that followed, the Commission heard repeatedly that the Leadership had substantial trouble with the construction reform bill and regarded it as unfit for action. A meeting was scheduled for June 27 between the Commissioners and the House Leadership to discuss the bill. In preparation, Bockian called Cullen to ask if Cullen were the source of the statements that the bill was technically flawed. Cullen replied that he was not; he said that, aside from very minor technicalities, it was his view that the problems with the bill were political.
The judgment of many State House observers at the time of the June 27 meeting was that the Legislature was preparing to prorogue in short order. Following a brief Commission meeting, all the Commissioners except Bellotti met in the Speaker's office with Speaker McGee, Finnegan, Murphy, Keveryian, and Piro for three hours. The Commission was left alone on several occasions to consider its response to the position of the Leadership.

At the meeting, the Leadership stated essentially that there was not time to get out a good construction bill that session. Although no hearing had been held by the Ways and Means Committee on the bill, the Leadership expressed the opinion that it was technically very poor. The members of the Leadership assured the Commission they supported construction reform along the lines the Commission recommended. They suggested that consideration of the bill be put off until the next legislative session, in which event the Leadership guaranteed that a complete construction bill, including a repeal of filed subbidding, would be voted through the House by March 1, 1981. The stick that accompanied that carrot was the declaration that the Legislature would prorogue by Sunday night, June 29th; thus the Commission had to decide immediately whether to face the possibility of defeat or no vote in the current session or else a deferral with the Leadership's promised support in the next session.

The Commission met itself and decided to accept the Leadership proposal to postpone consideration of the bill, but Chairman Ward said specifically that this agreement should not be announced until Monday, June 30th, after the Commission had time to review the terms of the understanding, and prepare a statement describing the terms to be made jointly by the Speaker and himself. It was further agreed at the meeting that no one was to make any public statement about what had transpired until the agreement was finalized on Monday.

Immediately after the meeting, word of the agreement apparently leaked out onto the floor of the House, leading to consternation among the representatives who had been working with the Commission in support of its bills. By Friday evening, the press was tracking down the participants in the meeting to attempt to gain a description of what had transpired. Globe reporters Walter Robinson and Laurence Collins quoted Ward in the Saturday edition as saying that he would not comment on what had been discussed at the meeting, but that there had been no agreement reached and that no statement about the meeting would be made until Monday. Over the weekend, Commission members and staff reviewed the options available to the Commission concerning the construction bill. As it developed
none of the Commission members or staff accepted the view that there were technical difficulties with the bill. Furthermore, it became clear over the weekend that the Legislature would not prorogue instantly as had been stated by the Leadership, but rather that solid support still existed for the June resolution not to prorogue until all the Commission bills had been considered by both chambers.

The headline of a Globe editorial on Monday morning, June 30, asked, "Is corruption commission caving?" The article read:

The commission will ill-serve the public if it accedes, as it may, to the desire of House Speaker Thomas W. McGee and some in the Legislature to avoid acting now on its recommendation. The commission has complained that the contracting legislation has not drawn focused public backing this year and has thus become a fat target for special interests. It should ponder the probable results in 1981 when the commission itself, the bill's most visible supporter, is gone.

The likelihood for enactment next year will be substantially lower than it is now. And, sadly, the ultimate judgment on the Special Commission's value to the state will fall as well.

After the painstaking performance of the Special Commission these many months, the public will feel betrayed by this reported cave-in and will remember the legislative roll calls on this central statewide issue.

The Commission met on Monday morning June 30, and agreed to inform the Speaker that they could not accept the proposal to postpone the bill until the next session. Ward held a press conference at 4 p.m. at which he stated there had never been any doubt in his mind that the Leadership fully supported comprehensive reform of the construction process and that the difference between the Leadership and the Commission was only one of timing as to whether the bill should be enacted now. The Chairman stated the Commission's position that it should be now. McGee, who also attended the meeting, declined an invitation from Ward to comment on the progress of the legislation.

McGee stated the next morning that the bill would be discharged from Ways and Means to the full House at the end of that day.

**Election Laws Hearing on Campaign Bill**

The Joint Committee on Election Laws held a hearing on the campaign reform bill on the morning of July 1. Until that time, the staff of that committee had
been instructed not to communicate with Commission staff concerning details of the bill, despite numerous offers by Commission staff to conduct briefings and discussions concerning cost estimates and other aspects of the proposed legislation. Commissioner Burke addressed the Committee:

Senator Bertonazzi, Representative Bassett, other members of the Joint Committee on Election Laws, members of the Massachusetts Senate and House -- I am Frances Burke of the Special Commission Concerning State and County Buildings. It is with a sense of urgency that I present this statement to you on behalf of the Commission concerning our Campaign Reform Bill, H. 6734. Though the current legislative session draws to a close, I believe the Commissioners, that the measure is of such overriding importance as to warrant consideration of the Massachusetts Legislature this session.

Over the past two years, the Special Commission has heard from many individuals and groups on the urgency for campaign finance reform in the Commonwealth of Massachusetts. During our earliest public hearings on the system, one Legislator testified that "office holders must be responsive to important donors if they wished to be re-elected." Further, testimony proposed that it is critical to "liberate the vast majority of honest elected officials" by recommending public financing of elections, and that the Commission's legislative reform package would be incomplete without public financing.

The compelling need for this bill is provided by the revealing records from the Commission's fourteen weeks of public testimony concluded last Friday. Vivid revelations were made of the extent to which public officials awarded contracts to people making large contributions to their campaigns. It was testified that contracts were not awarded to the most capable firms; competent firms hesitated to seek public contracts; and the costs of such contributions and payoffs were added to the contract price and passed along to the taxpayer. In a very real sense, then, the Commonwealth of Massachusetts already has a public finance system, as citizens indirectly fund politicians' campaigns and get shoddy services and unaccountable government in return.

The public testimony shows clearly that during the period under investigation:
- Former administrative officials directly approached "certain categories of people in line to get appointments and contracts" in exchange for political contributions;
- Designer Selection Board finalists were automatically added to source lists of a Governor soliciting campaign contributions;
- Contractors doing substantial work for a city were regularly solicited to buy tickets for mayoral fundraisers;
- Designers in the Commonwealth believed that, as one testified, "It was virtually impossible to get contracts without making political contributions;"
- Firms were expressly required to make payoffs, called political contributions, as quid pro quo for receiving contracts;
- "Simple favoritism" towards one's contributing friends was an Administration and Finance Secretary's guidance for contract awards.

These examples associated with the current system of campaign financing highlight the problem of the elected official's obligation to contributors, coupled with the designer's or contractor's obligation to contribute. A pervasive, corruptive environment reigns, which fosters the covertness of reciprocity." We pay for this 'agreement' not only in taxpayers' dollars but in the hidden costs of continuing this environment; the climate which accepts less than excellence in public administration, less than excellence in our public buildings for users, and less than excellence in our procedures, processes and practices in the Commonwealth. It is wasteful and corruptive.

Together anti-corruption measures will not clear up the problems. We need to strengthen the public's right to know who contributes to whom, legislate full and timely disclosure of political contributions, reduce the candidates' dependence on
large gifts, curb excessive influence of big donors, encourage the small donor to participate, and restore the trust, confidence and credibility of the people in our Commonwealth. This public finance bill (along with our bills on the management of construction and inspector general) will strengthen our political processes, citizen trust and confidence.

House 6734, our campaign finance proposal before you today, strengthens the present Ch. 55A of General Laws on two major points. First, the proposed system is funded by means of a $2 checkoff for individual taxpayers on their state tax return rather than the $1 add-on under present law. Less than 4% of Massachusetts taxpayers participate in current add-on system, generating a negligible amount of funds. Thirty-five percent of these same taxpayers, however, check off $1 on their federal tax returns to finance presidential elections. We anticipate that a similar situation and would participate in a state checkoff system, particularly since Massachusetts taxpayers' participation far exceeds the national average of 23%. Secondly, the system we are proposing extends public finance to campaigns of legislative candidates. Our public corruption hearings have shown that these candidates are subject to the same financial pressures, and consequently to the same obligations and indebtedness as statewide candidates.

The bill reduces the maximum allowable size of contributions per contributor from $1,000 to $500 and extends this limitation to political committees, as well as individuals. Candidates who choose to accept public financing will be held to a maximum limit of $250 on contributions. These measures will substantially reduce the crippling influence wielded by large contributors and special interest groups.

This bill provides for an open reporting system of contributions, and for more efficient and more effective monitoring of campaign accounts. It extends the period for which campaign finance records must be retained -- by candidates and by the Office of Campaign and Political Finance -- to six years. This period coincides with the expiration of the statute of limitations for prosecuting violations of the campaign finance laws. Under the present law, records may be destroyed at the end of the term of office sought by the candidate, making subsequent investigation all but impossible.

This bill requires candidates to report separately names and business affiliations of contributors associated with firms which have done substantial business with our government. A provision permits public scrutiny of contributions made by public vendors. A separate provision prohibits prejudicing any person or business for refusing to make political contributions or favoring any person or business for making a political contribution.

Finally, this system the Commission is proposing is inexpensive, cost-effective. Public financing of statewide and legislative campaigns by means of a $2 checkoff will represent less than 3/100ths of one percent of the State budget.

The Special Commission has done extensive analysis of this legislation for the 1978 and 1980 campaigns. These analyses highlight that our proposed bill, when enacted, will provide sufficient funds to support campaigns in the Commonwealth.

The Commissioners view this legislation, House Bill 6734, as extremely important. We respectfully urge the Joint Committee on Election Laws to recommend this bill favorably so that it will receive speedy consideration before the end of this session.
U.S. House Speaker Thomas P. O'Neill endorsed the Commission's efforts to obtain a system of public financing in a letter. Senator Edward M. Kennedy submitted written testimony to the Joint Committee, saying:

The cost of reform is extremely small. The Special Commission Concerning State and County Buildings estimates the cost of public financing of State Senate and House elections to be less than $6 million. In my view, this is the wisest single investment the hard-pressed Massachusetts taxpayer can make in the future of the Commonwealth. For it is from this reform that the legislature will grow more responsive to the State and its needs and elections will once again belong to all the people.

Press reaction continued to reinforce the Commission's position on immediate legislative action. In the second installment of a four-part series, the Lowell Sun editorialized on July 1:

The bills described above may not be acted upon this year but they should be. If the House and Senate are not kept in session, if the legislators are not allowed to vote now on these bills, the onus will be squarely on the back of Speaker McGee and his counterpart in the Senate, President William Bulger of Boston. They'll have a lot of explaining to do to a public that has seen the legislature remain in session many times in past years beyond normal prorogation date to settle matters of lesser importance.
Prorogation

Indeed, beyond the Commission's bills, it appeared that, in keeping with tradition, the Massachusetts Legislature was due to confront many of its most significant concerns in the frantic, waning hours of the session. Out of the total of 8,428 bills filed in the session, key bills still pending included reorganization of the MBTA, the deficiency budget, the capital outlay budget for the new fiscal year, an energy audit bill, two bills to make it easier for Boston to build convention centers, a bill calling for stricter sentencing of drug pushers and mandatory sentences for repeat offenders, a bill for reform of the state civil service system, a bill to "staircase" sex offenses, the bottle bill, a tax-limiting bill that would institute a seven percent cap on state and local spending, a controversial condominium conversion bill, and a bill to allow local housing authorities to provide condominium housing for the elderly.

In a further effort to stave off prorogation and encourage action on the Commission's bills, Common Cause sent a letter to the 132 representatives who had voted in favor of the June 4 resolve. Director Elizabeth Fay reminded the members of their commitments, complemented them for their progress until that point, but observed that there was a long way to go.

The House considered a number of matters during the afternoon, and adjourned for supper from 6 pm until 9:30 pm. The House took up the construction reform bill at approximately 10:30 pm. The Clerk announced that the bill had been reported from Ways and Means with a recommendation to pass. Between 11 pm on July 1 and 4 am on July 2, the House debated the construction reform bill.

The Commission hurriedly visited House members known to support changes to the bill and made themselves highly visible in the House Lobby to discuss
whatever friendly amendments other representatives might contemplate. These efforts were only partially successful. Nickinello proposed the first amendment, which concerned removal of transportation matters from the jurisdiction of the bill. Representatives supporting the Commission bill did not contest this amendment. Next, Johnston proposed the Commission amendment to repeal the existing mandatory filed sub-bid law. That measure was debated and defeated on a roll call vote. Marotta offered a series of amendments, one of which mistakenly removed all cities and towns from competitive bidding on the award of construction contracts, and all his amendments passed.

Representative Michael Flaherty (D-Boston) then entered the chamber to offer an amendment. He declared that he had first seen the legislation earlier that evening and had read the first 20 pages and in those 20 pages found a number of objectionable provisions. He then offered a series of amendments requiring approval of the Legislature before any action be taken regarding any real property under the control of any agency in the Commonwealth. In many cases, this approval would already have been required by Commission's proposal but in many others it went far beyond even the rigid procedures currently required regarding state owned real property. In what appeared to be a whimsical mood, the House passed all these amendments by roughly 30 vote margins and defeated a motion to reconsider them by a 85 to 70 vote.

**House Passes Construction Bill**

Card offered an amendment to strike the prevailing wage section of the legislation. This amendment conformed with Commission policy which at that time dictated that if no changes were made in the subcontractor selection law, no change would be necessary in the existing prevailing wage laws. This amendment passed on a voice vote and set the stage for important subsequent events. In all instances it was impossible for the members to know what the amendments were since the clerk only stated that certain lines of certain pages in the bill were to be removed and certain other lines substituted, but the texts to be substituted were not generally available nor were they read to the House before they were voted on. By 4 am the parade of amendments slowed down. Marotta, apparently alerted to the consequences of several of his amendments, requested unanimous approval for their withdrawal. Such approval was granted. The bill was voted on by the whole House as amended, and passed on a roll call vote of 131-14. McGee, Keverian, Piro and Flaherty (Charles) voted against the bill but Finnegan voted for it. The bill was passed to be engrossed. Then it was engrossed the same morning, July 2nd, and sent to the Senate.

"No more dots," commented Card to the Patriot Ledger.
In a press conference later that day, Johnston and Card proclaimed victory for the passage of the two bills in the House. "Four days ago," said Johnston, "the Speaker of the House told the Special Commission there was no way the contract reform bill would reach the floor of the House this year...At 3 am the House engrossed and sent to the Senate the contracts bill." Johnston said:

The vote last night and the previous inspector general vote represent a tremendous victory for the Special Commission which has been working for two years to clean up a system that was totally corrupt for at least a generation. It also represents a victory for progressive forces in the Massachusetts House...in a direct confrontation with the leadership over the most important piece of legislation this year.

Committee Work on Campaign Bill

Card and Johnston noted, however, that the campaign reform bill and the proposal to increase bribery penalties still faced legislative action. Johnston warned that the Inspector General bill "could die in conference committee," but that he was confident the Governor would sign it if it got to his desk. He said that it was necessary for the Senate to act on the contracts bill "forthwith, that is within the next 24 hours," because of the danger of a King pocket veto. "We feel it is important to keep the heat on him," said Johnston.

Initial indications from staff of the Committee on Election Laws following the hearing on the Commission's campaign bill had been unfavorable. State House observers appeared to believe that it was too late for any substantive action on the subject. But Commission staff received word from Committee staff on July 2 that their Chairmen had instructed them to develop a bill which could be reported out favorably forthwith. The unexpected progress of the other Commission bills apparently prompted the Election Law Committee leadership to act hurriedly on the proposal. The Commission surmised that its public finance bill would become a hot potato were the other bills to gain passage; Bertozzi and Bassett no doubt hoped to avoid culpability for the death of the only Commission proposal out of four not to pass during the session.

Beeferman, Alper, Dolberg and Read met with Committee staff members including Craig Stepnoe, Jim Killilea, for a total of over ten hours on July 2. Though both parties felt pressure to reach constructive compromises in areas to result in the report of a viable bill, the meeting acquired an antagonistic tone. Stepnoe became effusive in his criticism of various provisions, requiring Beeferman to engage in detailed defense of aspects of the proposal. Representative Robert Cerasoli (D-Quincy) participated in portions of the meeting; Representative John Businger (D-Brookline) attended for a brief period and left because he said the meeting was counterproductive. When the meeting adjourned well past midnight, both parties agreed to continue the next day.
When the Senate convened, the construction bill had been referred to the Senate Ways and Means Committee, which promptly reported out favorably to the floor after amending it to strike revisions to the prevailing wage law.

**Senate Passes Construction Bill**

Senator Brennan began the debate on the floor on the Construction Reform Bill at approximately 11 pm on July 2 by offering an amendment to the definition of "minority" as it applied to the provision requiring a five percent set-aside on public construction projects for minority businesses. He stated that the Irish, the Italians, the English, the French as well as the Orientals were minorities since no one group totaled more than 50 percent of the population of the Commonwealth. Brennan argued that such groups should be included in the definition of the word minority. The amendment was debated for over an hour. The amendment was defeated, but during the course of the evening, Brennan offered a series of additional amendments and repeatedly stated his position that no one had read the bill in the Senate and it therefore should not be passed in such a precipitous manner. Senator Locke, supported by Senator Rotondi, proposed the Commission recommendation to abolish mandatory filed subbid. Pollard, who in other matters supported the Commission and State Administration Committee bill, spoke against abolition of filed subbidding. She also initiated a successful parliamentary procedure which would result in no roll call votes being taken on the substance of the Locke amendment, but only on other procedural questions such as reconsideration. The Locke amendment was approved 7-6 on a stand up vote. On roll call, reconsideration was approved 20-13. On a second stand up vote, the amendment was defeated narrowly.

Several additional amendments were proposed by members of the Senate during the course of early-morning debate. One amendment by Senator LoPresti proposed to put private Chapter 121A construction projects, which benefit from property tax reductions, within the purview of the Division of Capital Planning and Operations, but the amendment was defeated on a voice vote. At approximately 4 am the bill was passed unanimously with amendments, 32-0. Senator Arthur J. Lewis, Jr. (D-Boston) and Senator Daniel J. Foley (D-Worcester) were paired against the bill, however. It was subsequently passed to be engrossed on a voice vote, and the next morning returned to the House for action, concurrence with Senate amendments, or appointment of a Conference Committee.

**Conference Committee on the Inspector General**

On Thursday, July 3rd, the House failed to concur with Senate amendments to the Inspector General bill and a Conference Committee was appointed consisting of
majority members Marotta, White and the minority member DeFilippi. The Senate membership was Pollard, Brennan, and Aylmer.

Before the Conference Committee met, Littlefield and McCarthy spoke to Pollard about the Commission's position on the amendments. The Commission felt most strongly opposed to the Senate amendment enlarging the council which was to approve summonses and attend private hearings. Pollard indicated that although she herself supported the position of the Commission on this point, there was nothing she could do about it since the Senate had passed the amendment.

The drive to prorogue was delayed by an unexpected development completely apart from the efforts of the Commission and its supporters to keep the General Court on the job until all four proposals had been confronted. U.S. District Court Judge Joseph L. Tauro issued subpoenas on July 3 ordering Governor King, Secretary Hanley, Human Services Secretary Charles F. Mahoney, Bellotti, Finnegan and Atkins to appear in court the next Monday. The judge requested an explanation, from the officials, of reasons why funds had not been approved to pay for consent decrees to improve the state's mental health and mental retardation facilities. When legislators returned to their fourth consecutive all-night session, they found deputy U.S. marshalls awaiting their colleagues in order to serve the subpoenas. In other judicial action, House Minority Leader William G. Robinson (R-Melrose) filed suit in the SJC at 5 pm, seeking to stop the prorogation until the Legislature voted on Proposition 2 1/2, an initiative petition designed to drastically cut local property taxes. Justice Francis J. Quirico denied the restraining order, saying intrusion of the judicial branch into the affairs of the legislative and executive branches was unjustified.

The Election Laws Committee staff arranged a meeting with Representatives Bassett, Cerasoli, and Commissioners Burke, McCarthy and staff on July 3 in the State House. Commission staff understood the meeting was to be an occasion for substantive negotiations designed to produce a bill for a favorable report; only a few areas of controversy remained by that time. But when representatives of public interest groups appeared in the room, along with other Election Laws committee members known to support the Commission's bill, the meeting became formal and efforts toward an informal mark-up ceased. Bassett reported that Bertonazzi was unavailable and it appeared that little progress could be made without his presence.

Conference Committee Meets on Inspector General

Ward, Littlefield and McCarthy walked into Marotta's office at 9:30 pm where the Inspector General Conference Committee was meeting. Shortly thereafter, Ward asked if he might address the Committee on one of the amendments in discussion
and Marotta denied the request. Ward then left the room. By the time the Commission representatives arrived at the meeting, the amendments had already been reviewed by the group with the exception of the last – the permanent exclusion of Commission staff from working for the Office of the Inspector General. Marotta maintained a strong position in support of the exclusion contending that he would not agree to the Senate amendment removing it and there would be no agreement and no bill unless the exclusion was retained. Brennan suggested a compromise that the exclusion not apply for life but only for ten years. Alymer suggested it not apply to college or law student volunteers. But the Senators then stated that in order to get a bill, they would insist on their other amendments but back down on the staff exclusion amendment and let it stay in. Senate members were at this point called out of the meeting for a roll call and Littlefield asked Marotta whether the matter of the enlargement of the counsel from six to eight had been decided upon. Marotta specifically said it had not been and that they only exchanged preliminary views on the matter. Minutes later the Senators returned and the Representative were called out to vote. Littlefield spoke to Brennan about his concern over the enlargement of the panel approving the summonses and the impracticality of the number of votes to issue a summons. Brennan said that it was too late to go over the matter because the Conference members had already agreed that the Senate amendment with the enlarged council would be adopted. Littlefield said that from what Marotta had just said he did not share that understanding, and further that the Commission’s concern was not with having Republican representation on the council, as had been suggested. He pointed out that this objective could be achieved by requiring that one or more of the six members of the council be Republican. He indicated that the Commission’s overriding concern centered on the actual enlargement of the council, because an eight member council was unwieldy, and would jeopardize the likelihood that the Inspector General’s proceedings would remain confidential.

When all parties returned and the meeting resumed, Brennan asked Marotta whether his understanding was not in fact correct, that an agreement had been reached. Marotta replied in the affirmative and the members proceeded to sign the conference report accepting all Senate amendments except that amendment dropping the exclusion of Commission staff from employment with the Inspector General. Marotta’s position on the Senate amendments was that, although he did not support them, he would go along “to get a bill;” as to the exclusion, he said, since the House had gone along with six Senate amendments, the Senate should go along with the House on the retention of the exclusion. Brennan’s position was that the Senate amendments had been already approved by the time Commission members had arrived, that the approval could not be reviewed; and that
since Marotta insisted on the exclusion, the Senate had to go along "to get a bill."

Conference on Construction Reform

Later that evening, the Conference Committee on the construction bill was appointed. The House members of the Conference were the same as they had been on the Inspector General. The Senate members were Pollard, LoPresti and Senator Fitzpatrick (R-Berkshire). The latter received appointment apparently because he had sponsored an amendment requiring one percent of construction appropriations to be spent on the arts. It was unclear why LoPresti was appointed, since he had not been on the Administration Committee nor had any previous contact with the construction bill. In fact, he had stated during the debate the night before that he had not read the bill.

All House members of the Conference Committee for the Inspector General had served on the State Administration Committee therefore their presence was logical. Likewise Senate member Pollard had been the Co-Chairman of the State Administration Committee. Brennan and Aylmer, however, had not served on the Committee. Brennan could perhaps have been selected for the Conference Committee because he had offered the amendment suggested by the Attorney General concerning the confidentiality of referrals, but he had not discussed amendments with Commissioners, nor as far as they knew had he expressed a particular interest in the bill previously.

Of course the Commission was not consulted at any time about membership on the Conference Committees. But it appeared to the Commission as if - at least with respect to the Inspector General Committee - the appointments had been made in order to carry out pre-arrangements of which amendments would be accepted and which would not. Only Pollard's statement that there was nothing she could do about the way the meeting would result directly suggested that there were influences brought to bear on the conference decision beyond those offered by the Conference Committee members.

The Senate went along with the House at 3:15 am in passage of a percentage gasoline tax as well as a tax on oil companies' gross sales. Among other actions taken during the overnight session was passage of numerous special interest bills creating jobs and providing raises for various individuals, many in the state courts system. An odd quiet descended over the State House hallways by late evening as the ringing of constituent calls ceased, and members dispensed with telephones altogether, instead pacing the corridors in intent groups. Formalities were cast aside quickly in the intense environment, which seemed temporarily cut off from the world outside. Indeed, as evening saw the closing
of the State House coffee shop due to no further food supplies, and as the approach of the July 4 holiday made acquisition of the most commonplace amenities tenuous at best, a peculiar camaraderie developed among legislators, lobbyists, and arch political rivals alike. It was as if all the participants in the process had been launched, by the people of the state, upon a mysterious and irrevocable voyage. Each sensed that the ultimate return from the journey depended on the attitude of every participant. When the legislators retired, intermittently, they slept on chairs and couches. Attrition was taking its toll, in no small part, due to the uncertainty of the process itself. While the leadership strove for completion of business as soon, during the holiday weekend, as possible, the hour targeted for prorogation remained unclear. All the Commissioners knew that the outcome of their entire undertaking rested on a period of perhaps hours. The prospects for reform battled with the clock.

Just after 6 am on July 4, the House entertained a motion to recess until Monday, July 7. It was defeated 49 to 91, while members sang "Yankee Doodle" and "The Battle Hymn of the Republic." Meanwhile, contact between the staff of the Joint Committee on Election laws and the Commission had ceased; it appeared that the Committee leadership was no longer interested in obtaining a bill. Robert Larkin (D-Needham) read names from the Needham telephone directory at 7:30 am, speculating how those listed might feel about the Commission legislation still held by the leadership. From a seat at the back of the chamber, McGee shouted, "The McGees of Needham would tell the representative to go to the 8 am parade." Larkin responded, "There are no McGees in Needham."

McGee announced a two-hour recess at 9 am on July 4. "I would have kept going," he told the Herald, "but you gotta have compassion in this business. People have to rest, sleep, get something to eat...When you get into prorogation, you try to pass the important legislation. We'd be here until December if we acted on everything around. It's never-ending."

But Alexander said, "There's nothing sacred about when we prorogue. It's somewhat insulting to the legislators and the public to ask that we consider multi-million-dollar proposals after none of us has had any sleep for 24 hours or more and little sleep the entire week. Obviously, the more tired the members are, the less resistance they can offer to issues."

Littlefield and Bockian had a chance meeting with Pollard in the coffee shop on the fourth floor of the State House early on July 4. After reviewing events in the Inspector General Conference Committee, Littlefield and Bockian asked where the Conference Committee on the construction bill would be held and whether they might attend. Pollard said she hoped they would be present but that it was likely that the only place the Conference meeting could be held would be in a
room in the Senate lobby. Access to the lobby is restricted and thus neither Commission representatives nor media were able to attend.

The Commission's position on the various amendments to the construction bill was not as strong, in most cases, as it had been regarding amendments to the Inspector General proposal. The Conference Committee removed most of the objectionable House amendments with the major exception of the Nickinello amendment concerning transportation agencies which was retained in the bill. As the Conference Committee meeting wore on, Commissioners and staff waiting outside in the hall were told that one issue was preventing agreement: the question of amendments to the prevailing wage law. Although the Commission had recommended these amendments initially, it had withdrawn its support for them when the abolition of the filed subbid law did not prevail. The issues in controversy had to do with the effect of the prevailing wage law in the balance between union and non-union firms doing state construction work. The amendments that were proposed would have favored the union firms; the absence of these amendments would have retained the status quo, a balance between union and non-union firms. With the filed sub-bid law still intact, the Commission took a neutral posture on the fate of the prevailing wage law amendments. The Commission's chief concern was that the Conference Committee reach a speedy conclusion whatever the result. The major lobbyists on both sides of this question now descended on the Conference Committee members. Using Piro's office as their base, the lobbyists for the Associated General Contractors, the CIM, and Associated Builders and Contractors (ABC, the major open shop group) sought to keep the prevailing wage law amendments out of the bill. Both Piro and Marotta supported their cause. On behalf of the unions, former Secretary of State Francis X. Davoren paid visits to leading House and Senate members. Davoren reportedly attempted to enlist the support of McGee, saying that it would be a disgrace for a Democratic legislator to allow these amendments to die. The Speaker nevertheless supported the House position not to include the amendments of the prevailing wage law. Pollard supported the union position and a deadlock ensued.

At one point during the stalemate that lasted almost 20 hours, Piro summoned Bockian to his office. Over a snack of hamburgers and french fries, Piro told Bockian that unless the prevailing wage law amendments stayed out of the bill, there would be no bill. Rather than act as spokesman for Piro, Bockian then went to Pollard and inquired of her the status of the Conference Committee. Although several strategic possibilities presented themselves, the Commission chose not to intervene in this dispute. It also appeared that the subcontractor lobby, which had successfully defended its own interests, had withdrawn from active
Bills to the Governor's Desk After Surreptitious Alterations

Finally, in the middle of the evening of July 4, the Senate agreed to delete the prevailing wage amendment from the bill, thereby creating agreement on all matters in dispute between the two branches. Later that night, both the Inspector General bill and the construction bill were passed and engrossed in both branches and sent to the Governor's desk. The Governor signed the Inspector General bill immediately. It became c. 388 of the Acts of 1980.

It was only after the fact that the Commission was to learn of illegitimate changes to the Inspector General bill which occurred shortly before King signed it into law. The alterations apparently occurred in the Senate Committee on Bills in Third Reading, and resulted in further dilution of the Inspector General's power. They were neither the subject of a senate amendment, nor the subject of discussion or decision by the Conference Committee. House bill 6755 had provided that the Inspector General should report to the Attorney General or any federal prosecutor when he had reasonable grounds to believe that there had been a violation of federal or state criminal law (page 8, section 10, lines 243-247). The House bill also provided that, upon a majority vote of the council, the Inspector General could refer audit or investigative findings to federal, state, or local agencies (lines 248-253).

In the final bill signed by the Governor, the authority of the Inspector General to report to the federal prosecutor violations of federal law was struck and the Inspector General was mandated to report only to the Attorney General, who should institute appropriate further proceedings (page 7, section 10). The Inspector General was still authorized to refer audit or investigative findings to any federal, state, or local agency on a majority vote of the Inspector General council, but not, on his own, to report violations of the federal law to the federal government.

There was a Conference Committee decision to make violations of section 10 a crime. Thus, in the final bill, the effect was to make it a crime for the Inspector General to report a federal crime to the federal authorities. It happens that it is a federal crime not to report a federal crime to the federal authorities. This preposterous provision was initiated by someone who was concerned that the Inspector General not have the ability to make direct referrals on his own to the United States Attorney, and that all criminal referrals be handled by the State Attorney General.

House bill 6755 authorized the Inspector General to have access to all
records maintained by any public body involved in the expenditure of public funds, etc. (section 9, page 7, lines 181-198); also, the Inspector General was authorized to require, by summonses, the production of all records relevant to any matter under audit or investigation (lines 212-216).

The final bill, submitted to the Governor and signed by him, placed exceptions on the authority of the Inspector General to have access to records, and to request information, and to summon documents. In each instance as related to the authority of the Inspector General to review or summons records, the exclusion, "except records under the provisions of Section 18 of Chapter 66 as defined in Section 3 of said Chapter 66" had been added (section 9, pages 5 and 6). Section 18 specifically excluded records of the General Court, thus having the effect of preventing the Inspector General from reviewing or summoning any records of the General Court.

The 11th hour changes were not discovered by the Commission until the statute was printed, well after the end of the session. Senate Counsel McIntyre maintained then that the changes were made on constitutional grounds and, thus, the third reading committee was not required to make a report of material changes.

Bribery Bill to King

Meanwhile, the commercial bribery bill, which had been languishing in the Senate Committee on Third Reading for more than a week, was brought to the floor of the Senate, engrossed, and sent on to the Governor.

The mood in the State House ran from nervous exhaustion to a condition of outright lunacy. A mechanical bird, launched by a Representative, hovered noisily at the level of the gallery and then plummeted to destruction in the midst of what Commissioner Mahoney termed the "organized confusion." Meanwhile, standing ovations honored those Representatives who planned not to return to the House the next session. When debate continued on the floor, one veteran legislator told the Patriot Ledger, "I've never seen anything like this. On the average, prorogation takes three days -- two nights and then a night and a day all the way through. This is the worst I've ever been in...It's a haphazard, very uncoordinated effort."

Representative Joseph N. Heimann (D-N. Andover) commented, "We're throwing papers out the windows saying, 'Help, we're held hostage.' This is unbelievable. We're all so tired we don't even know what the heck is happening." Johnston observed, "It's absurd to work on a totally unplanned basis, people forced to come in the middle of the night. You can't make rational decisions when you're so exhausted. It's a ridiculous way to run a government."
House Votes Down Campaign Reform

A group of Representatives, and legislative and Commission staff gathered on the State House roof to watch a spectacular fireworks display over the Charles River in celebration of Boston's 350th Birthday. When House pages yelled, "Roll call!" out the windows, the members rushed down the staircase to vote.

After conferring with Commission staff and agreeing that the campaign reform bill no longer had any prospect for enactment, Johnston announced, on the floor, that the Commission was throwing its support behind Connolly's more limited bill. The proposal had already gained passage in the Senate and languished in the House Ways and Means Committee. Johnston moved to discharge the Connolly bill from committee; his motion carried 72-68. Since House Rules required that no further action be taken on a discharged bill until the following legislative day, Johnston moved to suspend the rules for immediate floor debate. While his second motion gained a majority vote in favor, it failed to win the two-thirds necessary to carry. While the Commissioners were disappointed by the fate of their own bill, they were pleased that the first House referendum on public financing in five years had gained a majority of votes. The Commission resolved to refile the proposal in the next session.

The representatives supporting the Commission's bills discussed whether prorogation should be opposed since the Governor had not signed the construction bill yet. Lynch, Guzzi, Finnegan, and others had spoken to the Governor and indicated strongly that King would sign the construction bill. Therefore, the representatives supporting the Commission decided not to attempt to hold up prorogation. The House members still had energy to laugh along when a team of their colleagues, clad in physician's gowns, trotted Representative Charles Flaherty (D-Cambridge) to the podium to recite a poem of the year's events.

The final session of the Legislature had begun on July 3 at 4 pm and lasted non-stop until 10 am Saturday July 5th. The previous three sessions had also each lasted until approximately 4 am. Two hundred bills were passed in the prorogation rush and sent to the Governor. The overwhelming vote in both branches in favor of the construction bill, the Inspector General bill, and the commercial bribery bill left no doubt where the Legislature stood on each of those bills. The mandate in favor of public finance was additionally encouraging. In each case, particularly the Inspector General and construction reform bills, there were complex and important issues involved. Because of the failure of the Legislature to deal with these bills on a timely basis in the beginning of the year, there was little understanding on the part of the Legislators on the content, particularly with the construction bill. The vote undoubtedly reflected confidence in the work of the Administration Committee.
which had considered both bills in detail, and the attitude of the public
supporting reform in the area of public contracting and construction.

Final analysis of the session was mixed. The Commission and its supporters
in the legislature and the public were obviously encouraged by the passage of
three of the four bills submitted, particularly following the reduced
expectations for the legislation evident at various stages of the process. The
members were discouraged by the compromises in the construction and Inspector
General legislation and by the fate of the campaign reform proposal. What
surfaced as a chief concern of all those associated with the efforts of the
Commission, however, was a pronounced alarm with the legislative process itself.
"Anyone who loves sausages or democracy shouldn't see them being made," quipped
AP's Steven A. Cohen in a news analysis. As the climax of the drawn out process,
prorogation had epitomized the basic flaws and brazen lunacy of the system. "All
that was missing from the wild scene was the gushing lava," the Lowell Sun opined.

Indeed, the Commission's own experience during the session pointed to the
need for rules reform and, according to the Lowell Sun, provided an avenue by
which the subject could be addressed.

We had an excellent State Building Commission that held hearings
out of which came much needed legislation...But what we need now
(next year) is a Commission of equal ability that will examine
this chaotic Massachusetts legislative process and come up with
recommendations to normalize it. Such an overhaul of the
legislature is as badly needed as a reform of the state building
process.

Aside from longterm hopes for rules reform, the Commission emerged from the
rigors of prorogation with concern for the sections of their legislative package
which had not seen passage. The members resolved to refile the campaign reform
and sub-bid proposals, and they directed staff to work over the summer to make
perfecting changes on these proposals as well as those already passed.
Encouragingly, a post mortem synopsis of the session issued by the Republican
Floor Leader William Robinson listed public campaign finance fourth on a list of
"significant omissions" of the session.

- Reform of management and financial support for the META.
- Civil service reform.
- Legislative alternative to Proposition 2 1/2.
- Public financing of legislative campaigns.

Of the four, two were to undergo developments later in the calendar year, despite
the legislature's inaction during the session. Proposition 2 1/2, the initiative
to limit property tax to 2 1/2 percent of real value and to cut automobile excise
taxes, was to pass by a wide margin in the general election; and the Governor was
to call the legislature back into emergency session in November to confront the
META funding and management crisis. Further action on public financing, however,
would await the next session following submission of the Commission's Final Report. The Globe observed in an editorial, "If the Commission proposals, it's the one with the broadest citizen support and can be revived next year, even when the Commission itself is out of business."

Coletti Challenges Commission

The Commission turned immediately to pressing legal concerns.

David B. Coletti, business manager of the Coletti Brothers architectural firm in Hingham, challenged a summons for his testimony on July 15 on the grounds that the Commission was legally out of existence as of June 30. Coletti's lawyer, James R. DeGiacomo, asked Suffolk Superior Court Judge Joseph Ford to rule that the Commission ceased to exist since the legislature failed to attach an emergency preamble to the bill providing for the six-month extension. Responding to the argument, Deputy Chief Counsel Tracy contended that there was no need for an emergency preamble because the bill was an appropriation that took effect immediately instead of 90 days following enactment. Previously, the Commission had obtained immunity for Coletti after he took the fifth amendment during an earlier private hearing.

King Signs Commercial Bribery and Construction Bills

Governor King signed the commercial bribery bill into law on July 16 as c. 531. He signed the construction bill before the midnight deadline the next day as c. 579.

At a State House Press Conference the governor said, "I am not convinced that this bill is the best way to address these problems." It does provide us, however, with a framework for preventing corrupt practices similar to those made public during the Special Commission's hearings." Johnston noted, "It's a tremendous victory. It's extraordinary when you think that only a few weeks ago it looked like all was lost."

Ward moderated a town meeting among legislators and the public sponsored by the Lowell Sun on July 17. Discussion covered a range of topics including the 41-hour proration session, public campaign financing, the Constitutional Convention, the Halloween pay raise, the gas tax, and the bottle bill. A July 21 Lowell Sun editorial endorsed the recommendation voiced on the occasion, "that a 10 hour limit on the legislative day be established to loosen the grip that the House and Senate leadership is able to fasten on legislators who are annually faced with the same tyrannical leadership tactics."

Judge Ford ruled in the Commission's favor in the Coletti case on July 21. He endorsed the Commission's argument that the extension was not subject to a 90-day delay in implementation since it was part of the budget. The judge stated
that all summonses and orders issued by the Commission since June 30 "remain in full force and effect...The Commission may lawfully continue its investigation and study concerning corruption and maladministration relating to the construction of state and county buildings until Dec. 31, 1980."

During July and early August, Common Cause sent statements to local newspapers across the state, reporting on the Commission legislation which saw passage, calling on the legislature to "complete the unfinished reform efforts begun in this session by passage of partial public financing of statewide and legislative elections," and recording the votes of local legislators on the bills. Meanwhile, legislation and outstanding Commission recommendations began to surface in legislative campaigns, as candidates across the state announced their positions on the issues. As the primary election approached, candidates' positions regarding the Commission and its findings became general issues in House, Senate, county, and congressional races.

Over 100 applications were submitted for the Inspector General position by the deadline of August 25.

Judge Joseph Ford ordered Coletti, on August 28, to testify before the Commission.

The Final Months

The Commission had begun the final six months of its life with four principal projects to complete before December 31: the final report; referrals of evidence to law enforcement agencies; a completion of the ongoing investigations; and a review of legislation enacted, with an eye toward strengthening it where necessary and preparation of revised and new legislation for filing by December 6.

Final Report

The Commissioners and staff began planning the final report in July 1980. One of the first issues which the Commission confronted was the propriety of including details of its investigations in the report. After extensive review of the law and the reports of other federal, state and local investigative commissions, discussions with lawyers employed by these commissions, and a series of meetings among the Commissioners, the Commission determined that not only was it permitted to disclose the details of its investigations, it was required to do so if it was properly to discharge its legislative mandate.

The arguments considered by the Commission for excluding such details were the possibility that the pretrial publicity generated by the report might prejudice the successful prosecution of people investigated by the Commission, the possible use of the report by defense counsel to impeach the credibility of
prosecution witnesses and to discover the details of the case against their clients, the possible injury to the reputations of people who were the subjects of investigation and a possible breach of professional ethics in disclosing details of criminal investigations in advance of trial.

In reaching its determination, the Commission was influenced by the final reports issued by other investigative bodies, including the Final Report of the Select Committee on Presidential Campaign Activities (June 1974) (the "Watergate Report"), the Final Assassinations Report of the Select Committee on Assassinations (July 1979), and the Report of the New York State Moreland Act Commission on Nursing Homes and Residential Facilities: Political Influence and Political Accountability: One Foot in the Door (February 1976).

The Watergate Report was issued three months after the indictment of seven major conspirators in the cover-up while impeachment proceedings against the President were pending. The authors of the report discussed in their introduction the problems inherent in releasing the details of their investigation to the public and the reasons which led them to do so.

"The Select Committee is acutely conscious that at the time it presents this report, the issue of impeachment of the President on Watergate-related evidence is pending in the Judiciary Committee of the House of Representatives. The Select Committee also recognizes that there are pending indictments against numerous defendants, most of whom were witnesses before the committee, which charge crimes that, directly or indirectly, relate to its inquiry. It thus must be stressed that the committee's hearings were not conducted, and this report not prepared, to determine the legal guilt or innocence of any person or whether the President should be impeached...

"The committee, however, to be true to its mandate from the Senate and its constitutional responsibilities, must present its view of the facts. The committee's enabling resolution ... which was passed by a unanimous Senate, instructs the committee to make a "complete" investigation and study "of the extent ... to which illegal, improper, or unethical activities" occurred in the 1972 Presidential campaign and election and to determine whether new legislation is needed "to safeguard the electoral process by which the President of the United States is chosen".... Thus, the factual statements contained in this report perform two basic legislative tasks. First, they serve as a basis for the remedial legislation recommended herein which the committee believes will assist in preserving the integrity of the electoral process not only for present day citizens but also for future generations of Americans. Second, they fulfill the historic function of the Congress to oversee the administration of executive agencies of Government and to inform the public of any wrongdoing or abuses it uncovers. The critical importance of this latter function cannot be over-emphasized....

"[1] In United States v. Rumely, 345 U.S. 41, 43 (1953), the Supreme Court termed the informing function "indispensable" and observed:

It is proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless
Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function." Wilson, "Congressional Government," 303.

It is in part to fulfill the historic "informing function" that the committee reveals to the public the detailed facts contained in this report.*

The Final Assassinations Report also disclosed details of its investigations, revealing the possible involvement of various people in the assassinations of John F. Kennedy and Martin Luther King as well as in other unprosecuted crimes. The preface by G. Robert Blakey, Chief Counsel and Director of the Select Committee that produced the report, contains a similar analysis of the Committee's responsibilities.

It may be forcefully argued that when evidence of criminal conduct is introduced before a congressional committee -- evidence that in the end falls short of clear and convincing persuasion -- the responsible course of action for the committee might be to refrain from making the evidence public. We weighed this option by evaluating the importance of public knowledge about each of the four issues of our mandate in light of the risk to the reputations and rights of persons being investigated. Ultimately, we determined that a complete analysis of all four issues and public disclosure of that analysis were necessary, if the committee was going to fulfill its legislative responsibilities and its constitutional duty of informing the American public.

Beyond its duty to legislate and oversee executive agencies, the committee was constitutionally obligated, we believed, to make public the facts it had learned about the assassinations. This obligation was increased by the degree of public doubt about the earlier investigations....

... With the integrity of the government at stake, the committee believed it would not suffice to respond simply by issuing its conclusions on government culpability. Conclusions without supporting facts would in the committee's view, a view that I shared, merely have served to increase the suspicions. We had a responsibility, therefore, to state our conclusions as to who might have participated in the assassinations and to supply a factual basis for those conclusions.

The Special Commission concluded that its mandate and responsibilities were fundamentally the same as the Watergate and Assassinations Committees'. Chapter 5 of the Resolves of 1978, as amended by chapter 11 of the Resolves of 1979, mandated the Commission "to investigate and study as a basis for legislative action the existence and extent of corrupt practices and maladministration" in the award of state and county building construction contracts and to file "the final report of its investigation and study" with the Clerk of the Massachusetts House of Representatives.

The Supreme Judicial Court interpreted the Commission's mandate in Ward v. Peabody, 1980 Mass. Adv. Sh. 1395, 1404-5. In that decision, the Court noted the

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importance of the Commission's final report, according it equal weight to its mandate to propose remedial legislation:

The Commission may inform or educate the people and their representatives as to what it uncovers, provided it is acting otherwise within the scope of its resolve.

* * *

But we are far from suggesting that investigatory power would lapse if the Commission had firmly decided on December 5 that it would make no further legislative proposals, for a final report, supported by investigation, might be useful to the Legislature in any event. (Emphasis added)

The Commission further concluded from its research that releasing details of its investigations would not prejudice subsequent criminal prosecutions. The case providing the strongest support for this conclusion is United States v. Haldeman, 599 F.2d 31, 59-71 (D.C. Cir. 1976). In that case the Court held that the massive publicity concerning the Watergate conspiracy and petitioner's prominent role therein, as well as in unrelated crimes of the Nixon administration, did not prevent Haldeman and his associates from receiving a fair trial. The court began by noting that the defendants had the burden of sustaining their claim of prejudice "not as a matter of speculation but as a demonstrable reality." (p.60) In considering the effect of the pretrial publicity on the defendants' trial the court stressed that "the overwhelming bulk" of the articles and broadcasts relating to Watergate "consists of straightforward, unemotional factual accounts of events and of the progress of official and unofficial investigations."(p.61) It also noted that the nature of the crimes charged -- "legally complex white collar crimes" rather than "crimes of violence and passion" -- made it less likely that publicity would make much impression on the average citizen, and that the extensive voir dire conducted by the judge was more than adequate to ensure an impartial jury. These considerations apply with greater force to the Commission's Final Report, which involves events far less sensational than Watergate.

The Massachusetts Supreme Judicial Court has consistently refused to reverse criminal convictions on grounds of alleged prejudicial publicity. In Commonwealth v. Monahan, 349 Mass. 139 (1965), the court held that the extensive publicity preceding defendant's conviction of larceny in connection with the construction of the Boston Common Parking Garage did not warrant dismissal of the indictments or reversal of the conviction because of the trial judge's failure to question the jurors on the effects of the publicity. The Court noted that decisions involving the extent of voir dire are committed by law to the discretion of the trial judge and that the defendant had failed to show, or even to argue, that any particular juror was in fact biased.(pp.156-7)

The United States Supreme Court has repeatedly upheld the broad power of
Congress to investigate and to publicize the results of its investigations. In Doe v. McMillan, 412 U.S. 306, 313 (1972), the Court declined to limit the scope of information potentially harmful to individuals not accused of crime published in a report of a Congressional subcommittee investigating the D.C. public schools:

Although we might disagree with the Committee as to whether it was necessary, or even remotely useful, to include the names of individual children in the evidence submitted to the Committee and in the Committee Report, we have no authority to oversee the judgment of the Committee in this respect or to impose liability on its Members if we disagree with their legislative judgment.

The power of Congress to inquire into and expose criminal conduct for a legitimate legislative purpose and its freedom to conduct its investigations as it sees fit was recognized by the Supreme Court in Hutcherson v. United States, 369 U.S. 599 (1962). Petitioner in that case contended that investigations by the McLellan Committee concerning the details of a matter which was the subject of a pending state prosecution violated his due process rights and were aimed at exposure for the sake of exposure, rather than any legitimate legislative purpose. The Court held that:

It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be use in such suits. (p. 613).*

In the case of Silverthorne v. United States, 400 F.2d 627, 634 (9th Cir. 1968), the Court similarly upheld the right of a Senate subcommittee to investigate petitioner's allegedly criminal activities.

The Senate investigation was, among other things, initiated for the purpose of informing the Executive so that existing laws may be enforced. In this respect the Senate committee and the federal grand jury are associates in exposing criminal activity and moving toward its curtailment. What illegality the Senate committee uncovers cannot become the forbidden fruit of the grand jury's consideration merely because in the process of uncovering, prejudice to the perpetrator may accrue.**

These cases support the Commission's conclusion that it was mandated to publish the details of its investigations despite possible prejudice to some of the people who were subjects of investigation.

Finally, the Commission concluded that publication of investigative details would not violate any canon of legal ethics. The only pertinent limitation on an attorney's right to reveal the details of a criminal investigation is


**In that case, the Court reversed petitioner's criminal conviction because of the trial judge's inadequate voir dire and his failure to insulate the jury from prejudicial publicity occurring during the trial. However, it is clear from the decision that proper procedural safeguards would have resulted in the conviction being sustained despite the earlier Senate investigations.
Disciplinary Rule 7-107(A) of the Rules of the Supreme Judicial Court:

A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication...

A footnote to the rule appearing in the ABA Code of Professional Responsibility makes it clear that the rule was intended to codify the Supreme Court's holding in Sheppard v. Maxwell, 384 U.S. 333 (1966), which was concerned with the conduct of prosecuting and defense attorneys. There is no evidence that the rule was intended to have any bearing on the conduct of a legislative commission.

Moreover, subsection (I) of the same rule appears to exempt attorneys involved in a legislative investigation from this prohibition:

The foregoing provisions of DR 7-107 do not preclude a lawyer from ... participating in the proceedings of legislative, administrative, or other investigative bodies.

As important as were the discussions by the Commissioners on what to include in the report were the discussions on what should not be included. Several general principles were followed. Testimony, evidence and investigative reports about corrupt or improper activities that were unsubstantiated were not included. Where possible, without detracting from the quality of the evidence presented, named individuals who had not engaged in wrongdoing but came innocently to be involved in the events were not included. What was included is that which the Commission believed to be credible which it sought to corrobore by casting a wide and intense investigative net around the allegations at issue.

The details in the report are often those which provided the corroboration or which furnished the supporting evidence to make an allegation credible. These details are included in the report so that the General Court and the public may reach its own conclusions, as the Commission has done, on the matters described and the issues considered.

As for the systems section of the report, entitled "Systems Issues and Findings," the goal of the Commission was three-fold. The basic goal was to report the findings, analysis and conclusions which led the Commission to the recommendations it has made. Two further goals grew out of these recommendations: the production of the report served as a vehicle to present new recommendations to the General Court for legislation, but more broadly the report was seen as an opportunity to convey information vital to those charged with implementing those laws which go into effect on July 1, 1981. In describing how the Commission came to its conclusions, the report would flesh out the bare bones of the legislation with the whys and hows of new procedures mandated by the new laws. In this sense, the task of the final six months of the Commission's Systems staff was to produce a guidebook for the operation and evaluation of the
system the Commission had recommended.

Referrals

The twelfth paragraph of Chapter 5 of the Resolves of of 1978 as amended by Chapter 11 of the Resolves of 1979 and by Chapter 257 of the Acts of 1980, the Resolve which created the Commission, describes the Commission's mandate to refer evidence:

Upon order of the commission, its counsel shall, under conditions of confidentiality, submit to the attorney general, a district attorney or other law enforcement agency, such evidence which has come to the attention of the commission as in the opinion of the commission warrants such presentation or submission. Any evidence of misconduct by an employee, officer, or official of the executive branch of government shall be presented to the governor; any evidence of misconduct by a member, officer, or employee of the general court shall be presented to the committee on Ethics of the appropriate branch of the general court; and any evidence of misconduct by a licensed or regulated professional shall be presented to the appropriate professional disciplinary body; provided, however, that such presentations may be limited to evidence which, in the opinion of a majority of the commission, is reasonably credible.

The Resolve establishes the standards for evidence which is to be referred that such evidence (1) in the opinion of the Commission warrants presentation and (2) "such presentations may be limited to evidence which, in the opinion of a majority of the Commission is reasonably credible." The Resolve also requires that the referrals be made "under conditions of confidentiality."

In July, the Commission began its review of all the evidence it had developed to select matters which warranted presentation to a law enforcement agency, or other agency. The Commission met throughout the summer and fall and reviewed the facts of each case that possibly merited referral. In many instances, the review of a single matter was continued over a number of weeks so that additional information could be presented or developed.

The Commission included, among the agencies to which it would refer evidence, the United States Attorney for Massachusetts, the Attorney General of the Commonwealth of Massachusetts, the Massachusetts State Ethics Commission, professional disciplinary bodies, and the executive and legislative branches. Where more than one agency had jurisdiction over the subject matter of a referral, the Commission took the view that it should refer the evidence to each agency having jurisdiction.

In determining whether a matter warranted presentation to a law enforcement agency the Commission began with the question of whether it had credible evidence that a crime or other violation of law had been committed, or whether further investigation by another agency would be likely to develop such evidence. In each instance, the Commission referred only evidence which "in the opinion of a majority of the Commission was reasonably credible."
There follows a discussion of several of the federal and state laws which the Commission considered in assessing whether to make a referral.

**Conflict of Interest Laws of the Commonwealth of Massachusetts**

Section 2 of Chapter 268A of the General Laws of Massachusetts prohibits state, county and municipal employees from seeking or receiving anything of value in return for being influenced in the performance of their official acts and responsibilities. Anyone giving, offering or promising anything of value with intent to influence a public official in the performance of his duties, furthermore, is also in violation of Chapter 268A. It is not necessary that the public official do anything in return for a payment in order that he or the person making the payment be prosecutable. It is necessary only that there have been an agreement between the parties contemplating a payment or payments to the public official in return for the official being influenced in the performance of his responsibilities. The thing of value offered or accepted, furthermore, may take many forms. Although the Commission found numerous examples of direct money payments, it also uncovered instances where free architectural work, free supplies, dinners and other forms of entertainment were the influencing factor.

Unlike section 2, section 3 of Chapter 268A does not require a specific ouid pro quo (payment in return for official action) or a corrupt intent. Section 3 prohibits the giving or receiving of anything of value where the gift or gratuity is made because of the public official's position rather than because of friendship between the donor and donee. Section 3 prohibits any payment of "substantial value," which has been interpreted by the Massachusetts Supreme Judicial Court to include a cash payment of $50.

Chapter 268A, section 4 makes it a crime for a state employee to directly or indirectly receive or request compensation from anyone other than the state in relation to any matter in which the state has a direct and substantial interest. For example, there would be a violation of this provision where a state employee received compensation for advice to an outside party concerning a state contract.

Section 9 of Chapter 268A provides additional remedies besides incarceration and fines for violation of sections 2 through 8. If the criminal violation substantially influenced the action taken by a state agency on a particular matter, the action may be cancelled or rescinded. Thus, where contracts have been corruptly bought, section 9 authorizes cancellation of these contracts. Section 9 authorizes a civil action against any person to recover the "economic advantage" gained by reason of violation of Chapter 268A. The section also authorizes the additional recovery of double the economic advantage if there has been no criminal conviction or acquittal for the same violation. Such a
judgment, however, bars any subsequent criminal prosecution.

Campaign Finance Laws of the Commonwealth of Massachusetts

In the course of testimony before the Commission, payoffs to public officials were often described as "campaign contributions." In many cases this was merely a euphemism for a bribe or payoff. In other cases, although the payment constituted a true campaign contribution, it was made with the corrupt intent to influence public officials in the performance of their duties. Such contributions have been held to be illegal bribes or gifts under Chapter 268A even if they were ultimately used for legitimate campaign expenses.

On the other hand, if when a campaign contribution is made to a public official, no specific act within that official's responsibility (such as the awarding of a contract) is envisioned to be performed by that official in return for the contribution, there is no violation of Chapter 268A.

Chapter 55, however, does impose strict standards regarding the amount of "campaign contributions" and the ways in which they may be made to public officials. In many instances, these provisions make criminal payments which fall short of bribery that may nevertheless (as evidenced by their size or manner in which they were made) have been intended to influence public officials in the performance of their official duties.

The following types of contributions are prohibited by Chapter 55. A candidate for public office or someone acting in his behalf is guilty for knowingly accepting such contributions.

Section 7: Prohibits aggregate contributions to a candidate or political committee organized in behalf of a candidate in excess of $1,000 per calendar year.

Section 6: Prohibits corporations and agents acting in a corporation's behalf from making campaign contributions.

Section 9: Prohibits acceptance of aggregate contributions from an individual of more than $50 per year except by check.

Section 10: Prohibits campaign contributions from being made in any name except the donor's name. Prohibits knowing receipt or entry into account by candidate of contributions failing to comply with this section.

Section 12: Prohibits solicitation or receipt of payment for political campaign purposes in any public building.

More than one of the above provisions may be violated in the course of a single payoff scheme. For example, in a cash generation scheme where a $3,000 check is issued by a corporation to one of its employees for fictitious
"entertainment" expenses, and subsequent checks are written culminating in a cash payment to a public official, there are at least four crimes committed by both the public official accepting the payments and the individual initiating them: (1) the contribution exceeds the $1,000 legal limit; (2) it is not in the true name of the donor (the public official must have knowledge that the payment is not from the true donor); (3) it is an illegal corporate contribution; and (4) it is not made by check. Those individuals knowingly participating in the scheme, furthermore, would be guilty of conspiracy to violate the campaign contribution laws.

Perjury

Chapter 268 Section 1.

The Commission Resolves specifically made applicable to testimony before the Commission the provisions of the perjury statute. The elements of perjury, each of which must be proven beyond a reasonable doubt, are as follows: (1) a defendant under oath (2) in a proper proceeding (3) willfully (4) makes a false statement (5) concerning a material issue. All testimony at a Commission hearing was under oath and in a proper proceeding. Materiality means relevance in the sense that the answer might tend in a reasonable degree to affect some aspect or result of the inquiry.

The element of willfulness in the false swearing is proved by showing that the defendant knew that his testimony was false.


Many state bribery cases may be prosecuted by the United States Attorney as violations of the Federal Hobbs Act. The three essential elements of the Hobbs Act are that:

(1) the defendant induced someone to part with property;
(2) he did so by "extortion" as defined in the act; and
(3) in doing so, interstate commerce was delayed, interrupted or affected.

"Extortion" is defined in the act as "the obtaining of the property of another, with his consent ... under color of official right." To demonstrate this, it is necessary to show that the defendant was a public official and that he used the power and authority of his office to obtain property that was not due the defendant nor due his office. It does not matter whether a public official induces payments in order to perform his duties or not to perform his duties. So long as the corrupt payment focuses on the defendant's official position, the obtaining constitutes extortion within the meaning of the Hobbs Act. It is the wrongful use of office to bring forth payments which constitutes extortion under
color of official right. In sum, most violations of Mass. G.L. chapter 268A, the Conflict of Interest statute, also constitute violations of the Hobbs Act.

Federal Mail Fraud: 18 U.S.C. Section 1341

The Federal Mail Fraud statute makes it a crime to use the U.S. mails for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises. The two essential elements of the crime are:

(1) formation of a scheme with intent to defraud, and
(2) use of the mails in furtherance of that scheme.

A scheme to defraud has been held to include a scheme to bribe a public official to influence his official actions. The public is defrauded of its right to have the business of the public office conducted free from bribery, and their right to loyal and faithful service of state officials.

Other Relevant Criminal Statutes of the Commonwealth of Massachusetts

Corporations that generate large amounts of cash to be used in making corrupt payments to public officials often falsify their records so that the illegal purposes of the cash generation will not be detected. Chapter 266, section 67 of the General Laws makes it a felony to make a false entry in corporate records or to omit making a true record.

G.L. c.266, section 30, makes it a crime of larceny when a person "with intent to defraud obtains by a false pretense ... the property of another...."
The crime contains four elements: (1) a false statement of fact; (2) knowledge or belief by the defendant that the statement is false; (3) intent of the defendant that the person to whom the statement was made rely on its truth; and (4) the person to whom the statement was made did in fact rely upon it as true and parted with personal property as a result.

Chapter 30, Section 391, prohibits deviation from specifications unless the deviations are authorized by the awarding authority or the architect. In addition, even authorized deviations must be justified in writing and any substitution of materials must be of the same cost and quality as the original.

In order for the responsible contractors to be convicted under Chapter 30, Section 391, it will have to be shown that the deviations were willful and done with intent to defraud.

Chapter 93, Section 9A, makes it a crime for a person or corporation to enter into an agreement or arrangement to submit a fraudulent or collusive bid to a state agency on a contract for public works or purchase of supplies or equipment.

The statute of limitations for most state crimes, including bribery, as set
by Chapter 277, Section 63, is six years. Each corrupt payment or kickback made as the result of an illegal agreement is a separate criminal violation. The limitations period thus may not begin to run until the last corrupt payment is made, well after the contract was awarded. For criminal violations of federal law the statute of limitations is five years. Under the mail fraud statute, however, each use of the mails pursuant to an unlawful scheme to defraud is a separate violation, so that even if the corrupt agreement took place outside the five-year period, subsequent mailings reasonably foreseen at the time of the corrupt agreement may contribute prosecutable violations.

The responsibility of the Commission to make referrals of evidence to law enforcement agencies and other agencies is one that the Commission took with utmost seriousness. The Commission spent many hours over many meetings during the final six months of its life attempting to insure that the evidence which warranted referral was properly referred.

**Ongoing Investigations**

The Commission and its staff continued to issue summonses, hold private hearings, litigate in court against those who opposed its process, and conduct audits and interviews during the final six months of its life. These on-going investigations were those already started by the Commission but incomplete as of July 1. The results of this work are included in the investigative sections of this final report.

**Legislation**

The end of the regular 1980 session of the General Court left the Commission with two tasks remaining to fulfill its mandate to recommend remedial action with its final report. The first of these was to determine which of its recommendations of 1980 had not been adopted and what effect the absence of these provisions would have on the legislation enacted. The second task was to decide which of these and which further recommendations were appropriate to present to the legislature for consideration in 1981.

The scope of the Commission's recommendations for 1980 did not leave many new areas which required development of fresh legislative proposals. The portions of the Commission's previous recommendations which were not enacted did, however, leave serious gaps in what the Commission saw as necessary actions to prevent the mistakes and malfeasance of the past. These gaps, affecting the Inspector General's Office, political campaigns, and subcontractor selection, are noted elsewhere in this report. Commissioners and staff reviewed each of these areas anew,
resifting evidentiary material, rethinking their analysis, and examining the
lessons to be learned from the previous six months of legislative deliberations.
Proposals were refined and in some cases reshaped. The recommendations contained
in the report and the legislation submitted to the General Court for
consideration in their 1981 session (appearing in the appendix, Volume 12)
are the results of that effort.

Events in Court

A federal grand jury indicted Senator Kelly on September 24 on charges that
he extorted $34,500 from the Masiello firm. Harrington noted that the indictment
resulted from closely coordinated investigations of his office, the FBI and the
Commission. Assistant U.S. Attorney Lloyd MacDonald was announced as the
prosecutor for the case which was referred to U.S. District Judge Joseph Tauro.

Meanwhile, David Coletti continued to refuse to testify before the Commission,
and on the morning of September 27 Suffolk Superior Court Judge Augustus Wagner
Jr. ordered Coletti to jail. Appeals Judge Rudolph Kass then denied a stay
motion in the early afternoon, and, two hours later, Supreme Judicial Court Associate
Justice Francis Quirico rejected a motion for temporary stay. Coletti entered
Charles Street Jail shortly afterward.

Kelly was arraigned in Federal District Court September 29, and pled not
guilty to the charge of extortion.

A three judge panel of the Massachusetts Appeals Court took under advisement,
on October 7, an appeal by Coletti of his contempt order. Coletti's attorney
James De Giacomo reiterated his argument, before Judges Frederick Brown, Raya
Dreben and John M. Greaney, that the Commission's enabling legislation included
no emergency preamble and, therefore, the panel had no power to question the
architect until September 8.

On October 17, Bellotti announced a settlement of approximately $1 million in
connection with the Commonwealth's law suit to recover damages for design defects
in the UMass-Amherst Tillson Farm Power Plant. Bellotti said that the
settlement, with United Engineers and Constructors, Inc., of Philadelphia,
represented an effort to address

...the public construction problems which plagued the state
during the 1960s and 1970s...As a member of the Special
Commission Concerning State and County Buildings, I am acutely
aware of the magnitude of the problems facing us.

The Massachusetts Appeals Court panel, in a decision written by Judge Donald
R. Grant, on October 21, allowed Coletti to be released from jail until his case
could be heard on appeal. The panel declared that Coletti had a "reasonable"
chance to win the appeal, since "the possibility exists" that the Commission's
extension, "was never validly enacted." The Supreme Judicial Court agreed to consider the issue at a hearing on November 6.

Officials at the UMass/Amherst campus closed the 28-story library for the second time in two years on October 28 due to basement flooding. A broken hot water pipe spewed water that reached five feet in depth in an area containing mechanical and electrical systems. The Department of Environmental Health and Safety ordered the library closed after the ventilation system began to distribute fumes from the emergency pumping machines through the building.

The Ethics Commission filed a civil suit in Suffolk Superior Court on October 31 against James Kelly, accusing him of conflict of interest for allegedly receiving $23,400 from three Worcester firms as part of a state rental and leasing scheme. The suit charged that Kelly approved 21 contracts totaling $1.9 million for state agencies to rent office space in three buildings in Worcester and one in Fitchburg owned by the companies. The suit also accused officers of the companies, Peter A. Consiglio, Sr., Peter A. Consiglio, Jr. and Wilna Consiglio, of conflict of interest. The three firms cited were Parker Realty Corporation, Parker Metal Corporation, and Parker Affiliated Company. The suit was the first attempt by the Ethics Commission to recover, in treble damages, economic benefits gained by individuals and businesses in violation of the conflict of interest law. According to the Ethics Commission's complaint, the companies' principals paid Kelly $23,400 "for financial analysis performed or to be performed by defendant Kelly." The complaint said that Kelly "did not perform such financial analysis but received this money for or because of" his approval of the contracts.

In an expedited hearing on the Coletti case before the Supreme Judicial Court on November 6, Deputy Chief Counsel Tracy argued that Commission's final extension had been lawfully enacted and urged a prompt ruling on the matter since the Commission had been frustrated in its work because of the uncertainty surrounding possible court action. Attorney DeGiacomo reiterated his contention that the Commission's final extension had been invalidly enacted, and he requested the court to clear his client of any contempt. Tracy repeated the Commission's view that, since its appropriation was an amendment to a July 1979 special appropriation, no emergency preamble was necessary for the act to have immediate effect.

The Supreme Judicial Court overturned the state Appeals Court decision regarding Coletti on November 13, validating the Commission's argument that it continued to exist lawfully and ordering Coletti to appear and testify before the Commission the next day. When Coletti failed to appear, the Commission returned to Superior Court to seek an order compelling Coletti to testify and
when he again failed to do so, he was returned to Charles Street Jail.

Inspector General Appointment Deadlock

By early November, King, Bellotti, and Buczko still had no final decision on the appointment of the Inspector General. The Globe underscored the significance of the choice, noting in an editorial on November 11:

...the success of the office will depend in large measure on the qualifications of the inspector general. Only a person of stature and repute will be able to make the case for sufficient annual appropriations. Only a person with a proven ability to organize the kinds of investigations necessary to make such an office effective, to build the civil and criminal cases necessary to give such an operation bite, will make the office a respected -- and, yes, even feared -- agency.

The commitment of Messrs. King, Bellotti and Buczko to remove permanently the tarnish of corruption from the commonwealth's image will be reflected in the quality of the person they designate as Massachusetts' first inspector general.

Legislation for Consideration in 1981

The Commission made public a summary of the section in its final report concerning filed sub-bidding on November 23, announcing that Representative Marotta would file its bill proposing repeal of the system. The bill was one of six filed by the December 3 deadline for consideration in the 1981 session. The other bills sought to:

- accomplish comprehensive reform of statewide and legislative campaigns
- remove the imperfections in the Inspector General statute
- insert correcting changes in the construction statute.

Coletti

Coletti requested to be let out of jail on December 23, just before Christmas; the Commission voiced no objection since it had no further means of taking his testimony.

Campaign Report

The Commission made public portions of the chapter in the final report concerning political campaigns on December 26. The sections included the results of a study of campaign finance and special interest influence through political contributions, as well as full explanation of the campaign reform bill filed for the Commission by Representative Johnston.

Final Report

Commission staff worked around the clock through Christmas on production of the final report. Ironically, dust in the McCormack Building's ventilation system jeopardized the report in the final stages, causing a "head-crash" in the
word processing computer which destroyed some of the chapter drafts; Commissioners and staff worked through the last weekend in 80 to 90 degree (F) heat despite sub-zero weather outdoors because of efforts by engineers to dry out heating pipes burst in the cold.

The Commission submitted the full report to the Clerks of the House and Senate on December 31, 1980.

* * * * * * * * * *

Financial History of the Special Commission

In Chapter 442 of the Acts of 1978, on July 14, 1978 the General Court enacted a special appropriation of $300,000 to start the work of the Special Commission. This amount was requested and approved before investigations were begun and before the scope and staff needs were known, with the understanding that additional funds would be requested when the Commission's work programs and financial needs had been developed. Once the core staff was in place and the investigations under way, the Commission determined that the number of contracts and entities to be investigated would necessitate a larger and more specialized staff including financial investigators and technical experts. Consequently, a deficiency request for the amount necessary to expand the staff was submitted January 15, 1979, calculated for the calendar year 1979. When it became apparent that there would not be an immediate introduction of a deficiency/supplemental budget, the Commission applied to the Law Enforcement Assistance Administration (LEAA) for funds to augment the staff and get the investigations under way while awaiting the state appropriation. That application was accepted and the grant amount was $209,507 for the period March 1, 1979 - June 30, 1980. Pursuant to a six-month time extension for the Special Commission in Chapter 342 of the Acts of 1979, the General Court enacted a fiscal year 1980 appropriation of $1,135,000 to continue the work of the Special Commission until June 30, 1980. The Commission then received a second six-month extension until December 31, 1980 and an appropriation of $484,000 to cover the work for the final six months.
**Special Commission Concerning State and County Buildings**

### Budget History

<table>
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<tr>
<th>Subsidiary</th>
<th>c.442 Appropriation (Account #1170-1000)</th>
<th>c.342 Appropriation (Account #0810-0041)</th>
<th>c.257 Appropriation (Account #0810-0041)</th>
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<td>$484,663</td>
<td><em>$1,919,663</em></td>
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*The Special Commission was awarded a federal grant in the amount of $209,507 by the Law Enforcement Assistance Administration. The grant period ran from 3/1/79 to 6/30/80. (Account #1170-1001)*

### Description of Subsidiary Accounts

**02** Salaries of temporary staff were paid out of the 02 subsidiary. These included the chief counsel and deputy chief counsel, associate counsel, assistant attorneys, financial investigators, personnel and financial administrators, legal secretaries, legal assistants, word processing operators, and a receptionist.

**03** Payments covered by the 03 subsidiary included those to consultants expert in the fields of law, financial investigation, computer programming, design, construction, writing, and editing. Also included were payments to temporary help such as WANG operators and proofreaders in emergency situations, overtime for state troopers issuing summonses, and stenography costs during hearings. Computer time and payments to work/study programs were also a part of the 03 subsidiary.

It should be mentioned at this time that the Special Commission received assistance from several state agencies including the State Auditor, the Secretary of State, the Metropolitan District Commission, and the Massachusetts State Police. These agencies loaned the Commission several full-time employees (auditors, police, investigators) at no cost to the Commission, except that the Commission paid overtime costs. Also, the Boston Police loaned one department member to work on investigations.

**10** The 10 subsidiary covered expenditures in connection with the investigative travel by lawyers, investigators, other staff personnel and
Expenditures for printing of reports and legislative recommendations, bulk photocopying, enlargement of microfilm records for investigations, and photo and chart enlargements were incurred under the 11 subsidiary account.

Procuring evidence and related costs were paid from the 13 subsidiary. The security system, polygraph exams, handwriting analysis, witness fees, witness travel, and the procuring of investigative documents and materials were all included under the heading of procuring evidence.

Office and administrative expenses including telephone, postage and office supplies were paid from the 14 subsidiary account.

Most of the Commission furniture was either borrowed from other state agencies or purchased through the 15 subsidiary at minimal cost from surplus warehouses, both Federal and State. The Commission did, however, purchase many new file cabinets for the storage of exhibits, records, and confidential information during and after the life of the Commission.

The 16 subsidiary covers the cost of all rentals. The Special Commission, not being a permanent entity, found it more economically feasible to rent rather than buy certain office equipment including a limited number of desks and chairs, typewriters and photocopying machines. The Commission also found it necessary to lease a reader-printer for close examination of bank records, and up to six automobiles for staff investigators.

The other major expense for the Special Commission was the computer which was used on three principal projects: 1) litigation support for the M&AE investigation, 2) litigation support for other investigations, and 3) systems research and legislative reform of the state construction process. Substantial pro bono assistance was received from the private sector. Massachusetts Institute of Technology (MIT) at the outset of the Commission’s work contributed the services of two computer technical specialists and $9,500 in computer time. Digital Equipment Corporation contributed two interactive terminals and Wang Laboratories, Inc. contributed five word processing work stations and two high-speed printers. Southeastern Massachusetts University (SMU) also contributed computer time for one of the projects. The only expenses left for the Commission to pay were supplies such as paper, diskettes and ribbons from the 14 subsidiary, and an acoustic coupler from the 15 for transmission of data to MIT. We also needed to purchase computer time out of the 03 subsidiary in excess of that donated by MIT and SMU.

As of December 31, 1980 the Commission will have expended all of the federal grant money and will have incurred obligations equal to the total amount of money appropriated by the state legislature.
1. Howard Dacey
2. Timothy Leonard
3. Peter Vitale
4. Michael G. Tracy
5. Bancroft Littlefield, Jr.
6. Thomas E. Dwyer, Jr.
7. Natalea Skvir
8. A. John Pappalardo
9. Richard J. McCarthy
10. Christine Aposhian
11. Barbara R. Buck
12. Julie K. Marston
13. Richard E. Read
14. Jane K. Alper
15. Robert J. Patenaude
16. Denise E. Milroy
17. John F. Brophy
18. Jeffrey Auerhahn
19. Eunice C. Donnelly
20. Lea G. Snow
21. Terry K. Mond
22. Shirley Thomas
23. Jonathan M. Bockian
24. Betty A. Krier
25. Jane A. Current
26. Nancy Dolberg
27. Larry W. Beeferman
28. James M. Siracusa
29. Phyllis M. Boffito
30. Richard W. Krant
31. Jeffrey Blatner
32. Kathleen Y. Clay
33. Lawrence A. Beckenstein
34. Myra Ten Huisen
35. Michael Wise
36. Mark S. Demorest
37. Robert Tillman
38. Frank S. Lucinski
39. William Cupelo
40. Karen M. Kelleher
41. J. Peter Mitcholl
42. William H. Cohn
43. Dean J. Askin
44. Donald S. Burnham
45. Donna DeBenedictis
46. Colleen Brown
47. Thomas M. Neely
48. John M. Woollett
49. Al Castentini
50. Richard T. Reale
51. Rachel S. Lapointe
52. Edward R. Kelly
53. Patrick A. Ward
54. John J. Maguire
55. James J. O'Neill
56. Gregory P. Lippolis
57. James R. Lamb's
58. Leslie W. Fields
59. Dirk H. Biukema
60. Annie Bobbitt
61. Robert E. Richardson
62. Jamie Dahlberg
63. Eric J. Bryant

SPECIAL COMMISSION CONCERNING STATE AND COUNTY BUILDINGS

Staff, volunteers, and students who served the Commission in a full or part time capacity at any time during its life

December 1980
For the past thirty months, I have functioned as a member of the Special Commission Concerning State and County Buildings, devoting a significant portion of my personal attention and the resources of the Department of the Attorney General to the task assigned the Commission. Frequently, during the two and a half year period, conflicts have arisen between my duties as a member of the Special Commission and my responsibilities as Attorney General of the Commonwealth. Those conflicts are not of my choosing or making; they stem from the very law which created the Special Commission and which placed me or a member of my staff on the Commission. My fellow Commissioners have recognized the duality of my position and have worked with me to avoid conflicts wherever possible. Now, as the Special Commission is about to expire and its final report to the General Court has come due, I am faced with yet another conflict. As the chief law officer of the Commonwealth and a recipient of formal referrals from the Special Commission, I am not free to make the kind of extrajudicial statements contained herein, and I therefore must disassociate myself from, and decline to participate in making, the narrative statements of investigative facts interspersed throughout this report.

By setting forth separate views, I do not intend to create the mistaken impression that I generally dissent from the work of the Commission or that I disassociate myself from its legislative recommendations. On the contrary, I generally believe strongly in the work and objectives of the Commission and its staff. The performance of the
Commission will ultimately be judged not on the basis of the erudition demonstrated in this report but on the strength of the reforms it proposes to the legislature and the successes of its referrals. In this regard, I have confidence that the Commission will be favorably judged because I have great admiration for the Commissioners and for their commitment to the cause of good government. In their devotion to that cause, the Commissioners have expended tremendous amounts of time and energy over an extended period of time at great sacrifice to both their private and professional lives. Similarly, I have come to know many, but not all, members of the staff and have been impressed by their enthusiasm and hard work.

In spite of my respect for the Commission, its staff, and the overall quality of their work product, I decline to endorse this report without setting forth my own personal views. My position is premised upon two closely related reasons, both hinging upon my role as chief law officer of the Commonwealth. As Attorney General, I am a prosecutor governed by the Canons of Ethics Regulating the Practice of Law. In its current form, this document contains detailed investigative information pertaining to matters which have been referred under conditions of confidentiality to federal and state law enforcement officials for potential prosecution. At least one indictment has been returned in connection with the matters so referred and most, if not all, of the others are under active investigation. I have received several such referrals and have all of these matters under active consideration. As a consequence, I am "a lawyer participating in or associated with the investigation of a criminal matter" as that phrase is used in
DR7-107 of the Canons of Ethics and Disciplinary Rules Regulating the Practice of Law, currently in force in Massachusetts by virtue of Supreme Judicial Court Rule 3:22. That rule, therefore, prevents me in my capacity as a prosecutor, from making "extrajudicial statements that a reasonable person would expect to be disseminated by means of public communication" containing the kind of investigative details set forth in this report.

The report itself is clearly an extrajudicial statement, i.e., a statement made outside the courtroom. Thus, if a reasonable person would expect the report to be disseminated by public communication, I would violate the Canons of Ethics which bind me were I to participate in certain portions of the report. In fact, there can be no argument as to the expectation of public dissemination; the Commission has devoted portions of several meetings to a discussion of methods of ensuring the widest possible circulation of its report through the mass media. While I have argued against such public pretrial disclosure of detailed investigative information, my arguments have not prevailed.

Other lawyers who are Commissioners or members of the staff do not have a prosecutorial role in addition to their legislative mandate. They are therefore insulated from violating the Canons of Ethics by a subsection of the ethical rule which provides an exemption for lawyers participating in the proceedings of legislative, administrative or other investigative bodies. I do not believe that this provision absolves me from my responsibilities as a prosecutor, and consequently, I feel precluded from endorsing this report in its entirety.

My separate views are also premised upon my concern for the civil
rights of the individuals named in the investigative sections of this report. Simply stated, this concern is that the non-adversarial proceedings of the Commission did not present the same kind of crucible for fact-finding that a trial would have provided. Thus one cannot state with the degree of confidence suggested by this report that we have arrived at truth.

However one chooses to characterize the work of the Special Commission, this document is implicitly accusatory; it attempts to inform the legislature, the press and public what went wrong on public construction projects and who is responsible for those failings. To those who view this as a purely legislative document, this approach may be totally satisfactory. As a prosecutor, however, my obligations and the procedures I must follow in furtherance of those obligations are very different from those of the Special Commission. Without providing a truly adversarial proceeding, including an opportunity for those implicated to participate meaningfully in the proceedings by affording them the opportunity to cross-examine their accusers and present their own evidence to an independent, neutral trier of fact, a prosecutor could not, in conscience, subscribe to a narrative of the type presented by this report.

I wish to emphasize, however, that I find no fault with the Special Commission for the nature of its proceedings. My reservations emanate from the standards which apply to me as a prosecutor and have no applicability to the Commission, which is not a prosecutorial office but a body created by the General Court to carry out the historic "informing function" of the legislature, a function long recognized
by the highest courts of the United States and the Commonwealth of Massachusetts. This distinction is an important one which ought not be lost to those who read my separate views. The Commission, in stating the facts as it sees them, has not applied the same standard of proof as a prosecutor. Its conclusions are supported by the evidence contained in this report and may be wholly appropriate for a body serving the legislature. I, however, am both a prosecutor and a Commissioner fulfilling a legislative mandate.

While I have been a Commissioner for about thirty months, I have been a lawyer for nearly thirty years. During the course of those years I have served as a prosecutor, a criminal defense lawyer, and an elected public official. In each of those positions I have been guided not only by the Canons of Professional Ethics but also by my own perception of what is right. I cannot and will not now, for the sake of unanimity, sacrifice the things in which I have come to believe. Therefore, I confine my participation in the filing of this report in accordance with these, my separate views.
Final Report
To The General Court
Of The Special Commission
Concerning State And County Buildings

December 31, 1980

Created by
Chapter 5 of the Resolves of 1978
as amended by Chapter 11 of the Resolves of 1979

VOLUME 10
# Footnotes for Volumes III, IV, V, VI, and IX

**Volume III**
- Findings in Individual Cases: Award of Design Contracts
- A New Campus for Holyoke Community College
- Masiello

**Volume IV**
- The Award of Design Contracts: An Overview
- Administration & Finance
- Desmond & Lord

**Volume V**
- Suppliers
  - Suppliers
  - Driscoll Weber
  - Testing Consultants
- Influence Exercised on Administrative and Legislative Action
- Neutralizing Supervision
- The J. A. Sullivan Corporation and the BBC
- Laundering Improper Campaign Contributions

**Volume VI**
- Construction Defects, State and County Buildings
  - Introduction
  - Cape Cod Community College
  - Salem State College Library
  - Southeastern Massachusetts University
  - Bridgewater State College
  - Boston State College
  - University of Massachusetts/Amherst Library
  - Tillson Farm Power Plant
  - University of Massachusetts/Boston, Columbia Point
  - University of Massachusetts/Worcester
  - Pondville Hospital
  - Haverhill Parking Garage
  - Worcester County Jail
  - Hingham District Courthouse
  - University of Massachusetts Building Authority
  - McCarthy Apartments, Melrose
  - Randolph Housing for the Elderly

**Volume IX**
- The Commission's Narrative
FOOTNOTES

VOLUME III: FINDINGS IN INDIVIDUAL CASES: AWARD OF DESIGN CONTRACTS

A New Campus for Holyoke Community College 3

Masiello

If A Hand Is Open 10
Frank Masiello In The 1960's: The Education Of A Political Architect 12
How Masiello Used Political Contributions As A "Door-Opener" to Suffolk County Contracts 15
Worcester County 17
Shrewsbury Housing Authority 19
Taunton Housing Authority 22
Fall River Housing Authority 24
Masiello's Strategy To Win the Springfield Mental Health Center Contract 27
"The Year of the Fire" and Costello interview
BRCC minutes, 1/12/68
BRCC minutes, 2/9/68
BRCC minutes, 3/8/68
House Bill 4771, 1968.
Journal of the House 1968
Journal of the Senate 1968
"The Year of the Fire"
*Tr. March 25, 1980 at p. 17
Dwyer and Costello interviews.
Designer Selection Board records.
BRCC Minutes, 3/8/68
OSB 2nd Annual Report
OSB 2nd Annual Report
OSB 1st, 2nd, and 3rd Annual Reports
Frank R. Masiello, Jr., interview.
Tr. March 25, 1980, at p. 16.
Poitrast interview.
Frank R. Masiello and Andrew Spinazzola interviews.
Tr. March 25, 1980, at pp. 16-17.
Frank R. Masiello interview.
Tr. March 25, 1980, at pp. 16-37.
Frank R. Masiello interview.
Tr. April 9, 1980, at pp. 35-36. (Anthony DeFalco)
OSB records.
OSB records.
Tr. March 25, 1980, at p. 31.
Tr. March 25, 1980, at pp. 68-70.
Tr. March 25, 1980, at pp. 71-84, and 94-95.
Tr. March 25, 1980, at pp. 93-100.

*Tr.: transcript of testimony before the Special Commission on date cited. Frank R. Masiello testified on March 25, 26, 27, 31, April 1, and June 16, 1980.
William V. Masiello testified on May 12, 13, 14, and June 24, 1980.
Tr. March 25, 1980, at pp. 100-104.


Minutes of 46th Meeting of Designer Selection Board.

Tr. March 25, 1980, at p. 103.

Tr. March 25, 1980, at pp. 109-123.


Administration & Finance Records.

Tr. March 25, 1980, at pp. 127-129.

Administration & Finance records.

Tr. April 9, 1980, at p. 17. (Anthony DeFalco)

Tr. April 9, 1980, at p. 20. "

Tr. April 9, 1980, at p. 21. "

Tr. April 9, 1980, at p. 23. "

Tr. April 9, 1980, at pp. 40-41. "

Frank R. Masiello interview.

BBC records.

Tr. April 9, 1980, at p. 45. (Anthony DeFalco)


BBC records.


BBC copy of contract with DMJM.

Internal memorandum of MBM firm.

Internal memorandum of MBM firm.

Tr. March 26, 1980, at pp. 6-7.

Internal memorandum of MBM firm.

Tr. March 26, 1980, at pp. 6-7.

Frank R. Masiello interview.


Tr. March 26, 1980, at pp. 15-17.


Tr. March 26, 1980, at pp. 18-22.

Tr. March 26, 1980, at pp. 22-25.

Tr. March 26, 1980, at pp. 22-25.

BBC records.


Tr. March 26, 1980, at pp. 26, 29-32.

Tr. March 26, 1980, at pp. 32-33.

Tr. March 26, 1980, at pp. 33-34.

Tr. May 12, 1980, at p. 21.

Tr. March 26, 1980, at p. 34; Tr. May 12, 1980, at p. 21.

Tr. March 26, 1980, at pp. 34, and 36-37.

Tr. May 12, 1980, at pp. 22-23.

Tr. April 7, 1980, at pp. 26-27. (Sherwood Tarlow)


Tr. March 26, 1980, at p. 38; Tr. May 12, 1980, at p. 22.

Masiello & Associates' records.

BBC records.

Holyoke Community College records.

BBC records.

Tr. March 26, 1980, at p. 45.

BBC records.


Tr. March 26, 1980, at pp. 47-49.

Masiello & Associates records.

Tr. March 26, 1980, at pp. 50-52, and 54-58.

Masiello & Associates records.

Tr. March 26, 1980, at pp. 59-68.

Letter from Harry Clausen to Joe Glynn, dated 7/2/70, with handwritten revisions, dated 7/13/70.

Tr. March 26, 1980, at pp. 75-84.

Two slightly different versions of a sign-up sheet, dated 7/9/70.

Letter from Harry Clausen to Joe Glynn, dated 7/2/70, with handwritten revisions, dated 7/13/70.

House Bill 5938, 1970.

Journals of the House and Senate, legislative documents.

BBC records.

Letter from F. Masiello to S. Smith, August 6, 1970.

Letter from S. Smith to F. Masiello, August 19, 1970.

Frank R. Masiello interview.

Letter from T. Kutay to F. Masiello, September 18, 1970.


Frank R. Masiello interview.


BBC records.
120 Tr. May 12, 1980, at p. 27.
125 Tr. May 12, 1980, at pp. 30-35.
126 Letter from Smith to Frost, December 8, 1970.
130 Tr. March 26, 1980, at pp. 115-116.
131 Letter from S. Smith to F. Masiello, April 17, 1971.
133 BBC records.
134 Tr. March 26, 1980, at pp. 117-121.
135 Tr. March 26, 1980, at p. 122.
137 Tr. March 26, 1980, at p. 117.
138 Masiello & Associates records.
139 Tr. March 26, 1980, at pp. 122-128.
140 Tr. May 12, 1980, at pp. 35-36.
141 Tr. March 26, 1980, at p. 125.
142 Masiello & Associates records.
143 Letter from Johnson and Masiello to Barnett, June 29, 1971.
144 Letter from S. Smith to F. Masiello, August 16, 1971.
145 Masiello & Associates' expense records.
146 Tr. April 28, 1980, at pp. 19-22. (John Wackell)
150 Tr. May 5, 1980. (Paul Hogan)
152 Tr. May 7, 1980. (Edmund DelPrete)
153 Tr. May 5, 1980. (Anthony Tomasiello)
155 Tr. May 7, 1980. (Charles W. Robinson)
156 Tr. May 7, 1980. (Anthony Penney)
157 Legislative documents.
Letter from S. Smith to F. Masiello, October 7, 1971.
Tr. April 1, 1980, at pp. 74-77.
Tr. May 12, 1980, at p. 39.
Tr. April 1, 1980, at pp. 78-87.
William V. Masiello interview.
Tr. May 12, 1980, at pp. 41-43.
Masiello & Associates records.
Tr. April 1, 1980, at pp. 94-95.
Tr. May 12, 1980, at pp. 43-44.
Letter from A. Mansueto to F. Masiello, November 15, 1971.
Tr. April 1, 1980, at pp. 95-97.
Tr. April 1, 1980, at pp. 98-99.
Letter from S. Smith to F. Masiello, December 20, 1971.
Letters from S. Smith to F. Masiello, February 3 and 4, 1972.
BBC records.
Tr. May 12, 1980, at pp. 51-52.
A&F and BBC records.
Walter J. Poitrast interview.
None
Tr. May 12, 1980, at pp. 55-63.
BBC records.
Tr. May 5, 1980. (Aubrey Batstone)
Tr. May 7, 1980. (Alfred Simoncini affidavit)
Testimony of James M. Siracusa, Tr. May 5, 1980, at pp. 52-58.
Tr. May 7, 1980. (Irving Bello)
Tr. May 5, 1980. (Donald Smith)
Tr. May 5, 1980. (Robert G. Lotuff)
Tr. May 5, 1980. (M. Joseph Stacey)
BBC project records.
Joseph Glynn interview.
William V. Masiello diary.
198 John Costello interview.
199 BRCC minutes, June 9, 1972.
201 Tr. May 12, 1980, at pp. 69-71.
202 William V. Masiello interview.
203 Tr. May 12, 1980, at pp. 72-75.
204 Masiello & Associates records.
205 Tr. April 1, 1980, at pp. 103-104 and 107.
206 Tr. May 12, 1980, at pp. 72-75 and 80-81.
207 Undated telex message found in Masiello & Associates' files.
208 Tr. April 1, 1980, at pp. 111-115.
209 Tr. April 1, 1980, at pp. 111-112.
210 BBC records.
211 BBC records.
212 Tr. May 12, 1980, at pp. 79-82 and private interview.
213 Undated telex message found in Masiello & Associates' files.
214 Tr. April 1, 1980, at p. 118.
215 Tr. April 1, 1980, at p. 119.
216 Tr. April 1, 1980, at p. 120.
217 Frank R. Masiello interview.
219 Sheraton Hotel registration card.
220 BBC records.
222 M. Joseph Stacey interview.
223 Letter from S. Smith to W. Poitrast, November 14, 1972.
224 Letters from S. Smith to P. Dwight and D. Bartley, Nov. 16, 1972.
225 Boston Herald American, November 20, 1972, p. 22.
226 Tr. May 12, 1980, at pp. 90-105.
227 Tr. May 12, 1980, at p. 106.
228 BBC records.
236 BBC records.
Masiello & Associates expense records.

Tr. May 12, 1980, at pp. 115-120.


Telegram from Masiello & Associates to DMJM.

Tr. May 12, 1980, at pp. 115-120.


BBC records.

Letter from Poitrast to DMJM, January 30, 1974.

BBC records.

Letter from Costello to Bartley, November 26, 1974.

A&F records.


Letter from Clausen to W. Masiello, February 14, 1975.

Letter from W. Masiello to Clausen, February 19, 1975.

Letter from W. Masiello to Dorman, March 14, 1975.

Letter from S. Smith to W. Masiello, April 12, 1975.

Letter from W. Masiello to S. Smith, April 7, 1975.

BBC records.

Legislative documents.

BBC records.

BBC records.
IF A HAND IS OPEN: FOOTNOTES

1. Testimony of Mark S. Demorest, Sp. Comm. 3/21/80 at 30,44 (Exhibit 15)
4. Id. at 23: Certificates of Condition filed with State Secretary.
5. Masiello Testimony, supra n. 2, at 8.
6. Id. at 13.
11. Id. at 129.
14. Id. at 129.
15. Id. at 130-131.
17. Id. at 47.
20. Id. at 9.
21. Id. at 30.
22. Id. at 31.
23. Id. at 17-18.
24. Id. at 30, Exhibit 11.
25. Id. at 44-50.
26. Id. at 44, Exhibit 15.
27. Id. at 63-69.
28. Id. at 63, Exhibit 18.
29. Id. at 64.
30. Id. at 38.
31. Id. at 28-29.
32. Id. at 40-41.
33. Id. at 40, Exhibit 13.
34. Id. at 53-54.
35. Id.
36. Id.
37. Id. at 52-53, Exhibit 16.
38. Id. at 57.
41. Notes of interviews of William V. Masiello by Special Commission staff.
42. Notes of interviews of William V. Masiello by Special Commission staff.
43. Notes of interviews of William V. Masiello by Special Commission staff.
44. Rawson Testimony, supra n. 3, at 48.
45. Id. at 38, Exhibit 6.
46. Id. at 54-55.
47. Id. at 60-62.
49. Id. at 37-39.
50. Rawson Testimony, supra n. 3, at 56-57.
51. Id. Exhibit 6 (reproduced in Appendix).
52. Masiello Testimony, supra n. 40, at 37.
53. Id. at 38.
54. Id. at 39.
Public testimony of Mark Demorest, Sp. Comm. 3/21/80 at 29


Id., at 12-18.

Id. at 10.


Masiello testimony, supra, n. 2 at 12.

Id. at 13.

Id. at 16-17.

Id. at 18.

Id. at 19.

Id., at 36.

Id. at 40.

Id. at 39-41.


Masiello testimony, supra, n. 2 at 47.

Id. at 58-59.

Id. at 62-63.

Id. at 72-73.

Id. at 74, 79.

Designer Selection Board Minutes of March 29, 1967.


Public testimony of Earle F. Littleton, Sp. Comm. 4/16/80 at 6-8, 23.

Masiello testimony, supra, n. 2 at 78-79.

Designer Selection Board Minutes of March 29, 1967.

Littleton testimony, supra, n. 19 at 8-13.


Masiello testimony, supra n. 2 at 93.

Id. at 82-83.

Id. at 83.

Id. at 84-89.

Id., at 88-89.

Id. at 89.


Masiello testimony, supra, n. 2 at 90.

BBC Invoice #55 dated 9/27/68 from Masiello & Healy, Architects, Inc. for $2,355.

33 Masiello testimony, supra, n. 2 at 93.

33A Id., at 96-98

34 Id. at 100.


37 Masiello testimony, supra n. 2 at 89.

38 Letter dated October 4, 1968 from Curtis and Davis, Architects, to BBC supra n. 36. Handwritten address under the listed name of Joseph A. Gildor, Engineer, Boston, is the notation "Masiello & Healy, Worcester."

39 Masiello testimony, supra n. 2 at 9-49.

40 Id. at 18, 38, 42, 85, 100.

41 Masiello testimony, supra, n. 2 at 102.

42 Id. at 101.

43 Notes of 3/6/80 interview of Frank R. Masiello by Special Commission staff at 15.


45 Masiello testimony supra, n. 44 at 9-10, 12. Masiello testimony, supra, n. 2 at 102-104.

46 Masiello testimony, supra, n. 2 at 103-104. Commission research has established that the Buyer executed a check to Frank R. Masiello, et ux, in the amount of $17,114.23 on 8/19/68, and a second cashier's check, in the amount of $9,585.60 on 8/23/68.


48 Masiello testimony, supra, n. 47 at 4.


50 Notes of 2/28/80 interview of Frank R. Masiello by Special Commission staff at 3.

51 Masiello testimony, supra, n. 2 at 104. Notes of 3/14/80 interview of Frank R. Masiello by Special Commission staff at 8. See also, checks referenced infra, n. 55.

52 Masiello testimony, supra, n. 2 at 105.


54 Masiello testimony, supra, n. 2 at 106.

55 Masiello testimony, supra, n. 2 at 108. Introduced as Sp. Comm. Exhibit #43 at this hearing was Home Federal Savings & Loan Association Cashier's Check #7298 dated 10/02/68 in the amount of $5400. The reverse side of this check bears a signature identified by Frank Masiello as his own, and a cash stamp of the Commerce Bank & Trust Company.

56 Notes of 3/6/80 interview of Frank R. Masiello by Special Commission staff at 16.

57 Masiello testimony, supra, n. 2 at 103.

Masiello testimony, supra, n. 47 at 4-17.


William V. Masiello testimony supra, n. 61 at 95.


Id., at 88.

<table>
<thead>
<tr>
<th>Page</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Masiello testimony, supra, n. 1 at 2-24.</td>
</tr>
<tr>
<td>3</td>
<td>Post Audit Subcommittee Report at 60-63.</td>
</tr>
<tr>
<td>4</td>
<td>Masiello testimony, supra, n. 1 at 24.</td>
</tr>
<tr>
<td>6</td>
<td>Masiello testimony, supra, n. 1 at 25-6.</td>
</tr>
<tr>
<td>8</td>
<td>Masiello testimony, supra, n. 1 at 27.</td>
</tr>
<tr>
<td>9</td>
<td>Id., at 30.</td>
</tr>
<tr>
<td>10</td>
<td>Id., at 30-1.</td>
</tr>
<tr>
<td>11</td>
<td>Id., at 38.</td>
</tr>
<tr>
<td>14</td>
<td>Id., at 9-11.</td>
</tr>
<tr>
<td>15</td>
<td>Id., at 13.</td>
</tr>
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<td>17</td>
<td>Id., at 5-6.</td>
</tr>
<tr>
<td>18</td>
<td>Id., at 6.</td>
</tr>
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<td>19</td>
<td>Id., at 6.</td>
</tr>
<tr>
<td>20</td>
<td>Id., at 7.</td>
</tr>
<tr>
<td>21</td>
<td>Testimony of Francis Falzarano, Sp. Comm. 5/15/80 at 5.</td>
</tr>
<tr>
<td>22</td>
<td>Id., at 6.</td>
</tr>
<tr>
<td>24</td>
<td>Memorandum dated 12/18/74, from Herbert Gleason, Corporation Counsel for the City of Boston, to Department Heads in the City concerning campaign finance laws and public employees.</td>
</tr>
<tr>
<td>27</td>
<td>Vandenburg testimony, supra, n. 13 at 14.</td>
</tr>
<tr>
<td>28</td>
<td>Vey Testimony, supra, n. 7 at 12-13.</td>
</tr>
<tr>
<td>29</td>
<td>Masiello testimony, supra, n. 1 at 24-26.</td>
</tr>
<tr>
<td>30</td>
<td>Vey testimony, supra, n. 7 at 17.</td>
</tr>
<tr>
<td>31</td>
<td>Masiello testimony, supra, n. 1 at 31-2</td>
</tr>
<tr>
<td>34</td>
<td>Id., at 12-13.</td>
</tr>
<tr>
<td>35</td>
<td>Id., at 18-20.</td>
</tr>
<tr>
<td>37</td>
<td>Vey testimony, supra, n. 7 at 40-42.</td>
</tr>
</tbody>
</table>


Hurley testimony, supra, n. 36 at 8.

Vey testimony, supra, n. 7 at 41.

Hagan testimony, supra, n. 25 at 5-7.

Lesser testimony, supra, n. 25 at 7-8.

Rothman interview, supra, n. 37 at 2.


Lesser testimony, supra, n. 25, at 9.

Id. at 11.

Notes of 5/7/80 interview of Peter Scarpignato by Sp. Comm. staff at 1.

Chia interview, supra, n. 43 at 2.


Masiello testimony, supra, n. 1 at 41.

Id., at 43.

Lesser testimony, supra, n. 25 at 11.


Rawson testimony, supra, n. 52 at 89.

Id., at 91-92.

Scarpignato Interview, supra, n. 12 at 2.

Chia interview, supra, n. 41 at 4.

Hagan testimony, supra, n. 25 at 15.

Lesser testimony, supra, n. 25 at 30-32.

Masiello testimony, supra, n. 1 at 41.

Id., at 42.

Miller testimony, supra, n. 52 at 34.

Masiello testimony, supra, n. 1 at 30-47.

Miller testimony, supra, n. 52, at 32.


Miller testimony, supra, n. 52 at 34.

Id., at 35.

Id., at 39.

Allard testimony, supra, n. 61, at 72-73.


Brown testimony, supra, n. 52 at 11.


Miller testimony, supra, n. 52 at 30-47.

Allard testimony, supra, n. 61 at 70-74.

Miller testimony, supra, n. 52 at 40-45.
Currently c. 7 s. 40 as amended by St. 1971, c. 1113, sections 1 and 2.


Notes of 2/26/80 interview of Frank R. Masiello by Special Commission Staff, at 11.

Testimony of Frank R. Masiello, Special Commission 4/1/80 at 12.

Masiello interview, supra n. 4 at 11 and 12.

Id., at 11.

Id., at 13.

Masiello testimony, supra n. 5 at 14-15.

Id., at 16-17.

Id., at 17.

Id., at 17.

Id., at 19-20.

Id.

Masiello interview, supra, n. 4, at 16.

Masiello testimony, supra, n. 5 at 22.

Id., at 24.

Id., at 24.

Id., at 25.

Id., at 26.

Notes of 2/7/80 interview of Frank R. Masiello by Special Commission staff, at 35.

Masiello testimony, supra, n. 5, at 26-27.

Id., at 27.

Id., at 27.

Id., at 37-39.

Masiello interview, supra, n. 4 at 9.

Masiello testimony, supra, n. 5 at 38.

Id., at 30-31.

Id., at 31.

Id., at 32-33.

Id., at 33.

Masiello interview, supra, n. 21, at 35.

Masiello testimony, supra, n. 5 at 33-35

Id., at 36.

Notes of 3/19/80 interview of Frank R. Masiello by Special Commission Staff, at 3.

Masiello testimony, supra, n. 5, at 36.
Masiello testimony, supra, n. 5, at 36.

Masiello testimony, supra, n. 5, at 38.

Notes of 2/21/80 interview of William V. Masiello by Special Commission Staff, at 8.

Proposal dated 3/25/70 from Masiello and Associates to the Worcester County Commissioners, Re: Jail Facility Worcester County.

Letter dated 3/31/70 from Paul X. Tivnan to Masiello and Associates authorizing the hiring of MBM.


Id., at 18-20.

Id., at 25-27.

Id., at 28-32.

Id., at 32-35.

Letter dated 11/21/73, from Walter F. Kelly to William I. Cowin. "... we respectfully request your approval for the continuous services of the previously appointed designers. . . ."

Letter dated 2/15/74 from Philip J. Philbin to William I. Cowin. "... Masiello and Associates are under strong consideration for the Gardner Courthouse. . . ."

Masiello testimony, supra, n. 5, at 28-29.

Compiled from receipts and expense reports of William Masiello, subpoenaed from Masiello and Associates, Inc., by Special Commission.

Philbin testimony, supra, n. 2, at 40.

Id., at 46.

Id.


Philbin testimony, supra, n. 2, at 46.

Masiello interview, supra, n. 4, at 18.

Masiello testimony, supra, n. 5, at 36.

Notes of 11/10/79 interview of Raymond Allard by Special Commission Staff, at 14.

Id.

Id.
SHREWSBURY HOUSING AUTHORITY

Minutes of the 12/7/66 Shrewsbury Housing Authority meeting.

Minutes of January 5, 1967 meeting of the Shrewsbury Housing Authority (SHA) at 1.

Id. at 1.

Id. at 2.

Notes of 11/1/79 interview of Walter Morrissey by Special Commission staff at 1.

Id. at 1.


Id. at 7-11.


Id. at 9.


Id. at 6-14.

Id. at 5-11.


Id. at 47-48.

Id. at 48.

Id. at 48.

Id. at 49 and at 50.

Frank Masiello testimony, supra n. 14 at 61 and 62.

Id. at 63.

Id. at 59.

Id. at 70-71.

Id. at 59.

Id. at 59.

Id., at 66-67.

Id., at 67.

Contract. Letter dated 11/2/69 from W.V. Masiello to SHA "RE: Housing for the Elderly, Shrewsbury, Massachusetts."

Id.

Frank Masiello testimony, supra n. 14, at Exhibit 75.


Id. at 17.


Minutes of the 11/17/71 meeting of the SHA.
Minutes of the 2/2/72 meeting of the SHA at 1.
Minutes of the 2/16/72 meeting of the SHA at 1.
Minutes of the 4/5/72 meeting of the SHA at 2.

Id., at 2.
Id., at 2.

Letter dated 4/2/72 from Louis Frongillo to Frank Masiello "RE: The state funded 667-project" at 1.
Private testimony of John Manzi, Sp. Comm. 12/5/79 at 25.21
Private testimony of Frongillo, supra, n.34 at 26.

Id., at 3.
Id., at 3.

Interview of William Masiello, supra, n.48 at 4.
Private testimony of William Masiello, supra, n. 51 at 21-3.
Public testimony of William Masiello, Sp. Comm. 5/14/80 at 8.

Id., at 8
Minutes of SHA meeting 8/1/73.
Minutes of SHA meeting 10/18/73
William Masiello testimony, supra, n. 54, Ex. 65-66.
Minutes of SHA meeting 4/3/74.
Letter undated, from Jean Wright to Lewis Crampton, "RE: SHA Legal Analysis of Amended Architects' Contract for Project 667-1."
Frongillo Private testimony, supra n.34 at 32-3.
Notes of Interview of John Manzi on 11/13/79.
Masiello testimony, supra n. 54 at 12-13.

Id., at 13.
PUBLIC testimony of Audrey Rawson, Sp. Comm. 5/1/80 at 36.
Masiello testimony, supra n.54 at pp. 12-14.

Id., at 15.
Allard testimony, supra n.67 at pp. 22-23.

Id., at 23.
Id., at 24-25.
Id., at 31-32.
74 Id., at 32.
75 Id., at 32-33.
76 Id., at 34-35.
77 Masiello testimony, supra n.54 at 13.
78 Id., at 8.
79 Rawson testimony, supra n.66 at 67.
80 Masiello testimony, supra n.54 at 16.
82 Id., at 68.
87 Private testimony of Frongillo, supra n.34 at 38-40.
TAUNTON FOOTNOTES

(1) Minutes of THA meeting, March 12, 1974. See also Report of the Executive Director, March 12, 1974, p.79.

(2) Notes of 1/14/80 interview of William V. Masiello by Special Commission Staff, at 5.

(3) Testimony of William V. Masiello (private), Special Commission 2/8/80 at 24-25.

(4) Id., at 24-26.

(5) Notes of 12/14/79 interview of James Thomas by Special Commission staff at 1.

(6) Masiello testimony, supra n.3, at 27.

(7) Id., at 28.


(9) Masiello interview, supra n. 2, at 18.

(10) Notes of 1/31/80 interview of William V. Masiello by Special Commission staff at 9-10.

(11) Masiello interview, supra n.2, at 9.-11.

(12) Testimony of Barbara Flynn (private), Special Commission, 2/1/80 at 14-16.

(13) Masiello testimony, supra n.3, at 28.

(14) Masiello testimony supra n.3, at 28.

(15) Id.

(16) Masiello interview, supra n.8 at 14.

(17) Id., at 15.

(18) Masiello interview, supra n.2, at 6.

(19) Id., at 5.

(20) Masiello interview, supra n.10 at 11.

(21) Testimony of Vite Pigaga (private), Special Commission, 2/22/80 at 12-18.

(22) Masiello interview, supra n.8 at 15.

(23) Pigaga testimony, supra n.21 at 22.


(25) Notes of 1/16/80 Interview of William V. Masiello by Special Commission staff at 19.

(26) Pigaga testimony, supra n.21 at 29-30.

(27) Masiello testimony, supra n.3 at 29-30.


(29) Testimony of William Masiello, Special Commission 5/14/80 at 54-55.


(31) Masiello testimony, supra n.29 at 82-3.

(32) Driscoll testimony, supra n.f2 at 32-35.

(33) Minutes of the 3/26/76 THA meeting, at 337.
(34) Minutes of the 5/12/76 THA meeting, at 347-8.
(34) Minutes of the 8/17/76 THA meeting, at 377.
(36) Id.(37) Letter dated 8/19/76, from the THA to Wood-Hu Kitchens, Inc., "Notice of Award".
(38) Letter dated 9/14/76, from John Wackell of M&E to Ralph Grillone, Wood-Hu Kitchens, "...the samples do not comply with the specifications."
(39) Minutes of the 9/14/76 THA meeting at 383.
(40) Letter of 9/21/76, from Ralph Grillone, Wood-Hu Kitchens to Joseph W. Kane, Department of Labor and Industries, "...the cabinet...was equal if not better than what was specified."
(41) Minutes of the 10/5/76 meeting of the THA at 392.
(42) Letter dated 10/7/76, from Joseph W. Kane to the THA, "...it is the position of this Department that the awarding authority has no alternative but to allow a submission of Wood-Hu as an equal since the specification was proprietary..."
(43) Letter dated 1/20/77 from Albert F. Cullen, Counsel for Driscoll Weber to Joseph W. Kane, "...requests an immediate hearing to determine if in fact Wood-Hu's cabinet meets the specifications."
Letter dated 1/21/77 from Joseph W. Kane to the THA "...would you advise this office...of your position..."
Letter dated 1/27/77, from the THA to Joseph W. Kane, "...the THA and M&A are satisfied with the alterations that Wood-Hu has made..."
Letter dated 1/31/77 from Joseph W. Kane to Albert F. Cullen "...it is the position of this Department that no further action is warranted."
(44) See the chapter entitled "Driscoll Weber" in Volume V of this report. See also Appendices 1D and 11 of that chapter, in Volume XI of this report.
(45) See Driscoll Weber appendix #35 in volume XI of this report.
FALL RIVER HOUSING AUTHORITY FOOTNOTES

1. Fall River Housing Authority Annual Report, 1977, at 8.
2. Letter dated April 24, 1975 from John Arruda to Martin Bresn.
5. Testimony of William V. Masiello, Special Commission, 5/14/81 at 24-47.
6. William V. Masiello interviews with Commission staff.
7. William V. Masiello interviews with Commission staff.
9. William V. Masiello interviews with Commission staff.
10. William V. Masiello interview, Supra n. 4, at 1-3.
12. William V. Masiello interviews with Commission staff.
13. Minutes of February 11, 1975 Fall River Housing Authority meeting. Resolution number 84.
14. Arruda and Assistant Executive Director Joseph DiSanti spoke with a Commission investigator when the project records were turned over to the Commission. They stated that the Housing Authority members do interview prospective architects, but in an "informal" manner, and do not record such interviews in the official minute book.
15. Minutes of March 9, 1976 Fall River Housing Authority meeting. Resolution number 87.
16. Contract dated April 9, 1976, between the Fall River Housing Authority and Masiello and Associates.
17. HUD "Architect's and Engineer's Contract Review" dated May 1 1975 for the Fall River Housing Authority projects.
18. Letter dated June 1, 1976 from John Arruda to Abraham Gammal.
19. William V. Masiello interviews with Commission staff.


23. William V. Masiello interview, Supra n. 4, at 3, 5.

24. William V. Masiello interview, Supra n. 4, at 3.


26. Masiello and Associates check number 3531, dated April 15, 1976


27b. Letter dated August 6, 1976 from William Masiello to John Arruda.

28. Fall River Housing Authority check number 16998, dated August 13, 1976.

29. William V. Masiello interviews with Commission staff.

30. William V. Masiello interviews with Commission staff.

31. Masiello and Associates check number 3871, dated August 16, 1976

32. William V. Masiello interview, Supra n. 4, at 6, 9.

33. Brown's fees alone on this project totalled nearly $9,000. In interviews with Commission staff, Brown stated that the figure sounded "too high" because he only went to the job site 3 - 5 times. At one interview, before being told how many hours he was down for, Brown estimated he spent about 100 hours on the project. At Brown's billing rate of $35 per hour, a total of $3500 is more than $5000 less than what Masiello and Associates received for Brown's services.


36. Letter dated May 3, 1977 from Audrey Rawson to the Fall River Housing Authority.

37. Minutes of May 9, 1977 Fall River Housing Authority meeting; Resolution number 26.
42. Notes of 2/27/80 interview of Charles Jacobs by Commission St at 3.
43. Testimony of William V. Masiello, Sp. Comm. 12/19/79, at 9 -
Springfield Mental Health Center

Footnotes

2. Id., at 5.
3. Id., at 9-10.
4. Id., at 8, 12.
5. Id., at 8.
8. Id., at 9-11.
13. Id., at 14.
15. 3/16/73 Contract to convert old high school building to be used as a middle school - Fee Schedule 9.75% - 12% on $3,000,000 - $1,000,000.

    Estimated Construction Cost $5,080,000

    Schematic Design Phase Report
    $50,000 paid 3/15/74

    7/11/74 Contract to construct new middle school 7.5% - 6.7% on Fee Schedule $4,000,000 - $10,000,000.

    Schematic Design Phase Report
    $72,535 paid 2/12/75

    Design Development Phase
    $76,986 paid 4/9/75
17. Id., at 14-16.
18. Id., at 17.
19. Id., at 19.
20. Id., at 23.
22. Notes of 2/26/80 Interview of Victor F. Zuchero by Special Commission Staff at 2,3.
25. Masiello Testimony, supra N.1 at 21.
27. Masiello Testimony, supra N.1 at 12.
28. Id., at 22.
29. Id., at 22.
Masiello Interview, supra N.11 at 11.
30. Masiello Interview, supra N.11 at 12.
31. Id., at 7,12.
32. Masiello Interview, supra N.11 at 12.
35. Kerr Interview, supra N.33 at 11.
37. Kerr Interview, supra N.33 at 11.
38. Kerr Private Testimony, supra N.26 at 42.
41. Kerr Interview, supra N.33 at 11.
42. Kerr Private Testimony, supra N.26 at 56.
43. Id., at 18.
44. Id., at 56.
45. Id., at 71.
46. Id., at 66.
47. Id., at 82.
48. Masiello Testimony, supra N.1 at 22.
49. Masiello Interview, supra N.11 at 12.
50. Masiello Testimony, supra N.1 at 22, 47.
    Masiello Interview, supra N.11 at 13.
51. Masiello Interview, supra N.11 at 13.
52. Notes of 12/30/79 Interview of Walter J. Poitrast by Special
    Commission staff, at 24, 31-33.
    by Special Commission staff, at 24, 31-33.
54. Masiello Testimony, supra N.1 at 47.
55. Designer Selection Board Minutes, 9/25/74.
56. Masiello Testimony, supra N.1 at 47.
57. Id., at 51.
59. Notes of Anthony P. DeFalco Interview of 8/13/80 at 4,5.
60. Masiello Testimony, supra N.1 at 23-24.
61. Masiello Interview, supra N.1 at 14.
62. Id., at 15.
63. Zuchero Interview of 2/22/80 supra N.9 at 2.
64. Id., at 2.
66. Zuchero Private Testimony, supra N.22 at 30,46,47.
67. Zuchero Public Testimony, supra N.24 at 90.
68. Id., at 26-30.
71. Masiello Testimony, *supra* N.1 at 27.
74. Masiello Interview, *supra* N.11 at 16.
76. *Id.*, at 78.
77. Masiello Interview, *supra* N.11 at 15,16.
78. *Id.*, at 16,17.
79. *Id.*, at 17.
81. *Id.*, at 34-35.
82. *Id.*, at 29.
83. *Id.*, at 29.
84. Zuchero Interview, 2/22/80, *supra* N.9 at 2.
87. *Id.*, at 101.
90. Dwight Private Testimony, *supra* N.88 at 72.
91. *Id.*, at 91.
92. Notes of 1/10/80 Interview with David M. Marchand by Special Commission staff, at 8.
95. Dwight Private Testimony, supra N.88 at 87,88.  

96. Zabriskie Private Testimony, supra N.95 at 5.


98. Zabriskie Private Testimony, supra N.95 at 6,8.  
   Zabriskie Public Testimony, supra N.97 at 20.


100. Zabriskie Public Testimony, supra N.97 at 56.


102. Zabriskie Public Testimony, supra N.97 at 44.

103. Id., at 25.

104. Dwight Private Testimony, supra N.88 at 87.

105. Zabriskie Public Testimony, supra N.97 at 50-51.

106. Marchand Public Testimony, supra N.93 at 36.

107. Id., at 14,16.

108. Shepard Private Testimony, supra N.89 at 23.


110. Public Testimony of William I. Cowin, Sp. Comm. 4/15/80,  
     at 10,17,20.

111. Zabriskie Public Testimony, supra N.97 at 48.  Special  
     Commission Exhibit No. 48.

112. Designer Selection Board transmittal letter, signed by  
     Zabriskie, to Commissioner of A & F Marchand, dated 9/27/74.

113. Marchand Private Testimony, supra N.94 at 31.  Special  
     Commission Exhibit 5.


115. Id., at 24.

116. Id., at 32.

117. Marchand Public Testimony, supra N.93 at 31-32.
118. Marchand Private Testimony, supra N.94 at 31-32.
Marchand Public Testimony, supra N.93 at 32.

119. Marchand Public Testimony, supra N.94 at 37.

120. Id., at 37.


123. BBC Designer Fee Payment Schedule Form 64-14.

124. Masiello Interview, supra N.11 at 21.

125. Id., at 30.

126. Id., at 30.

127. Id., at 30, 41.

128. Id., at 30-31

129. Id., at 18.

130. Masiello Testimony, supra N.1 at 31.

131. Id., at 42-43.

132. Id., at 42.


133. Id., at 69-70.

134. Id., at 64.

135. Id., at 61.

136. Id., at 62.

137. Id., at 71.

138. Id., at 72.


140. Id., at 9-11.


142. Id., at 40.

143. Id., at 43-44.

144. Masiello Testimony, supra N.1 at 30.
145. Id., at 136.
146. Id., at 137.
147. Dwight Private Testimony, supra N.88 at 58,59,60.
148. Id., at 65.
149. Id., at 69-70.
150. Id., at 71.
151. Id., at 107-108.

152. Notes of 6/23/80 Interview of Brian Pollock by Special Commission staff at 1-5.
153. Notes of 7/2/80 Interview of James Roche by Special Commission staff at 1-6.

154. Letter dated 6/24/74, from James Kerr, Department of Mental Health, to BBC. Kerr advises BBC that "word change" to expand M64-14 has been filed with Legislature.

155. Memorandum dated 1/17/75, from Krikorian to Poulos of BBC, re: status of M64-14 with "Total Project Cost" of $5 million.

156. Letter dated 2/14/75 from BBC to Masiello & Associates. Continued services of Masiello & Associates on (expanded) project authorized.

157. Omitted from text.

158. Memorandum dated 1/24/78 from BBC to Department of Mental Health. "Enclosed find three sets of [Masiello & Associates] preliminary plans for M64-14."


160. BBC Designer Fee Payment Schedule for M64-14.
FOOTNOTES

VOLUME IV: THE AWARD OF DESIGN CONTRACTS: AN OVERVIEW

ADMINISTRATION & FINANCE

  Introduction 35
  The Peabody Era 35
  Volpe Era 39
  Sargent Era 42

DESMOND & LORD 62
FOOTNOTES: INTRODUCTION


FOOTNOTES: PEABODY ERA

7. Tarlow testimony, Sp. Comm. 4/7/80 at 11-12, 32.
27. Tarlow testimony, Sp. Comm. 4/7/80 at 57.

Tarlow testimony, Sp. Comm. 4/7/80 at 62.


Tarlow testimony, Sp. Comm. 4/7/80 at 62.

Tarlow testimony, Sp. Comm. 4/7/80 at 62.

Tarlow testimony, Sp. Comm. 4/7/80 at 63-4.


Tarlow testimony, Sp. Comm. 4/7/80 at 68.


Tarlow testimony, Sp. Comm. 4/7/80 at 69-70.

Tarlow testimony, Sp. Comm. 4/7/80 at 70.


Tarlow testimony, Sp. Comm. 4/7/80 at 75-6.


Tarlow testimony, Sp. Comm. 4/7/80 at 74.

Tarlow testimony, Sp. Comm. 4/7/80 at 74-5.

Tarlow testimony, Sp. Comm. 4/7/80 at 74-5.


Peabody testimony, Sp. Comm. 6/19/80 at 11.


Tarlow testimony, Sp. Comm. 4/7/80 at 24-5.


84 Tarlow testimony, Sp. Comm. 4/7/80 at 39-41, 43.
85 Tarlow testimony, Sp. Comm. 4/7/80 at 44-5.
86 Tarlow testimony, Sp. Comm. 4/7/80 at 44-5, 77.
87 Tarlow testimony, Sp. Comm. 4/7/80 at 45.
92 Tarlow testimony, Sp. Comm. 4/7/80 at 37, 41-2.
96 Waldron testimony, Sp. Comm. 4/9/80 at 24-5; Tarlow testimony, Sp. Comm. 4/7/80 at 37, 41-2, 47.
97 Tarlow testimony, Sp. Comm. 4/7/80 at 42.
103 Waldron testimony, Sp. Comm. 4/9/80 at 32.


133 Tarlow testimony, Sp. Comm. 4/8/80 at 64.
FOOTNOTES: VOLPE ERA; BEFORE THE ESTABLISHMENT OF THE DESIGNER SELECTION BOARD

142 1966 Special Senate Committee Report at 4-10.
143 1966 Special Senate Committee Report at 10-11.
144 1966 Special Senate Committee Report at 14-77.
145 1966 Special Senate Committee Report at 85-86, 89.
146 1966 Special Senate Committee Report at 87.
147 1966 Special Senate Committee Report at 83-4, 159.
148 1966 Special Senate Committee Report at 88-9, 104.
149 1966 Special Senate Committee Report at 173-6.
150 1966 Special Senate Committee Report at 104-5, 144.
151 1966 Special Senate Committee Report at
153 1966 Special Senate Committee Report at 132-133.
154 1966 Special Senate Committee Report at 144-145.
156 1966 Special Senate Committee Report at 137-41.
157 1966 Special Senate Committee Report at 141, 162-3.
158 1966 Special Senate Committee Report at 238.
159 1966 Special Senate Committee Report at 136, 154, 156.
160 1966 Special Senate Committee Report at 146.
161 1966 Special Senate Committee Report at 146.
162 1966 Special Senate Committee Report at 146-154.
164 1966 Special Senate Committee Report at 159-60.
165 1966 Special Senate Committee Report at 154-59.
167 1966 Special Senate Committee Report at 199-212.
168 1966 Special Senate Committee Report at 197.
169 1966 Special Senate Committee Report at 237.
FOOTNOTES: AFTER THE ESTABLISHMENT OF THE DESIGNER SELECTION BOARD

173 1966 Acts and Resolves, Chapter 676; 12/6/66 OSB minutes.
174 1966 Acts and Resolves, Chapter 676; 12/6/66 OSB minutes.
175 12/6/66 OSB minutes.
176 Ibid.
177 Ibid.
178 Littleton testimony, Sp. Comm. 4/16/80 at 8.
179 1966 Special Senate Committee Report at 169.
180 1966 Special Senate Committee Report at 172.
181 1966 Special Senate Committee Report at 169.
189 Testimony of Mark Oemorest (Dwight), Sp. Comm. 4/14/80 42-48.
190 Testimony of Mark Oemorest (Dwight), Sp. Comm. 4/14/80 at 44.
191 Testimony of Mark Oemorest (Dwight), Sp. Comm. 4/14/80 at 44-45.
192 None.
198 Littleton testimony, Sp. Comm. 4/16/80 at 11.
208 F. Masiello testimony, Sp. Comm. 3/27/80 at 82.
220 Id.
221 DeFalco private testimony, Sp. Comm. 2/27/80 at 32.
FOOTNOTES: SARGENT ERA

226 Testimony of Francis Sargent, P.A. 6/7/78 at 75; Testimony of Francis Sargent, M/M 3/19/79 at 39-40; Transcript of 3/13/80. interview of Francis Sargent by Special Commission staff at 71-72, 74-76, 78-87; Private testimony of Francis Sargent, Sp. Commission 12/10/80 at 51, 55.


233 Demorest (Dwight) testimony, Sp. Commission 4/14/80 at 22-3.


238 Zabriskie Private testimony 2/20/80 at 13, 15; Zabriskie private testimony Sp. Commission 3/14/80 at 5.
<table>
<thead>
<tr>
<th>Page</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>247</td>
<td>Demorest (Dwight) testimony, Sp. Commission 4/14/80 at 29-35, 54,60-</td>
</tr>
<tr>
<td>248</td>
<td>Zabriskie private testimony, Sp. Commission 3/14/80 at 5-9;</td>
</tr>
<tr>
<td>249</td>
<td>Private testimony of Robert Yasi, Sp. Comm. 2/27/80 at 4;</td>
</tr>
<tr>
<td>255</td>
<td>Private testimony of William Cowin, Sp. Commission 3/7/80 at 5;</td>
</tr>
<tr>
<td></td>
<td>Testimony of William Cowin, Sp. Commission 4/14/80 at 3-4;</td>
</tr>
<tr>
<td></td>
<td>Zabriskie testimony, Sp. Commission 4/16/80 at 41.</td>
</tr>
<tr>
<td>256</td>
<td>Zabriskie private testimony, Sp. Commission 3/14/80 at 6-7;</td>
</tr>
<tr>
<td>257</td>
<td>Zabriskie private testimony, Sp. Commission 3/14/80 at 6-9;</td>
</tr>
</tbody>
</table>


Testimony of Harold Greene, Sp. Comm. 6/24/80 at 4-5.


Greene testimony, Sp. Comm. 6/24/80 at 23.


For statements during public hearings that this change from checkmarks to dots occurred, see transcript of Harold Greene, Sp. Commission 6/27/80 at 37-40.

Testimony of Charles Shepard, Sp. Comm. 4/14/80 at 18-19;

Testimony of David Marchard, Sp. Comm. 4/15/80 at 13-14; implicit public testimony of Robert Yasi (4/15/80) and William Cowin (4/14/80) numbered DSB letters to the A & F Commissioners have same date, ind. sent as a group.


Greene testimony, Sp. Comm. 6/27/80 at 14-17, 40-44.


Greene testimony, Sp. Commission 6/24/80 at 34,44


Greene testimony, Sp. Commission 6/24/80 at 47.


Greene testimony, Sp. Comm. 6/24/80 at 31-56.

Greene testimony, Sp. Comm. 6/24/80 at 32-54.
300 Zuchero testimony, Sp. Commission 5/7/80 at 32.
303 Zuchero testimony, Sp. Commission 5/7/80 at 44.
304 Zuchero testimony, Sp. Commission 5/7/80 at 45
306 Notes of 9/18/80 interview of John Flannery by Special Commission staff.
307 Notes of 8/26/80 interview of Jane Clifford Fowler by Special Commission staff.
312 Notes of 9/3/80 interview of Steven Teichner by Special Commission Staff.
313 Private testimony of Francis Sargent, Sp. Commission 12/10/80 at 38.
316 Sargent private testimony, Sp. Commission, 12/10/80 at 43-4
317 Sargent private testimony, Sp. Commission, 12/10/80 at 42-
318 Sargent private testimony, Sp. Commission, 12/10/80 at 67-
319 Sargent private testimony, Sp. Commission, 12/10/80 at 67-
320 Sargent private testimony, Sp. Commission, 12/10/80 at 61-
321 Sargent private testimony, Sp. Commission, 12/10/80 at 63-
323 Sargent private testimony, Sp. Commission, 12/10/80 at 51.
324 Sargent private testimony, Sp. Commission, 12/10/80 at 53.
325 Sargent private testimony, Sp. Commission, 12/10/80 at 55-
326 Sargent private testimony, Sp. Commission, 12/10/80 at 56-
327 Sargent private testimony, Sp. Commission, 12/10/80 at 44-
328 Sargent private testimony, Sp. Commission, 12/10/80 at 50-
333  Notes of 8/13/80 interview of Ronald Gourley by Special Commission staff.
334  Notes of 8/13/80 interview of Ronald Gourley by Special Commission staff.
335  Notes of 8/13/80 interview of Ronald Gourley by Special Commission staff.
336  Notes of 8/13/80 interview of Ronald Gourley by Special Commission staff.
337  Notes of 8/13/80 interview of Ronald Gourley by Special Commission staff.
338  Notes of 8/13/80 interview of Ronald Gourley by Special Commission staff.
339  Greene testimony, Sp. Comm. 6/24/80 at 30; other page reference re. other entries, infra.
341  None
345  Demorest (Dwight) testimony, Sp. Comm. 4/14/80 at 54-5.


Zuchero testimony, Sp. Comm. 5/7/80 at 78.


Greene testimony, Sp. Comm. 6/24/80 at 34-6, 44.

None
None
Woolf testimony, Sp. Comm. 4/17/80 at 11, 17;
Zuchero testimony, Sp. Comm. 5/7/80 at 68, 79.
None
None
Carr private testimony, Sp. Comm. 2/28/79 at 7-8;


Greene testimony, Sp. Comm. 6/24/80 at 51.


<table>
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<tr>
<th>Line</th>
<th>Text</th>
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<tbody>
<tr>
<td>400</td>
<td>Quinlan private testimony, Sp. Comm. 3/28/79 at 44.</td>
</tr>
</tbody>
</table>
| 403  | Quinlan private testimony, Sp. Comm. 3/28/79 at 46;  
| 404  | Quinlan private testimony, Sp. Comm. 3/28/79 at 43;  
        | W. Masiello testimony, Sp. Comm. at 47. |
| 410  | Healy private testimony, Sp. Comm. 2/28/79 at 21;  
| 411  | Healy private testimony, Sp. Comm. 2/28/79 at 19, 21-5;  
| 412  | Healy private testimony, Sp. Comm. 2/28/79 at 19;  
| 413  | Healy private testimony, Sp. Comm. 2/28/79 at 20, 30, 47;  
| 414  | Healy private testimony, Sp. Comm. 2/28/79 at 28;  
| 416  | Healy private testimony, Sp. Comm. 2/28/79 at 22-4;  
| 418  | Healy private testimony, Sp. Comm. 2/28/79 at 28, 32;  

420  Healy private testimony, Sp. Comm. 2/28/79 at 29;
     Healy testimony, Sp. Comm. 4/17/80 at 44.

421  Healy private testimony, Sp. Comm. 2/28/79 at 33;
     Healy testimony, Sp. Comm. 4/17/80 at 47.

422  Healy private testimony, Sp. Comm. 2/28/79 at 33-4;
     Healy testimony, Sp. Comm. 4/17/80 at 50.


426  Zuchero private testimony, Sp. Comm. 3/3/80 at 31;
     Zuchero testimony, Sp. Comm. 5/7/80 at 68-75.

427  Zuchero testimony, Sp. Comm. 5/7/80 at 75-6.


429  Zuchero testimony, Sp. Comm. 5/7/80 at 76.


432  Sargent private testimony, Sp. Comm. 12/10/80 at 24-8;


437  Cowin private testimony, Sp. Comm. 3/7/80 at 38.


440  Zuchero private testimony, Sp. Comm. 3/3/80 at 37, 38;
     Zuchero testimony, Sp. Comm. 5/7/80 at 82-4;
     Staff at 1.
None


Notes of 6/11/80 interview of Joseph Intingaro by Special Commission staff.

Notes of 6/11/80 interview of Joseph Intingaro by Special Commission staff.


11/18/70 letter from Shepard to Poitrast.

4/10/72 letter from Yasi to Altshuler.

2/25/74 letter from Cowin to Altshuler.


4/29/75 memo by Carl Sapers re interview of Joseph Intingaro.

Cowin private testimony, Sp. Comm. 3/7/80 at 43.

9/18/74 letter from Marchand to Altshuler.


8/4/71 letter from Shepard to Poitrast.

11/29/72 letter from Cowin to Altshuler.

2/14/74 letter from Cowin to Altshuler.

None


Demorest (Dwight) testimony, Sp. Comm. 4/14/80 at 42.

Demorest (Dwight) testimony, Sp. Comm. 4/14/80 at 42-44.

Demorest (Dwight) testimony, Sp. Comm. 4/14/80 at 44-5.

Demorest (Dwight) testimony, Sp. Comm. 4/14/80 at 44-5.

Demorest (Dwight) testimony, Sp. Comm. 4/14/80 at 46.

11/18/70 letter from Shepard to Poitrast.

2/20/74 letter from Cowin to Altshuler.

9/25/74 letter from Marchand to Altshuler.

2/14/74 letter from Cowin to Altshuler.

2/19/74 letter from Cowin to Altshuler.


2/25/74 letter from Cowin to Altshuler.

Cowin private testimony, Sp. Comm. 3/7/80 at 41-43.

3/4/74 letter from Cowin to Altshuler.
480 11/18/70 letter from Shepard to Poitrast.

481 5/12/72 letter from Yasi to Altshuler.
2/25/74 letter from Cowin to Altshuler.

482 11/18/70 letter from Shepard to Poitrast.

483 11/18/70 letter from Shepard to Poitrast.

484 11/19/70 letter from Shepard to Poitrast.
5/2/72 letter from Yasi to Altshuler.

485 4/16/71 letter from Shepard to Poitrast.
Testimony of Charles Shepard, Sp. Comm. 4/14/80 at 4-5; see also 1966 Senate Special Committee Report.

Dwight private testimony, Sp. Comm 1/30/80 at 75,77; Private testimony of Charles Shepard, Sp. Comm. 2/25/80 at 5-7;

Shepard testimony, Sp. Comm. 4/14/80 at 3-4.
Shepard private testimony, Sp. Comm. 2/25/80 at 5-6, 10;

Shepard private testimony, Sp. Comm. 2/25/80 at 20;

Shepard testimony, Sp. Comm. 4/14/80 at 40-41, 52.


Shepard testimony, Sp. Comm. 4/14/80 at 47.

Shepard private testimony, Sp. Comm. 2/25/80 at 16-17;


Shepard private testimony 2/25/80 at 27.

Shepard testimony, Sp. Comm. 4/14/80 at 47-8.

Shepard private testimony, Sp. Comm. 2/24/80 at 19;
Shepard testimony, Sp. Comm. 4/14/80 at 23.

Shepard private testimony, Sp. Comm. 2/25/80 at 18;

Shepard testimony, Sp. Comm. 4/14/80 at 42, 50

Zabriskie private testimony, Sp. Comm. 3/14/80 at 8-9;

Zabriskie private testimony, Sp. Comm. 3/14/80 at 8-9;
Demorest (Dwight) testimony, Sp. Comm. 4/14/80 at 29-31.

Yasi private testimony, Sp. Comm. 2/27/80 at 4;
Yasi testimony, Sp. Comm. 4/15/80 at 4-5.


Yasi testimony, Sp. Comm. 4/15/80 at 10, 11.

Yasi private testimony, Sp. Comm. 2/27/80 at 4;
Yasi testimony, Sp. Comm. 4/15/80 at 5-6.

Zabriskie testimony, Sp. Comm. 4/16/80 at 11-12.


Yasi testimony, Sp. Comm. 4/15/80 at 6-7;
Zuchero private testimony, Sp. Comm. 3/3/80 at 5-6;
Zuchero testimony, Sp. Comm. 5/7/80 at 5-6.

Sargent interview, Sp. Comm. 3/13/80 at 34.

Demorest (Dwight) testimony, Sp. Comm. 4/14/80 at 32-4, 54, 60-63.

Yasi testimony, Sp. Comm. 4/15/80 at 52-5;
Yasi private testimony, Sp. Comm. 2/27/80 at 17, 18, 20, 23.


Zabriskie private testimony, Sp. Comm. 2/20/80 at 13-15;
Zabriskie private testimony, Sp. Comm. 3/14/80 at 5.

Zabriskie testimony, Sp. Comm. 4/16/80 at 31-2.

Littleton testimony, Sp. Comm. 4/16/80 at 15-16.

Yasi private testimony, Sp. Comm. 2/27/80 at 5-7, 12-17;


531 Dwight private testimony, Sp. Comm. 1/30/80 at 80-81.


534 Cowin private testimony, Sp. Comm. 3/7/80 at 8-9, 11; Cowin testimony, Sp. Comm. 4/14/80 at 11-12.


539 Cowin private testimony, Sp. Comm. 3/7/80 at 10,36.


541 Zabriskie testimony, Sp. Comm. 4/16/80 at 44-5.

546 Cowin testimony, Sp. Comm. 4/14/80 at 58.
547 E. McCarthy testimony, Sp. Comm. 4/16/80 at 13-17.
548 Demorest (Dwight) testimony, Sp. Comm. 4/14/80 at 34, 54, 62-63.
553 Marchand private testimony Sp. Comm. 3/3/80 at 5-6; Marchand testimony, Sp. Comm. 4/15/80 at 5; Dwight private testimony, Sp. Comm. 1/30/80 at 67; Demorest (Dwight) testimony, Sp. Comm. 4/14/80 at 23-4
554 Dwight private testimony, Sp. Comm. 1/30/80 at 81.
Marchand testimony, Sp. Comm. 4/15/80 at 17.

Marchand private testimony, Sp. Comm. 3/3/80 at 18-19

None.

None.


Marchand private testimony, Sp. Comm. 3/3/80 at 27-8;


Marchand private testimony, Sp. Comm. 3/3/80 at 32-6;
Marchand testimony, Sp. Comm. 4/15/80 at 27-8, 33;


Marchand private testimony, Sp. Comm. 3/3/80 at 15-16;


Demorest (Dwight) testimony, Sp. Comm. 4/14/80 at 34.

Demorest (Dwight) testimony, Sp. Comm. 4/14/80 at 68.

578 Zabriskie testimony, Sp. Comm. 4/16/80 at 49-53.
579 Zabriskie testimony, Sp. Comm. 4/16/80 at 52.
582 Zabriskie testimony, Sp. Comm. 4/16/80 at 52.
583 Zabriskie testimony, Sp. Comm. 4/16/80 at 53.
5. Thissen Private Testimony, 11/22/78 at 152-3.
6. Private Testimony of Peter Brown, Sp. Comm. 1/16/80 at 9, 73. Mancuso Private Testimony, 10/10/80 at 8-10.
13. Id. at 30-31.
14. Id. at 64.
16. Tarlow Testimony, 4/7/80 at 37, 41-2.
18. Id,
19. Tarlow Testimony, 4/7/80 at 42.
20. Id. at 42-3, 47-8.
22. Thissen Testimony, 2/7/79 at 48.
23. Id.
24. Id. at 47.
25. Id. at 47, 54.
26. Id. at 55.
27. Id.
28. Id. at 56.
29. See, Vol. IV.
30. This document is produced in the A&F section on the Sargent Administration in Volume IV of this report.
32. This document is reproduced in the Appendix to the A&F section. See, Vol XI.
33. This document is reproduced in the Appendix to the A&F section. See, Vol. XI.
35. This document is reproduced in the Appendix to the Vol. IV section on A&F. See, Vol. XI.
36. Sargent Testimony, 12/10/80.
37. Sargent Testimony, 12/10/80.
40. Interview of Earle Littleton by Special Commission Staff, 1/14/80 at 1.
41. Paton Interview, 1/8/80 at 13.
42. Brown, Private Testimony, 1/16/80.
43. Testimony of William I. Cowin, 4/14/80 at 39.
44. Interview of Frank Viera by Special Commission Staff, 5/10/79 at 4.

45. Cowin Testimony, 4/14/80 at 28.


47. Cowin Testimony, 4/14/80 at 38.


49. See, A&F section in Vol. IV.


51. Id. at 8-9.

52. Id. at 9.

53. Id. at 10.

54. Id.

55. Id. at 21.

56. Id. at 10.

57. Id.

58. Id. at 14-16.

59. Id. at 16.


61. Interview of Thomas H. Kuhn, by Special Commission Staff, 4/7/80.


64. Interview of Edward C. Maher, 11/9/79.

66. Id. at 11.
67. Id. at 9.
68. Id. at 6.
69. Id. at 8.
70. Interview of Carl I. Kneisel, 10/15/80.
71. Id.
72. Interview of Eugene T. Kelly, 10/1/80.
73. Id.
75. Kneisel Interview, 10/15/80.
76. Interview of Thomas H. Kuhn, 4/18/80.
77. Kneisel Interview, 10/15/80; Kelly Interview, 10/1/80.
79. Id.
82. Id.
83. Id.
84. Id.
85. Interview of Fritz Kubitz, 6/13/80.
87. Kelly Interview, 10/1/80.
Kneisel Interview, 10/15/80.
89. Interview of Nesbitt A. Garmendia, 9/17/80.
90. Interview of Walter Hart, 12/11/80.
91. Interview of Arnold Thompson, 11/3/80; Interview of Frank Sherwood, 10/31/80.

92. Id.


94. Garmendia Interview, 9/17/80.

95. Interview of Lev Zetlin, 10/15/80; Hillman Interview, 9/17/80.

96. Hillman Interview, 9/17/80; Garmendia Interview, 9/17/80.

97. Id.

98. Interview of Ron Reeves, 10/8/80.


100. Hillman Interview, 9/17/80.

101. Id.

102. Interview of Charles Hagenah, 10/6/80.

103. Reeves Interview, 10/8/80.

104. Hillman Interview, 9/17/80; Garmendia Interview, 9/17/80; Reeves Interview, 10/8/80; Hart Interview, 12/11/80; Hagenah Interview, 10/6/80.

105. Interviews of Hillman; Hart; Reeves.


107. Reeves Interview, 10/8/80.

108. Hillman Interview, 9/17/80; Garmendia Interview, 9/17/80.


110. Reeves Interview, 10/8/80.

111. Hart Interview, 12/11/80.

112. Id.

113. Interview of Eugene Kohn, 3/26/80; Interview of Philip Johnson and John Burgee, 10/16/80.

114. Id.
115. Id.
116. Johnson and Burgee Interview, 10/16/80.
117. Id.
118. Kohn Interview, 10/6/80.
119. Id.
120. Id.
121. Id.
122. Id.
123. Hagenah Interview, 10/6/80.
124. Johnson and Burgee Interview, 10/16/80.
125. Id.
126. Minutes of the Massport Board, 12/21/67, Executive Session.
127. Interview of Paul May, 6/13/80; Albre Interview, 9/9/80.
128. Interview of Huson Jackson, 2/7/80.
129. Id.
130. Id.
131. Id.
132. Id.
133. May Interview, 6/13/80.
134. Jackson Interview, 2/7/80.
135. Vol. VI.
137. G.L.c.7 § 30c
138. Vol. VI

140. Interview of John Davey, 4/17/80.

141. This letter is reproduced in the Appendix to the section on the Salem State College Library in Volume VI.

142. Mancuso Testimony, 10/10/80.

143. Davey Interview.

144. Interview of Sepp Firnkas, 6/14/79.

145. Id.

146. Id.

147. Interview of Sepp Firnkas, 3/18/80.

148. Firnkas Interview, 6/14/79.

149. Mancuso Private Testimony, 10/17/80 at 33.

150. Id.

151. Thissen Private Testimony, 2/7/79 at 46.

152. Id. at 78.


154. Mancuso Private Testimony, 10/17/80 at 72-75.

155. Thissen Private Testimony, 2/7/79 at 158.

156. Id. at 160.

157. Id. at 160-61.

158. Id.


160. Thissen Private Testimony, 11/22/78 at 74.


162. Private Testimony of Mary Maloof, 8/29/79 at 25, 35, 38 & pas

168. Maloof Private Testimony, 8/29.79 at 81, 90.
169. Id.
    Maloof Private Testimony, 8/29/79 at 120, 126-127, 142.
172 Maloof Private Testimony, 9/5/79 at 25.
174. Id. at 29.
176. Id. at 71.
177. Maloof Private Testimony, 8/8/79 at 84.
179. n. 174, 177, supra.
182. Firnkas Interviews, 6/14/79; 3/18/80.
183. Mancuso Private Testimony, 10/17/80 at 72-73.
184. Id. 73-75.
185. Thissen Private Testimony, 2/7/79 at 60.
FOOTNOTES

VOLUME V: SUPPLIERS

INFLUENCE EXERTED ON ADMINISTRATIVE AND LEGISLATIVE ACTION

 Laundering Improper Campaign Contributions

SUPPLIERS

Suppliers 71
Driscoll Weber 79
Testiing Consultants 86

INFLUENCE EXERCISED ON ADMINISTRATIVE AND LEGISLATIVE ACTION

Neutralizing Supervision 88
Masiello & Associates, Senator James A. Kelly and the Legislative Process

What the Masiellos Did for Kelly 90
What Kelly Did in Return 101
The J. A. Sullivan Corporation and the BBC 102

LAUNDERING IMPROPER CAMPAIGN CONTRIBUTIONS 105

Id. at 59.


Miller testimony, supra n. 3, at 65-66.


Id. at 11-12.


Chaleki testimony, supra n. 4, at 16.

Marcus testimony, supra n. 6, at 11.

William V. Masiello testimony, supra n. 1, at 74.

Id. at 58.

Notes of 1/15/80 interview William V. Masiello by Special Commission staff.


Id. at 79-80.

Chaleki testimony, supra n. 4, at 19.

Source: Project P61-1 #4 (MCI-Concord, Buildings H, K, L) list of sub-bids, dated 12/1/70; and memorandum of approval #71-61 dated 12/28/70, from Walter Poitrast to Charles Shepard.

Source: List of sub-bids, project P61-1 #9C, dated 3/4/75; and memorandum of approval #75-56, dated 4/1/75, from Walter Poitrast to Frederick Salvucci and John Buckley.

Chaleki testimony, supra n. 4, at 20.

Id. at 20.

Id. at 16, 23. Cf. William V. Masiello testimony, supra n. 1, at 73.

William V. Masiello supra n. 1, at 49-54.

Id. at 61.

Chaleki testimony, supra n. 4, at 14.

Id. at 16-17.

William V. Masiello testimony, supra n. 1, at 49-52.

Id. at 65-66.

Arello testimony, supra n. 8, at 6-8.

Id. at 10; Chaleki testimony, supra n. 4 at 16, 23.

Notes of 1/16/80 interview of William V. Masiello by Special Commission staff.

Id. at 49, 53-54; Cf. Marcus testimony, supra n. 6, at 12.


Marcus testimony, supra n. 6, at 15; Arello testimony, supra n. 8, at 10-22.
William V. Masiello testimony, supra n. 1, at 50, 74-75, 83, 89-90.

35 See part B, Shawmut Hardware Corp.

36 William V. Masiello testimony, supra n. 1, at 50.

37 Id. at 50-51.

38 Arello testimony, supra n. 8, at 29-32.

39 Id. at 7-8.

40 William V. Masiello testimony, supra n. 1 at 49 et seq.

41 Notes of 3/3/80 interview of Carl Iaccarino by Special Commission staff.


43 Source: 1971-77 corporate tax returns and W-3 forms of the Ralph Iaccarino and Sons Lumber Co., Inc.

44 Iaccarino interview, supra n. 41.

45 Id.

46 William V. Masiello testimony, supra n. 1, at 49.

47 Id. at 49-54, 59.

48 Id. at 63-66.

49 Source: Records of Masiello and Healy, Architects, Masiello and Associates, Architects, Inc. and Worcester County Commissioners.

50 Iaccarino interview, supra n. 41.


52 Martellotta testimony, supra n. 42, at 24.

53 William V. Masiello testimony, supra n. 1, at 58.


55 William V. Masiello interview, supra n. 13.

56 Id. Iaccarino interview, supra n. 41; Private testimony of Audrey M. Rawson, Sp. Comm. 10/31/79 at 69-70; William V. Masiello testimony, supra n. 1, at 50.

57 Id.

58 William V. Masiello testimony, supra n. 1 at 51.

59 Iaccarino interview, supra n. 41.

60 William V. Masiello interview, supra n. 13.

61. Miller testimony, supra n. 3, at 54-55.


63 Iaccarino interview, supra n. 41; Iaccarino testimony, supra n. 51.

64 William V. Masiello testimony, supra n. 1 at 60, 82-83.

65. Allard testimony, supra n. 54, at 78-79, 81, 96.

66 Notes of 11/14/79 interview of John Innamorati by Special Commission staff.

67 Source: cancelled checks of Ralph Iaccarino and Sons Lumber Co., Inc.

68 Source: copies of cancelled checks of Carl and Christine Iaccarino.

69 Martellotta testimony, supra n. 42, at 21-23, 70-71.

70. Allard testimony, supra n. 54, at 97-98.
William V. Masiello interview, supra n. 13.


William V. Masiello interview, supra n. 13.

William V. Masiello testimony, supra n. 1, at 67-70.

William V. Masiello interview, supra n. 13; Martellotta testimony, supra n. 42, at 67.

Notes of 6/10/80 interview of Bruce Tompkins, Clerk of Works, by Special Commission staff.

Source: American Plywood Co.

Martellotta testimony, supra n. 42, at 67-68.

William V. Masiello testimony, supra n. 1, at 53.


Notes of 2/1/80 interview of Irving Marcus by Special Commission staff; Private testimony, of Joseph A. Bartoloni, Sp. Comm. 3/5/80 at 8-11; Marcus testimony, supra n. 6, at 5-7.

Marcus testimony, supra n. 6, at 9.

Bartoloni testimony, supra n. 84, at 34-35.

Notes of 1/22/80 interview of George P. Sargent by Special Commission staff.

Source: records of Masiello and Associates, Architects, Inc. and records of Worcester County Commissioners.

Bartoloni testimony, supra n. 84, at 28; Marcus testimony, supra n. 6, at 19-21.

William V. Masiello testimony, supra n. 1, at 59.

Marcus testimony, supra n. 6, at 10.

Id.

Marcus testimony, supra n. 83, at 8-9.

William V. Masiello testimony, supra n. 1, at 74-75.

Marcus testimony, supra n. 6, at 11-14.

Id. at 15.

Sargent testimony, supra n. 83, at 8-11.

Id. at 6; Marcus testimony, supra n. 6, at 11.

Sargent testimony, supra n. 83, at 10.

Id. at 11-18.

Allard testimony, supra n. 54, at 94-95.

Sargent testimony, supra n. 83, at 10-13.

William V. Masiello interview, supra n. 13.

Private testimony of William V. Masiello, Sp. Comm. 2/8/80 at 37; Marcus testimony, supra n. 83, at 6, 10-12; Allard testimony supra n. 54, at 93.
Marcus testimony, supra n. 83, at 10-13.

Id. at 11.

Id.

Id. at 16-17.


Marcus testimony, supra n. 83, at 7-8.

Marcus interview, supra n. 84.

Notes of 3/19/80 interview of Frank R. Masiello by Special Commission staff.

Bartoloni testimony, supra n. 84, at 20-23, 32-33.

Id. at 19-20.

Id. at 22-28.

Sargent testimony, supra n. 83, at 24.

Sargent interview, supra n. 87.


Notes of 10/29/79 interview of Robert Arello by Special Commission staff.

Id.

Id. Arello testimony, supra n. 8, at 5.

Source: federal income tax returns of Arello, Inc.

William V. Masiello interview, supra n. 30.

Arello testimony, supra n. 8, at 5; list of public projects supplied by Arello, Inc.

Private deposition of Robert Arello, Sp. Comm. 4/25/80 at 64-65; Arello testimony, supra n. 8, at 6, 9-10.

Arello testimony, supra n. 8, at 6-7.

Id. at 7-8.

Id. at 8, 10.

Id. at 11, 12.

Notes of 3/11/80 interview of Charles McKeon by Special Commission staff.

Notes of 5/12/80 interview of Flora McKeon by Special Commission staff.

Notes of 11/6/79 and 3/5/80 interviews of Jerome F. Murphy by Special Commission staff.

Notes of 4/28/80 interview of Jerome F. Murphy by Special Commission staff.

Arello deposition, supra n. 125, at 53; Arello testimony, supra n. 8, at 23.

Arello testimony, supra n. 8, at 10-11.

Source: correspondence files of Worcester County Commissioners.

Arello testimony, supra n. 8, at 15-22, 26.

Id. at 26.

Id. at 29-30.

Id. at 33-34.
Id. at 35.

Arello deposition, supra n. 125, at 24-25.

Notes of 3/5/80 interview of Jerome F. Murphy by Special Commission staff.

William V. Masiello testimony, supra n. 1, at 100-102.

Arello testimony, supra n. 8, at 36-39.

Notes of 3/31/80 interview of Charles E. Krzik by Special Commission staff.

Id.; notes of 4/2/80 interview of John Corrigan by Special Commission staff.

Notes of 10/30/70 interview of Julius A. Palley by Special Commission staff.

Source: ledgers and cash receipts books, Commonwealth Stationers, Inc.

Krizik interview, supra n. 30; Frank R. Masiello interview, supra n. 112.

Krizik interview, supra n. 146.

William V. Masiello interview, supra n. 30.

William V. Masiello interview, supra n. 112.

Id.

Source: specifications for office furniture and equipment, Milford Court House, Milford, Mass. for Bids on 11/27/68.

Source: Worcester County Commissioners correspondence files.

Krizik interview, supra n. 146.

Source: minutes of 5/19/70 vote of Worcester County Commissioners to accept bid of Palley Office Supply.


Krizik interview, supra n. 146.


Source: correspondence between Masiello and Associates and Worcester County Commissioners.

Krizik interview, supra n. 146.

William V. Masiello testimony, supra n. 1, at 93.

Id. at 93-95.

Source: Minutes of 2/15/73 vote of Worcester County Commissioners to accept bid of Commonwealth Stationers.


Julius A. Palley interview, supra n. 148.

Letter dated 7/20/76 from Wayne O. Salo to Worcester County Commissioners re: Gardner Courthouse Furniture Bid Review.

William V. Masiello interview, supra n. 30.

Frank V. Masiello interview, supra n. 112.

Krizik interview, supra n. 146.
175 Id.
176 Id.
177 William V. Masiello interview, supra n. 30.
178 Krzik interview, supra n. 146.
180 Julius A. Palley interview, supra n. 148.
181 Notes of 5/7/80 interview of Arthur and Julius A. Palley by Special Commission staff.
182 Id.; notes of 5/9/80 interview of Arthur Palley by Special Commission staff.
183 Julius A. Palley interview, supra n. 148.
184 Id.
185 Notes of 3/26 interview of John Lefevre by Special Commission staff.
186 Notes of 3/17/80 interview of Joseph Blasetti by Special Commission staff.
187 Lefevre interview, supra n. 185.
188 Blasetti interview, supra n. 186.
189 Notes of 1/28/80 telephone interview of John Lefevre by Special Commission staff.
190 Blasetti interview, supra n. 186.
191 Id.
192 William V. Masiello testimony, supra n. 1, at 85-86.
193 Blasetti interview, supra n. 186.
194 Lefevre interview, supra n. 185.
195 Source: BBC file: 1964 Record sub-bids; P61-1 #2, Section 7.
196 Source: BBC list of Sub-bidders for P61-1 #4, dated 12/1/70; Administration and Finance Memorandum of Approval #71-61 for P61-1 #4, dated 12/28/70.
197 Source: BBC sub-bid list dated 3/4/75 for P61-2 #9C.
198 BBC inter-office memorandum dated 3/5/75 from R. Simon to F. Kussman via A. Poulos titled "Renovations to Farm Dormitory, MCI Concord - Subbids."
200 Source: BBC notice to bidders P61-1 #9C dated 3/7/75.
201 Source: BBC list for invitation bid P61-1#9C, Section 7, dated 3/20/75.
202 Source: BBC Bid recording for P61-1 #9C, Section 7, dated 3/30/75; letter dated 3/26/75 from William Tibbets (BBC) to Bratko Corp. re: Bayley as lowest sub-bidder to be substituted for allowance; letter dated 3/31/75 from J. Ernest Boudreau (of Bratko) to William Tibbetts (BBC) re: no objection to use of Bayley.
203 William V. Masiello testimony, supra n. 1, at 88-89.
204 Id. at 99.
205 Id. at 85.
206 Id. at 86-87.
207 Id. at 87-88.
208 Id. at 86.
209. Lefevre interview, supra n. 185.

210. Id.


213. Id. at 7-8.

214. Provost testimony, supra n. 211, at 7.


216. Id. at 75-76.

217. Id. at 79.

218. Mezzano testimony, supra n. 212, at 10.


220. Id. at 8; Mezzano testimony, supra n. 212, at 10-11.

221. William V. Masiello testimony, supra n. 1 at 76-77.

222. Provost testimony, supra n. 211, at 9-21.


224. BBC Request and Agreement for a Change in the Plans and/or Specifications and/or Contract. Project P61-1 #4, Request #71, Approval #59, dated 6/7/73.

225. Provost testimony, supra n. 211, at 9-10; Mezzano testimony supra n. 212, at 11-14.


227. Provost testimony, supra n. 211, at 21-22.

228. Notes of 11/19/79 interview of William Gulvanesian by Special Commission staff.

229. Notes of 1/24/80 interview of William V. Masiello by Special Commission staff.


231. Gulvanesian testimony, supra n. 230, at 5-6.

232. Id. at 7-8.


234. Gulvanesian testimony, supra n. 230, at 8-12.

235. Id. at 13-16.

236. Source: bid documents, Worcester County Jail files.


238. Id. at 18-19, 21.

239. Id. at 19-22.

240. William V. Masiello testimony, supra n. 1, at 90.


Gulvanesian testimony, supra n. 230, at 26-28

Id. at 29-33.

William V. Masiello testimony, supra n. 1, at 55-58.

Id. at 84-85: Public testimony, of Roger J. Hare, Sp. Comm. 4/29/80/


William V. Masiello testimony, supra n. 1, at 115.
Larry Vickery's role in soliciting business is reflected in Driscoll Weber bid proposals submitted by him to various local housing authorities examples of which are reproduced as Driscoll Weber (DW) appendix exhibit #1.

Driscoll Weber unaudited Comparative Statement of Income and Retained Earnings for the years ended 7-31-71, and 7-31-70, prepared by Meyers Brothers & Company. Reproduced as DW appendix exhibit #2.

Driscoll Weber general ledger loan accounts for Weber's relatives. Reproduced as DW appendix exhibit #3.


Driscoll Weber unaudited Comparative Balance Sheet as of 7-31-71 and 7-31-70, prepared by Meyers Brothers & Company. Reproduced as DW appendix exhibit #5.


Examples of Driscoll Weber receipts from LHA's at which contract was direct, and examples of Driscoll Weber receipts from contracts with General Contractors are reflected in the charts. Reproduced a DW appendix exhibit #12.

List of local housing authorities that Driscoll Weber supplied kitchen cabinets for the years 1973 through 1977, prepared by Special Commission Commission staff. Reproduced as DW appendix exhibit #13.


List of Calendar 1973 kitchen cabinet awards and approvals, prepared by Special Commission staff. Reproduced as DW appendix exhibit #15.

List of Calendar 1974 kitchen cabinet awards and approvals, prepared by Special Commission staff. Reproduced as DW appendix exhibit #16.

Various examples of 1974 kitchen cabinet awards to Driscoll Weber in which payments were received in 1975 and 1976 are contained in the chart reproduced as DW appendix exhibit 17.


Robert Charles kitchen cabinet specifications for the Canton 667-2 housing for the elderly project. Reproduced as DW appendix exhibit 20.

Robert Charles kitchen cabinet specifications for the Medfield 667-1 housing for the elderly project. Reproduced as DW appendix exhibit 21.
22 Robert Charles kitchen cabinet specifications for the Hudson 667-2 housing for the elderly project. Reproduced as DW appendix exhibit 22.

23 Canton Housing Authority letter to Robert Charles Associates dated 1-29-75. Reproduced as DW appendix exhibit 23.

24 Salem Housing Authority letter to the DCA dated 1-23-74. Reproduced as DW appendix exhibit #24.

25 Masiello testimony, Sp. Comm. 5/14/80 at 54-55.

26 Minutes of the Taunton Housing Authority on 10-5-76. Reproduced as DW appendix exhibit #25.

27 Taunton 667-1 kitchen cabinet specifications and bidding documents dated 1-20-76 sent to Michael Harrington for his approval. Reproduced as DW appendix exhibit #26.

28 Yorktowne Ambassador kitchen cabinet specifications notated by Frank Driscoll on the first page. Reproduced as DW appendix exhibit #27.

29 Moulton & Looney letter to the Department of Labor and Industries dated 1-20-77. Reproduced as DW appendix exhibit #28.

30 John Carr Associates kitchen cabinet specifications for the Leominster 667-3 housing for the elderly project. Reproduced as DW appendix exhibit #29.

31 John Carr Associates letter to the Leominster Housing Authority dated 6-6-72. Reproduced as DW appendix exhibit #30.


33 Reinhardt Associates, Inc. kitchen cabinet specifications for the Brimfield 667-1 housing for the elderly. Reproduced as DW appendix exhibit #32.

34 Reinhardt Associates, Inc. kitchen cabinet specifications for the Mansfield 667-2 housing for the elderly. Reproduced as DW appendix exhibit #33.

35 Reinhardt Associates, Inc. kitchen cabinet specifications for the Templeton 667-1 housing for the elderly. Reproduced as DW appendix exhibit #34.


38 Special Commission staff analysis of Commission expense and gross sales for fiscal year 1969 through fiscal 1978. Reproduced as DW appendix #35.


41 Driscoll Weber unaudited Comparative Statement of Income and Retained earnings for the years ended 7-31-75 and 7-31-74, prepared by Meyers Brothers, Handelsman, Menzel & Adeletti. Reproduced as DW appendix exhibit #37.

42 Cash generation analysis prepared by Special Commission staff. Reproduced as DW appendix exhibit #38.


45 Ibid.

46 Ibid.
Driscoll Weber check #1069 dated 4-16-75. Reproduced as DW appendix exhibit #41.

Driscoll Weber check #116 dated 4-16-74. Reproduced as DW appendix exhibit #42.


Frank M. Driscoll's personal check dated 4-15-74 payable to Lawrence Vickery. Reproduced as DW appendix exhibit #44.


Driscoll Weber check #1070 dated 4-16-75 payable to Larry Vickery. Reproduced as DW appendix exhibit #46.

Driscoll Weber check #590 payable to Frank Driscoll dated 4-14-76. Reproduced as DW appendix exhibit #47.

Larry Vickery's personal check dated 4-14-76 payable to the IRS. Reproduced as DW appendix exhibit #48.


Driscoll Weber check dated 12-4-74 payable to Donald Eyors. Reproduced as DW appendix exhibit #49.

Vickery Testimony, at 7-8.


Driscoll Testimony at 7-8.

Masiello Testimony at 82-83.

Driscoll Testimony at 32-35.

Special Commission staff analysis of Driscoll Weber cash receipts attributable to Masiello (M), Reinhardt (R), and Robert Charles (RC) related contracts. Reproduced as DW appendix exhibit #50.

Driscoll Weber checks payable to Frank Driscoll and Larry Vickery. Reproduced as DW appendix exhibit #51.

File document concerning footnote #63. Reproduced as DW appendix exhibit #52.

Driscoll Testimony at 15.

Driscoll Weber checks payable to Frank Driscoll and Larry Vickery. Reproduced as DW appendix exhibit #53.

File document concerning footnote #65. Reproduced as DW appendix exhibit #54.

Driscoll Testimony at 15.


Driscoll Weber check issued to Alden Lumbard. Reproduced as DW appendix exhibit #56.

Special Commission staff analysis of Driscoll Weber cash receipts attributable to Masiello, Reinhardt and Robert Charles related contracts. See DW appendix exhibit #50.

Check voucher for check issued to Alden Lumbard. Reproduced as DW appendix exhibit #57.

Driscoll Testimony at 20-21.

Alden Lumbard's bank activity. Reproduced as DW appendix exhibit #51.

Driscoll Weber check issued to Alden Lumbard. Reproduced as DW appendix exhibit #59.

Check voucher for Driscoll Weber check issued to Alden Lumbard. Reproduced as DW appendix exhibit #60.

Dris collar Testimony at 22-23.

Driscoll Weber check issued to Donald Feldman. Reproduced as DW appendix exhibit #61.

Check voucher for Driscoll Weber check issued to Donald Feldman. Reproduced as DW appendix exhibit #62.

Frank M. Driscoll's personal check issued to Atty Donald Feldman. Reproduced as DW appendix exhibit #63.

Driscoll Testimony at 24.

Ibid. at 26-31.

Ibid. at 43.

Ibid. at 31.

Driscoll interview by Special Commission staff on August 22, 1980.

Driscoll Weber check payable to Frank Driscoll. Reproduced as DW appendix exhibit #64.

Check voucher for Driscoll Weber check issued to Frank Driscoll. Reproduced as DW appendix exhibit #65.

Driscoll Testimony at 36-42.

Ibid. at 39-40.

Driscoll interview by Special Commission staff.

Special Commission staff analysis of Driscoll Weber cash receipts attributable to Robert Charles related contracts. See DW appendix exhibit #50.

Driscoll Testimony at 49.

Kitchen cabinet specifications for the Agawam 667-3 housing for the elderly project. Reproduced as DW appendix exhibit #66.

Ibid. at 48-49.

Ibid. at 46-47.

Driscoll Weber check payable to Murphy Associates. Reproduced as DW appendix exhibit #67.

Driscoll Testimony at 45-46.

Check voucher for Driscoll Weber check issued to Murphy Associates. Reproduced as DW appendix exhibit #68.


Special Commission staff analysis of Driscoll Weber cash receipts attributable to Masiello, Reinhardt, and Robert Charles related contracts. See DW appendix exhibit #50.

Ibid.

Third National Bank of Hampden County bank money order #176309. Reproduced as DW appendix exhibit #70.

Various examples of Michael Harrington approving change orders concerning kitchen cabinets supplied by Driscoll Weber. Reproduced as DW appendix exhibit #71.

DCA kitchen cabinet contracts approved by Michael Harrington in which Driscoll Weber was not the low bidder. Reproduced as DW appendix exhibit #72.
Driscoll Testimony at 60, 62, 68-69.

102 Vickery Testimony at 11-12.

103 Driscoll interview by Special Commission staff on May 14, 1980.

104 Driscoll Testimony at 69.

105 Driscoll interview by Special Commission staff on August 22, 1980.

106 Driscoll Weber check payable to Frank Driscoll. Reproduced as DW appendix exhibit #73.

107 File document concerning footnote #106. Reproduced as DW appendix exhibit #74.

108 Driscoll Testimony at 52-58.

109 Driscoll Weber check payable to Michael Harrington. Reproduced as DW appendix exhibit #75.

110 Driscoll Testimony at 59.

111 Check voucher for Driscoll Weber check issued to Michael Harrington. Reproduced as DW appendix exhibit #76.

112 Driscoll Testimony at 59-60.

113 Sharon 667-1 change order #6. Reproduced as DW appendix exhibit #77.

114 Scituate 667-3 change order #3. See DW appendix exhibit #77.

115 Driscoll Weber check payable to Michael Harrington. Reproduced as DW appendix exhibit #78.

116 Driscoll Testimony at 61-62.

117 Check voucher for Driscoll Weber check issued to Michael Harrington. Reproduced as DW appendix exhibit #79.

118 Driscoll Testimony at 61-62.

119 Driscoll Weber check payable to Frank Driscoll. Reproduced as DW appendix exhibit #80.

120 Check voucher for Driscoll Weber check issued to Frank Driscoll. Reproduced as DW appendix exhibit #81.

121 Driscoll Testimony at 64.

122 Driscoll Weber check payable to Michael D. Harrington Jr. Reproduced as DW appendix exhibit #82.

123 Check voucher and supporting documentation for Driscoll Weber check issued to Michael D. Harrington Jr. Reproduced as DW appendix exhibit #83.

124 Driscoll Testimony at 65-68.

125 Ibid at 69-72. Driscoll Weber check payable to Treadway Inn. Reproduced as DW appendix exhibit #84.

126 Ibid at 72-73.

127 Driscoll Weber checks payable to Giles Associates. Reproduced as DW appendix exhibit #85.

128 Driscoll Weber check payable to Giles Associates. Reproduced as DW appendix exhibit #86.

129 Check voucher for Driscoll Weber check issued to Giles Associates. Reproduced as DW appendix exhibit #87.

130 Richard Skerry's letter to the Commissioner of the DCA. Reproduced as DW appendix exhibit #88.

131 Canton 667-2 change order #9. Reproduced as DW appendix exhibit #11.
Frank Driscoll's personal check payable to Richard Skerry. Reproduced as DW appendix exhibit #89.

Driscoll Testimony at 79-81.

Frank Driscoll's personal checks payable to Richard Skerry and Mrs. Richard Skerry. Reproduced as DW appendix exhibit #90.

Driscoll Testimony at 81-82.

Frank Driscoll's personal check payable to Richard Skerry. Reproduced as DW appendix exhibit #91.

Driscoll Testimony at 82-83.

Frank Driscoll's personal check payable to Richard Skerry. Reproduced as DW appendix exhibit #92.

Driscoll Testimony at 84.

Frank Driscoll's personal check payable to Richard Skerry. Reproduced as DW appendix exhibit #93.

Driscoll Testimony at 84.

Ibid at 91.

Ibid at 92-94.

Ibid at 95.

Check reproduced as DW appendix exhibit #94.

Check reproduced as DW appendix exhibit #95.

Check voucher reproduced as DW appendix exhibit #96.

Check reproduced as DW appendix exhibit #97.

Check reproduced as DW appendix exhibit #98.

Check reproduced as DW appendix exhibit #99.

Driscoll Testimony at 89.

DCA letters to the Chicopee Housing Authority dated 12-26-72 and 7-3-73. Reproduced as DW appendix exhibit #100.

Lucien Boileau personal check issued to Frank Driscoll. Reproduced as DW appendix exhibit #101.

Lucien Boileau Testimony October 10, 1975.

Driscoll Testimony at 79, 85-86.

Canton 667-2 change order #9. See DW appendix exhibit #11.

Driscoll Testimony at 83-84.

DCA authorization letter to the Chicopee Housing Authority dated 8-15-73. Reproduced as DW appendix exhibit #102.

Driscoll interview by Special Commission staff on June 11, 1980.

Ibid.

Driscoll Weber check payable to Frank Driscoll. Reproduced as DW appendix exhibit #103.

Third National Bank of Hampden County bank money orders dated 7-2-74. Reproduced as DW appendix exhibit #104.

Driscoll interview by Special Commission staff on June 11, 1980.

Check reproduced as DW appendix exhibit #105.

Check reproduced as DW appendix exhibit #106.
Deposit records of the Sargent Reception Committee on July 22, 1974 at the Guaranty Bank & Trust Co. Reproduced as DW appendix exhibit #107.

Driscoll interview by Special Commission staff on May 13, 1980 and May 27, 1980.

Driscoll interview by Special Commission staff on May 13, 1980 and June 11, 1980.


Sylvia interview by Special Commission staff on November 10, 1980.

Check vouchers for Driscoll Weber check #s 1205 and 1206. Reproduced as DW appendix exhibit #108.

Notes of 9/10/79 interview of H. W. Moore by Sp. Comm. staff, at 1-2. In one instance, in fact, the Commission discovered that one small group of persons together owned at least ten consulting companies, most of which shared common office space and employees, and which apparently made a practice of collusive bidding.


H. W. Moore interview, at 2.


Kenney testimony, supra n. 9, at 5-6.

Id. at 6-7.

Id. at 7.

Id. at 8.

Id. at 8-9.

Id. at 35.

Id. at 23-24.

Id. at 14-20.

Id. at 14-20.

Id. at 24-25.

Id. at 25.

Id. at 26.

Id. at 27.

Id. at 28.

Id. at 28.

Id. at 29-31.

Id. at 31.

Id. at 33-34.

Id. at 34-35.

Id. at 36.

Id. at 34.

Id. at 39.

Id. at 39-40.

Id. at 41.
34 Id. at 46.
35 Id. at 21.
36 Id. at 46-47.
37 Id. at 48-49.
38 Id. at 49.
39 Id. at 51.
FOOTNOTES

INFLUENCE EXERCISED ON ADMINISTRATIVE AND LEGISLATIVE ACTION
Neutralizing Supervision

10. William V. Masiello Testimony, supra n.1, at 43.
11. Id. at 41-43; Frank R. Masiello Testimony, supra n.9, at 94-95.
17. Source: Travel and entertainment records of Masiello and Associates, Architects, Inc.
19. Allard Testimony, supra n.3, at 57; travel and entertainment records of Masiello and Associates, Architects, Inc.
21. Id. at 56-57.

22. Source: Travel and entertainment records of Masiello and Associates, Architects, Inc.

23. Id.


30. Id. 39-47.

31. Rawson Testimony, supra n.24, at 1-3-116.

Masiello and Associates, Senator James A. Kelly
and
The Legislative Process
What the Masiellos Did for Kelly

FOOTNOTES

3. Frank Masiello Testimony, Supra n. 2 at 9-15
5. Frank Masiello Testimony, Supra n. 4 at 4,5
6. Frank Masiello Testimony, Supra n. 4 at 6
7. Frank Masiello Testimony, Supra n. 4 at 6-7
8. Frank Masiello Testimony, Supra n. 4 at 4
9. Frank Masiello Testimony, Supra n. 4 at 4
10. Frank Masiello Testimony, Supra n. 4 at 6-7
11. Frank Masiello Testimony, Supra n. 4 at 9
12. Frank Masiello Testimony, Supra n. 4 at 9 et seq.
13. Frank Masiello Testimony, Supra n. 4 at 9-10
14. Frank Masiello Testimony, Supra n. 4 at 10
15. Frank Masiello Testimony, Supra n. 4 at 10
16. Frank Masiello Testimony, Supra n. 4 at 11
17. Frank Masiello Testimony, Supra n. 4 at 14
18. Frank Masiello Testimony, Supra n. 4 at 11
19. Frank Masiello Testimony, Supra n. 4 at 11-12
20. Frank Masiello Testimony, Supra n. 4 at 11
21. Frank Masiello Testimony, Supra n. 4 at 12
22. Notes of 2/21/80 Interview of Frank R. Masiello by Special Commission Staff, at 20.
23. Frank Masiello Testimony, Supra n. 4, at 13.
25. Notes of 2/5/80 Interview of Frank R. Masiello by Special Commission Staff at 12.
27. Frank Masiello Testimony, Supra n. 4, at 16
28. Frank Masiello Testimony, Supra n. 4, at 17
29. Frank Masiello Testimony, Supra n. 4, at 15-16
30. Frank Masiello Testimony, Supra n. 4, at 15
31. Frank Masiello Testimony, Supra n. 4, at 15
32. Frank Masiello Testimony, Supra n. 4, at 15
33. Frank Masiello Testimony, Supra n. 4, at 18
34. Frank Masiello Testimony, Supra n. 4, at 18
35. November 5, 1969 sale agreement between Frank Masiello and William Masiello, at 1
36. November 5, 1969 Sale Agreement, supra n. 35, at 1 et seq.
38. Frank R. Masiello Testimony, supra n. 4, at 19.
39. Frank R. Masiello Testimony, supra n. 4, at 21-22
40. Frank R. Masiello Testimony, supra n. 4, at 20-21
41. Frank R. Masiello Testimony, supra n. 4, at 20-21
42. Frank R. Masiello Testimony, supra n. 4, at 22
43. Frank R. Masiello Testimony, supra n. 4, at 5
44. Frank R. Masiello Testimony, supra n. 4, at 6
45. Frank R. Masiello Testimony, supra n. 4, at 21-22
46. Frank R. Masiello Testimony, supra n. 4, at 21-22
47. Frank R. Masiello Testimony, supra n. 4, at 23
48. Frank R. Masiello Testimony, supra n. 4, at 23
49. Frank R. Masiello Testimony, supra n. 4, at 75
50. Frank R. Masiello Testimony, supra n. 4, at 27
51. Frank R. Masiello Interview, supra n. 25, at 4
52. Frank R. Masiello Testimony, supra n. 4, at 24
53. Frank R. Masiello Testimony, supra n. 4 at 24
54. Frank R. Masiello Testimony, supra n. 4 at 23
55. Frank R. Masiello Testimony, supra n. 4 at 23
56. Memorandum dated June 17, 1970 from Frank R. Masiello to Jack Gardiner re: "Position Descriptions"
57. Frank R. Masiello Testimony, supra n. 4 at 20-21
58. Frank R. Masiello Testimony, supra n. 4 at 27-28
59. Frank R. Masiello Testimony, supra n. 4 at 28
60. Frank R. Masiello Testimony, supra n. 4 at 28-29
61. Frank R. Masiello Testimony, supra n. 4 at 29
62. Frank R. Masiello Testimony, supra n. 4 at 29-30
63. Frank R. Masiello Interview, supra n. 25, at 16
64. Frank R. Masiello Testimony, supra n. 4, at 31
65. Frank R. Masiello Testimony, supra n. 4, at 31-32
66. Frank R. Masiello Testimony, supra n. 4, at 31-32
67. Frank R. Masiello Testimony, supra n. 4, at 31-32
68. Frank R. Masiello Testimony, supra n. 4, at 32
69. Frank R. Masiello Testimony, supra n. 4, at 31-32
71. Notes of 12/19/79 Interview of William V. Masiello by Special Commission Staff, at 11.
72. William V. Masiello Interview, supra n. 71, at 11.
73. Notes of 12/27/79 Interview of William V. Masiello by Special Commission Staff, at 24
74. Frank R. Masiello Interview, supra n. 22 at 7
75. Frank R. Masiello Testimony, supra n. 4, at 33
76. Frank R. Masiello Testimony, supra n. 4, at 34.
77. Frank R. Masiello Testimony, supra n. 4, at 33.
78. Frank R. Masiello Interview, supra n. 25, at 15.
79. Frank R. Masiello Testimony, supra n. 4, at 35-36.
80. Frank R. Masiello Testimony, supra n. 25 at 15.
82. Frank R. Masiello Testimony, supra n. 4, at 60-61.
84. Frank R. Masiello Testimony, supra n. 4, at 43 et seq.
85. Frank R. Masiello Testimony, supra n. 4, at 38.
86. Frank R. Masiello Interview, supra n. 25, at 29.
87. Frank R. Masiello Testimony, supra n. 4, at 39.
89. Frank R. Masiello Testimony, supra n. 4, at 40.
90. Frank R. Masiello Testimony, supra n. 4, at 40.
91. Frank R. Masiello Testimony, supra n. 4, at 50-51.
92. Frank R. Masiello Interview, supra n. 25, at 20.
93. Frank R. Masiello Testimony, supra n. 4, at 53.
94. Frank R. Masiello Interview, supra n. 25, at 15.
95. William V. Masiello Testimony, Sp. Comm. 5/13/80 at 57
96. William V. Masiello Testimony, Supra n. 95, 57-58
97. William V. Masiello Testimony, Supra n. 95, 58
99. Frank R. Masiello Testimony, Supra n. 4, at 67-68
100. Frank R. Masiello Testimony, Supra n. 4, at 68
101. Frank R. Masiello Testimony, Supra n. 4, at 68
102. Frank R. Masiello Testimony, Supra n. 4, at 68
103. Frank R. Masiello Testimony, Supra n. 4, at 68-69
104. Frank R. Masiello Testimony, Supra n. 4, at 93-94
105. Frank R. Masiello Testimony, Supra n. 4, at 94
106. Frank R. Masiello Testimony, Supra n. 4, at 94
107. Frank R. Masiello Testimony, Supra n. 4, at 70
108. Frank R. Masiello Testimony, Supra n. 4, at 70
110. Bauchat Testimony, Supra n. 109, at 5
111. Bauchat Testimony, Supra n. 109 at 7
112. Frank R. Masiello Testimony, Supra n. 4, at 71
113. Bauchat Testimony, Supra n. 109, at 10-11
114. Bauchat Testimony, Supra n. 109, at 11-12
115. Bauchat Testimony, Supra n. 109, at 11-12
116. Bauchat Testimony, Supra n. 109, at 11-12
117. Frank R. Masiello Testimony, Supra n. 4, at 73
118. Bauchat Testimony, Supra n. 109, at 13
119. Bauchat Testimony, Supra n. 109, at 14
120. Bauchat Testimony, Supra n. 109, at 15
121. Bauchat Testimony, Supra n. 109, at 16
122. Bauchat Testimony, Supra n. 109, at 16-17
123. Bauchat Testimony, Supra n. 109, at 17
124. Bauchat Testimony, Supra n. 109, at 17
125. Frank R. Masiello Testimony, Supra n. 4, at 71
126. Frank R. Masiello Testimony, Supra n. 4, at 72-73
127. Bauchat Testimony, Supra, n. 109 at 17-18
128. Bauchat Testimony, Supra, n. 109 at 18
129. Bauchat Testimony, Supra, n. 109 at 18
130. Bauchat Testimony, Supra, n. 109 at 18
131. Bauchat Testimony, Supra, n. 109 at 19
132. Bauchat Testimony, Supra, n. 109 at 19
133. Bauchat Testimony, Supra, n. 109 at 19
134. Bauchat Testimony, Supra, n. 109 at 20
135. Bauchat Testimony, Supra, n. 109 at 20
136. Bauchat Testimony, Supra, n. 109 at 20
137. Bauchat Testimony, Supra, n. 109 at 20
138. Bauchat Testimony, Supra, n. 109 at 20
139. Bauchat Testimony, Supra n. 109 at 20
140. Bauchat Testimony, Supra n. 109 at 20
141. Bauchat Testimony, Supra n. 109 at 21
142. Bauchat Testimony, Supra n. 109 at 22
143. Bauchat Testimony, Supra n. 109 at 22
144. Bauchat Testimony, Supra n. 109 at 22
145. Bauchat Testimony, Supra n. 109 at 22
146. Bauchat Testimony, Supra n. 109 at 23
147. Bauchat Testimony, Supra n. 109 at 23
148. Bauchat Testimony, Supra n. 109 at 24
149. Bauchat Testimony, Supra n. 109 at 24
150. Bauchat Testimony, Supra n. 109 at 24-25
151. Bauchat Testimony, Supra n. 109 at 25
152. Bauchat Testimony, Supra n. 109 at 25
153. Bauchat Testimony, Supra n. 109 at 25
155. Bauchat Testimony, Supra n. 109 at 27-28
156. Bauchat Testimony, supra n. 109 at 28
157. Frank R. Masiello Testimony, supra n. 4 at 77
158. Frank R. Masiello Testimony, supra n. 4, at 77-78
159. Frank R. Masiello Testimony, supra n. 4, at 77-79
160. Frank R. Masiello Testimony, supra n. 4, at 79
161. Notes of 2/10/80 interview by Frank R. Masiello by Commission Staff at 17
162. Frank R. Masiello Testimony, supra n. 4, at 80
163. Frank R. Masiello Testimony, supra n. 4, at 79
166. Frank R. Masiello Testimony, supra n. 4, at 83
167. Frank R. Masiello Testimony, supra n. 4, at 83
169. Testimony of Audrey Rawson, Sp. Comm. 5/1/80 at 28-29
171. Bauchat Testimony, Supra n. 109, at 30
173. Cohan Testimony, Supra n. 172 at 6
174. Cohan Testimony, Supra n. 172 at 6
175. Cohan Testimony, supra n. 172, at 19
176. Cohan Testimony, supra n. 172, at 23-24
177. Cohan Testimony, supra n. 172, at 24
178. Cohan Testimony, supra n. 172, at 24
180. Daoust Testimony, supra n. 179 17-19
181. Daoust Testimony, supra n. 179 20
182. Daoust Testimony, supra n. 179 19
183. Testimony of Matteo Girardi, Sp. Comm., 4/2/80, at 4
184. Girardi Testimony, supra n. 183 at 4
185. Girardi Testimony, supra n. 183 at 5
186. Girardi Testimony, supra n. 183 at 5-6
187. Girardi Testimony, supra n. 183 at 6
188. Girardi Testimony, supra n. 183 at 7
189. Girardi Testimony, supra n. 183 at 9
190. Girardi Testimony, supra n. 183 at 6
191. Daoust Testimony, supra n. 179, at 20-21
193. Girardi testimony, supra n. 183 at 8-9
194. Rawson testimony, supra n. 169, at 19-20
195. Rawson Testimony, supra n. 169, at 33-34
196. Rawson testimony, supra n. 169, at 34
197. Rawson testimony, supra n. 169, at 34-35
198. Rawson testimony, supra n. 169, at 60
199. Rawson testimony, supra n. 169, at 60
200. Rawson testimony, supra n. 169, at 59-61
201. Bauchat testimony, supra n. 109, at 36
202. Bauchat testimony, supra n. 109, at 38
203. Daoust testimony, supra n. 179, at 26
204. Daoust testimony, supra n. 179, at 26
205. Daoust testimony, supra n. 179, at 27
206. Daoust testimony, supra n. 179, at 33-34
207. Daoust testimony, supra n. 179 at 28
208. Daoust testimony, supra n. 179 at 34-35
209. Frank R. Masiello interview, supra n. 25, at 26
210. Frank R. Masiello interview, supra n. 25, at 6
211. Frank R. Masiello interview, supra n. 25 at 6
212. Frank R. Masiello interview, supra n. 25 at 6-7
213. Frank R. Masiello interview, supra n. 25 at 7
214. December 7, 1972 sale agreement between Frank Masiello and William Masiello, at 1-2
215. December 7, 1972 employment agreement between Masiello and Associates and Frank Masiello
216. December 7, 1972 sale agreement, supra n. 214, at 7
217. Frank R. Masiello interview, supra n. 25 at 7
218. Frank R. Masiello interview, supra n. 25 at 8
220. William V. Masiello testimony, supra n. 219 at 55
221. William V. Masiello testimony, supra n. 219 at 65-66
222. William V. Masiello testimony, supra n. 219 at 65-66
223. William V. Masiello testimony, supra n. 219 at 65-66
224. William V. Masiello testimony, supra n. 219 at 67
225. Cohan testimony, supra n. 172, at 25-30
226. William V. Masiello testimony, supra n. 219 at 68
228. William V. Masiello testimony, supra n. 219, at 82-83
229. William V. Masiello testimony, supra n. 219, at 70-71
230. Rawson testimony, supra n. 169, at 36
231. Rawson testimony, supra n. 169 at 57-58
232. Rawson testimony, supra n. 169 at 37
233. William V. Masiello testimony, supra n. 219, at 70-72
234. Rawson testimony, supra n. 169, at 43
235. Rawson testimony, supra no. 169, at 30-37
236. Rawson testimony, supra no. 169, at 61-63
237. Rawson testimony, supra no. 169, at 74-75
238. Rawson testimony, supra n. 169 at 76
239. Rawson testimony, supra n. 169 at 77
240. Rawson testimony, supra n. 169 at 78
241. Rawson testimony, supra n. 169 at 78
242. Rawson Testimony, supra n. 169 at 78
243. Rawson testimony, supra n. 169 at 78
244. Rawson testimony, supra n. 169 at 79
245. Rawson testimony, supra n. 169 at 79
246. Rawson testimony, supra n. 169 at 78
247. Rawson testimony, supra n. 169 at 79
248. Rawson testimony, supra n. 169 at 36
249. Rawson testimony, supra n. 169 at 61
250. Rawson testimony, supra n. 169 at 61
251. Rawson testimony, supra n. 169 at 61
252. Rawson testimony, supra n. 169 at 62
253. Testimony of Raymond Allard, Sp. Comm. 4/22/80 at 45
254. Allard testimony, supra n. 253, at 46
256. Gould testimony, supra n. 255, 21-22
257. Gould testimony, supra n. 255, 22
258. William V. Masiello testimony, supra n. 219, at 86
259. William V. Masiello testimony, supra n. 219, at 86
260. William V. Masiello testimony, supra n. 219, at 86-87
261. William V. Masiello testimony, supra n. 219, 87
262. William V. Masiello testimony, supra n. 219, 84
263. See e.g., Rawson testimony supra n. 169, at 13-14
264. See e.g., Rawson testimony, supra n. 169, at 120-125
265. See e.g., Rawson testimony, supra n. 169, at 118-120; 126-130
266. William V. Masiello testimony, supra n. 219, at 84
1. Public Testimony of Mark Demorest, Sp. Comm. 3/31/80 at 44.
2. Id., at 14.
5. Id., at 69.
7. Id., at 21.
8. Wm. Masiello Public Testimony, supra n. 4, at 94,95.
9. Id., at 94.
10. Id., at 96.
11. Id., at 92.
12. Id., at 97.
15. Id., at 40.
17. Notes of 1/16/80 interview of William V. Masiello by Special Commission Staff, at 15.
J.A. SULLIVAN FOOTNOTES

3  Gibbs testimony, supra n. 2, at 16.
5  Cooney testimony, supra n. 4, at 23, 26.
6  Cooney testimony, supra n. 4, at 27.
7  Cooney testimony, supra n. 4, at 27.
8  Cooney testimony, supra n. 4, at 31.
9  Cooney testimony, supra n. 4, at 41.
10 Cooney testimony, supra n. 4, at 34.
11 Cooney testimony, supra n. 4, at 36.
12 Cooney testimony, supra n. 4, at 39, 42-43.
14 Sullivan testimony, supra n. 13, at 17.
15 Sullivan testimony, supra n. 13, at 17.
16 Sullivan testimony, supra n. 13, at 18.
17 Sullivan testimony, supra n. 13, at 22.
18 Sullivan testimony, supra n. 13, at 19.
19 Sullivan testimony, supra n. 13, at 33.
25 Sullivan testimony, supra n. 23, at 47.
26 Sullivan testimony, supra n. 23, at 40-41.
27 Sullivan testimony, supra n. 23, at 35-36.
28 Sullivan testimony, supra n. 23, at 47.
29 Schroeder testimony, supra n. 21, at 14-16.
30 Sullivan testimony, supra n. 13, at 45-46.
31 Schroeder testimony, supra n. 1, at 17.
32 Schroeder testimony, supra n. 1, at 35.
33 Schroeder testimony, supra n. 1, at 31.
35 Kussman testimony, supra n. 34, at 89-90.
36 Kussman testimony, supra n. 34, at 74.
Kussman testimony, supra n. 34, at 75, 82.
Kussman testimony, supra n. 34, at 76.
Kussman testimony, supra n. 34, at 75.
Kussman testimony, supra n. 34, at 77.
Kussman testimony, supra n. 34, at 85, 86.
Kussman testimony, supra n. 34, at 85, 86.
Kussman testimony, supra n. 34, at 75.
Sullivan testimony, supra n. 23, at 35-36, 47.
Kussman testimony, supra n. 34, at 77.
Kussman testimony, supra n. 34, at 81.
Sullivan testimony, supra n. 23, at 37.
Schroeder testimony, supra n. 1, at 46.
Schroeder testimony, supra n. 1, at 46.
Schroeder testimony, supra n. 1, at 62.
Schroeder testimony, supra n. 1, at 62-63.
Gibbs testimony, supra n. 2, at 9.
Cooney testimony, supra n. 4, at 16.
Cooney testimony, supra n. 4, at 18.
Cooney testimony, supra n. 4, at 16.
Cooney testimony, supra n. 4, at 18.
Cooney testimony, supra n. 4, at 19-20.
Cooney testimony, supra n. 4, at 21.
Cooney testimony, supra n. 4, at 19.
McSwiggen interview, supra n. 62.
Cooney testimony, supra n. 4, at 19.
Cooney testimony, supra n. 4, at 18.
McSwiggen interview, supra n. 62.
Testimony of Barbara Manning, Sp. Comm. 5/2/79, at 76.
Sullivan testimony, supra n. 68, at 43.
Sullivan testimony, supra n. 68, at 69.
Sullivan testimony, supra n. 68, at 70.
Sullivan testimony, supra n. 68, at 70.
Sullivan testimony, supra n. 68, at 75.
Manning testimony, supra n. 67, at 67.
Manning testimony, supra n. 67, at 69.
Sullivan testimony, supra n. 13, at 25.
Sullivan testimony, supra n. 13, at 25.
Manning testimony, supra n. 67, at 31.
Manning testimony, supra n. 67, at 32.
Manning testimony, supra n. 67, at 29.
Manning testimony, supra n. 67, at 32.
Sullivan testimony, supra n. 13, at 32.
Manning testimony, supra n. 67, at 47.
Manning testimony, supra n. 67, at 48.
Manning testimony, supra n. 67, at 54.
Manning testimony, supra n. 67, at 54-55.
Manning testimony, supra n. 67, at 55-56.
Manning testimony, supra n. 67, at 55-56.
Sullivan testimony, supra n. 13, at 34-35.
Sullivan testimony, supra n. 13, at 35-36.
Sullivan testimony, supra n. 13, at 36.
Sullivan testimony, supra n. 13, at 37.
Manning testimony, supra n. 67, at 58.
Manning testimony, supra n. 67, at 60.
Manning testimony, supra n. 67, at 61-62.
Manning testimony, supra n. 67, at 62.
Manning testimony, supra n. 67, at 62.
Manning testimony, supra n. 67, at 63.
Manning testimony, supra n. 67, at 64-65.
Manning testimony, supra n. 67, at 17-18.
Manning testimony, supra n. 67, at 18-20.
Manning testimony, supra n. 67, at 22.
Manning testimony, supra n. 67, at 71.
Manning testimony, supra n. 67, at 71.
Manning testimony, supra n. 67, at 72-73.
Gibbs testimony, supra n. 2, at 18-19.
Gibbs testimony, supra n. 2, at 20.
Gibbs testimony, supra n. 2, at 18.
Sullivan testimony, supra n. 23, at 34.
Sullivan testimony, supra n. 68, at 30.
Sullivan testimony, supra n. 68, at 53-55.
Sullivan testimony, supra n. 13, at 60.
LAUNDERING IMPROPER CAMPAIGN CONTRIBUTIONS

2. Id., at 99-106.
4. Id., at 60.
7. Id., at 12.
8. This check is reproduced as Appendix Exhibit 3.
9. Testimony of James M. Siracusa, supra n.6 at 11-12.
10. The testimony is summarized later in this section.
12. Id., at 10.
16. Id. Paragraphs 2-3.
17. The Boston Globe, July 21, 1972, at 1, 12; Appendix Exhibit 5.
18. See Appendix Exhibits 7, 13, 17 and 20, which list all Sargent Committee contributors who made contributions on the dates in question and compare those with the names included in the Boston Globe article.
19. Id.
21. Id.
22. Photocopies of each of these checks may be found in Appendix Exhibit 6.
23. Testimony of James M. Siracusa, supra n.6 at 18. See Appendix Exhibit 7 for a chart summarizing the detailed information on the 9/14/71 checks, and comparing this with information from the face of the other California cashier's checks deposited on other dates.
24. See chart which is Appendix Exhibit 8 for a graphic comparison between the checks deposited and the corresponding contributions listed in the Sargent Committee files. Appendix Exhibit 9 is a photocopy of the Sargent Committee file cards containing contributions deposited on September 14, 1971.
25. The fact that another personal check deposited in the Sargent Reception Committee account--$250 from John T. Doran--is not reflected in the Sargent Committee contributor files for that date is evidence that the Sargent Committee's practice of regularly maintaining such files does not guarantee that every contribution was recorded accurately.
26. Arthur Manzi. Albert "Toots" Manzi's brother and the owner of the insurance agency at which Paul Hogan testified he picked up cash and check contributions from Albert Manzi, was requested to appear, but did not.
See text and footnotes below.

28 See Appendix Exhibit 10, which is a copy of this check.


30 Id. at 9.


32 Id. at 6-8.


34 Id. at 3-4, 6.


37 See the Holyoke Community College section of this report, for a more detailed discussion of the facts and circumstances of this meeting and of payments by DMJM to Manzi.

38 Appendix Exhibit 11 is a copy of this check.

39 Copies of the relevant cards from the Sargent Committee files are reproduced as Appendix 12.

40 A chart comparing the Sargent Committee file entries with all checks deposited into the account on February 7, 1972, is reproduced as Appendix Exhibit 13.

41 The affidavit is reproduced as Appendix Exhibit 14.

42 Appendix Exhibit 14.


44 Id. at 8.

45 Both cashier's checks are reproduced as Appendix Exhibit 15.

46 Copies of these twenty Sargent Committee file cards are reproduced as Appendix Exhibit 16.

47 A chart comparing the 3/30/72 deposited items with the Sargent Committee contribution records for said date is reproduced as Appendix Exhibit 17.


49 Id. at 7-8.


53 Id. at 7-8.

54 Id. at 10-11. Commission staff also interviewed Krupa by telephone. When told during the interview that he was listed on the Sargent Committee records and in the Boston Globe article as contributing $1,000, Krupa said, "I wish I had the money" and "The only dinner I ever went to in Massachusetts was for Bob Cousy in the early 60's."

55 Testimony of M. Joseph Stacey, supra n.52 at 11.

56 Id. at 23.

57 Siracusa Testimony, supra n.6 at 23.
Testimony of William Maselli, supra n.3 at 55-63.

See Holyoke Community College section of this report for a more detailed discussion of the evidence concerning this payment by DMJM to Manzi.

A photocopy of this check is reproduced as Appendix Exhibit 18.

Commission staff investigator James M. Siracusa spoke briefly with Jensen by telephone. In this interview Jensen confirmed that he was assistant to the controller at DMJM during 1971-72, but denied purchasing any casnier's checks on behalf of DMJM at the Bank of California. If this telephone statement were true, this would mean that whoever did purchase the 3/2/72 check from the Bank of California gave Jensen's name, in its commonly known version (i.e., Lee Jensen, not Raymond Lee Jensen), as the purchaser, but misspelled the surname when typed on the remitter line of check.

The relevant Sargent Committee file cards are reproduced as Appendix Exhibit 19.

A chart listing all checks deposited into the account, and comparing these deposits with the Sargent Committee contributor file documents, is reproduced as Appendix Exhibit 20.

See Appendix Exhibit 5.

This check is reproduced as Appendix Exhibit 21.

This check is reproduced as Appendix Exhibit 22.

This check is reproduced as Appendix Exhibit 23.

This check is reproduced as Appendix Exhibit 24.

Neponset Circle Branch of N.E.M. is identified on copies of cashiers checks as seen in A.E. 25 by Code #12 stamped beneath payee line and to the left of check amount.

Both these checks are reproduced as Appendix Exhibit 25.

The Sargent Committee file card is reproduced as Appendix Exhibit 26.

There were three $2,500 checks deposited into the Sargent Reception Committee account: the two New England Merchants National Bank checks, and a Blackstone Valley National Bank check (issued May 22, 1972 and deposited May 31, 1972) discussed supra. The Boston Globe article lists only two $2,500 contributor names taken from the candidate's statement filed with the Secretary of State's office: Martha Hoffman, and a Howard Rhodes of Worcester. The Sargent Committee files contain no card for Rhodes from which to determine his present whereabouts or whether there is in fact a Howard Rhodes.


Id. at 5-10.

These authorized signature cards, produced by the New England Merchants Bank pursuant to summons, are reproduced as Appendix Exhibit 27.

Testimony of M. Joseph Stacey, supra n.52, at 11, 15.


Frank M. Driscoll, interview June 11, 1980.


Id. at 6-7.
FOOTNOTES

VOLUME VI: CONSTRUCTION DEFECTS, STATE AND COUNTY BUILDINGS

Construction Defects, State and County Buildings. 109
Cape Cod Community College. 115
Salem State College Library. 117
Southeastern Massachusetts University. 118
Bridgewater State College. 120
Boston State College. 122
UMass/Amherst Library. 123
UMass/Amherst Tillson Farm Power Plant. 127
UMass Columbia Point. 130
UMass Medical School, Worcester. 131
Pondville Hospital. 135
Haverhill Parking Garage. 137
Worcester County Jail. 138
Hingham District Court. 140
UMass Building Authority. 141
McCarthy Apartments. 143
Randolph Housing for the Elderly. 146
FOOTNOTES FOR CONSTRUCTION DEFECTS, STATE AND COUNTY BUILDINGS,
JANUARY 1, 1968 TO DECEMBER 31, 1979

1 This figure does not include expenditures on construction by cities and towns where state funds were not involved; includes some debt service and assumes the commonwealth issues bonds with a 7 percent interest rate and a 20 year pay period.

Construction-related expenditures during the period from January 1, 1968 to December 31, 1980 break down as follows:

**TABLE A CONSTRUCTION PROJECT COSTS**
(EXCLUDING FINANCE COSTS)

<table>
<thead>
<tr>
<th>MILLIONS OF DOLLARS</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Authorization for Buildings for Line State Agencies .................. 1,593.0</td>
</tr>
<tr>
<td>B. Authorization for County Facilities ......................................... 134.3</td>
</tr>
<tr>
<td>C. Authorizations for Public Works for Line State Agencies (Main Capital Outlay Bill Only) .................. 199.6</td>
</tr>
<tr>
<td>D. Increases in Authorizations for Higher Education Building Authorities ............ 65.0</td>
</tr>
<tr>
<td>E. Appropriations for Payments Toward Construction Grants by Division of School Facilities ............ 1056.9</td>
</tr>
<tr>
<td>F. Long-Term Commitments for Payments Toward Construction Grants by Division of School Facilities ............ 1,090.1</td>
</tr>
<tr>
<td>G. Authorizations for Department of Community Affairs - Housing Authority Programs ............ 923.0</td>
</tr>
<tr>
<td>H. Authorizations for Public Works (Non-Main Capital Outlay Bill, Primarily Executive Office of Environmental Affairs, OPW) ............ 2756.6</td>
</tr>
<tr>
<td>I. Investments in Facilities by the Massachusetts Port Authority ..................... 372.2</td>
</tr>
<tr>
<td>J. Authorizations by Massachusetts Turnpike Authority ......................... 15.0</td>
</tr>
<tr>
<td>K. Authorizations for Government Land Bank ......................................... 39.8</td>
</tr>
<tr>
<td>L. Authorizations for Off-Street Parking Facilities Program ....................... 12.5</td>
</tr>
<tr>
<td>M. Authorizations for Convention Hall and Civic Center Program ................. 30.0</td>
</tr>
<tr>
<td>N. Authorizations for Massachusetts Housing Finance Agency .................... 1,500.0</td>
</tr>
<tr>
<td>O. Authorizations by Massachusetts Health and Educational Facilities Authority ........ 434.75</td>
</tr>
<tr>
<td>P. MBTA Authorization ................................................................. 1,759.0</td>
</tr>
</tbody>
</table>
TABLE B: CONSTRUCTION FUNDING SOURCES

| State Operating Expense       | $2,147,000,000 |
| Bonded Public Debt            | $4,487,830,000 |
| Debt Services:                |               |
| Taxpayer                      | $3,141,481,000 |
| User-financed                 | $1,922,165,000 |
| Federal Reimbursement Funds   | $2,636,970,000 |
| User-financed Expense         | $2,745,950,000 |
| **Total:**                    | **$17,081,396,000** |

Bonded public debt refers to those construction projects financed by bond. Interest must be paid on all of these projects and on user-financed bonds, hence the figure for debt service. The federal funds largely come from the Federal Capital Improvement Fund (FCIF) which the state holds to collect federal monies it is alloted. Construction funded by State-operating expense does not call for debt service, but is a direct taxpayer expense. User-financed construction come from state instrumentalities--bodies such as Massachusetts Port Authority, Massachusetts Turnpike Authority, etc.

From January 1, 1968 to December 31, 1980, the Commonwealth and its political subdivisions authorized or appropriated expenditures of $6.63 billion for construction and construction-related projects (not including federal reimbursement and authorities which raise funds by bond issue).

When the taxpayer-funded cost of debt service is added to this figure, the authorized or appropriate cost to Massachusetts taxpayers of Capital Outlay Construction projects is $9.78 billion. Figures included in this figure are the Massachusetts taxpayers' contributions to the federal government which are returned to the state as Federal reimbursement funds.

All figures come from Commission studies and are a breakdown of Table 1 with debt service added.

2 This figure is derived from the Commission's breakdown of the $17.01 billion into three "areas" of construction: state building construction projects, non-building state construction projects, and state-assisted private construction. These respective totals are $10.4 billion (61.05%), $6.23 billion (36.4%), and $422 million (2.47%).

3 This figure is derived from the $2.036 billion in construction costs of buildings surveyed in the Commission's study, increased by 33% for non-construction costs (design which is in turn increased by a 5% contingency for change orders. The resulting figure is increased 72% for land and finance costs. (33% and 5% is the BBC formula for computing project cost.)

4 Based on the Commission's building survey, it has been determined that 75 percent of surveyed buildings, 50 percent of non-surveyed buildings, 20 percent of state-assisted buildings, and buildings 3.0 billion have a percent of state-assisted private construction has severe defects. A recent study by the Road Information Program of Washington, D.C. concluded that 74 percent of the state's 30,000 miles of road are in need of repair and 11.4 percent of the bridges in the state were seriously defective.

This projection, and the projections relating to waste because of unnecessary delays and projects planned but never built, assumes that an approximately equal amount of funds had been authorized or appropriated but not spent as of January 1, 1968 as have been authorized or appropriated but not spent as of December 31, 1980.

5 The percentage of defective construction in buildings and non-buildings is as in footnote 4. The average annual number of individual taxpayers from 1966-1980 as compiled by the Department of Revenue was used (approximately 2,472 thousand). When appropriate, debt service was considered as part of the cost to the taxpayer. Neither federal nor user-operated moneys come into these calculations. No state-assisted private construction is included.

6 There are three identified areas of waste: waste due to delay in the bidding process, waste due to delay in design and waste due to delay in construction. Construction costs were used as the base figures as follows: buildings 3.0 billion, non-buildings 3.77 billion, and state assisted private construction $156 million. These figures were derived from project costs using the BBC formula (33 percent for non-construction and 5 percent contingency).
Gelays in Bidding

It was determined by the Commission's study and projection that delays in bidding resulted in cost increases of 2.5% for state building projects and 1.25% for non-building state construction projects. State-assisted private construction delays in design were determined to be insignificant. This total was $169 million.

Gelays in Design

Design delays resulted in a ten-percent increase in state building construction costs, a 3 1/3% increase for state non-building construction costs, and a 1.6% for state-assisted private construction projects. The resulting figures are summed for waste due to delays in design. This total was $561 million.

Gelays in Construction

For waste due to delays in construction, it was determined by Commission studies and projections that there was, on the average, a 9% cost increase for all BBC projects, a 1/2% increase for all other state building construction projects, and a 2.25% increase in non-building projects. (State-assisted private construction cost increases due to construction delay were determined to be insignificant.) A total of $354 million was wasted due to delays in construction.

The Commission estimates that $427 million were paid in design fees for building and non-building construction projects. In a case study of $70 million design fees administered by the BBC, $12 million (17 percent) was paid for projects never built. After adjusting for buildings designed but, for justifiable reasons, never built, the Commission determined that roughly 1/6 of all design fees, or $10.25 million were wasted. This figure was then projected for all state buildings. ($44.0 million) A Commission study estimated that 2 percent of non-building design fees ($4.71 million) were wasted.

Cost to repair defective construction is based on the following calculations and assumptions (dollar figures in Millions)

| Total all construction costs | 8,993 |
| Total building construction costs | 5,026 |
| Total NON - building construction costs | 3,967 |

BUILDINGS SURVEYED (see report "Estimated Construction Cost to Repair Defective Work")

36.4% of $2,036 = 741.1
defective rate 75%
Cost to repair $741.1 surveyed = 130.0
Therefore cost to repair total $2,036 population surveyed = 130x2036 = $357.14

- 357.14 475.00 23.75 349.12
+ 33% design, etc. = 117.86 + 5% contingency = 498.75 + 70% finance =
TOTAL COST TO REPAIR = $847.87 $2,036 SURVEYED

Defective buildings $2,036 x 75% = $1527
Repair cost as a percent of defective buildings = 847.87 x 100 = 55.52%

BUILDINGS NOT SURVEYED

| Total Buildings | 5026 |
| Surveyed Buildings | 2036 |
| Buildings not surveyed | 2990 |

Assumed defective rate = 50%
Assumed cost to repair similar to survey, 55.52% of defective construction.

Estimated defective buildings = 2990 x 50% = 1495
Repair as a percent of defective buildings 55.52%
Therefore cost to repair non-surveyed defective buildings = 1495 x 55.52% = $830.02
NON-BUILDINGS

Non-building cost 3967

Assumed defective rate = 20%
Assume cost to repair similar to survey, 55.52% of defective construction

Estimated defective construction = 3967 x 20% = 793.4
Repair as percent of defective construction 55.52%

Therefore estimated cost to repair defective non-building 793.4 x 55.52% = 440.49

TOTAL ESTIMATED REPAIR COST FOR ALL CONSTRUCTION

<table>
<thead>
<tr>
<th>Surveyed buildings</th>
<th>MILLIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-surveyed buildings</td>
<td>830.02</td>
</tr>
<tr>
<td>Non-buildings</td>
<td>440.49</td>
</tr>
<tr>
<td><strong>TOTAL REPAIRS</strong></td>
<td><strong>2,118.38 MILLION</strong></td>
</tr>
</tbody>
</table>

This figure reflects the dollar costs at the time of construction and has not been inflated to reflect the value of the 1980 dollar. This figure does not include the cost of secondary damage resulting from defective construction.

Assuming an average of 2,472 thousand taxpayers between 1968 and 1980, the cost of repairs per taxpayer is 2,118,380/2472 = $856.95

9 Dr. John M. Woollett, B.A., B. Arch. Eng., M.S. (Construction Management), Ph.D. (Construction Financial Forecasting). Dr. Woollett has had 15 years experience as a contractor and international construction consultant, he currently teaches architectural technology at Harvard University, Mass.

10 "Construction cost" includes the direct costs of new construction, renovations, and major, non-recurring repairs involving buildings and building site work. Normal maintenance is excluded. Land purchase, design fees, furnishing costs, development costs, overhead for state and county employees, financing costs, etc., are excluded. All figures are based on bid prices of contracts awarded and executed. Net costs of change orders are not included.

Sources:
For BBC, official figures taken from the files of the BBC and the Massachusetts Comptroller's Division
For Lowell University Building Authority: Figures supplied by UMass/Amherst Physical Plant Dept.

11 Includes Bureau of Building Construction, Department of Community Affairs, minor construction by state agencies, Metropolitan District Commission, Massachusetts Bay Transportation Authority, Massachusetts Turnpike Authority, Massachusetts Port Authority, Government Center Commission, University of Massachusetts Building Authority, State Colleges Building Authority, Lowell University Building Authority, Southeastern Massachusetts Building Authority and counties.
Sources see footnote 10.

12 See footnotes 10 and 11 above.

13 Figures supplied by Stuart Lesser, director of the BBC, indicate that in mid-1980, the BBC was working on 394 different contracts. 87 percent of these were repair or renovation jobs, while only 13 percent involved new construction. In contrast, an analysis of BBC Memoranda of Approval for construction contracts awarded in 1970 indicates that only 43 percent were for repairs and renovations and 57 percent represented new construction.

Full name of professional consultants referred to in Table IX: Dr. John Woollett, B.A., B. Arch. Eng., M.S., Ph.D.; James C. Deveney, Professional Engineer; Spaulding Brick Company, Inc., Somerville; R. J. Kenney Associates, Inc., Attleboro, construction materials testing; Edward Durrell Stone, New York, architect

Simppican Consultants International Inc., Cambridge (SCI)
  o Francis Associates - SCI/Mechanical - Electrical
  o Le Messurier Associates - SCI/Structural
  o Tighe and Bond-SCI/Civil-Sanitary

Edward Sears Read & Associates, Malden, Architects

Edwards & Kelcey, Boston, Consulting Engineers

Allstate Roofing & Waterproofing Corp., Somerville

Keith C. Thornton & Associates, Paramus, N.J., Consulting Engineers

ICO Systems, Inc., Boston/Architects and Engineers-Building Systems,

Simpson, Gumpertz & Heger, Inc., Cambridge, Consulting Engineers

John J. Digby Jr., Associate Civil Engineer, Bureau of Building Construction

Childs, Bertman, Tseckares & Casendino, Inc., Boston, Architects (CBT)

Thompson & Lichtner, Inc., Brookline, Consulting Engineers

James C. Dempsey, Auditor

Kenneth F. Perry & Associates, Weymouth, Architects

Design Group, Inc., Cambridge Consulting Engineers (EDG)

Bay State Test Boring, Inc., Avon, Soil & Rock Investigators (BSB)

C.E. Maquire, Inc., Waltham, Structural Engineers

Loomis and Loomis, Inc., Windsor, Conn., Consulting Engineers

Gilbert Small and Co., Needham, Consulting Engineers

John Agnoli, Registered Prof. Eng., Longmeadow

Charles T. Main, Inc., Boston, Civil Engineers

Wallace, Floyd, Ellenreger, Moore Inc., Cambridge, Architects (WFEM)

Schoenfeld Associates, Inc., Boston, Consulting Engineers

Helden Associates, Inc., Boston, Mechanical Consultants

Battelle Columbus Laboratories, Columbus, Ohio, Consulting Engineers

Steco Engineering Corp., Norwell, Consulting Engineers


Report by LeMessurier Associates, October 29, 1971

J.C. Deveney, P.E.


Technician field report, December 4th, 1979

Letter from James M. Collins to Norfolk County Commissioners, May 4, 1979.

Field report dated November 6, 1979

Letter dated October 10, 1979, Henry W. Ainslie to Stuart O. Lesser

The filed sub-bid law, Massachusetts General Laws Chapter 149, Section 44A through 44L inclusive.

Bids records are available for 56 BBC contracts awarded during fiscal 1978. Each contract included multiple filed sub-bid categories, and each category had at least three filed sub-bidders. There are no instances in which a filed subcontractor other than the lowest available sub-bidder was included in the winning general bid.

Source, BBC Memoranda of Approval

Source, BBC Memoranda of Approval
Columbia Cornice Roofing and Flashing Projects under Massachusetts Filed Sub-Bid System: Salem State College Physical Education Center (BBC E 65-2 #3) Extensive leaks, failure of roofing system, Mt. Wachusett Community College Main Building (BBC E 68-1 #1) "Serious Roof Leaks" according to Facility Engineer Mr. Donahue. Fitchburg State College Library/Student Union (BBC E 70-2 #1), serious leaks for four years following occupancy according to Physical Plant director Dr. Ginan. Whittier Regional High School, Haverhill (Regional School Board), total failure of roofing system (See Simpson Gumpertz & Heger, Roofing Investigation, January, 1980).

Source: BBC Memoranda of Approval and BBC project files. Based on Bid prices of contracts awarded.


Testimony of Dr. John Woollett, Sp. Comm. 5/21/80 at 22.

Source: Capital Outlay Budget, in fiscal year 1980.

See footnotes 6 and 8 above.

See the analysis of technical investigative results and building defects by category in the text, volume 6 at 16-23.

See footnote 8 above.

See footnote 8 above.

Letter dated May 18, 1977 from E. Edward Rossi to the BBC.

<table>
<thead>
<tr>
<th>Contract Number</th>
<th>Buildings</th>
<th>Contractor</th>
<th>Amount</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1A</td>
<td>Science, N&amp;S Classrooms</td>
<td>S. Volpe &amp; Co.</td>
<td>$3,697,000</td>
<td>Start-Use &amp; Occupancy-9-1-70</td>
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<tr>
<td></td>
<td></td>
<td></td>
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<td>Final Acceptance-Not Accepted</td>
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<tr>
<td>1B</td>
<td>Library &amp; Administration</td>
<td>Loranger Construction</td>
<td>$1,895,000</td>
<td>Start-U/O-3/24/69</td>
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<td></td>
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<td>Final Acceptance-10-9-69</td>
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<tr>
<td>1C</td>
<td>Commons</td>
<td>Jefferson Construction</td>
<td>$1,514,000</td>
<td>Start-U/O-3-24-69</td>
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<td></td>
<td>Final Acceptance-1-1-71</td>
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<tr>
<td>1D</td>
<td>Gymnatorium, Maintenance</td>
<td>V&amp;V Construction</td>
<td>$1,764,000</td>
<td>Start-U/O-9-10-70</td>
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<td>Final Acceptance-5-24-71</td>
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<td>1E</td>
<td>Site Lighting</td>
<td>Vander Electric &amp; Equipment Co.</td>
<td>$103,000</td>
<td>Start-U/O-9-4-70</td>
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<tr>
<td>1F</td>
<td>Paving &amp; Roadways, Walkways</td>
<td>Crowell Construction</td>
<td>$78,700</td>
<td>Start-F.A.-9-18-71</td>
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<tr>
<td>1G</td>
<td>Auditorium</td>
<td>Farwell Construction</td>
<td>$1,557,000</td>
<td>Start-U/O-6-15-72</td>
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<td>Final Acceptance-1-29-74</td>
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<tr>
<td>1K</td>
<td>Athletic Field &amp; Landscaping</td>
<td>Dimarzio Construction</td>
<td>$238,000</td>
<td>Start-U/O-7-30-75</td>
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<td>Final Acceptance-1-11-77</td>
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<td>3</td>
<td>Parking Lots &amp; Utilities</td>
<td>ET&amp;L Construction</td>
<td>$441,000</td>
<td>Start-F.A.-12-12-66</td>
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<tr>
<td>4</td>
<td>Dental Lab</td>
<td>Hyannis Millwork &amp; Supply</td>
<td>$65,000</td>
<td>Start-F.A.-11-13-74</td>
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<td>5</td>
<td>Site work; Bleachers &amp;</td>
<td>RJ Oelmonico Co.</td>
<td>$88,000</td>
<td>Start-Completion Date-1-1-81</td>
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<td>Storage Building</td>
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<tr>
<td>6</td>
<td>Additional work to</td>
<td>Automatic Sprinkler Corp.</td>
<td>$29,570</td>
<td>Start-F.A.-1-15-77</td>
</tr>
<tr>
<td></td>
<td>Auditorium</td>
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</tr>
</tbody>
</table>

The College signed Use and Occupancy papers for all buildings certifying that the buildings were at least functional, and the BBC issued Certificates of Final Acceptance for all buildings except the Science and North and South Classroom buildings.


Ibid. at 18.
A reglet system consists of a specially made groove or slot cut into the roof curb and an expansion piece designed to fit the end of the flashing into the groove.

The roof to wall flashing consists of lead coated copper or stainless steel base flashing.

EDG-2 at 27; see S.M.A.C.N.A., Architectural Sheet Metal Manual, New England Approved Roofing Contractor's Built-up Roof Manual, and A.I.A. Manual of Built-up Roof Systems; also, in the opinion of Dr. John Woollett, technical consultant for the Special Commission, the flashing and reglet designs do not meet accepted industry standards.
SALEM STATE COLLEGE
LIBRARY FOOTNOTES


6 BBC Accounting Workpaper. Reproduced as appendix exhibit #5.


10 Department of the State Auditor, Commonwealth of Massachusetts, 1972 report of the Bureau of Building Construction.


14 Letter dated September 10, 1973 from Lawrence E. Dennis to Patrick E. McCarthy, "Re: Funding for the library." Reproduced as appendix exhibit #11.

Notes of 10/27/80 interview of Foster Jacobs, SMU Director of Plant and Operations, by Special Commission staff, at 2.

2 Report entitled, "Southeastern Massachusetts University, Project: Repairs to Gymnasium - Natatorium," by Harry Connelly and Foster Jacobs, at 1.

3 SMU report, supra, n. 2, at 1.

4 SMU report, supra, n. 2, at 2.

5 Id.

6 Notes of 10/27/80 interview of F. Jacobs, supra, n. 1, at 1.

7 SMU, departmental purchase order 054545000, 5/15/79.

8 SMU report, supra, n. 2, at 1.

9 Notes of 10/31/80 phone interview of Larry Lonas of Aqua-Craft, Inc., by Special Commission staff.

10 Id.

11 SMU report, supra, n. 2, at 1.

11a Notes of 10/31/80 phone interview of David Minetti, customer service at Beinkell, Inc., by Special Commission staff, supra.

11b Notes of 10/30/80 phone interview of Rodney Andrews, owner of Andrews Gunite Co., Inc., by Special Commission staff, supra.

11c Notes of 10/31/80 phone interview of L. Lonas, supra, n. 9.

12 Notes of 10/10/80 phone interview of Rodney Andrews, supra, n. 11b.

13 Notes of 10/31/80 phone interview of L. Lonas, supra, n. 9.

14 Notes of 11/6/80 consultation with John Woollett by Special Commission staff.


15 Notes of 10/27/80 phone interview of F. Jacobs, supra, n. 1, at 1-2.

16 SMU report, supra, n. 2, at 3-4.

17 Invoice No. c-8893, July 24, 1979, Montle Plumbing and Heating Co., Fall River, MA, "Re: Mod. to Swimming Pool Area, SMU project #78-15A - P.O. No. 0521370-00, requisition order no. 5."

18 Notes of 10/27/80 interview of F. Jacobs, supra, n. 1, at 1.

19 SMU report supra, n. 2, at 5. Also see notes of 10/27/80 interview of F. Jacobs, supra, n. 1, at 2.

20 Notes of 10/23/80 phone interview of Foster Jacobs by Special Commission staff, at 1.


23 Physical Education Building, Project E61-4, contract no. 7, SMU, North Dartmouth, MA, change order number 3.

24 Letter dated November 9, 1970 from Bruno Venier, clerk to Walter J. Poitrast, Director of the BBC, "Re: Change Order Request No. 3." Also see letter dated November 25, 1970, to Libby Albanese, at the BBC, "Re: Physical Education Building, SMU contract E61-4 #7."


**FOOTNOTES**

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Letter dated November 18, 1970, from Walter J. Poitras to John Guarino, &quot;Re: Continued services of the designer.&quot; Reproduced as appendix exhibit #2.</td>
</tr>
<tr>
<td>3</td>
<td>Memorandum of approval dated October 12, 1971, from Walter J. Poitras to Alan Altshuler, &quot;Re: Contract award.&quot; Reproduced as appendix exhibit #3.</td>
</tr>
<tr>
<td>4</td>
<td>Certificate of use/occupancy, reproduced as appendix exhibit #4.</td>
</tr>
<tr>
<td>5</td>
<td>Certificate of final inspection, release, and acceptance, reproduced as appendix exhibit #5.</td>
</tr>
<tr>
<td>6</td>
<td>Notes of June 6, 1980, interview of Arthur Berube by Special Commission staff, at 1. Reproduced as appendix exhibit #6.</td>
</tr>
<tr>
<td>8</td>
<td>Letter dated November 3, 1972, from Catherine E. Comeau to David Flynn, &quot;Re: Drainage problems with the new athletic fields.&quot; Reproduced as appendix exhibit #8.</td>
</tr>
<tr>
<td>12</td>
<td>Letter dated May 4, 1973, from Adrian Rondileau to E. Edward Rossi, &quot;Re: Executing the certificate for use and occupancy.&quot; Reproduced as appendix exhibit #12.</td>
</tr>
<tr>
<td>14</td>
<td>See n. 12, supra.</td>
</tr>
<tr>
<td>15</td>
<td>Letter dated February 8, 1974, from Walter J. Poitras executed by Robert E. Allard to Division of State Colleges, &quot;Re: Expiration of applicable guarantee.&quot; Reproduced as appendix exhibit #13.</td>
</tr>
<tr>
<td>16</td>
<td>Letter dated March 8, 1974, from Catherine Comeau to David Flynn, &quot;Re: Problems that should be corrected prior to acceptance.&quot; Reproduced as appendix exhibit #14.</td>
</tr>
<tr>
<td>17</td>
<td>Memorandum dated December 14, 1979, from John Meder and Ronnette Riley to Richard McCarthy, &quot;Re: Bridgewater State College.&quot; Reproduced as appendix exhibit #15.</td>
</tr>
<tr>
<td>18</td>
<td>Memorandum dated December 19, 1979, from Kyle Hanton, &quot;Re: Site visit, Bridgewater State College athletic fields.&quot; Reproduced as appendix exhibit #16.</td>
</tr>
<tr>
<td>19</td>
<td>See n. 16, supra.</td>
</tr>
<tr>
<td>21</td>
<td>Perry Testimony, supra, n. 20 at 17.</td>
</tr>
<tr>
<td>22</td>
<td>Map of the Bridgewater State College athletic fields illustrating the location of each individual test boring conducted. Reproduced as appendix exhibit #17.</td>
</tr>
</tbody>
</table>
23 Summary of the test boring results reproduced as appendix exhibit #18.


25 Ferry Testimony, supra, n. 20 at 15-16.

26 Deveney Testimony, supra, n. 20 at 16-17.

27 Professional opinion of Commission consultant, James C. Deveney.
1 See Report on Department of Public Safety Memorandums Dated 7/16/79 and
7/27/79---Boston State College Tower Building for the Massachusetts Bureau of
Building Construction, January 21, 1980---By Amsler Hagenah MacLean
Architects Inc., (hereinafter, "AHM") at 25.

2 Ibid., at 28.

3 See Department of Public Safety Board of Schoolhouse Structural Standards,
Chapter 788, 1970---Building Regulations for Schoolhouses, Section 877.0,
877.9 (fire protection and firestopping); AHM, at 26-28.

4 See notes of 9/13/79 Report on Investigation/Room Survey at Boston State

5 AHM, at 29.

6 Supra n.4, at 8.

7 Memorandum dated July 27, 1979 from DPS State Building Inspector Alfred
Downey to DPS Chief of Inspections John Olsen, "Re: Boston State College
Tower Building."

8 Memorandum dated July 27, 1979 from Alfred Downey to John Olsen, "Re: Boston
State College Tower Building."

9 Letter dated April 3, 1980 from Charles Hagenah to Paul Conolly of the BBC,
"Re: Budget Increase to Include DPS's Requirements, Boston State College
Tower Building."


9. First Amendment to Contract for Designer's Services (U66-1), dated August 24, 1967. See also discussion of redesign clause in Volume VIII of this report, infra, "Design."

10. BBC Memorandum of Approval dated March 27, 1969.


13. op cit., n. 6.


15. op cit., n. 10.


19. BBC contract files.

20. Much of this foregoing discussion is based on the Simpson, Gumpertz & Heger report (op cit, n. 2) especially Chapter 2 (pp. 5 to 26).


22. Letter dated October 8, 1973, from DOC to EDS, Re: field examination by DOC.


24. BBC change order files.


26. Report to BBC dated February 27, 1976, from Roger Karlsson of EDS to Henry Salic of BBC.


28. Joe Cohen, When the Chips Are Down ... , Student Center for Educational Research and Advocacy (UMass/Amherst), 1980, p. 1


30. Loomis and Loomis, "Structural Report Regarding the Behavior of the Steel Relief Angles Supporting the Exterior Masonry Veneer at the University of Massachusetts Library, Amherst." September 4, 1979, p. 3.

31. Ibid., pp. 2-3.

32. Ibid., p. 2.

33. Ibid., p. 4.


36. Memorandum dated September 20, 1979, from Donald A. Robinson (University Health Services, Amherst) to Terence Burke (Director of same); Re: September 19 on-site visit.

37. SGH report, op cit., Abstract

38. Ibid., p. 64.

39. Ibid., p. 72.

40. Ibid., p. 65.


42. Ibid., p. 65.

43. Ibid., p. 72.

44. Ibid., pp. 66-67.

45. Ibid., Abstract.

46. Ibid., p. 67.

47. Ibid., Abstract.

48. Ibid., p. 68.

49. Ibid., Abstract. See also pp. 52-55, 70.

50. Ibid., p. 68.

51. Ibid., p. 69.

52. Ibid., pp. 38-39.

53. Ibid., p. 69.

54. Ibid., pp. 70-71, 61-63.

55. Ibid., Abstract.

56. Ibid., p. 74.

57. Ibid., p. 79.

58. Ibid., Chapter 9, pp. 79 ff.

59. Ibid., p. 78.


63. Designer Selection Board Criteria Sheet for BBC project UA81-1 "Masonry Repairs, Library Building."
Minutes of the Board of Trustees of the University of Massachusetts, April 7, 1976, p. 5.


Capital outlay acts, 1960-1967; 1961, Ch. 544; 1962, Ch. 705; 1963, Ch. 648; 1963, Ch. 522; 1964, Ch. 640; 1965, Ch. 791; 1966, Ch. 590; 1967, Ch. 682.

Summary of utility-improvement contracts: (attached). Source: Special Commission contract survey, based on BBC contract files and Comptroller's cards information.

Merrill Associates, BBC study contracts U63-7#2, and U63-7#3: Stone & Webster, BBC contracts U63-7#4 and #5.

BBC contract U63-7 #13.

Chas. T. Main, op. cit., page III-1.

Minutes of the Board of Trustees of the University of Massachusetts, February 21, 1969.

Minutes of the Board of Trustees of UMass, April 30, 1969.


BBC contract file U63-7 #16

Source: Special Commission survey of BBC contracts.

Source: Special Commission survey of BBC contracts.


Jackson & Moreland to BBC, August 9, 1974.

Ibid.


Certificate of Use and Occupancy, approved October 24, 1974 and attachment.


T. P. deLesdernier to BBC, June 4, 1975.

Jackson & Moreland to BBC, May 1, 1975.

BBC change order files, contract U63-7-16.

Special Commission Survey of BBC Contracts.


Ibid, p. II-2

Ibid, p. IX-1 to XII-10.


Ibid, p. XII-8


Tom Melvin (BBC project engineer) and A. Poulos (BBC engineer) to Jackson & Moreland, May 3, 1977.


Attachment to letter of Robert Wood to Committee on Buildings and Grounds, dated May 12, 1977.


BBC file UA76-2R.

David L. Flynn (DSB executive secretary) to John R. Buckley, June 30, 1977.


Acts of 1977, Ch. 920, Item 7410-8753.

Portrait to Syska & Hennessy, August 10, 1977.

Syska & Hennessy to BBC, Jan. 4, 1978.


Frederick Kussman to Stone & Webster, July 18, 1978.

Memorandum of Approval #78-76, June 27, 1978.

George Kaludis to David Flynn, April 14, 1978.


Ibid., p. 15.

Ibid., p. 6.

Ibid., p. 3.

Ibid., pp. 12-14.

Ibid., p. 3.

Ibid., pp. 5, 22.

Ibid., pp. 27-30.
Ibid., pp. 31-32.


Ibid., p. 5


BBC contract file UA76-2.

BBC project milestone printout dated Sept. 18, 1980.


BBC project UA80-14R

Complaint, Commonwealth of Massachusetts v. Jackson & Moreland, Partnership; et al., Civil Action No. 34886, Suffolk Super. Ct.

Syska & Hennessy, op. cit., n. 54, p.4.

Because of the frequency of high winds in the Columbia Point area, normal door hardware is insufficiently strong to maintain closure. As the hardware breaks down the university spends $200 per door to replace the closers with new ones of greater holding capacity. This problem can be attributed to a design specification oversight resulting from unusual local conditions. In the Service and Supply Building (150) the reflective glass installed by the general contractor (now out of business) was defective and will have to be replaced at the university's expense for estimated cost of approximately $5,500. Another $2,500 is required to make repairs to the masonry and flashing on the promenade roof deck of this building, due in part to poor design detailing as well as to low quality construction. Excessive leaking around the windows of the Library has required expeditiously caulking and corrections to window flashings and lintels, which were so long that they extended into the exterior brick. Material replacement costs approach $30,000. Another $15,000 was spent to install tinted glass in the 10th floor greenhouse-type skylight in order to reduce the excessive heat gain from solar energy which overloaded the area HVAC systems. Tinted glass had been specified in the first place but the contractor had been allowed to substitute clear glass in a schedule expediency measure. It has cost $150,000 to replace the roof and promenade deck of the Library. The original roofing materials were removed down to the structural slab and replaced with liquid membrane, new thermal insulation and new storm ballast. The roofing system of this, and the other campus buildings, had to be designed not only to withstand the elements, but to insulate the interior spaces from the sound of low flying aircraft as well. In this particular application the sequence of installation was mismanaged and resulted in a make-shift assembly that failed almost immediately.

Investigation by the Attorney General's office of the circumstances surrounding the design and construction of the mechanical system is in progress (the initial HVAC engineer was replaced during the project life), as of December 1980.

As a result of design oversight the hatchway in the Pumphouse (161) intended to permit removal of pumps and other equipment for servicing was buried under the promenade paving and the roof membrane. Essentially the use of the hatch requires the demolition and replacement of a large section of roofing and paving with the attendant likelihood of creating leaking problems. Contract UST76-7 provided $75-80,000 for the demolition and repair of the roof/paving area of which $15,000 was apportioned for the hatchway itself.

The building code of the Commonwealth suggests the need for one brick tie every 2 square feet of wall surface.
4. Notes of 7/18/79 interview of Dr. Lamar Soutter by Special Commission Staff, at 1.
8. BBC Memorandum of Approval number 66-79.
12. BBC Contract Number 229, Supra n.9.
19. BBC Instructions to Designer and Standard Specifications, Appendix A.
20. BBC Instructions, Supra n. 19. Appendix A.
23. Letter dated June 5, 1970, from Walter Poitrast to Ritchie Assoc
24. Letter dated June 5, 1970, from Walter Poitrast to Ritchie Assoc


29. Letter dated December 2, 1971 from Peter Moyes to Walter Poit.


31. Soutter interview, Supra n. 4, at 1.


36. BBC Memorandum of Approval number 72-66.

37. Letter dated July 7, 1972 from Joel Camino to Vappi Construction Co.

38. Letter dated November 29, 1972 from Fred H. Lindquist to Peter Moyes.

39. See e.g., notes of 7/18/79 interview of Joseph Glynn by Special Commission Staff, at 1.

40. Memorandum to files dated October 11, 1972, by John H. Fuller.

41. Letter dated October 20, 1972 from John Fullerton to Roland Martineau.

42. Memorandum to files dated October 25, 1972, by John H. Fuller.

43. Memorandum of Special Job meeting, November 1, 1972.

44. BBC Change orders approval number 13, 14, 15, 16, for Mass. State Project U66-3 #2.

45. BBC Change orders approval number 13 for Mass. State Project U66-3 #2.

46. BBC Change orders approval number 15 for Mass. State Project U66-3 #2.
47. BBC Change orders approval number 16 for Mass. State Project U66-3 #2.

48. BBC Change orders approval number 14 for Mass. State Project U66-3 #2.

49. BBC Change orders approval number 43 for Mass. State Project U66-3 #2.

50. BBC Change orders approval number 36 for Mass. State Project U66-3 #2.

51. BBC Change orders approval number 65 for Mass. State Project U66-3 #2.

52. BBC Change orders approval number 67 for Mass. State Project U66-3 #2.


54. Boston Herald Traveler - Record American, Nov. 29, 1972, page not shown.


56. Minutes of BBC meeting June 5, 1974.

57. BBC Memorandum of Approval number 74-61.


60. Memorandum dated Dec. 16, 1974, from Malcolm MacPhail to Dennis Ditelberg.

61. Commonwealth of Massachusetts v. The Ritchie Organization, Suffolk Superior Court, Number 8223.


64. Letter dated Aug. 6, 1974, from Lamar Soutter to Robert Wood.

65. Interoffice memorandum dated April 10, 1975, from Guido Manjo to R.W. Butcher.


69. Notes of 12/12/80 interview with Raymond Quinlan by Special Commission staff, at 1.

70. Quinlan interview, Supra n. 69, at 1.


72. Quinlan interview Supra, n. 69, at 1.

73. Quinlan interview Supra, n. 69, at 1.

74. See Memorandum of Conference dated April 19, 1971; Letter dated April 28, 1971 from Robert Terhune to Peter Moyes; Letter dated June 10, 1971 from Mark Mendall to Eugene Malloy


76. Letter dated July 24, 1974 from Leigh Smith to Walter Poitras

77. Letter dated September 28, 1977 from Maxwell Pounder

78. Letter, Pounder to Poitras, Supra n. 77, at 2.

79. BBC Bid opening document, Supra n. 71.

80. Quinlan interview, Supra n. 69, at 1.


83. Scott interview, Supra n. 81, at 1.

84. Special Commission staff analysis dated July 12, 1979.


PONDVILLE FOOTNOTES

1. Special Commission Questionnaire, completed for BBC contract H61-3 on October 18, 1979, by Ernest J. Sullivan, Principal Civil Engineer for the Massachusetts Department of Public Health, Section B 14.


3. Acts 1980 - Chapter 519, "An Act Authorizing the sale or lease of Pondville Hospital."


5. Id.


8. Id.


10. State Auditor Report No. 79-3-5-302, supra, n. 9, at 5 and State Auditor Report No. 74-3-5-302, supra, n. 9, at 4.


15. Id.


17a. Special Commission Internal Memorandum dated December 30, 1979, "Re: Pondville Hospital."

18. Id.

19. Notes of 12/5/80 phone interview of Eleanor Hall, Pondville Hospital Operating Room Supervisor, by Special Commission Staff.

20. Id.


22. Special Commission Questionnaire, completed for BBC contract H74-5 on October 18, 1979, by Ernest Sullivan, section B 4.

23. Special Commission Questionnaire, BBC contract H74-5, supra, n. 1, section C.

24. Letter dated July 26, 1976, from John A. Desmon, Director Metropolitan Boston Air Pollution Control District of the Massachusetts Department of Public Health, to Dr. Ronald Messur, Superintendent Pondville Hospital, "Re: MBAPCO - Walpole, S.C.C. - Regulations 8.1.3. & 8.1.4."

25. BBC Mechanical and Electrical Section Internal Memorandum, dated March 18, 1975 from Thomas Melvin to Walter Poitrast, "Re: Incinerator Renovations - Pondville Hospital, Request to Transfer $20,000.00 from the Air Pollution Abatement Account to the above Project."
26. Special Commission Questionnaire, completed on October 18, 1979 for BBC contract H73-4 by E. Sullivan, supra, n. 1, Section C.

27. Id.

28. Id.

29. Letter dated April 10, 1978 from Charles W. Smith, Pondville Hospital Steward, to Frank Johnson, BBC Associate Civil Engineer.

30. Internal Memorandum of the Trane Company, Burlington, Iowa, dated March 13, 1979 from Gene McNurlen to Warren Johnson, "Re: Pondville Hospital, Norfolk, Massachusetts."

HAVERHILL FOOTNOTES

1. Cost breakdowns supplied by Norman Goldman, Assistant Project Engineer, Massachusetts Department of Public Works, December 18, 1980.

2. All design cost figures supplied by Gordon Guest, Vice President, Anderson-Nichols & Company, Inc., December 18, 1980.

3. All construction cost figures supplied by Norman Goldman, Assistant Project Engineer, Massachusetts Department of Public Works, December 17, 1980.


6. Memorandum dated November 5, 1979, from J. C. Deveney to Richard J. McCarthy, "Re: Parking Deck Construction".

7. Letter dated June 7, 1979, from Sherman Eidelman, Massachusetts Department of Public Works to Thomas P. Coronis, Coronis Construction.

8. See notes 2. and 3. above.

9. Deveney, see note 6. above.


12. Thornton, see note 11. above.

13. Thornton, see note 11 above.


15. Thornton, see note 11 above.

16. Thornton, see note 11 above.

17. Thornton, see note 11 above.

18. Letter dated September 12, 1979, from Richard W. Sierk, Jr., Frame Associates Limited to King Erectors, Inc.


20. Sierk, see note 18. above.

21. Thornton, see note 11 above.

22. Sierk, see note 18 above.

23. Sierk, see note 18 above.

24. Edwards & Kelcey, see note 10. above

25. Interview of Gordon Guest by Commission staff December 18, 1980

26. Deveney, see note 6. above.


29. Thornton, see note 11. above.

2. Special Commission Questionnaire, completed for the Worcester County Jail and House of Correction on August 24, 1979 by James Ford, Section B.

3. Id.

4. Special Commission Questionnaire, supra, n. 2, Section C.

5. Id.

6. Report dated November 9, 1974 from Captain Ralph N. Suliman to Assistant Deputy Master Harold F. Gabriel "Re: Outside of Building Inspection (Stucco Coating)."


11. Notes of 12/19/80 phone interview of Sheriff Francis T. Deignan by Special Commission Staff. Also see Special Commission Internal Memorandum dated December 19, 1980 "Re: Construction Defects in the Worcester County Jail."

12. Special Commission Questionnaire, Worcester County Jail, supra, n. 2, Section D.


16. Letter dated November 1, 1973 from J. Wackell to Edward G. Granger, Jr., "Re: West Boylston Jail."

17. Id.


19. Letter dated June 12, 1973 from Granger Jr., to Mr. Wayne Salo, "Re: Worcester County Jail."

20. Two letters dated November 1, 1973 from J. Wackell to E. Granger, Jr., "Re: Worcester County Jail."

21. Reports dated November 9 and November 15, 1974, from R. Suliman to H. Gabriel, "Re: Outside of Building Inspection (stucco coating)."


23. This analysis is in accordance with the opinion of Dr. John Woollett, Associate Professor of the Harvard Graduate School of Design and consultant to the Special Commission.


26 Special Commission Internal Memorandum dated December 19, 1980, supra, n. 11.

27 Id.

28 Notes of 1/16/80 interview of William V. Masiello by Special Commission staff.

29 Notes of 12/11/80 phone interview of J. Ford by Special Commission staff.

30 Special Commission Questionnaire, Worcester County Jail, supra, n. 2, section D.

31 Change order #21, Worcester County Jail. Also see letter dated October 26, 1971 from Wayne O. Salo, Assistant Construction Supervisor for Masiello & Associates, Inc., to Paul X. Tivnan, "Re: Worcester County Jail."

32 Letter dated February 8, 1974 from E. Granger, Jr., to W. Masiello, "Re: Worcester County Jail."

33 Letter dated September 12, 1974 from Joseph A. Smith, Sheriff Worcester County Jail, to Philip J. Philbin, Chairman Worcester County Commissioners.

34 Notes to 12/11/80 phone interview of J. Ford, supra.

35 Letter dated February 7, 1975 from J. Wackell to Stewart-Decatur Security Systems, Inc.

36 Change orders 1 and 2, furnishings contract, Worcester County Jail, supra, n. 2, section 2.

37 Notes of 12/11/80 phone interview of J. Ford, supra.

38 Special Commission Questionnaire, Worcester County Jail, supra, n. 2, section D.

39 Notes of 12/9/80 interview of F. Deignan, supra, n. 11.
HINGHAM DISTRICT COURT FOOTNOTES

1 Notes of June 19, 1979, interview of Charles Drake and Roger Guay by the Special Commission staff, at 5.


UMASS BUILDING AUTHORITY FOOTNOTES


7. List supplied by Bill Warren of UMass/Amherst Physical Plant Department.


12. Letter dated March 26, 1976 from E. J. Ryan (UMass/Amherst Physical Plant engineer) to Morris Goldings (UMBA chief counsel), "Re: UMBA Project #11 Campus Center - Roof Leaks."


18. Ibid, "Repair Recommendations" pp 10ff.; costs of repairs: op cit, n. 7, for original repair contract prices; and UMBA minutes, October 21, 1979, p. 3, for change order on firsts repair contract.

19. Loomis to Leo Liberman, January 8, 1979, Re: "Proposed medium priority."


21. Memorandum dated September 18, 1979 from George Beatty, Jr. to Harvey F. Kline, Secretary, Faculty Senate.


25 Clarence Rainess & Co., certified public accountants, "Review of Accounting Procedures and Financial Reporting of the University of Massachusetts at Amherst (Phase II) for the UMass Building Authority," February 27, 1976, pp. 5-6.


27 As originally voted by UMBA on December 18, 1978. See also Minutes of meeting of UMass Building Authority, October 31, 1979.


29 G. L. C. 7 s. 40A.

Testimony of Robert L. Nason, Special Commission, 6/1/80 at 6.

Nason testimony, *supra*, n. 1, at 5-6.

Hearing on Motion, Melrose Housing Authority v. William Kroky, Middlesex Superior Court, no. 78-2463, August 2, 1978 at 18.


Nason testimony, *supra*, n. 1, at 32-33, 38.

Nason testimony, *supra*, n. 1, at 11.

*Id.*


*Id.*

*Id.*


*Id.*


Letter dated March 23, 197, from Columbia Cornice Co. to Schena Construction Co.


Nason testimony, *supra*, n. 1, at 17.


*Id.*

Nason testimony, *supra*, n. 1, at 18.

*Id.*

Testimony of Russell J. Kenney, Special Commission 6/11/80 at 22.

Nason testimony, *supra*, n. 1, at 19.

*Id.*

Nason testimony, *supra*, n. 1, at 24-25.


Nason testimony, *supra*, n. 1, at 23.

Nason testimony, supra, n. 1, at 25.
Nason testimony, supra, n. 1, at 33.
Nason testimony, supra, n. 1, at 47.
Nason testimony, supra, n. 1, at 37.
Nason testimony, supra, n. 1, at 28.
Nason testimony, supra, n. 1, at 43-45.
Kenney testimony, supra, n. 24, at 31.
Kenney testimony, supra, at 11. supra, n. 2A, at 12.
Kenney testimony, supra, n. 24, at 12.
Kenney testimony, supra, n. 24, at 15.
Id.
Kenney testimony, supra, n. 24, at 13-14.
Kenney testimony, supra, n. 24, at 16-17.
Kenney report, October 1, 1979, supra, n. 40, at 1.2.
Kenney report, October 1, 1979, supra, n. 40, at 4.1.
Kenney testimony, supra, n. 24, at 18.
Kenney testimony, supra, n. 24, at 19.
Kenney testimony, supra, n. 24, at 25.
Kenney testimony, supra, n. 24, at 26.
Kenney testimony, supra, n. 24, at 28.
Kenney testimony, supra, n. 24, at 26-27.
Kenney testimony, supra, n. 24, at 28.
Kenney testimony, supra, n. 24, at 29-30.
Kenney testimony, supra, n. 24, at 39-40.
Kenney testimony, supra, n. 24, at 35-36.
68 Kenney testimony, supra, n. 24, at 40-41.
69 Brown testimony, supra, at 7 and 18.
72 Brown testimony, supra, n. 71, at 7.
73 Brown testimony, supra, n. 71, at 15.
74 Brown testimony, supra, n. 71, at 18-20.
75 Nason testimony, supra, n. 1, at 10-11.
76 Nason testimony, supra, n. 1, at 8-9.
78 Brown testimony, supra, n. 71, at 23.
79 Kenney testimony, supra, n. 24, at 48-50.
80 Brown testimony, supra, n. 71, at 31-33.
RANDOLPH HOUSING FOR THE ELDERLY FOOTNOTES

2 Letters dated October 19 and November 5 and 21, 1973, from E. Ross to Farwell Construction Corp.
3 Letters dated October 19 and 23 and November 2, 13 and 21, 1973, from E. Ross to Farwell Construction Corp.
6 Notes of 1/4/79 interview of Harvey Teed, clerk-of-the-works during the project's construction and presently Head of Maintenance at the project, and Joseph Welch, then Executive Director of the RHA and presently its legal counsel, by Special Commission staff. Also see notes of 10/8/80 phone interview of Michael O'Shea by Special Commission staff.
7 Notes of 10/8/80 phone interview of M. O'Shea, supra, n. 6.
8 Notes of 1/4/79 interview of H. Teed and J. Welch, supra, n. 6.
9 Notes of 10/8/80 phone interview of M. O'Shea, supra, n. 6.
10 Id.
11 Notes of 1/4/79 interview of H. Teed and J. Welch, supra, n. 6. Also see notes of 10/8/80 phone interview of M. O'Shea, supra, n. 6.
12 Notes of 10/8/80 phone interview of M. O'Shea, supra, n. 6. Also see notes of 1/4/79 interview of H. Teed and J. Welch, supra, n. 6.
13 Id.
15 Id.
16 Letter dated January 8, 1974, from Joseph Welch of RHA to M. Antell.
17 Id.
18 Notes of 10/8/80 phone interview of M. O'Shea, supra, n. 6.
19 Field notes on February 12, 1974 by M. O'Shea.
20 Letters dated March 2 and 28, 1974, from M. O'Shea to Farwell Construction Corp.
21 Letter dated March 2, 1974, from M. O'Shea to Farwell, supra, n. 20.
23 Plans submitted March 5, 1974, by the Farwell Constructon Corp. to the Department of Public Safety.
24 Letter dated March 14, 1974, from H. Heney to the RHA.
25 Letter dated March 16, 1974, from M. O'Shea to Farwell Construction Corp.
26 Letter dated March 2, 1974, from M. Antell to the RHA.
27 Letter dated March 25, 1974, from Robert White of Farwell Construction Corp. to M. O'Shea.
28 Letter dated March 28, 1974, from M. O'Shea to Farwell Construction Corp.
29 Letter dated April 16, 1974, from M. O'Shea to Farwell Construction Corp.
Notes of 10/4/80 phone interview of M. O'Shea by Special Commission staff.

Id.

Notes in credit file of the First National Bank of Boston, dated January 14, 1974, under Farwell Construction Corp.

Notes of 1/4/79 interview of H. Teed and J. Welch, supra, n. 6.

Housing for the Elderly, Project 667-3, Randolph, MA, Change Order Number 8.

Letter dated June 13, 1974 from M. Antell to J. Welch, "RE: State-Aided Housing for the Elderly, project no. 667-3, Randolph, MA," and letter dated June 20, 1974 from M. O'Shea to Kenneth Christie of the Department of Community Affairs, and letter dated June 21, 1974 from M. O'Shea to Lewis Crampton, Commissioner of the DCA.

Letter dated June 21, 1974 from M. O'Shea to L. Crampton.

Housing for the Elderly, Project 667-3, Randolph, MA, Change Order Number 22.

Notes of 11/13/80 phone interview of J. Welch by Special Commission staff.

Record of storm leaks on April 3, 1975, made by a clerk on M. O'Shea stationery.


Notes from 10/4/80 phone interview with M. O'Shea by Special Commission staff.

Letters dated January 29 and March 5, 1974 from M. Antell to M. O'Shea.

Letter dated February 7, 1974 from James Barry of Farwell Construction Corp. to Thomas DePalma, P.E.

Notes of 10/9/80 consultation with John Woollett, by Special Commission staff.

Notes of 10/14/80 consultation with John Woollett, by Special Commission staff.

Letter dated March 7, 1974 from M. O'Shea to Farwell Construction Corp.

Notes from 10/4/80 phone interview with M. O'Shea by Special Commission staff.

Housing for the Elderly, Project 667-3, Randolph, MA, Change Order Number 19.

Letter dated March 8, 1978 from Ronald Lowe of Farwell Construction Corp. to M. O'Shea.

Notes of 10/9/80 consultation with J. Woollett, supra, n. 44.

Notes of 1/4/79 interview of H. Teed and J. Welch, supra, n. 6.

Letter dated November 27, 1973 from E. Ross to Farwell Construction Corp.
THE COMMISSION'S NARRATIVE: FOOTNOTES

1. Testimony of Frank R. Masiello, Public Hearing, 3/25/80, p. 31
2. Id., p. 3
4. Id., p. 136
5. Id., p. 136
6. Id., p. 136-137
8. Testimony of Frank R. Masiello, Public Hearing, 3/31/80, p. 78
10. Id., p. 48
11. Id., p. 125
12. Testimony of Matteo Girardi, Public Hearing 4/2/80, p. 8
13. Id., p. 13
14. Id.
16. Id., p. 11
17. Id., p. 13
18. Omitted from text
20. Id., Dr. John W. Ward's statement, p. 31
21. Testimony of Sherwood Tarlow, Public Hearing, 4/7/80, p. 64
22. Id., p. 65
23. Testimony of Sherwood Tarlow, Public Hearing, 4/7/80, p. 35-36
24. Id., p. 62
25. Id., p. 63
26. Id.,
27. Testimony of Sherwood Tarlow, Public Hearing, 4/7/80, p. 69
28. Omitted from text
29. Omitted from text
30. Omitted from text
31. Testimony of Sherwood Tarlow, Public Hearing, 4/8/80, p. 21
32. Id., p. 68
33. Id., p. 7
34. Testimony of James Bauchat, Public Hearing 4/8/80, p. 23
35 Id., p. 25
36 Testimony of William A. Waldron, Public Hearing, 4/9/80, p. 34
37 Testimony of Anthony DeFalco, Public Hearing, 4/9/80, p. 42
38 Testimony of Mark Demorest (re: Donald Dwight), Public Hearing, 4/14/80, p. 4-5 (statement of John William Ward)
39 Testimony of Raymond Allard, Public Hearing, 4/22/80, p. 45
40 Testimony of Raymond Allard, Public Hearing, 4/22/80, p. 57
41 Testimony of John Wackell, Public Hearing, 4/28/80, p. 20
42 Id., p. 28-29
43
44 Testimony of Audrey Rawson, Public Hearing, 5/1/80, p. 9
45 Id., p. 34
46 Testimony of Stanley Lupkin, Public Hearing, 5/8/80, p. 26
47 Testimony of William V. Masiello, Public Hearing, 5/12/80, p. 68
48 Id.
49 Id., pp. 7-8
50 Id., p 9
51 Id., p. 129
52 Id.
53 Testimony of William V. Masiello, Public Hearing, 5/13/80, p. 30
54 Id.
55 Id.
57 Testimony of Francis Falzarano, Public Hearing, 5/15/80, p. 6
58 Id.
59 Testimony of Patricia Vandenberg, Public Hearing, 5/15/80, p. 13
60 Testimony of John M. Woollett, Public Hearing, 5/21/80, p. 5
61 Testimony of James C. Deveney, Public Hearing 5/21/80, p. 6
63 Testimony of Daniel Shields, Public Hearing, 6/2/80, p. 96
64 Id., p. 56
65 Id., p. 59
67 Testimony of William Harding, Public Hearing, 6/4/80, p. 28
68 Testimony of Albert P. Manzi, Public Hearing, 6/9/80; Reardon speaks p. 10
69 Testimony of Robert L. Nason, Public Hearing, 6/11/80, p. 17
70 Id., p. 25
71 Testimony of Russell J. Kenney, Public Hearing, 6/11/80, p. 10
72  Id., p. 14
73  Testimony of Lewis Perry, Public Hearing, 6/11/80, p. 17
74  Id.
75  Testimony of Frank R. Masiello, Public Hearing, 6/16/80, pp. 31-32
76  Id., p. 8
77  Id.
78  Testimony of Endicott Peabody, Public Hearing, 6/18/80, pp. 14-15
79  Id., p. 13
80  Id., p. 10
81  Id., p. 12
82  Testimony of Harold Greene, Public Hearing, 6/24/80, p. 7
The Commonwealth of Massachusetts

FINAL REPORT

TO THE

GENERAL COURT OF THE

SPECIAL COMMISSION CONCERNING

STATE AND COUNTY BUILDINGS


December 31, 1980

[The complete text of the report, including the twelve volumes and the miscellaneous investigative material, is on file in the Archives Division of the Secretary of the Commonwealth.]
December 31, 1980.

Mr. Wallace C. Mills  
Clerk of the House of Representatives  
State House, Room 145  
Boston, MA 02108

Dear Mr. Mills: Enclosed for filing today is the Final Report of the Special Commission Concerning State and County Buildings. The participation of the Attorney General in this Filing is limited in accordance with his separate views in Volume IX.

Very truly yours,

Francis X. Bellotti  
Frances Burke  
Peter Forbes  
Daniel O. Mahoney  
Walter J. McCarthy  
John William Ward  
Lewis H. Weinstein
The Honorable William M. Bulger  
President of the Senate  
State House, Room 330  
Boston, Massachusetts 02133

The Honorable Thomas W. McGee  
Speaker of the House of Representatives  
State House, Room 356  
Boston, Massachusetts 02133

December 31, 1980

Dear Mr. President and Mr. Speaker:

We have today delivered to the Clerks of the Senate and House the Final Report of the Special Commission Concerning State and County Buildings. With its submission the Special Commission comes to an end. It has been a long and arduous experience, but I speak for all the Commissioners and their staff, when I say it has truly been a privilege and a pleasure to have served the General Court and the people of the Commonwealth of Massachusetts.

With literally my last words as Chairman of the Special Commission, I wish especially to give public praise to my fellow commissioners who have given their time and their talent freely in public service. We have been deeply involved together now for more than two years. It has been humanly satisfying as well as professionally rewarding to have been their Chairman.

In any enterprise as complex as the work of the Special Commission, one depends on many others. The Commissioners believe they have had the benefit of the finest professional investigative and legislative staff to have been assembled in the history of the Commonwealth. We owe them much. We are in debt to many others, too, and our "Acknowledgements" of their help is, we know, insufficient to express our gratitude. But I wish especially, as we submit our final report to
you, to thank you for your ready availability whenever the need arose. There have been differences between us, to be sure, but they never diminished your public responsibility toward the Commission.

Since it is the last day of 1980, as well as the last day in the life of the Special Commission, may I wish you a good new year.

Cordially,

JOHN WILLIAM WARD
TABLE OF CONTENTS

VOLUME I

Foreword
Letter of Transmittal to the Clerk of the House of Representatives
Letter of Transmittal to the President of the Senate and Speaker of the House of Representatives
Table of Contents
Members of the Special Commission Concerning State and County Buildings
Acknowledgements
What We Have Learned

VOLUME II

Report on the Investigation of MBM and Related Entities

Why the Commission Investigated Matters Relating to MBM
Corporate Overview of MBM
MBM's Activities in Massachusetts Prior to 1969
MBM's Procurement of the UMass/Boston Project Management Contract
Evidence Relating to Whether MBM Obtained the UMass/Boston Contract Through a Corrupt Agreement
The Terms of MBM's UMass/Boston Contract, MBM's Anticipated Profit, and MBM's Performance on the Contract
Challenges to MBM's UMass/Boston Contract
The Investigation, Prosecution, Appeals and Post-Trial Motions of DiCarlo and MacKenzie
The Manzi Trial of 1979
Activities in Massachusetts of William F. Harding and Daniel Shields
At Times When They Were Not Working for MBM
Conclusions
Appendices A through F
VOLUME III

Description of Findings in Individual Cases: Award of Design Contracts

A New Campus for Holyoke Community College

Masiello
If a Hand is Open
Frank Masiello in the 1960's: The Education of a Political Architect
How Masiello Used Political Contributions as a "Door-Opener" to Suffolk County Contracts
Worcester County
Shrewsbury Housing Authority
Taunton Housing Authority
Fall River Housing Authority
Masiello's Strategy to Win the Springfield Mental Health Center Contract

VOLUME IV

The Award of Design Contracts: An Overview

Introduction
The Peabody Era
Introduction
Background: Fundraising and Design Contract Awards
The Boiler Room: Squeezing Money Out of a Stone
Simple Favoritism: How Design Contracts Were Awarded
Design Legacy of Simple Favoritism
Conclusion
Volpe Era
Before the Establishment of the Designer Selection Board
After the Establishment of the Designer Selection Board
Sargent Era
Introduction
The Significant Individuals
The Architects
The Commissioners of A&F
Conclusion
Desmond and Lord

Introduction
  History of the Firm
  Thissen’s Role in the Firm
  Emphasis on Public Contracts
  Desmond and Lord’s Public Design Contracts

The Selection Process
  Contracts Within the Jurisdiction of the Bureau of Building Construction
  Massport Contracts

Performance of Design Contracts

Fee Analysis
  Standard Procedures
  Desmond and Lord Analysis

Political Influence
  Method of Political Contributions
  Financial Analysis
  Cash Generation

Conclusion

VOLUME V

Suppliers

Introduction

The Methods
  Specifications
  Nonfiled Sub-bids
  Filed Sub-bids
  Allowances
  Forms of Kickbacks

Case Studies from Investigations and Testimony
  Millwork: Ralph Iaccarino and Sons Lumber Co., Inc.
  Hardware: Shawmut Hardware Corporation, Inc.
Landscaping: Arello, Inc.
Office Furniture: Krizik and Corrigan, Inc.; Commonwealth Stationers, Inc.
Security Windows: The William Bayley Company
Brick: Provost Company, Inc.
Athletic Equipment: SunLes Sports Company

Conclusion
Driscoll Weber
Testing Consultants

Influence Exercised on Administrative and Legislative Action

Overview of Strategies to Influence Legislators and Neutralize Supervision

Specific Means of Buying Access
  Political Fundraising
  Related Political Activity
  Professional Fees
  Entertainment
  Travel and Conventions
  Gifts
  Sports Events
  Free Services and Use of the Firm's Credit

The Access That was Bought

Masiello and Associates, Senator James A. Kelly and the Legislative Process
  What the Masiello's Did for Kelly
  What Kelly Did in Return

The J.A. Sullivan Corporation and the B.B.C.
  Contractor Selection at Salem State College
  Payment to Frederick J. Russman
  Performance as a Contractor
  Cash Generation
  Conclusion
Laundering Improper Campaign Contributions

Introduction
The DMJM Story
What the Commission Found in Manzi's Bank Account
How The Commission Found What It Was Looking For

 Procedures for the Commission Audit
Guarantee Bank and Trust Accounts 4-336-7011 and 4-338-1359
Bank Procedures Followed in Retrieving Information

Other Sources of Information
Sargent Reception Committee Treasurer Paul H. Hogan's Role
Under Manzi
Sargent Committee Records

Boston Globe Article

Findings of the Commission's Audit
Tracing the California Cashier's Checks
California Cashiers Checks Deposited on September 14, 1971
Sargent Reception Committee Deposit on September 14, 1971
Contributors
Probable Source of the Cashiers Checks
California Cashiers Check's Deposited on February 7, 1972
Sargent Reception Committee Deposit on February 7, 1972
Contributors
California Cashier's Checks Deposited on March 30, 1972
Sargent Reception Committee Deposit on March 30, 1972
Contributors
May 2, 1972 Deposit
Contributors
Other Unidentified Contributions
Unidentified Cashier's Checks
Undeposited Cash Contributions

Conclusion
Introduction
An Architect with a Local Monopoly
An Architect’s Relationship with a County
Another Architectural Firm
A Former Mayor Hired by an Architect as a “Consultant”
An Engineering Firm
A Major Engineering Consultant to Architects Under Investigation
A General Contractor’s Petty Cash Fund
Another Construction Company
A Family of Companies

Conclusions

VOLUME VI

Construction Defects, State and County Buildings

Introduction
Summary of State and County Building Construction: 1968-1979
Physical Condition of State and County Buildings Constructed from 1968-1979
  Questionnaire Survey Procedures
  Analysis of Questionnaire Responses
  Technical Investigations and Inspections
  Analysis of Technical Investigative Results
  Building Defects by Category
  Systemic Defects Observed in Technical Investigations

Building Defects and Filed Subcontractors
Review of Contract Time Data
Evidence of Fraud from Technical Investigations
Estimated Construction Costs to Repair Defective Work
Case Studies
   BBC Administered Contracts
   Independent Building Authority Administered Contracts
   DCA Administered Contracts

VOLUME VII

Systems Issues and Findings

The System of Public Construction in Massachusetts
   Introduction
   Scope and Nature of Capital Investments
   Formal Organization and Processes
   Capital Planning and Budget
   Real Property Management
   Programming
   Designer Selection
   Design

VOLUME VIII

Systems Issues and Findings, continued

The System of Public Construction in Massachusetts, continued

Construction Bidding: Subcontractor Selection; Contractor Qualifications; Improper Use of Alternates, Estimated Quantities and Unit Prices; Access to Public Contracts
   Project Management
   Building Maintenance and Repair
   Record Keeping
   Recommended Budget

Campaign Finance
   Introduction
   Findings on the Effects of Private Money on Decision-Making
   Findings on the Failure of Existing System to Enforce Campaign Finance Laws
Summary of Recommendations for Restricting Large Campaign Contributions and Improving the System of Public Finance of Campaigns

Summary of Recommendations for Dealing With Reporting, Disclosure, and Enforcement

Supplement A: Detailed Summary of Campaign Contributions and Expenditures, Statewide Offices, 1978

Supplement B: Detailed Summary of Campaign Contributions and Expenditures, Legislative office, 1978

Supplement C: Detailed Description of Triggering Mechanism

Detecting and Preventing Fraud

The Office of Inspector General
Introduction
Problems in Detection and Prevention
Solutions

Enforcement Statutes
The Need for New Laws
The New Statutes

Piloting the Legislation

Organization: Developing & Drafting Legislative Proposals

Assumptions and Goals
Development of Proposals as a Political Process
The Legislative Process
Floor Action
News Media

The Special Commission in Court

Ward v. Peabody
Public Hearings: Kelly, Thissen, Doe and Greene
Doe v. Ward
In the Matter of Harold Greene
Daniel J. Burke

Other Cases
David B. Coletti
Impounded Cases
Ward V. Manzi

VOLUME IX

The Commission's Narrative

Introduction
Events Leading to Proposals for a Commission
  December Appeal
  Calls for a Commission
  Commission Bill Filed
  Judiciary Committee Hearing
  The Curtin Memo
  Commission Bill to House Floor and Passed
  Senate Passes Bill: Governor Signs

Constitution of the Commission
  First Interim Report

Commission Faces Delay
Assembling Data on State Contracts
  Investigations Initiated
  Commission Evaluates Investigative Alternatives

Consideration of the Budget
The Second Interim Report
Meeting with Governor King
Manzi/Masiello Trial
Agreement with the Governor
Amendments to the Resolve
Discussion of Hearings
The Systems Reform Program
More Budget Delays
  Governor Recommends Funds
  Budget Problems Loom Again
Debate of the Proposed Amendments
  Amendments Approved by House
  Amendments Passed: Sent to the Governor
  Executive Message to the Legislature
  Amendment Rejected: Governor Signs
Back to Business: Development of Proposals
  Preparations for Filing
Investigative Methods
Campaign Law and Campaign Finance Reform
The Filing
Committee Consideration
Future Campaign Research
The Administration Committee Hearing and the Debate Whether to Debate
The Public Hearings
Campaign Bill Drafting Begins
Administration Committee Work on the Legislation
DiCarlo Appears in Public Hearing
Legislation Moves Slowly
Public Perception of the Hearings
Harold Greene Challenges Commission Subpoena
Still No Commitment on the Legislation
Campaign Reform Bill Filed
Calls for Action on Bills
Decision to Request Extension of the Commission
Meeting with legislative Black Caucus
Testimony of William V. Masiello
Extension/Inspector General Voted Out
From Ways and Means to Prorogation
Resolution Not to Prorogue
$300 Million Repair Estimate
Ways and Means Hearing on Inspector General
MacKenzie Testifies
Manzi to Testify
Peabody Ordered to Comply
Testimony on Defective Buildings
Compromise and Conflict on the Inspector General Bill
Greene to Charles Street Jail
Calls for Admission of Campaign Bill
Inspector General Passes the House
Greene Appears Before Public Hearing
Campaign Bill Admitted
Construction Reform Reaches the Floor
Commission Meets with Leadership
Election Laws Hearing on Campaign Bill
Prorogation
House Passes Construction Bill
Committee Work on Campaign Bill
Senate Passes Construction Bill
Conference Committee on the Inspector General
Conference on Construction Reform
Bills to the Governor’s Desk After Surreptitious Alterations
Bribery Bill to King
House Votes Down Campaign Reform
Coletti Challenges the Commission
VOLUME IX, continued

King Signs Criminal Bribery and Construction Bills
The Final Months
   The Final Report
Referrals
   Conflict of Interest Laws of Massachusetts
   Campaign Finance Laws of the Commonwealth
   Perjury
   Federal Hobbs Act
   Federal Mail Fraud
   Other Relevant Criminal Statutes of the Commonwealth
Ongoing Investigations
Legislation
Events in Court
Inspector General Appointment Deadlocked
Legislation for Consideration in 1981
Coletti
Campaign Report
Final Report
Financial History of the Special Commission

Separate Views

VOLUME X

Footnotes to Volumes I-VI and IX

VOLUME XI

Appendices to Volumes I-VI and IX

VOLUME XII

Footnotes and Appendices to Systems Issues and Findings, Volumes VII and VIII
In the Year One Thousand Nine Hundred and Eighty-One.

AN ACT TO INCREASE THE POLITICAL INDEPENDENCE OF THE OFFICE OF INSPECTOR GENERAL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 2 of Chapter 12A, as inserted by chapter three hundred and eighty-eight of the acts of 1980, is hereby amended by striking from the second sentence thereof the words, "the unanimous vote of the attorney general, the state auditor and the governor for a term of five years." and inserting in place thereof the following: the governor, subject to nomination by a majority vote of the deans of the seven schools of law in Massachusetts, being Boston College Law School, Boston University School of Law, Harvard Law School, New England School of Law, Northeastern University School of Law, Suffolk University Law School, Western New England College School of Law. In the event that no dean is then serving at any school, the acting dean shall vote in his place. The name of the person so nominated by majority vote of said deans shall be submitted to the governor for appointment and shall be acted upon by the governor within fifteen days, Saturdays, Sundays and legal holidays not included, in the affirmative or the negative. In the event that the governor fails to respond within the time or rejects the person so nominated, said deans shall again by majority vote forward a single nomination to the governor. This procedure shall be repeated until an inspector general is appointed. The inspector general shall serve for a term of five years.
AN ACT TO FOCUS ACCOUNTABILITY FOR PUBLIC BUILDINGS CONSTRUCTION EXCLUSIVELY ON GENERAL CONTRACTORS, TO ENCOURAGE THE USE OF EFFICIENT COST SAVING ARCHITECTURAL TECHNOLOGY, AND TO BROADEN ACCESS TO PUBLIC BUILDING CONTRACTS, TO BE KNOWN AS THE "CONSTRUCTION ACCOUNTABILITY ACT".

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section forty-four B of chapter one hundred and twenty-four of the General Laws, as most recently amended by section 55 of chapter 579 of the acts of 1980, is hereby amended by striking the following:
5 (A) In section 2 of said section forty-four B, the words, "and
6 every sub-bid submitted in connection with such a contract for a
7 subtrade pursuant to section forty-four F";
8 (B) Section (4) of that section in its entirety;
9 (C) From section (5) of that section the words, "and (4)".

1 SECTION 2. Section forty-four D of chapter one hundred and twenty-four General Laws, as most recently amended by section 55 of chapter 579 of the acts of 1980, is hereby amended by striking section (9) in its entirety.

1 SECTION 3. Section forty-four E of chapter one hundred and twenty-four of the General Laws, as most recently amended by section 55 of chapter 579 of the acts of 1980, is hereby amended by striking the following:
5 (A) In section 1 of said section forty-four E the words, "and
6 whenever sub-bids are invited in connection with such a contract
7 subject to section forty-four F(1)", and the words, "and one place
8 for filing such sub-bids, which need not be the same place", and the
second sentence of the second paragraph of said section 1 in its entirety;

(B) From section (2) of said section forty-four E, subsection (d) in its entirety;

(C) In section 3 of said section forty-four E, in the first paragraph the words, “and shall include the names of sub-bidders and the amounts of their sub-bids;”, and in the third paragraph of said section 3, subsection 1 and subsection 2 in their entirety;

SECTION 4. Section forty-four F of chapter one hundred and forty-nine of the General Laws, as most recently amended by section 55 of chapter 579 of the acts of 1980, is hereby stricken in its entirety and in its place is inserted the following:

Section 44F. The selection of subcontractors shall be the exclusive responsibility of the general contractor awarded a contract pursuant to sections forty-four A through forty-four H of this chapter, subject to all requirements otherwise provided by the laws of the Commonwealth and of the United States and the provisions of this chapter. The general contractor awarded a contract pursuant to this chapter shall, within seven days after such award, Saturdays, Sundays, and legal holidays not included, furnish to the awarding authority in writing the names and proposed contract prices of the persons or entities who will perform labor or perform labor and furnish materials under a contract with the general contractor. The awarding authority will promptly reply to the general contractor in writing stating whether or not the awarding authority, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the awarding authority to reply within seven days, Saturdays, Sundays, and legal holidays not included, following submission of such names by the general contractor shall constitute notice of no reasonable objection. Any person or entity debarred pursuant to this chapter shall be deemed thereby objectionable to all awarding authorities subject to this chapter, provided proper notice of the debarment has been placed in the central register, and no separate notice of objection need be provided by the awarding authority.

The general contractor shall not contract with any such proposed person or entity to whom the awarding authority makes
objection under the provisions of this chapter or who is debarred pursuant to this chapter. The general contractor shall not be required to contract with any person or entity to whom it has a reasonable objection.

If the awarding authority has objection to any such proposed person or entity, the general contractor shall submit a substitute to whom the awarding authority has no reasonable objection. The contract sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate change order shall be issued; provided, however, that no increase in contract sum shall be allowed for any such substitution occasioned by the submission of the name of a person or entity debarred pursuant to this chapter, and that no increase in contract sum shall be allowed unless the general contractor has acted in accordance with the requirements of this chapter in submitting names to the awarding authority.

The general contractor shall make no substitution for any such person or entity previously selected and named without written notification to the awarding authority at least three days, Saturdays, Sundays, and holidays not included, in advance of such substitution and shall make no such substitution if the awarding authority makes reasonable objection to such substitution.

The general contractor shall require each subcontractor performing labor or both performing labor and furnishing materials to the general contractor to enter into a written contract with the general contractor in accordance with a form for subcontract promulgated by the Division of Capital Planning and Operations. Such subcontract shall require each sub-contractor to be bound to the general contractor by the terms of the plans, specifications (including all general conditions), and addenda, and to assume toward the general contractor all the obligations and responsibilities which the general contractor assumes toward the awarding authority.

SECTION 5. Section thirty-nine F of chapter thirty of the General Laws, as most recently amended by section 53 of chapter 579 of the acts of 1980, is hereby amended by striking from part (3) the words, “(i) for contracts awarded as provided in sections forty-four A to forty-four H, inclusive, of chapter one hundred
and forty-nine shall mean a person who filed a sub-bid and receives
a subcontract as a result of that filed sub-bid or who is approved by
the awarding authority in writing as a person performing labor or
both performing labor and furnishing materials pursuant to a
contract with the general contract" and inserting in their place the
following:

“(i) for projects subject to the provisions of sections forty-four A
to forty-four H of chapter one hundred and forty-nine shall mean a
person or entity which is performing labor or both performing
labor and furnishing materials pursuant to a contract with any
other party performing labor or both performing labor and fur-
nishing materials for said project provided that said person or
entity has served a written notice to the general contractor, by
registered or certified mail, postage prepaid in an envelope ad-
dressed to the contractor at any place at which it maintains an
office or conducts its business, and to the awarding authority prior
to said person or entity commencing work, stating with substantial
accuracy that said person or entity is a party in interest to the
general contract, the name of the party said person or entity is
under contract with to perform labor or both perform labor and
furnish materials, and the amount of said person or entity’s con-
tact, and provided further that said notice is acknowledged by the
awarding authority in writing within three days, Saturdays, Sun-
days, and legal holidays not included, following receipt of said
notice”.

SECTION 6. Section thirty-nine K of chapter thirty of the Gen-
eral Laws, as most recently amended by section 2 of chapter 887 of
the acts of 1971, is hereby amended by striking the second sentence
of the third paragraph thereof and inserting in place thereof the
following: “All periodic estimates shall contain a separate item for
each subcontractor named in accordance with the provisions of
section forty-four F of chapter one hundred and forty-nine, and a
column listing the amount paid to each such subcontractor as of
the date the periodic estimate is filed.”
APPENDIX C

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-One.

AN ACT AFFECTING THE POWERS AND DUTIES OF THE INSPECTOR GENERAL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 3 of chapter 12A of the General Laws, as appearing in section 1 of chapter 388 of the Acts of 1980, is hereby amended by striking from the first sentence everything after the words “three such persons submitted by the president of the senate”.

SECTION 2. Section 9 of chapter 12A of the General Laws, as appearing in section 1 of chapter 388 of the Acts of 1980, is hereby amended by striking from the first sentence of the first paragraph of that section the words, “except records under the provisions of section eighteen of chapter sixty-six as defined in section three of said chapter sixty-six” and inserting in their place the words, “under this chapter”; and by striking from the second sentence of the second paragraph of said section nine the words, “except records under the provisions of section eighteen of chapter sixty-six as defined in section three of said chapter sixty-six” and inserting in their place the words, “as is not in contravention of any law”; and by striking from the first sentence of the sixth paragraph of said section nine the words, “except records under the provisions of section eighteen of chapter sixty-six as defined by section three of said chapter sixty-six”.

SECTION 3. Section 10 of chapter 12A of the General Laws, as appearing in section 1 of chapter 388 of the Acts of 1980, is hereby amended by inserting into the first sentence of the first
4 paragraph of said section, following the words, “to the attorney
general”, the words, “or any federal prosecutor”; and by striking in
its entirety the second sentence of the first paragraph of said
section;

SECTION 4. Section 2 of chapter 388 of the Acts of 1980 is
hereby amended by striking in the first sentence of the first para-
graph of that section the words, “with prior approval of six
members of the inspector general council” and substituting in their
place the words, “with prior approval of four members of the
inspector general council”; and by striking from the second sen-
tence of the first paragraph of said section 2 the words, “The
approval of six members of the inspector general council”, and
substituting in their place the words, “The approval of four
members of the inspector general council”; and by striking from
the first sentence of the third paragraph of said section 2 the words,
“at least six members of the inspector general council”, and substi-
tuting in their place the words, “at least four members of the
inspector general council”.

SECTION 5. Section three of chapter three hundred and eighty-
eight of the Acts of nineteen hundred and eighty is hereby repealed.
AN ACT TO CLARIFY THE POWERS AND DUTIES OF CERTAIN STATE OFFICIALS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 40A of chapter 7 of the General Laws, as appearing in section 7 of chapter 579 of the Acts of 1980, is hereby amended by striking out the second and third sentences of subparagraph (4) thereof.

SECTION 2. Section 40E of said chapter 7 is hereby amended by inserting in the first sentence after the words “chapter 184,” the following words, “and any other delegations which the general court has made to state agencies pertaining to the acquisition, control, and disposition of real property;”.

SECTION 3. Section 40F of said chapter 7, as so appearing, is hereby amended by striking out of the fifth paragraph thereof the words, “the Springfield Office Building”.

SECTION 4. Said section 40F is hereby further amended by striking out of the fourth sentence of the sixth paragraph the words, “, and such transfer shall only be made when the general court is in session, except as provided hereafter.”.

SECTION 5. Said section 40F is hereby further amended by striking out the fifth sentence of the sixth paragraph and inserting in place thereof the following sentence, “Such transfer may be made without prior notification of the house and senate committees on ways and means only if the deputy commissioner certifies
in writing that an emergency exists; provided that any such
transfer may be authorized for a period not to exceed six months,
and provided further that the deputy commissioner shall submit
his or her certification to and notify the house and senate ways and
means committees of such transfer at the earliest possible oppor-
tunity."

SECTION 6. Section 40G of said chapter 7, as so appearing, is
hereby amended by striking out of the second sentence of the
fourth paragraph the words, "and such agreement shall only be
made when the general court is in session, except as provided
hereafter."

SECTION 7. Such section 40G is hereby further amended by
striking out the third sentence of the fourth paragraph and insert-
ing in place thereof the following sentence, "Such agreement may
be made without prior notification of the house and senate com-
mittees on ways and means only if the deputy commissioner
certifies in writing that an emergency exists; provided that any
such agreement may be authorized for a period not to exceed six
months, and provided further that the deputy commissioner shall
submit his or her certification to and notify the house and senate
ways and means committees of such agreement at the earliest
possible opportunity."

SECTION 8. Section 40I of said chapter 7, as so appearing, is
hereby amended by inserting at the end the following sentence,
"Such notice period may be shortened or waived only if the deputy
commissioner certifies in writing that an emergency exists."

SECTION 9. Section 40K of said chapter 7, as so appearing, is
hereby amended by inserting after the first sentence the following
sentences, "For the purposes of identifying agricultural lands, the
deputy commissioner shall utilize criteria established by the secre-
tary of environmental affairs. Such criteria shall determine agric-
cultural land according to past and present agricultural use, and
according to the agricultural production suitability of land as
defined by the standards of the United States Department of
Agriculture Soil Conservation Service."
SECTION 10. Section 6 of chapter 8 of the General Laws, as most recently amended by section 21 of chapter 579 of the Acts of 1980, is hereby further amended by striking out in lines 4 to 6 the words, “the Springfield Office Building”.

SECTION 11. Section 9 of chapter 8 of the General Laws, as most recently amended by section 22 of chapter 579 of the Acts of 1980, is hereby amended by striking out in lines 4 to 6 the words, “the Springfield Office Building”.

SECTION 12. Section 42B of chapter 7 of the General Laws, as appearing in section 12 of chapter 579 of the Acts of 1980, is hereby amended by striking out the last sentence of the final paragraph and inserting in place thereof the following sentence, “The director shall state in writing the reasons for not requesting an audit upon approval of any change order or contract modification if: (a) the cumulative cost of all previously approved increases in the contract price exceeds five percent of the original contracted construction cost of the project; or (b) the preliminary estimate of or approved change in the contract price resulting from the change order or contract modification is $5,000 or more.”.

SECTION 13. Section thirteen A of chapter five hundred and seventy-nine of the Acts of nineteen hundred and eighty is hereby repealed.


SECTION 15. Section 20 of chapter 9 of the General Laws, as most recently amended by section 50 of chapter 579 of the Acts of 1980, is hereby further amended by adding to the second sentence, part (a), after the words “any capital facility” the words, “including but not limited to a building or other structure or part thereof, an airport or port facility, a water resource improvement, a highway improvement, a transportation improvement, or any other such
facility as may be designated by the deputy commissioner of capital planning and operations;”.

SECTION 16. Section 39Q of chapter 30 of the General Laws, as inserted by section 62 of chapter 579 of the acts of 1980, is hereby amended by striking the first sentence of subsection (1) and inserting in place thereof the following sentence, “Every contract awarded to a general bidder by a state agency, as defined by section thirty-nine A of chapter seven, pursuant to section forty-four A through forty-four H, inclusive, of chapter one hundred and forty-nine or to section thirty-nine M of this chapter shall contain the following subparagraphs (a) through (d) in their entirety.”

SECTION 17. Subparagraph (a) of said section 39Q, as so inserted, is hereby amended by striking from the first sentence the words, “which shall constitute the exclusive method for resolving such disputes.”.

SECTION 18. Subparagraph (c) of said section 39Q, as so inserted, is hereby amended by striking from the first sentence the words, “and shall serve copies thereof upon all other parties in the form the manner prescribed governing the conduct of adjudicatory proceedings of the division of hearing officers.

SECTION 19. Said subparagraph (c) is hereby further amended by striking from the second sentence the words “The appeal” and inserting in place thereof the words, “An appeal to the division of hearing officers”.
AN ACT TO IMPROVE CAPITAL OUTLAY BUDGET PLANNING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section thirty-nine A of chapter seven of the General Laws, as appearing in section 7 of chapter 579 of the Acts of 1980 is hereby amended by inserting in sub-section (f) after the words "remodeled for some other use;" the following words, "A highway improvement such as a highway, bridge, or tunnel; a transportation improvement such as a mass transportation or other public transit facility, including a".

SECTION 2. Said section thirty-nine A is hereby further amended by striking from sub-section (f) the words "by the metropolitan district commission".

SECTION 3. Said section thirty-nine A is hereby further amended by striking from sub-section (f) the words "provided however that a highway improvement such as a highway, bridge or tunnel; a transportation improvement such as a mass transportation or other public transit facility, but not including a department of transportation building in the Park Square area of the city of Boston, shall not be considered a capital facility as defined herein;".
AN ACT RELATING TO THE STATUS OF CERTAIN PERSONNEL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 41B of chapter 7 of the General Laws, as appearing in section 12 of chapter 579 of the acts of 1980, is hereby amended by striking out the third sentence of the second paragraph and inserting in place thereof the following sentences:—

" Except as provided by law, all such appointments shall be made in accordance with chapter thirty-one. Subject to the provisions of sections thirty B through thirty P, inclusive, and to the approval of the deputy commissioner, the director may hire consultants to perform programming, architectural, engineering, surveying, cost estimating and other professional services."

SECTION 2. Section 42A of said chapter 7, as so appearing, is hereby amended by inserting at the end of the third paragraph thereof the following sentence:—

"Except as provided by law, all such appointments shall be made in accordance with chapter thirty-one."

SECTION 3. Section 42B of said chapter 7, as so appearing, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:—

"If the director considers it in the best interests of the commonwealth, he may hire consultants, subject to the provisions of sections thirty B through thirty P, inclusive, and to the approval of the deputy commissioner, to perform architectural, engineering, quantity surveying, network scheduling, cost estimating, and other professional services."
SECTION 4. Said section 42B is hereby further amended by inserting at the end of the seventh paragraph thereof the following sentence: —

"Except as provided by law, all such appointments shall be made in accordance with chapter thirty-one."

SECTION 5. Section 42D of said chapter 7, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraphs: —

"In every instance of any employee promoted to the position of project manager from a position classified under chapter thirty-one or a position in which at the time of promotion he shall have tenure by reason of section nine A of chapter thirty, upon termination of his service the employee shall, if he shall so request, be restored to the position from which he shall have been promoted or to a position equivalent thereto in salary grade without impairment of his civil service status or his tenure under section nine A or loss of his seniority, retirement or other rights to which uninterrupted service in such position would have entitled him; provided, however, that if his service shall have been terminated for cause, his right to be restored shall be determined by the civil service commission in accordance with the standards applied by the commissioner in administering chapter thirty-one. Nothing in this section shall be deemed to exempt the position of project manager from the provisions of sections forty-five to fifty, inclusive, of chapter thirty.

"The director may appoint project managers having particular areas of expertise, including such areas as civil, mechanical, electrical and structural engineering.

"The director shall recommend to the deputy commissioner standards governing the volume of work as defined by number of building projects, total dollar volume, or other pertinent criteria to which any individual project manager may be assigned at any one time. The project manager shall participate in all phases of building projects to which he has been assigned by the director. He shall:"
SECTION 6. Section forty-two J of said chapter seven, as so inserted, is hereby amended by striking out the second sentence of the first paragraph and inserting in place thereof the following sentence:—

“Resident engineers may be hired as permanent or temporary employees subject to the provisions of chapter thirty-one.”

SECTION 7. The said section forty-two J is hereby further amended by inserting at the end of the fifth paragraph the following sentence:—

“Cost estimators may be hired as permanent or temporary employees subject to the provisions of chapter thirty-one.”

SECTION 8. Section forty-three of said chapter seven, as inserted by section 15 of chapter 579 of the Acts of 1980, is hereby amended by inserting at the end of the second paragraph the following sentence:—

“Except as provided by law, all such appointments shall be made in accordance with chapter thirty-one.”
AN ACT RELATIVE TO CERTAIN FALSE REPRESENTATIONS MADE TO THE COMMONWEALTH OR ITS POLITICAL SUBDIVISIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 67A of chapter 266 of the General Laws, as appearing in section 2 of chapter 531 of the Acts of 1980, is hereby amended by striking from the first sentence of said section 67A the words, “as defined in section 6 of chapter 12A”, and inserting in their place the words, “as defined in section 1 of chapter 12A”.
Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 55 is hereby amended by inserting after the definition of "Candidate" the following definition:

"Commission", the Campaign and Political Finance Commission.

SECTION 2. Said section 1 is hereby further amended by striking out the definition of "Director".

SECTION 3. Said Section 1 is hereby further amended by striking out the definition of "political committees" and inserting in place thereof the following definitions:

"Person," an individual, partnership, committee, association, society, corporation, labor organization, or any other organization or group of persons acting in concert.

"Political committee," any person, other than an individual, or any combination of persons who directly or indirectly receives contributions or make expenditures, including without limitation, a nation, regional, state, county or municipal committee.

SECTION 4. Section 2 of Chapter 55 of the General Laws, as most recently amended by section 102 of chapter 329 of the Acts of 1979, is hereby amended by striking out the tenth paragraph beginning with the words "The candidate" and inserting in place thereof the following paragraph:
6 The candidate shall preserve all receipted bills and accounts
7 required to be kept pursuant to the provisions of this section for a
8 period of six years from January tenth of the year following the
9 year of the election for the office sought by the candidate.

SECTION 5. Said chapter 55 of the General Laws is hereby
amended by striking out section 3 and inserting in place thereof the
following sections: —
Section 3. (a) There is established a campaign and political
finance commission composed of five members. At no time shall
more than three members be from the same political party.
(b) Three members of the commission shall be appointed by the
governor, one of whom shall be designated as chairman, and one
member shall be appointed by the state secretary and one member
shall be appointed by the attorney general. At no time shall more
than two of the members to be appointed by the governor be from
the same political party. One member appointed by the governor
shall be at the time of his or her appointment the president, chief
executive officer or dean of a private institution of higher learning
in the commonwealth; one such member shall be the president-
elect of the Massachusetts Bar Association or another member of
that association designated by him; and one such member shall be
a former or retired justice of the superior court, appeals court or
supreme judicial court of the commonwealth.
(c) Members of the commission shall serve for terms of five
years.
(d) No person shall be appointed to more than one full five year
term on the commission.
(e) Not less than thirty days prior to making any appointment to
the commission, the appointing official shall give public notice
that a vacancy on the commission exists.
(f) No members or employee of the commission shall:
(1) hold or be a candidate for any other public office while a
member or employee or for one year thereafter;
(2) hold office in any political party or political committee;
(3) participate in or contribute to the political campaign of any
candidate for public office.
(g) Members of the commission may be removed by a majority
vote of the governor, state secretary, and attorney general, for
substantial neglect of duty, inability to discharge the powers and
duties of office, violation of subsection (f) of this section, gross
misconduct, or conviction of a felony.

(h) Any vacancy occurring on the commission shall be filled
within ninety days by the original appointing authority. A person
appointed to fill a vacancy for the unexpired term of the member
he succeeds, and shall be eligible for appointment to one full five
year term.

(i) The commission shall elect a vice chairman. The vice chair-
man shall act as chairman in the absence of the chairman or in the
event of a vacancy in that position.

(j) Three members of the commission shall constitute a quorum
and three affirmative votes shall be required for any action or
recommendation of the commission; the chairman or any three
members of the commission may call a meeting; advance notice of
all meetings shall be given to each member of the commission and
to any other person who requests such notice;

(k) Members of the commission shall be compensated for work
performed for the commission at such rate as the secretary of
administration and finance shall determine and shall be reim-
bursed for their expenses.

(l) The commission shall annually report to the general court
and the governor concerning the action it has taken; the names and
salaries and duties of all individuals in its employ and the money it
has disbursed; and shall make such further reports on matters
within its jurisdiction as may appear necessary;

(m) The commission shall employ an executive director, a gener-
al counsel, and, subject to appropriation, such other staff, includ-
ing but not limited to clerks, accountants, and investigators, as are
necessary to carry out its duties pursuant to this chapter and
chapter fifty-five A. The staff shall serve at the pleasure of the
commission and shall not be subject to the provisions of chapter 31
or section 9A of chapter 30. The executive director shall be respon-
sible for the administrative operation of the commission and shall
perform such other tasks as the commission shall determine. The
general counsel shall be the chief legal officer of the commission.
The commission may employ, subject to appropriation, the serv-
ces of experts and consultants necessary to carry out its duties. The
commission of public safety, the state auditor, the comptroller, the
attorney general, and the state ethics commission may make avail-
able to the commission personnel and other assistance as the
commission may request.

Section 3B. The commission shall: (a) prescribe and publish,
pursuant to the provision of chapter 30A, rules and regulations to
carry out the purposes of this chapter, including rules governing
the conduct of proceedings hereunder;

(b) prepare and publish, after giving the public an opportunity
to comment, forms for the statements and reports required to be
filed by this chapter and make such forms available to any and all
persons required to file statements and reports pursuant to the
provisions of this chapter and chapter 55A;

(c) prepare and publish, pursuant to the provision of chapter
30A, methods of accounting and reporting to be used by person
required to file statements and reports by this chapter and chapter
55A;

(d) make statements and reports filed with the commission
available upon the written request of any individual for public
inspection and copying during regular office hours and make
copying facilities available free of charge or at a charge not to
exceed actual cost;

(e) compile and maintain an index of all reports and statements
filed with the commission to facilitate public access to such reports
and statements;

(f) inspect all statements and reports of candidates, or non-elect-
ed political committees supporting such candidates, filed with it,
within thirty days of the reporting dates required by this chapter,
and all other statements and reports within sixty days of the
reporting dates of this chapter unless otherwise provided for by
chapter fifty-five A or other law, in order to ascertain whether any
reporting person has failed to file a statement or report as required
by law, or has filed a deficient statement or report. If, upon
inspection, it is ascertained that a reporting person has failed to file
such a statement or report, or if it is ascertained that any such
statement or report filed with the commissions fails to conform to
the requirements of this chapter or chapter fifty-five A, then the
commission shall, in writing, notify the delinquent; such notice
shall state in detail the deficiency and the penalties for failure to file
such a statement or report;

(g) in addition to the inspection of statements and reports
required to be performed by the commission pursuant to sub-
section (f) of this section, the commission shall make field audits with
respect to reports and statements of:

(1) each candidate for statewide elective office in a primary,
general, or special election for whom the commission determines
that twenty-five thousand dollars or more in contributions have
been received or twenty-five thousand dollars in expenditures have
been made, whether by the candidate or by a political committee
operating on behalf of such candidate. Each candidate for state-
wide elective office whose contributions or expenditures are less
than twenty-five thousand dollars shall be subject to an audit on a
random basis of ten percent of the number of candidates.

(2) each candidate for legislative elective office in a primary,
general or special election for whom the commission determines
that ten-thousand dollars or more in contributions have been
received or ten thousand dollars in expenditures have been made,
whether by the candidate or by a political committee which is
operating on behalf of such candidate. Each candidate for legisla-
tive elective office whose contributions or expenditures are less
than ten thousand dollars shall be subject to an audit on a random
basis of fifty percent of the senate districts and fifty percent of the
house districts.

(3) each political committee operating on behalf of a candidate
who is being audited pursuant to subdivisions (1) and (2); and

(4) every political committee required to organize pursuant to
the provisions of section 5, in other than those specified by subsec-
tions (1), (2), and (3) of this section, if the commission determines
that the political committee has received contributions or made
expenditures in the aggregate of more than ten thousand dollars
during any calendar year, shall be subject to audit by a random
selection of fifty percent of such political committees.

In accordance with subsections (1), (2), (3) and (4) of this
section, the commission shall select by lot the candidates, political
committees and districts to be audited on a random basis.

Any field audit made by the commission pursuant to the provi-
sions of this section shall involve at least an inquiry and determina-
tion of whether the statements and reports required to be submit-
ted can be reconciled with the records kept by the candidate and
political committee to be audited, whether or not such records are
required to be kept pursuant to this chapter or chapter fifty-five A.

In addition to the inspections and audits required by sub-section (f) and this section, the commission may make inspections and audits with respect to any reports or statements required by this chapter and chapter fifty-five A.

(h) upon written request from a person who is or may be subject to the provisions of this chapter or chapter fifty-five A, render advisory opinions on the requirements of said chapters. An opinion by the commission, until and unless amended or revoked, shall be a defense in criminal action brought under chapter fifty-five and fifty-five A and shall be binding on the commission in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such requests shall be confidential; provided, however, that the commission may publish such opinions, but the name of the requesting person and any other identifying information shall not be included in such publication unless the requesting person consents to such inclusion;

(i) issue interpretive bulletins and respond with reasonable requests for information and interpretations presented by candidates, political committees, or members of the public; and

(j) make available to investigative, accounting and law enforcement agencies of the commonwealth or any one or more of them, all information necessary or advisable to fulfill their duties, with respect to this chapter, chapter fifty-five A, or other campaign finance law.

Section 3C. Upon receipt of a sworn complaint signed under pains and penalties of perjury, or upon receipt of evidence which is deemed sufficient by the commission, the commission shall initiate a preliminary inquiry into any alleged violation of this chapter, chapter fifty-five A or any other campaign finance laws of the commonwealth pertaining to campaign contributions and expenditures. At the beginning of a preliminary inquiry into any such alleged violation, the general counsel shall notify the attorney general of such action. All commission proceedings and records relating to a preliminary inquiry shall be confidential, except that the general counsel may turn over to the attorney general evidence which may be used in a criminal proceeding. The general counsel
shall notify any person who is the subject of the preliminary inquiry of the existence of such inquiry and the general nature of the alleged violation within thirty days of the commencement of the inquiry.

If a preliminary inquiry fails to indicate reasonable cause for belief that this chapter or chapter fifty-five A or other campaign finance law has been violated, the commission shall immediately terminate the inquiry and so notify in writing, the complainant, if any, and the person who had been the subject of the inquiry. All commission records and proceedings from such an inquiry shall remain confidential.

If a preliminary inquiry indicates reasonable cause for belief that this chapter or chapter fifty-five A or other campaign finance law has been violated, the commission may, upon a majority vote, initiate a full investigation and appropriate proceedings to determine whether there has been such a violation.

The commission may require by summons the attendance and testimony under oath of witnesses and the production of books, papers and other records relating to any matter being investigated by it pursuant to this chapter and chapter fifty-five A. Such a summons may be issued by the commission only upon a majority vote of the commission and shall be served in the same manner as summonses for witnesses in civil cases, and all provisions of law relative to summonses issued by the commission. Any justice of the superior court may, upon application by the commission, in his discretion issue an order requiring the attendance of witnesses summoned as aforesaid and the giving of testimony or the production of books, papers, and other records before the commission in furtherance of any investigation pursuant to the provisions of this chapter or chapter fifty-five A or other campaign finance law in the same manner and to the same extent as before said courts.

Any member of the commission may administer oaths and any member of the commission may hear testimony or receive other evidence in any proceeding before the commission.

All testimony in commission proceedings shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, to submit evidence, and to be represented by counsel. Before testifying, all witnesses shall be given a copy of the regulations governing
commission proceedings. All witnesses shall be entitled to be represented by counsel. Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby may appear personally before the commission on his own behalf or file a written statement for incorporation into the record of the proceeding.

All proceedings of the commission carried out pursuant to the provisions of this subsection shall be public, unless the members vote to go into executive session.

Within thirty days after the end of proceedings pursuant to the provision of this subsection, the commission shall meet in executive session for the purpose of reviewing the evidence before it. Within thirty days after completion of deliberations, the commission shall publish a written report of its findings and conclusions.

Section 3D. The commission, upon a finding pursuant to the provisions of section 3C that there has been a violation of this chapter or chapter fifty-five A or other campaign finance law, may issue an order requiring the violator to (1) cease, and desist from such violation and (2) file any report, statements or other information as required by this chapter, chapter fifty-five A or other campaign finance law. In addition to turning over to the attorney general, pursuant to the provisions of section 3C, evidence which may be used in a criminal proceeding, the commission may issue an order requiring a violator to (1) pay a civil fine for each violation of this chapter or chapter fifty-five A not to exceed the greater of $1000 or three times the amount the violator failed to report properly or unlawfully contributed, expended, gave or received and (2) pay a civil fine for failure to file an original or amended statement or report after any deadline imposed by this chapter or chapter fifty-five A. The fine for failure to report shall not exceed the greater of one thousand dollars or ten dollars per day for each day after the deadline but before notice has been sent by the commission pursuant to sub-paragraph (f) of section three B and one hundred dollars per day for each day after such notice has been sent, until the required statement or report is filed. The commission need not issue an order requiring payment of a fine pursuant to the provisions of this paragraph if it determines that the late filing was
not willful and that enforcement of the fine will not further the
purposes of this chapter, except that it shall issue such an order if
the statement or report is not filed within seven days after the
commission has sent specific written notice of the filing require-
ment.

No fine imposed on any person by the commission pursuant to
this section shall be paid for directly or indirectly by a political
committee, whether or not organized or operating on behalf of a
candidate.

The commission may file a civil action in superior court to
enforce an order issued by it pursuant to this section.

Any final action by the commission made pursuant to this
chapter shall be subject to review in superior court upon petition of
any interested person filed within thirty days after the action for
which review is sought. The court shall enter a judgement enforc-
ing, modifying or setting aside the order of the commission or it
may remand the proceeding to the commission for such further
action as the court may decide.

Section 3E. Any person who violates the confidentiality of a
commission inquiry under the provisions of section three C of this
chapter shall be punished by a fine of not more than one thousand
dollars or by imprisonment for not more than one year, or both.

Any person who willfully affirms or swears falsely to any material
matter before a commission proceeding section three C of this
chapter shall be punished by a fine of not more than one thousand
dollars or by imprisonment in a state prison for not more than two
and one half years, or both.

Section 3F. The commission shall periodically, but in no event
less often than once a year by June first of that year, prepare
reports which shall be public documents and which shall contain in
detail at least the commission's findings with respect to the accu-
rency and completeness of each report and statement received and
its findings with respect to any report or statement that should have
been but was not filed. The commission shall also complete statis-
tics pertaining to campaign contributions and expenditures and
shall include in its report any analyses or studies thereof for the
purpose of explaining the impact and efficacy of the provisions of
this chapter, chapter fifty-five A and any other campaign finance
law.
SECTION 6. Section 4 of Chapter 55 of the General Laws is hereby amended by striking out the word "director" as it appears in the second, third, and fourth sentences thereof, and by inserting in place thereof the word: commission.

SECTION 7. Section 5 of Chapter 55 of the General Laws is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph: —

Every political committee organized or operating on behalf of a candidate or candidates, every political committee, a principal purpose of which is to receive contributions or make expenditures, and every other political committee which receives contributions aggregating in excess of one thousand dollars during a calendar year or which makes expenditures aggregating in excess of one thousand dollars during a calendar year shall organize by filing with the commission or, if organized for the purpose of a city or town election only, with the city or town clerk, a statement of organization.

SECTION 8. Said section is hereby further amended by striking from the first sentence of the fourth and the first sentence of the fifth paragraph the word "director" and inserting in place thereof the word: commission.

SECTION 9. Said section is hereby further amended by inserting in the first sentence and the third sentences of the fifth paragraph and the first sentence of the sixth paragraph before the words "political committee" the word: such.

SECTION 10. Said chapter 55 of the General Laws is hereby amended by striking out section 6 and inserting in place thereof the following section: —

Section 6. A candidate or a political committee organized or operating on behalf of a candidate under the provisions of this chapter may receive into and pay and expend money or other things of value from the campaign account of such candidate or political committee for reasonable and necessary expenses directly related to the campaign of the candidate, but shall not make any
expenditure that is primarily for the personal use of the candidate or any other person. The commission shall establish reasonable rules and regulations concerning such expenditures. No such political committee, other than the state committee of a political party, may contribute to any other political committee or to the campaign fund of any other candidate.

Any other political committee, duly organized, may receive, pay and expend money or other things of value for reasonable and necessary expenses directly related to the promotion of the principle for which the political committee was organized or for reasonable and necessary expenses directly related to the campaign of a candidate, but shall not make any expenditure that is primarily for the personal use of a candidate or any other person. The commission shall establish reasonable rules and regulations concerning such expenditures.

A political committee may place surplus finds in an account with a banking institution located in the commonwealth and may earn interest thereon but it may not invest its funds or other things of value in any other manner.

Violation of any provision of this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars.

SECTION 11. Section 7 of said Chapter 55 of the General Laws, as inserted by section 1 of chapter 151, is hereby amended by striking out the third through the fifth sentences of the first paragraph and inserting in place thereof the following sentences:—

Any person or political committee which may otherwise lawfully contribute to a candidate’s campaign, other than a non-elected political committee organized on behalf of a candidate, may make campaign contributions to candidates or non-elected political committees organized on behalf of candidates, provided that the aggregate of all such contributions for the benefit of any one candidate and the non-elected political committee organized on such candidate’s behalf shall not exceed in any one calendar year the sum of one thousand dollars, in the case of a candidate for statewide elective office, and the sum of five hundred dollars, in the case of a candidate for other than statewide elective office. Any
person or political committee which may otherwise lawfully con-
tribute to political committee organized on behalf of political
party, other than a non-elected political committee organized on
behalf of a candidate, may in addition make campaign contribu-
tions for the benefit of elected political committees or non-elected
political committees organized on behalf of a political party; pro-
vided that the aggregate of such campaign contributions for the
benefit of the political committees of any one political party shall
not exceed in any one calendar year the sum of one thousand
dollars. Any person or political committee which may otherwise
lawfully contribute to political committees not organized on behalf
of a candidate or candidates or a political party, other than a
non-elected political committee organized on behalf of a can-
date, may in addition make campaign contributions not exceeding
in any one calendar year the sum of one thousand dollars to
non-elected political committees not organized on behalf of any
candidate or candidates or political party. For the purposes of the
limitations established by this section, all campaign contributions
made by political committees established, financed, maintained or
controlled by any person, including any parent of subsidiary of any
person other than a natural person, shall be considered to have
been made by a single political committee.

SECTION 12. Said chapter 55 is further amended by inserting
after section 10 the following sections: —

Section 10A. Every person who, and business entity which, has
done business with any public agency during the current calendar
year, or the preceding calendar year, shall file a statement pursuant
to the provisions of this section and sections ten B, ten C and ten D,
inclusive if the person or business entity directly or indirectly made
or caused to be made a contribution to a person holding elective
office or to a candidate for elective office or to a political commit-
tee organized or operating on behalf of a candidate or candidates
during the current calendar year. The statement required to be filed
by a business entity shall be filed by the chief executive officer of
such business entity. Such statement shall be filed on or before
October twenty-third of each year, and shall include all contribu-
tions directly or indirectly made or caused to be made during the
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current calendar year up to and including October twentieth of the
current calendar year; if the person or business entity directly or
indirectly makes or causes to be made a contribution or contribu-
tions between October twentieth and December thirty-first of the
current calendar year, a supplementary statement shall be filed on
or before February first of the succeeding calendar year which shall
include all contributions directly or indirectly made or caused to be
made during the period of October twentieth through December
thirty-first of the calendar year preceding February first.

Section 10B. Every statement required to be filed pursuant to
section ten A shall contain the following information: —
(a) the names of all persons, candidates or political committees
to which a contribution was directly or indirectly made or caused
to be made and the office which the individual held or for which the
candidate was seeking election;
(b) the amount of the aggregate contributions to each person,
candidate or particular committee;
(c) the name of each public agency with which the person or
business entity did business. However, the name of each public
agency with which the person or business entity did business may
be omitted upon the written approval of the commission. The
commission may grant such approval of its finds that it would be
unduly burdensome to require this information, that the public
interest would not be substantially impaired by its omission, and
that such person or business entity submitting the statement stipu-
lates that he, she or it has done the requisite business in the amount
of ten thousand dollars or more during the period in question;
(d) the nature and amount of business done with each public
agency. However, information concerning the amount of business
done with each agency may be omitted upon the written approval
of the commission. The commission may grant approval if it finds
that it would be unduly burdensome to require this information,
that the public interest would not be substantially impaired by its
omission, and that the person or business entity submitting the
statement stipulates that he, she or it has done the requisite busi-
ness in the amount of ten thousand or more during the period in
question;
(e) if the business was done or the contribution was directly or
indirectly made or caused to be made by another person or busi-
ness entity and is attributed under section ten C to the person or
business entity filing the statement, the name of the person or
business entity who did the business or directly or indirectly made
or caused to be made the contribution, and the relationship of that
person or business entity to the person or business entity filing the
statement;

(f) such statement shall be filed with the commission and shall be
retained as a public record for at least six years from the date of its
receipt. The commission shall make the statements available for
examination and copying by the public during normal office hours,
free of charge or at a charge not to exceed actual cost and subject to
such reasonable administrative procedures as the commission may
establish from time to time; and

(g) the commission shall prepare and make available forms for
the statements required by this section.

Section 10C. A contribution directly or indirectly made, or
casted to be made, by an officer, director, partner or trustee of a
business entity or by a beneficial owner of more than ten present of
any class of the outstanding equity in such business entity, and a
contribution directly or indirectly made or caused to be made by an
employee, agent, or other person at the suggestion or direction of a
person required by section ten A herein to file a statement or of an
officer, director, partner or trustee of a business entity, shall for
purposes of this section be attributed to such person or business
entity and shall be included in the statement filed by such person or
business entity as though made directly by it;

Each officer, director, partner, and trustee of a business entity
and each beneficial owner of more than ten percent of any class of
the outstanding equity in such business entity, who directly or
indirectly makes or causes to be made a contribution which, if
made by the business entity, would have to be disclosed under
section ten A, shall report the contribution to the chief executive
officer of the business entity so that it may be included in the
statement filed by the business entity.

Each employee, agent, or other person who, at the suggestion or
direction of (a) a person or business entity required by section ten A
herein to file a statement; (b) an officer, director, partner or trustee
of a business entity required by section ten A to file a statement; or
(c) a beneficial owner or more than ten percent of any class of the outstanding equity in such business entity, directly or indirectly makes or causes to be made a contribution shall report the contribution to the person or chief executive officer of the business entity so that it may be included in the statement filed by the person or business entity.

Business done with a public agency by a subsidiary business entity shall be attributed to its parent and shall be included in the statement filed by such parent. Contributions made by, or caused to be made by, or attributed to a subsidiary shall for purposes of this section be attributed to its parent and shall be included in the statement filed by such parent;

If under this section a contribution made by a director is attributed to a business entity of which such director is an officer, partner, employee, trustee, or beneficial owner of more than ten percent of any class of the outstanding equity in such business entity and which is required to be included in a statement filed by a business entity, the contribution may not be attributed to, and need not be included in a statement of, any other non-profit business entity solely because the contributor is a director thereof.

Section 10D. For purposes of section ten A, ten B, and ten C, the term "business" shall mean any one or combination of sales, purchases, leases, or contracts, involving consideration of ten thousand dollars or more on a cumulative basis entered into during a calendar year. If an agreement calls for the consideration to be paid over a period extending beyond one calendar year, the total ascertainable consideration to be paid under the agreement shall be included as business done during the calendar year in which the agreement was entered into. Business of less than ten thousand dollars with a public agency shall be reported if the aggregate business done with all public agencies amounts to more than ten thousand dollars. Business shall not include salaries paid directly by a public agency.

For purposes of Sections ten A, ten B, and ten C herein, the term "business entity" shall include any business entity organized for profit, including but not limited to any firm, corporation, trust, unincorporated association, or other organization, any corporation organized under the provisions of chapter one hundred and
eighty and any other entity organized for any of the purposes set
forth in chapter one hundred and eighty.

For purposes of Section ten A, ten B, and ten C herein, the term
“contribution” shall include a contribution or contributions in an
aggregate amount of fifty dollars or more directly or indirectly
made or caused to be made to an individual holding elective office,
or a candidate for elective office, or to a political committee
organized or operating on behalf of a candidate or candidates, and
an expenditure or expenditures in an aggregate amount of fifty
dollars or more directly or indirectly made or caused to be made on
behalf of an individual holding elective office, a candidate for
elective office, or to a political committee organized or operating
on behalf of a candidate or candidates.

For purposes of this section, the term “public agency” shall mean
any department, agency, board, commission, authority or other
instrumentality of the commonwealth or political subdivision of
the commonwealth or two or more subdivisions thereof.

Section 10E. Violation of any provision of sections ten A, ten B,
ten C or ten D, shall be punished by imprisonment for not more
than one year or by a fine of not more than one thousand dollars, or
both.

SECTION 13. Said Chapter 55 is further amended by inserting
after section 16 thereof the following section: —

Section 16A. No person, including a business entity as defined
in section ten D, no officer, director, partner or trustee, or benefi-
cial owner of any class of outstanding equity thereof, or employee
or agency thereof shall for the reason that such person, including a
business entity, does any business, no matter how small, with a
public agency, be under any obligation to contribute to any public
fund or to render any political service. No such person, including a
business entity and no such officer, director, partner or trustee, or
beneficial owner of any class of outstanding equity thereof, or
employee or agent thereof shall be prejudiced or threatened with
prejudice in any manner by any candidate for or individual holding
elective office or by any person acting on behalf of or under the
color of acting on behalf of any such candidate or individual or the
political committee operating on behalf of such candidate or indi-
vidual for refusing to contribute to any political fund or to render
any political service or granted any advantage or promise of advan-
tage for contributing to any political fund or rendering any politi-
cal service.
Violation of any provision of this section shall be punished by
imprisonment for not more than one year or by a fine of more than
one thousand dollars, or both.

SECTION 14. Section 18 of said chapter 55 of the General
Laws is further amended by striking out the first paragraph and
inserting in place thereof the following paragraph: —
Each candidate and each treasurer of a political committee
organized under the provisions of section five shall file with the
commission, or if the candidate seeks public office at a city or town
election, or if the committee is organized for the purpose of a city or
town election, with the city or town clerk, reports of contributions
received and expenditures made on forms to be prescribed by the
commission. A committee organized under the provisions of sec-
tion five to favor or oppose a question submitted to the voters shall
file its report with the commission if the question appears on
ballots at a state election, or with the city or town clerk if the
question appears on ballots at a city or town election.

SECTION 15. Said section 18 is hereby further amended by
striking out subsection (a) and inserting in place thereof the follow-
ing subsection: —
(a) by each candidate for nomination or election to the state
senate or house of representatives, and by the non-elected political
committee organized on behalf of such candidate, on or before: (1)
the thirtieth and eighth days preceding a primary, the tenth day of
January in the following year complete as to the thirty-first of
December of the prior year; (2) the thirtieth and eighth days preced-
ing a special primary, including a convention of a caucus, the
eighth day preceding a special election, the thirtieth day following a
special election, the tenth day of January in the following year
complete as to the thirty-first day of December of the prior year;
and (3) the tenth day following the close of any calendar quarter,
other than a calendar quarter during or with respect to the end of
which a report is otherwise required by this subsection to be made, in which the candidate or the non-elected political committee organized on behalf of such candidate received contributions in excess of five thousand dollars or made expenditures in excess of five thousand dollars, complete as of the last day of such calendar quarter.

SECTION 16. Sub-section (h) of said chapter 18 as most recently amended by section 102 of chapter 329 of the Acts of 1979, is hereby amended by striking out the third sentence of the eleventh paragraph and inserting in place thereof the following sentences:

All such residual funds shall be placed in an account with a banking institution located in the commonwealth and reserved for use with the interest earned thereon in the candidate's future political campaigns, returned on a pro-rata basis to contributors in proportion to the aggregate contributions by such contributors during the period between the most recent election for the office sought by the candidate and the previous election for that office, donated to the Local Aid Fund established under the provisions of section two D of chapter twenty-nine, or donated to the commonwealth.

SECTION 17. Chapter 55 is further amended by inserting after section 18 thereof the following new sections:

Section 18A. Notwithstanding any requirements that an entity organized as a political committee pursuant to the provisions of section five, no dues or assessments payable on a regular basis to and no other income received by an entity in the normal course of its business and not received or solicited for the purpose of making contributions or making expenditures shall be required to be reported as contributions to that entity under the provisions of section eighteen. The fact that a contribution or expenditure is made by such an entity from its own funds or property, including dues or assessments payable on a regular basis to or other income received by it in the normal course of its business, shall not include such contribution or expenditure by the entity from the reporting requirements of section eighteen.
Section 18B. Every person who makes an expenditure or expenditures in an aggregate amount exceeding one hundred dollars during any calendar year for the purpose of promoting the election or defeat of any candidate or candidates shall file with the director, or with the city or town clerk if such candidate or candidates seek public office at a city or town election, within seven business days after making such independent expenditure or expenditures, on a form prescribed by the commission, a report stating the name and address of the individual or political committee making the expenditure or expenditures; the name(s) of the candidate or candidates whose election or defeat the expenditure promoted; the name(s) and address(es) of the person or persons to whom the expenditure or expenditures were made; and the total amount or value, the purpose(s) and the date(s) of the expenditure or expenditures.

For the purposes of this section the term “independent expenditure” means an expenditure by a person or political committee expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or a non-elected political committee organized on behalf of a candidate, or any agent of a candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any non-elected political committee organized on behalf of a candidate or agent of such candidate.

SECTION 18. Section 19 of said chapter 55 of the General Laws, as most recently amended by section 1 of chapter 151 of the acts of 1975, is further amended by striking out the first sentence of subsection (b) and inserting in place thereof the following sentence:

(b) Every candidate and the treasurer of every committee required to designate a depository shall, by the end of the seventh day after receipt of contribution, deposit it in the form received in the designated depository or return it in the same form to the original donor.

SECTION 19. Section 22 of said chapter 55, as most recently amended by chapter 491 of the acts of 1975, is hereby amended by striking from the first sentence of the first paragraph the word "director" and inserting in place thereof the word: commission.
SECTION 20. Section 22A of said chapter, as inserted by chapter 572 of the acts of 1978, is hereby amended by striking from the first sentence of the first paragraph the word "director" and inserting in place thereof the word: commission.

SECTION 21. Section 24 of said chapter 55, as inserted by section 1 of chapter 151 of the acts of 1975, is hereby amended by striking from the first sentence of the first paragraph the word "director" and inserting in place thereof the word: commission.

SECTION 22. Section 25 of said chapter 55, as most recently amended by section 102 of chapter 329 of the Acts of 1979, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph: —

The commission shall retain all statements and reports filed with it under the provisions of this chapter until January tenth of the year following the year in which is held the election for the office sought by the candidate or the year following the year in which said statements and reports are filed with it, whichever is later.

The commission shall retain all statements and reports filed with it under the provisions of this chapter until the later of (a) January tenth of the year following the year in which is held the election for the office sought by the candidate and (b) the date on which said statements and reports are filed with the commission. In the case of committees other than those authorized by a candidate, the commission shall retain all required statements and reports filed with it for a period of six years from the date on which said statements and reports are filed.

SECTION 23. Said section 25 is hereby further amended by striking out the second paragraph thereof.

SECTION 24. Section 27 of said chapter 55, as inserted by section 1 of chapter 151 of the acts of 1975, is hereby amended by striking from the first and second sentences of the first paragraph and the first sentence of the second paragraph the word "director" and inserting in place thereof the following word: commission.
SECTION 25. Said section 27 is hereby further amended by striking from the second sentence of the first paragraph the word "him" and inserting in place thereof the word: it.

SECTION 26. Said chapter 55 of the General Laws is hereby amended by striking out section 28 and inserting in place thereof the following section: —

Section 28. The clerks of cities and towns shall inspect all statements and reports of candidates, or non-elected political committees supporting such candidates filed with them, within thirty days of the reporting dates required by this chapter, and all other statements and reports within sixty days of the reporting dates required by this chapter. If upon examination of the records it appears that any candidate or political committee has failed to file a statement or report as required by law, or if it appears to a city or town clerk that such statement or report relating to a city or town nomination or election does not conform to law, or upon written complaint by five registered voters that a statement or report does not conform to law, or that any candidate or political committee has failed to file a statement or report as required by law, or if it appears to a city or town clerk that such statement or report relating to a city or town nomination or election does not conform to law, or upon written complaint by five registered voters that a statement or report does not conform to law, or that any candidate or political committee has failed to file a statement or report required by law, the city or town clerk, as the case may be, shall, in writing, notify the delinquent person. Such complaint shall state in detail the grounds of objection, shall be sworn to by one of the subscribers, and shall be filed with the proper city or town clerk within ten days after the required date for filing a statement or report, or within ten days after the filing of a statement or report, or an amended statement or report.

SECTION 27. Said chapter 55 of the General Laws is hereby amended by striking out section 29 and inserting in place thereof the following section: —

Section 29. Upon failure to file a statement or report within ten days after receiving notice under section twenty-eight, or if any
statement filed after receiving such notices discloses any violation of any provision of this chapter, the city or town clerk shall notify the attorney general thereof and shall furnish him with copies of all papers relating thereto, and the attorney general, within two months thereafter, shall examine every such case, and, if satisfied that there is cause, he shall in the name of the commonwealth institute appropriate civil proceedings or refer the case to the proper district attorney for such action as may be appropriate in the criminal courts.

SECTION 28. Section 33 of said chapter 55, as most recently amended by section 34 of chapter 478 of the acts of 1978, is hereby amended by striking from sub-section (j) the word “director” and inserting in place thereof the words: secretary of state.

SECTION 29. Section 42 of said chapter 55, as inserted by section 1 of chapter 151 of the acts of 1975, is hereby amended by striking from the first sentence of the first paragraph the word “director” and inserting in place thereof the words: secretary of state.

SECTION 30. Chapter 62 of the General Laws is hereby amended by striking out section 6C, as inserted by section 4 of chapter 774 of the acts of 1975, and inserting in place thereof the following section: —

Section 6C. Every individual who files a separate return and whose income tax liability for any taxable year is two dollars or more may designate that two dollars of said liability be paid directly to the state election campaign fund established pursuant to section forty-two of chapter ten. In the case of a joint return of a husband and wife having an income tax liability of four dollars or more, each spouse may designate that two dollars shall be paid directly to the fund. A designation under this section may be made with respect to any taxable year at the time of filing the return of the tax imposed by this chapter for such taxable year. The commissioner shall provide that the opportunity to make such designation shall be prominently stated on the face of the return required by section
SECTION 31. Section 42 of chapter 10 of the General Laws, as inserted by section 1 of chapter 774 of the acts of 1975, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph: —

The state treasurer shall deposit the fund in accordance with the provisions of sections thirty-four and thirty-four A of chapter twenty-nine in such manner as will secure the highest interest rate available consistent with the safety of the fund and with the requirement that all amounts on deposit which are allocated to the statewide accounts established by section forty-three be available for immediate withdrawal at any time after June thirtieth in any year in which are held elections for statewide elective office and that such amounts which are allocated to the legislative account established by section forty-three be available for immediate withdrawal in any year in which elections for legislative office are or may be held as the campaign and political finance determines may be necessary for payment to eligible candidates in such elections.

SECTION 32. Said section 42 is hereby further amended by striking out the third paragraph and inserting in place thereof the following paragraph: —

The state election campaign fund shall be expended only for payment to eligible candidates, as determined under chapter fifty-five A, of amounts due on account of public financing on campaigns for statewide and legislative elective office and any unexpended balances shall be redeposited, as herein provided, pending the next year in which elections are held for statewide or legislative elective office.
SECTION 33. Said chapter 10 is hereby further amended by striking out sections 43 and 44, and inserting in place thereof the following sections: —

Section 42A. On or before the first Tuesday of November of the year preceding one in which a biennial election or an election for statewide elective office is held, the comptroller shall determine the balance of the state election campaign fund as of June thirtieth of that year. The comptroller shall also prepare an estimate of the projected balance of the state election campaign fund as of June thirtieth of the next year. For the purpose of making such an estimate the comptroller shall assume that the increase in the balance of the state election campaign fund from June thirtieth of the current year to June thirtieth of the next year will be equal to (a) in the case of a year preceding one in which a biennial election is held but in which an election for statewide elective office is not held, (i) the increase in the balance of the election campaign fund to June thirtieth of the current year plus (ii) payments made to publicly financed candidates from the state election campaign fund pursuant to sections five, seven, and seven B of chapter fifty-five A minus (ii) any surplus balance paid by a publicly financed candidate for deposit to the state election campaign fund pursuant to the provisions of section nine of chapter fifty-five A during the period from June thirtieth of the preceding year to June thirtieth of the current year, (b) in the case of a year preceding one in which an election for statewide elective office is held, one third of (i) the increase in the state election campaign fund, (ii) plus any payments made to publicly financed candidates from the state election campaign fund pursuant to sections five, seven and seven B of chapter fifty-five A minus (iii) any surplus balance paid by a publicly financed candidate for deposit to the state election campaign fund pursuant to the provisions of section nine of chapter fifty-five A during the period from June thirtieth of the year in which the preceding election for statewide elective office was held to June thirtieth of the current year.

The comptroller shall further determine a list of the elective offices candidates for which will be publicly financed in the year after the then current year. The comptroller shall make such a determination by (a) assuming that the balance of the state election
campaign fund on June thirtieth of the year after the then current year will be equal to the amount of the estimate and (b) calculating which accounts would, under such circumstances, be allocated monies from the state election campaign fund pursuant to the provisions of section forty-three of this chapter.

The comptroller shall, no later than by the first Tuesday of November of the year in which the estimate and list have been prepared, certify to the state treasurer and to the campaign and political finance commission the estimate and the list and by suitable public notice public said estimate and list.

The comptroller shall make no allocations to candidates pursuant to the provisions of section forty-three for the purpose of publicly financing candidates in the biennial or statewide election occurring in the next year, as the case may be, except to those of candidates for the elective offices named on the list certified by him pursuant to the provisions of this section.

Section 43. On or before the eighth Tuesday before a primary election in any year in which an election for statewide elective office is held, the comptroller shall determine the balance of the state election campaign fund as of June thirtieth of that year and the state election campaign fund shall thereupon be divided by the comptroller into accounts as follows:

(a) that portion of the balance equal to the maximum public finance payment for candidates for governor in the last statewide election shall be allocated to a gubernatorial account;

(b) after allocation pursuant to sub-section (a), that portion of any remainder of the balance equal to the maximum public finance payment for candidates for lieutenant governor in the last statewide election shall be allocated to a gubernatorial account;

(c) after allocation pursuant to sub-sections (a) and (b), that portion of any remainder of the balance equal to the maximum public finance payment for candidates for attorney general in the last statewide election shall be allocated to an attorney general’s account;

(d) after allocation pursuant to sub-sections (a), (b), and (c), that portion of any remainder of the balance equal to the maximum public finance payment for candidates for secretary plus the maximum public finance payment for candidates for treasurer plus the...
maximum public finance payment for candidates for auditor in the
last statewide election shall be allocated in proportion to the size of
such payments to a secretary's account, treasurer's account, and
auditor's account, respectively; provided that should there be an insufficient remainder to make the full allocations provided by this subsection, that remainder shall be allocated pro-rata in proportion to the size of the maximum public finance payments for each elective office in the last statewide election;
(e) after allocation pursuant to sub-sections (a), (b), (c), and (d), that portion of any remainder of the balance equal to the maximum public finance payment for candidates for legislative elective office in the year of the last statewide election shall be allocated to a legislative account; and
(f) after allocation pursuant to sub-sections (a), (b), (c), (d), and (e) the remainder of the balance shall be allocated pro rata in proportion to the maximum public finance payments to candidates for governor, lieutenant governor, attorney general, secretary, treasurer, auditor, and for legislative elective office in the year of the last statewide election in addition to the sums allocated pursuant to sections (a), (b), (c), (d), and (e), respectively.
On or before the eighth Tuesday before a primary election for legislative elective office in a biennial election year, other than one in which an election for statewide elective office, a legislative elective office is held, the comptroller shall determine the balance of the state election campaign fund as of June thirtieth of that year and the state election campaign fund shall thereupon be divided by the comptroller into accounts as follows: —
(a) that portion of the balance equal to one half of the sum of the maximum public finance payments for candidates for all statewide elective offices in the last statewide election shall be retained in the state election campaign fund;
(b) after allocation pursuant to sub-section (a), that portion of any remainder of the balance equal to the maximum public finance payment for candidates for legislative elective office during the last statewide election year shall be allocated to a legislative account; and
(c) after allocation pursuant to sub-sections (a) and (b) the remainder shall be divided pro rata according to the sum of all maximum public finance payments to candidates for statewide
elective office and the sum of the maximum public finance pay-
ments to candidates for legislative elective office during the last
statewide election year, respectively, and the former portion shall
be retained in the state election campaign fund and the latter
portion shall be allocated to the aforementioned legislative ac-
count to be in addition to the sum allocated pursuant to sub-sec-
tion (b).

On or before the eighth Tuesday before a primary election in any
year in which a special state election for a legislative elective office
is held, the comptroller shall determine the balance of the state
election campaign fund as of June thirtieth of that year or as of the
ninth Tuesday before the special election, whichever is earlier and
the state election campaign fund shall thereupon be divided by the
comptroller and the state election campaign fund shall thereupon
be divided by the comptroller into accounts as follows:—

(a) a portion of the balance equal to the amount credited,
pursuant to the provisions of this section, to an individual legisla-
tive candidate account for that legislative elective office in the last
biennial election year times the number of candidates for that
office who qualify for the primary ballot or who qualify for the
state election ballot without being entered in a party primary and
who are opposed in the primary, or will after the primary, be
opposed in the special state election as certified by the state secre-
tary under section two A of chapter fifty-five A shall be allocated
to a legislative account; and

(b) after allocation pursuant to sub-section (a) the remainder of
the balance shall be retained in the state election campaign fund.

For the purposes of this section the term “maximum public
finance payment” shall mean:

(a) in the case of candidates for governor, the sum of (i) the
number of candidates for governor who qualify for public finance
in a particular statewide election year during the primary election
multiplied by the maximum amount of public finance allowed to
such candidates pursuant to section five of chapter fifty-five A plus
(ii) the number of candidates for governor who qualify for public
finance in that same statewide election year during the general
election multiplied by the maximum amount of public finance
allowed to candidates for governor and lieutenant governor pursu-
ant to section seven of chapter fifty-five A;
(b) in the case of candidates for lieutenant governor the number of candidates who qualify for public finance in a particular statewide election year during the primary multiplied by the maximum amount of public finance allowed to such candidates pursuant to section five of chapter fifty-five A;

(c) in the case of candidates for statewide elective office other than those for governor or lieutenant governor, the sum of (i) the number of candidates who qualify for public finance in a particular statewide election year during the primary election multiplied by the maximum amount of public finance allowed to such candidates pursuant to section five of chapter fifty-five A plus (ii) the number of candidates who qualify for public finance in that same statewide election year during the general election multiplied by the maximum amount of public finance allowed to such candidates pursuant to section five of chapter fifty-five A; and

(d) in the case of candidates for legislative elective office the sum of (i) the number of candidates for state senator who qualify for public finance in a particular statewide election year multiplied by the maximum amount of public finance allowed to such candidates pursuant to section seven B of chapter fifty-five A plus (ii) the number of candidates for state representative who qualify for public finance in that year multiplied by the maximum amount of public finance allowed to such candidates pursuant to section seven B of chapter fifty-five A; provided that for the purpose of making allocations for publicly financing candidates in a biennial or statewide election, as the case may be, the term “maximum public finance payment” shall mean zero for candidates for any elective office not included in the list certified by the comptroller by the second Tuesday in November of the previous year pursuant to the provisions of section forty-two A.

On or before the eighth Tuesday before a primary election in any year in which an election for statewide elective office is held, and after dividing the state election campaign fund into accounts pursuant to the provisions of this section, the comptroller shall divide each of the accounts for candidates for statewide elective office, except for the account for candidates for lieutenant governor, into primary and state election accounts by placing sixty percent of the balance into a primary election candidate account and the remain-
Each primary election candidate account shall be further subdivided into as many individual primary election candidate accounts as there are candidates for each statewide elective office who both qualify for the primary ballot and have primary opposition as certified by the state secretary under section two of chapter fifty-five A. The account for candidates for lieutenant governor shall be divided into as many individual primary election candidate accounts for candidates for lieutenant governor who both qualify for the primary ballot and have primary opposition as certified by the state secretary under section two of chapter fifty-five A. Each individual primary election candidate account shall be credited with an amount determined by dividing the primary election candidate account or the account for candidates for lieutenant governor, as the case may be, by a number equal to the number of certified candidates for that statewide elective office.

On or before the fifth Tuesday preceding the state election, each state election candidate account shall be further subdivided into as many individual state election candidate accounts as there are candidates for statewide elective office who both qualify for the state election ballot and have opposition in the state election as certified by the state secretary under section two of chapter fifty-five A, except that one state election candidate account shall be established in the name of the candidate for governor for each governor and lieutenant governor team of candidates. Each individual state election candidate account shall be credited with an amount determined by dividing the state election candidate account by a number equal to the number of certified candidates for that statewide elective office, except in the case of the individual account established in the name of a candidate for governor it shall be credited with an amount determined by dividing the state election candidate account for governor by the number of certified candidate teams for governor and lieutenant governor.

On or before the eighth Tuesday before a primary election for legislative elective office and after dividing the state election campaign fund into accounts pursuant to the provisions of this section, the comptroller shall subdivide the legislative account into as many individual legislative candidate accounts as there are candidates
for legislative elective office who qualify for the primary ballot or who qualify for the state election ballot without being entered in a party primary and who are opposed in the primary, or will after the primary, be opposed in the state election as certified by the state secretary under section two A of chapter fifty-five A. Each such individual legislative candidate account shall be credited with an amount determined by dividing the legislative account by a number equal to the sum of two times the number of certified candidates for state senator and one times the number of certified candidates for state representative, except that each individual legislative candidate account shall be credited with two times the amount so determined.

Section 44. On or before the eighth, sixth, fourth, and second Tuesday before the primary election in any year in which a biennial or special state election is held, the state treasurer shall without further appropriation distribute from each individual legislative candidate account for candidates for legislative elective office, and in any year in which elections for statewide elective office are held, from each individual primary election candidate account for candidates for statewide elective office, the amounts then certified by the campaign and political finance commission to be due to each eligible candidate. All distributions shall be made by direct deposit to the depository accounts designated by candidates for statewide elective office pursuant to section nineteen of chapter fifty-five, and by check payable to the political committee, if any, designated by each candidate for legislative elective office, or if such candidate does not designate a committee, to the candidate.

All individual primary election candidate accounts established pursuant to section forty-three for candidates for statewide elective office shall be closed immediately after the second Tuesday before the primary election. Any balance remaining therein shall be allocated to the state election candidate account for that statewide elective office, provided that the balance from the individual primary election candidate accounts for candidates for lieutenant governor shall be allocated to the state election candidate account established in the name of candidates for governor. Further allocation shall be made as provided by section forty-three and distribution as herein provided. All individual legislative candidate ac-
counts established pursuant to section forty-three for candidates for legislative elective office who are not among those who qualify for the state election ballot as certified by the state secretary under section two A of chapter fifty-five A shall be closed on or before the fifth Tuesday before the state election. Any balances remaining therein shall be allocated to the individual legislative candidate accounts of candidates for legislative elective office who qualify for the state election ballot by crediting to each such account an amount determined by dividing the total of such balances by a number equal to the sum of two times the number of certified candidates for state senator and one times the number of certified candidates for state representative, except that each candidate for the office of state senator shall be credited with two times the amount so determined.

On or before the fourth and second Tuesday before the state election in any year in which a statewide, biennial or special state election is held, the state treasurer shall without further appropriation distribute from each individual legislative candidate account for candidates for legislative elective office, and in any year in which elections for statewide elective office are held, from each individual state election candidate account for candidates for statewide elective office, the amounts certified to be due to each eligible candidate in the same manner as he distributed funds to candidates in the primary election.

All individual legislative candidate accounts and all individual state election candidate accounts shall be closed immediately after the second Tuesday before the state election. Any balances remaining in such accounts shall be returned to the state election campaign fund pending the next year in which a statewide, biennial, or special election is held.

SECTION 34. Section 45 of said chapter 10, is hereby amended by inserting after the word “statewide”, wherever it occurs, the words: or legislative.

SECTION 35. Section 1 of chapter 55A of the General Laws, as inserted by section 3 of chapter 774 of the acts of 1975, is hereby amended by inserting after the definition of “Statewide elective
office” the following definition: —
“Legislative elective office”, the offices of senator and representa-
tive to the general court.

SECTION 36. Said section 1 is hereby further amended by
striking out the definition of “Qualifying contribution” and insert-
ing in place thereof the following definition: —

“Qualifying contribution”, any gift of money from an individual
in the form of a written instrument signed by the donor that
identifies the donor by full name and mailing address, received
during the calendar year in which the election to which it relates is
held or during the preceding calendar year, and in the case of a
candidate for statewide elective office deposited in the depository
account required by section nineteen of chapter fifty-five during
either of said calendar years, except that (a) with respect to a
candidate for statewide elective office, no contribution shall be
considered a qualifying contribution if it exceeds five hundred
dollars or to the extent that such contribution, when added to any
other contributions from the same individual made during the
calendar year in which the election is held and during the preceding
calendar year, would exceed five hundred dollars; (b) with respect
to a candidate for legislative elective office, no contribution shall
be considered a qualifying contribution to the extent that it exceeds
twenty five dollars or, when added to any other contributions from
the same individual made during the calendar year in which the
election is held and during the preceding calendar year, would
exceed one hundred dollars; and (c) with respect to a candidate for
statewide elective office, the same contribution may be treated as a
qualifying contribution for both the primary election and the state
election.

SECTION 37. Said section 1 is hereby further amended by
striking out the definition of “Director” and inserting in place
thereof the following definition: “Commission”, the campaign and
political finance commission.

SECTION 38. Section 2 of said chapter 55A is hereby amended
by striking from the first, third, and fifth sentences the word
“director” and inserting in place thereof the word: commission.
SECTION 39. Said chapter 55A is hereby further amended by inserting after section 2 the following section: —

Section 2A. On or before the ninth Tuesday before a primary in any year in which an election or elections are held for legislative elective office the state secretary shall determine and certify to the commission and the state treasurer the names and addresses of all candidates for legislative elective office who qualify for the primary ballot or who qualify for the state election ballot without being entered in a party primary, and who are opposed by one or more candidates who have qualified for the same ballot in the primary election, or will be after a primary, opposed by one or more candidates who have qualified for the state election ballot. For purposes of this chapter any candidate for legislative elective office for whom certificates of nomination and nomination papers have been filed in apparent conformity with law shall be considered qualified for the ballot notwithstanding any objections thereto that may be filed and notwithstanding any vacancy that may occur following the filing of such certificates of nomination and nomination papers other than a vacancy caused by withdrawal of a candidate within the time allowed by law. On or before the fifth Tuesday before the state election in any such year the state secretary shall determine and certify to the commission and to the state treasurer the names and addresses of all candidates for legislative elective office who qualify for the state election ballot and who are opposed by one or more candidates who have qualified for the state election ballot. For purposes of this chapter any candidate for legislative elective office nominated at the primary election shall be considered qualified for the ballot notwithstanding any objections thereto that may be filed and notwithstanding any vacancy that may occur other than a vacancy caused by withdrawal of a candidate within the time allowed by law. The state secretary shall promptly determine and certify to the commission and state treasurer the name and address of any candidate who no longer qualifies for the primary or state election ballot or no longer has opposition because of death or withdrawal or ineligibility for office or because objections to certificates of nomination and nomination papers have been sustained or because of a recount or for any like reason.
SECTION 40. Section 3 of said chapter 55A is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph: —

The commission shall determine and certify to the state treasurer those candidates for statewide or legislative elective office who are eligible for limited public financing as provided in sections four, six and seven A, and shall determine and certify to the state treasurer the amounts due to each eligible candidate as provided in sections five, seven, and seven B. If at the time of the latter certification the treasurer determines that the monies in a primary election candidate account, the account for candidate for lieutenant governor, a state election candidate account or the legislative account, as the case may be, are not, or may not be, sufficient to satisfy the full entitlements of all eligible candidates for statewide and legislative elective offices, respectively, he shall withhold from each payment of such amount as he determines will be necessary to assure that all eligible candidates for such elective office will receive a pro rata share of their full entitlement. At the time of such withholding, the treasurer shall notify each candidate of the amount withheld and the basis for calculating said amount. Amounts so withheld shall be paid when the treasurer determines that the amounts in the particular account have become sufficient to satisfy the full entitlement, or a portion thereof, of all eligible candidates, in which case each eligible candidate shall be paid all, or a pro rata share, of his full entitlement. In determining whether the monies remaining in an account at any given time shall be sufficient to satisfy the full entitlements of all eligible candidates, the treasurer shall consider the potential entitlements of all eligible candidates as well as the actual entitlement of each candidate at the time such determination is made.

SECTION 41. Said section 3 is hereby further amended by striking out, in the first sentence of the second paragraph, the words “elections are held for statewide elective office” and inserting in place thereof the words: the election is held for the office to which such contributions relate.
SECTION 42. Said section 3 is hereby further amended by adding after the word "statewide" in the third sentence of the second paragraph the words: or legislative.

SECTION 43. Said section 3 is hereby further amended by striking from the first, second, and third sentences of the second paragraph the word "director" and inserting in place thereof the word: commission.

SECTION 44. Section 4 of said chapter 55A is hereby amended by striking from the first sentence of the first paragraph and the first and second sentence of the second paragraph the word "director" and inserting in place thereof the word: commission.

SECTION 45. Section 5 of said chapter 55A is hereby amended by striking from the first sentence of the first paragraph and from the first and second sentences of the second paragraph the word "director" and inserting in place thereof the word: commission.

SECTION 46. Said section 5 is hereby further amended by striking out of the first sentence of the first paragraph the word "primary" and inserting in place thereof the words: individual primary election.

SECTION 47. Said section 5 is hereby further amended by striking from the first sentence of the first paragraph the word "forty-two" and inserting in place thereof the words: forty-three.

SECTION 48. Section 6 of said chapter 55A is hereby amended by striking from the first sentence of the first paragraph and the first and second sentences of the second paragraph the word "director" and inserting in place thereof the word: commission.

SECTION 49. Section 7 of said chapter 55A is hereby amended by striking from the first sentence of the first paragraph and the first and second sentences of the second paragraph the word "director" and inserting in place thereof the word: commission.
SECTION 50. Said section is hereby further amended by inserting in the first sentence of the first paragraph before the words "state election candidate" the word: individual.

SECTION 51. Said chapter 55A is hereby further amended by inserting after section 7 the following sections:—

Section 7A. Any candidate for legislative elective office certified by the state secretary under section two A as qualifying for the ballot and having opposition in either the primary or the election shall be eligible to receive limited public financing of his campaign, to the extent provided by section seven B, on determination and certification by the commission that the candidate (a) has filed a request for public financing with the commission together with the bond required by section eight and (b) has received qualifying contributions as defined by section one in at least the following minimum amounts for the following legislative elective offices:—

<table>
<thead>
<tr>
<th>Office</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senator</td>
<td>$2,500</td>
</tr>
<tr>
<td>Representative</td>
<td>$1,500</td>
</tr>
</tbody>
</table>

Only amounts appearing in statements of qualifying contributions filed with the commission, in such form as it shall prescribe, shall be considered in determining whether any such minimum amount has been met. Determinations and certifications of the eligibility of candidates shall be made by the commission on or before the eighth, sixth, fourth and second Tuesday before the primary election and the fourth and second Tuesday before the state election, and shall be based solely upon information contained in such statements as have been filed prior to such dates.

The fact that a qualifying contribution has previously been considered in determining eligibility for, or the extent of, public financing of a candidate's primary election campaign shall not prevent consideration of the same contribution in determining eligibility for public financing of such candidate's state election campaign.

Section 7B. Any candidate for legislative elective office eligible to receive limited public financing of his campaign shall, on determination and certification by the commission, be entitled to an amount equal to one dollar for each one dollar of qualifying
contributions as defined by section one subject to section nine and
subject to the following limitations: (a) no candidate shall be
entitled to receive any amount in excess of the candidate’s share of
the balance then remaining in the individual legislative candidate
account established for that candidate under section forty-three of
chapter ten; (b) no candidate shall be entitled to receive any
amount after the primary election if he is not qualified for the state
election ballot or does not have opposition in such election; (c) nor
shall any candidate be entitled to receive any amount in excess of
the following maximum amounts for the following legislative elec-
tive offices: —

Senator  $12,000
Representative  $ 6,000

Only amounts appearing in statements of qualifying contribu-
tions filed with the commission, in such form as it shall prescribe,
shall be considered in determining amounts to which candidates
are entitled. Determinations and certifications of the amounts to
which eligible candidates are entitled shall be made by the commis-
sion on or before the eighth, sixth, fourth and second Tuesday
before the primary election and the fourth and second Tuesday
before the state election, and shall be based solely upon informa-
tion contained in such statements as have been filed prior to such
dates.

SECTION 52. Section 8 of said chapter 55A is hereby amended
by inserting in the second sentence of the first paragraph after the
word “statewide”, the words: or legislative.

SECTION 53. Said section 8 is hereby further amended by
inserting after the line reading, “Auditor 50,000” the following
lines: —

Senator  12,000
Representative  6,000.

SECTION 54. Said section 8 is hereby further amended by
striking from the second sentence of the first paragraph and the
first and second sentences of the second paragraph the word
“director” and inserting in place thereof the word: commission.
SECTION 55. Section 9 of said chapter 55A is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph: —

Within two weeks after any primary or state election for statewide or legislative elective office, any candidate who has received public financing under this chapter shall file a statement with the commission showing the funds remaining in the candidate’s control as of the primary or state election less any reserve necessary to defray campaign expenditures incurred in connection with such primary or such state election. Except as herein provided, in the case of any candidate for statewide elective office having a surplus following any such primary election shall thereupon pay to the state treasurer for deposit to the statewide campaign election account for candidates for the same statewide elective office an amount equal to the total amount of public financing received on account of such primary election campaign, up to the amount of said surplus. Except as herein provided, in the case of any candidate for legislative elective office having a surplus following any such primary election shall thereupon pay to the state treasurer for deposit in individual legislative candidate accounts in the same manner as any remaining balances are allocated to said accounts pursuant to the provisions of section forty-four of chapter ten. Except as herein provided, any candidate for statewide or legislative elective office having a surplus balance following any such state election shall thereupon pay to the state treasurer for deposit to the state election campaign fund an amount equal to the total amount of public financing received on account of such state election campaign, up to the amount of said surplus balance.

No candidate having a surplus balance following the primary election shall be required to make any payment on account of such surplus if such candidate is certified by the state secretary under section two of section two A as qualifying for the ballot and having opposition in the state election and, in the case of candidate for statewide election, is certified by the commission of campaign and political finance as eligible for public financing for the state election within three weeks following such primary election. In determining and certifying the amount to which any such candidate for
statewide elective office is entitled under section seven the commis-

132sion shall reduce the amount that would otherwise be determined
133thereunder by an amount to the amount that would such candidate
134would be required to pay to the state treasurer under this section
135but for the preceding sentence.

136SECTION 56. Said section 9 is hereby further amended by
137striking from the first sentence of the second paragraph the first
138sentence of the third paragraph and the first sentence of the fourth
139paragraph the word “director” and inserting in place thereof the
140word: commission.

141SECTION 57. Section 10 of said chapter 55A is hereby amend-
142ed by adding the following paragraphs: —
143Notwithstanding the provisions of section seven of chapter
144fifty-five with respect to expenditures and contributions by candi-
145dates on their own behalf, and subject to the other provisions of
146this section, no candidate for statewide or legislative elective office
147who accepts public financing under this chapter shall expend,
148during the period beginning on January eleventh of the year after
149the previous election for the office sought by the candidate and
150ending on January tenth of the year after the election for that
151office, more than fifty thousand dollars in the case of a candidate
152for governor, twenty-five thousand dollars in the case of a candi-
153date for any other statewide elective office, four thousand dollars
154in the case of a candidate for state senator, and two thousand
155dollars in the case of a candidate for state representative, in the
156aggregate, on behalf of his own campaign, either by direct expen-
157ditures or by contributions to his non-elected political committee
158or by a combination of such expenditures and contributions.
159If such candidate has expended on behalf of his own campaign
160prior to the primary election an amount less than the maximum
161amount permitted by this section and does not qualify for the
162ballot for the state election, then the candidate may expend on his
163own behalf after the primary election and before January tenth of
164the year after the state election an amount equal to the lesser of (a)
165the maximum amount permitted by this section less the amount
spent by the candidate on behalf of his own campaign prior to the
date of the primary election or (b) the amount necessary to pay
debts incurred to defray campaign expenditures during the pri-
mary election as reported by the candidate two weeks after the
primary election pursuant to the provisions of section nine, for the
sole purpose of paying such debts.

If a candidate who accepts public financing under this chapter
and who qualifies for the state election ballot has expended on
behalf of his own campaign prior to the state election an amount
less than the maximum amount permitted by this section, then the
candidate may spend on his own behalf after the state election an
amount equal to the lesser of (a) the maximum amount permitted
by this section less the amount spent by the candidate on behalf of
his own campaign prior to the date of the state election or (b) the
amount necessary to pay debts incurred to defray campaign ex-
penditures during the primary or state elections as reported by the
candidate two weeks after the state election pursuant to the provi-
sions of section nine, for the sole purpose of paying such debts.

Notwithstanding the provisions of the third sentence of the first
paragraph of section seven of chapter fifty-five, any candidate for
statewide elective office who accepts public financing under this
chapter and any political committee organized or operating on
behalf of any such candidate shall not accept from any individual
or political committee during the period between elections for the
office sought by the candidate any contributions that exceed in the
aggregate the sum of five hundred dollars in any calendar year and
no candidate for legislative elective office who accepts public
financing under this chapter and any political committee organ-}
ized or operating on behalf of any such candidate shall not accept
from any individual or political committee during the period
between elections for the office sought by the candidate any contrib-
utions which exceed in the aggregate the sum of two hundred and
fifty dollars in any calendar year. A candidate may, in order to
qualify for public financing under this chapter, return to any
contributor the difference between the aggregate contributions
received and the maximum aggregate contributions from such
contributor permissible under this paragraph, and the candidate
shall report any such return in the statement filed with the commis-
sion pursuant to sections four through seven B of this chapter.
SECTION 58. Section 11 of said chapter 55A is hereby amended by striking from the first sentence of the first paragraph and the first sentence of the second paragraph the word "director" and inserting in place thereof the word: commission.

SECTION 59. Said chapter 55A is hereby further amended by adding after section 12 the following new section: —

Section 13. The commission shall study the effect of changes in the cost of living on the provisions of chapters fifty-five and fifty-five A to the extent that such changes affect the adequacy of the minimum amounts listed in sections four, six and seven A of this chapter, the maximum amounts listed in section seven of chapter fifty-five and in sections five, seven, seven B and ten of this chapter, the amounts of the bonds required in section eight of this chapter, and the amount of the taxpayer's designation as provided in section six C of chapter sixty-two. Not later than June first of each year preceding the year in which an election for statewide elective office is held, the commission shall report to the general court the results of its study and its recommendations for changes in the aforesaid amounts which are required to effectuate the purposes of chapters fifty-five and fifty-five A. In its report the commission shall include a statement of the percentage increase or decrease during the four preceding years in the consumer price index for urban wage earners and clerical workers for the greater Boston area published by the United States Bureau of Labor Statistics or in any other indices which more accurately reflect the effect of changes in the cost of living on the cost of financing campaigns for legislative or statewide elective office and the relation of such changes to its recommendations.

SECTION 60. For the purpose of publicly financing candidates for lieutenant governor and governor in the 1982 election year all of the balance of the state election campaign fund as determined by the comptroller in 1982, notwithstanding any provisions of section 43 of chapter 10 of the General Laws as amended by this Act, to the contrary shall be allocated as follows: ten elevenths of said balance to the account for candidates for governor; one eleventh of said balance to the account for candi-
dates for lieutenant governor; and nothing of said balance shall be allocated to the accounts for any other candidates for statewide elective office or for legislative elective office.

SECTION 61. No monies from the state election campaign fund shall be allocated by the comptroller in 1984, notwithstanding any provisions of section 43 of chapter 10 of the General Laws as amended by this Act, to the contrary for the purpose of publicly financing candidates for elective office in the 1984 biennial election year or any special election held prior to the 1986 state election.

SECTION 62. For the purpose of publicly financing candidates for statewide and legislative elective office in the 1986 state election year, the balance of the state election campaign fund as determined by the comptroller in that year, notwithstanding provisions of section 43 of chapter 10 of the General Laws as amended by this Act, to the contrary shall be allocated as follows:

1. (1) Initial allocation to accounts for candidates for governor and lieutenant governor shall be made pursuant to the provisions of sub-sections (a) and (b) of the aforementioned section 43;
2. (2) After allocation pursuant to section (1) that portion of any balance remaining equal to or less than the base public finance payment for candidates for attorney general;
3. (3) After allocation pursuant to sections (1) and (2) that portion of any balance remaining equal to or less than the sum of the base public finance payments for candidates for state secretary, auditor, and treasurer shall be allocated to the accounts for state secretary, auditor, and treasurer in proportion to the size of their respective base public finance payments;
4. (4) After allocation pursuant to sections (1), (2), and (3) that portion of any balance remaining equal to or less than the base public finance payment for candidates for legislative elective office shall be allocated to the account for candidates for legislative elective office; and
5. (5) After allocation pursuant to sections (1), (2), (3), and (4) that portion of any balance remaining shall be allocated pro rata to accounts for candidates in proportion to the amounts initially allocated pursuant to sections (1), (2), (3), and (4).
For the purposes of the preceding paragraph, the term "base public finance payment" in relation to candidates for a statewide elective office shall mean the sum of (a) the number of such candidates in 1982 who qualified for the primary ballot and were opposed by one or more candidates who qualified for the same ballot in the primary election and who received more than 15 percent of the vote in the primary election times the maximum amount of public finance allowed to such candidates in the primary pursuant to the provisions of section five of chapter fifty-five A plus (b) the number of such candidates in 1982 who qualified for the ballot and had opposition in the state election and who received more than 15 percent of the vote in the state election times the maximum amount of public finance allowed to such candidates in the state election pursuant to the provisions of section seven of chapter fifty-five A. For the purposes of the preceding paragraph, the term "base public finance payment" in relation to candidates for legislative elective office shall mean the sum of (a) the number of candidates for state senator in 1982 who (i) qualified for the primary ballot or who qualified for the state election ballot without being entered in a party primary, and who were opposed by one or more candidates who qualified for the same ballot in the primary election, or who were after the primary, opposed by one or more candidates who qualified for the state election ballot and (ii) received more than 15 percent of the vote in the primary election times the maximum amount of public finance allowed to such candidates pursuant to the provision of section seven B of chapter fifty-five A plus (b) the number of candidates for state representative in 1982 who (i) qualified for the primary ballot or who qualified for the state election ballot without being entered in a party primary, and who were opposed by one or more candidates who qualified for the same ballot in the primary election, or who were after the primary, opposed by one or more candidates who qualified for the state election ballot and (ii) received more than 15 percent of the vote in the primary election times one half the maximum amount of public finance allowed to such candidates pursuant to the provision of section seven B of chapter fifty-five A plus (c) the number of candidates for state senator in 1982 who qualified for the state election ballot and (i) who were opposed by
one or more candidates who qualified for the state election ballot and (ii) received more than 15 percent of the vote in the state elections times one half the maximum amount of public finance allowed to such candidates pursuant to the provisions of section seven B of chapter fifty-five A plus (c) the number of candidates for state representative in 1982 who (i) qualified for the state election ballot and who were opposed by one or more candidates who qualified for the state election ballot and (ii) received more than 15 percent of the vote in the state elections times one half the maximum amount of public finance allowed to such candidates pursuant to the provisions of section seven B of chapter fifty-five A.

SECTION 63. All officers and employees below the rank of director of the office of campaign and political finance who immediately prior to the effective date of this act do not hold positions classified under chapter thirty-one not have tenure in their positions by reason of section nine A of chapter thirty are hereby transferred to the services of the campaign and political finance commission established by this act without interruption of service within the meaning of section nine A of chapter thirty and without reduction in compensation and salary grade, notwithstanding any change in title or duties resulting from such transfer.

All collective bargaining agreements covering any of the aforementioned employees which are in effect immediately prior to the effective date of this act shall continue in full force and effect in accordance with law.

Nothing in this section shall be construed to confer upon any officer or employee any rights not held immediately prior to the effective date of this act or to prohibit any reduction of salary, transfer, reassignment, suspension, discharge, layoff or abolition of position not prohibited prior to said effective date.

SECTION 64. The office of campaign and political finance is hereby abolished.

All books, papers, records, documents, equipment, lands, interests in land, buildings, facilities and other property both personal and real, which immediately prior to the effective date of this act
are in the custody of or maintained for the use of the office of
campaign and political finance which relate to or are maintained
for the purpose of the said office are hereby transferred to the
campaign and political finance commission established by this act.
All questions regarding the identification of such books, papers,
records, equipment, lands, interests in land, buildings, facilities
and other property shall be determined by said commission.

All monies heretofore appropriated for the office of campaign
and political finance remaining unexpended on the effective date
of this act are hereby transferred to, and shall be available for
expenditure by the campaign and political finance commission
established by this act for the purpose of the exercise of the powers
and the performance of the duties for which such monies were
appropriated. All questions regarding the identification of such
monies shall be determined by said commission.

All duly existing contracts, leases and obligations of the office of
campaign and political finance which are in force immediately
prior to the effective date of this act, shall be performed by the
campaign and political finance commission established there-
under by this act, in accordance with law. This provision shall not
affect any renewal provision or option to renew contained in any
such lease in existence of the effective date of this act. All questions
regarding the identification of such contracts, leases, and obliga-
tions shall be determined by said commission.

Any petitions, hearings and other proceedings duly begun by the
office of campaign and political finance or by any official or agent
thereof shall continue unabated and remain in full force and effect
notwithstanding the passage of this act, and shall thereafter be
completed before or by the campaign and political finance com-
mission or by any official or agent thereof in accordance with law.

All orders, rules and regulations duly made, and all licenses,
permits, certificates and approvals duly granted by the office of
campaign and political finance or by any official or agent thereof
shall remain in full force and effect until superseded, revised,
rescinded or cancelled in accordance with law.
SECTION 65. If any provision of this act, or its application to any person or any set of facts and circumstances, is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other provision of this act or the application of the provision in question to any other person, facts or circumstances.

SECTION 66. This act shall take effect on January 10, 1982, except that section thirty shall take effect with respect to taxable years beginning on or after January 1, 1981.
Final Report
To The General Court
Of The Special Commission
Concerning State And County Buildings

December 31, 1980

Created by
Chapter 5 of the Resolves of 1978
as amended by Chapter 11 of the Resolves of 1979
VOLUME 12

SYSTEMS ISSUES AND FINDINGS

FOOTNOTES AND APPENDICES

for

VOLUMES 7 and 8
# Table of Contents

## Footnotes:

**THE SYSTEM OF PUBLIC CONSTRUCTION IN MASSACHUSETTS**

- Introduction: 1
- The Scope and Nature of the Commonwealth's Capital Investment Program: 1
- Formal Organization and Processes: 1
- Capital Planning and Budget: 1
- Results of Capital Planning: 2
- Specific Systemic Problems in the Capital Planning Process: 2
- Solutions to Specific Problems: 4
- Reviews of Plans and Requests: 5
- Real Property Management: 7
- Programming: 8
- Designer Selection: 9
- Design: 13
- Construction Bidding: 14
- Contractor Qualifications: 17
- Access to Public Contracts: 19
- Project Management: 19
- Maintenance and Repair: 22
- Record Keeping: 23

**CAMPAIGN FINANCE**

- The Special Commission in Court: 25

- Total Pages: 11
APPENDICES TO VOLUMES 7 AND 8:

Appendix to Designer Selection:

Appendix to Subcontractor Selection:
- Data from the Massachusetts Department of Public Works on the Cost of Filed Sub-bid Projects.
- Recommended Legislation, "Construction Accountability Act."

Appendix to Contractor Qualifications:

Appendix to Access to Public Contracts:

Appendix to Recommended Budget:

Appendix to Campaign Finance:
- Section by Section Summary of Campaign Finance Bill.
- Recommended Campaign Finance Legislation: "An Act to Further Regulate the Reporting and Disclosure of Campaign Contributions and Expenditures and to Provide for Partial Public Financing of the Political Campaigns of Certain Candidates for Public Office."

Appendix to Enforcement:
- Recommended Legislation" "An Act to Increase the Political Independence of the Office of Inspector General."

Appendix to Systems Issues and Findings:

Additional Recommended Legislation
- "An Act Affecting the Powers and Duties of the Inspector General."
- "An Act to Clarify the Powers and Duties of Certain State Officers."
- "An Act to Improve Capital Outlay Budget Planning."
"An Act Clarifying Section 67A of Chapter 266 of the General Laws."
THE SYSTEM OF PUBLIC CONSTRUCTION IN MASSACHUSETTS

FOOTNOTES

INTRODUCTION
(Volume 7, pages 3 - 7)
1 Testimony at public Commission hearing, May 21, 1980.
2 Testimony at public Commission hearing, June 11, 1980.
3 Testimony at public hearing before the General Court Joint Committee on State Administration, March 19, 1980.

THE SCOPE AND NATURE OF THE COMMONWEALTH'S CAPITAL INVESTMENT PROGRAM
(Volume 7, pages 8 - 15)
1 Massachusetts Financial Report, For the Fiscal Year Ended June 30, 1979, pp. 19-20
2 Report on the Status of All Buildings Occupied by the Judicial Branch Including Recommendations Relative to Acquisition of Court Buildings Report, p. 8
3 Report, p. 10
4 Report, p. 11
5 Report to the Court, United States District Court Monitor, August, 1980, pp. 10-10-11
6 Acts of 1980, c. 466, s. 3.
7 Acts of 1980, c. 466, s. 3.

FORMAL ORGANIZATION AND PROCESSES
(Volume 7, pages 19 - 35)

CAPITAL PLANNING AND BUDGET
(Volume 7, pages 36 - 43)
1. The Executive Office of Educational Affairs followed a different procedure. This executive office was abolished in 1980.
2. G. L. c. 3 s. 38B
3. G. L. c. 35 s. 30
4. G. L. c. 34 s. 14
RESULTS OF CAPITAL PLANNING
(Volume 7, pages 44 - 59)


2 Management Letter dated June 30, 1975, from Clarence Rainess, Certified Public Accountant, to University of Massachusetts Building Authority, at 4.


3 Memorandum dated April 25, 1979 from Robert Wood (UMass President) to Committee on Buildings and Grounds, Re: "Tillson: Issues and Options" p. 2. See also, Volume 6 of this report.

4 Id., p. 3


6 Testimony of Joan Belle-Isle, Sp. Comm. 9/26/79 at 175.

7 Id., at 176.

8 Id., at 177.

9 Id., at 187-8.


11 Quoted in Joint Committee on Post Audit and Oversight, Management Audit of the Department of Youth Services, April 1974, at 105-111.


13 Id., at 10-11.

13a Id., at 11.

14 Id., at 13.

15 Id., at 15.


17 Ibid., p. 18.

18 Ibid., p. 23.

19 Ibid., p. 23.

20 Ibid., p. 23.

21 Ibid., p. 24.

22 Ibid., p. 24.

SPECIFIC SYSTEMIC PROBLEMS IN THE CAPITAL PLANNING PROCESS
(Volume 7, pages 60 - 81)


Ibid., p. 51.
Ibid., p. 46.
Ibid., p. 14
Ibid., p. 15
Ibid., p. 16
Ibid., p. 17
Ibid., p. 17
Ibid., p. 17
Ibid., p. 52
Ibid., p. 47
Ibid., p. 47
Ibid., p. 48


Ibid., p. 184.


Ibid., at 18.
Ibid., at 18.
Ibid., at 19.
Ibid., at 19.
Ibid., at 32.
Ibid., at 32.
Ibid., at 33.
Ibid., at 33.
Ibid., at 24.
Ibid., at 24.
Ibid., at 24.
Ibid., at 25.
Ibid., at 25-6.

Dober Report, p. 63.

Ibid., p. 63.


Glynn testimony, supra, n. 21, at 30.
SOLUTIONS TO SPECIFIC PROBLEMS
(Volume 7, pages 32 - 89)
Upon reflection, the Commission saw the wisdom of a single division. The argument that the functions of the two agencies would have been different (as would their staffs) had merit; so did the concern about placing within a single office (and in a single person's hands) two very important functions:

1) the power to recommend projects and 2) the opportunity to carry them out. The risk of self-serving recommendations and empire-building might be great. To some extent the notion that having agencies with a similar expertise and overlapping concerns would be a source of creative differences in making policy choices was a sound one.

On the other hand, the two divisions would inevitably rely upon similar information and expertise. Thus, to duplicate their staffs and supporting resources would be wasteful. Moreover, differences between them might not be creative—they might constitute wasteful conflict and necessitate unproductive mediation. The Commission therefore preferred to rely upon other forces within the Executive and the legislature to deal with potential problems resulting from having a pivotal division head. The choice was made for a single division encompassing both planning and operations.

The Commission's originally proposal gave those responsibilities to the Office of Facilities Management, within the purely "operations" unit, of the Division of Capital Operations, one of the two Divisions originally proposed. The rationale was that many decisions related to real property management, and the supporting information were often linked with the decisions and information pertaining to functions of the Office of Facilities Management in overseeing repair and maintenance of buildings. However, once the Commission adopted a proposal for a single Division of Capital Planning and Operations, the argument was not as compelling.

REVIEWS OF PLANS AND REQUESTS
(Volume 7, pages 90 - 100)
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<td>11</td>
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<td>40</td>
<td>c. 7 s. 40M</td>
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Id., at 7

Comptroller's Division, Financial Report for the Fiscal Year Ended June 30, 1979 (Commonwealth of Massachusetts) at 10

G.L. c.8 s.10A

G.L. c.7 s.36

Comptroller's Division, Real Estate Manual (Commonwealth of Massachusetts) at 2

Id., at 2

The Governor's Management Task Force 1976, A Management Plan for Massachusetts (Commonwealth of Massachusetts) at 53

Department of Mental Health, G.L. c.19 s.14B; Department of Public Health, G.L. c.111 s.62R; Metropolitan District Commission, G.L. c.92 s.87; Mass. Board of Regional Community Colleges, G.L. c.15 s.33; Southeastern Massachusetts University, G.L. c.75B s.8; University of Lowell, G.L. c.75A s.11; University of Massachusetts, G.L. c.75 s.33

Department of Corrections, G.L. c.124 s.10; Department of Mental Health, G.L. c.19 s.1

Memorandum of the Department of Mental Health

G.L. c.8 s.10

Memorandum dated September 28, 1979, from Harold Vanasse, "State Surplus Property:" memorandum dated October 28, 1977 from the Executive Office for Administration and Finance to All Agency Heads, "Excess and Surplus State Real Property"

The Governor's Management Task Force 1976, supra at 53

Department of Public Works, G.L. c.16 s.19; c.81 s.7; c.11 s.13B; c.83 s.4; c.91 s.5

Testimony of Michael Tabak, Sp. Comm. 5/28/80 at 6-7


Department of Public Works, c.81 s.70, 7E, 7H, 7L. 12; c.91 s.2. Southeastern Massachusetts University, G.L. 75B s.13, 14. University of Lowell G.L. c.75A s.18, 19. University of Massachusetts, G.L. 75 s.25-27 c.329 s.17 of the Acts of 1980

Division of Drug Rehabilitation, G.L. c.123 s.43(2). Department of Natural Resources, G.L. c.21 s.30. Office for Children, G.L. 28A s.3. Soldiers Home, G.L. c.115A s.8. Metropolitan District Commission, G.L. c.92 s.13, 81, 82, 84, 85, 88

Joint Committee on Post Audit and Oversight, Interim Report Relative to Management Practices at Quinsigamond Community College (Commonwealth of Massachusetts, 1978) at 23-24

Memorandum dated October 16, 1979 from Russell Feldman to Byron Matthews, "Vacant Publicly Held Structures in Massachusetts"

Memorandum dated March 7, 1975 from Arthur Mackinnor, Comptroller, to Agencies Having Real Property owned by the Commonwealth of Massachusetts, "Land and Building Records"

Malcolm E. Dudley & Associates, supra at 5-6

Opinion of the Attorney General, June 19, 1980
Programming
(Volume 7, pages 128 - 141)

Testimony of Stuart Lesser, Sp. Comm. 10/12/79 at 68.
Glynn Testimony, supra, at 28-30.

Belle-Isle testimony, supra, at 28-30.


See the section of this report dealing with Boston State College for more detail.
Belle-Isle Testimony, supra, at 175-7.
Belle-Isle Testimony, supra, at 175-8.

Source: BBC files.
Testimony of William Porter, Special Commission hearing 9/26/79 at pp. 127-8

Source: response to Commission questionnaire regarding building defects submitted to Commission by Charles T. Moyer, Head Administrative Assistant, Institute of Laboratories; also interviews with staff.

See the section of this Report on Duxbury (Volume 6).

Interviews with Department of Corrections staff. For a detailed discussion of the awarding of this design contract, see the investigative sections of this Report on Masiello & Associates.

Source: review of Government Center Commission files.

See Research & Design, the Quarterly of the AIA Research Corporation, Summer 1978; also Progressive Architecture, Nov. 1974, pp. 70-77.


G.L. c.29 s.7C, as most recently amended by Chap. 579 of the Acts of 1980.
G.L. c.29 s.7D.
G.L. c.29 s.7K.
G.L. c.29 ss 26A and 26B.
G.L. c.7 ss 41A and 41B.
G.L. c.7 s.4DA.
G.L. c.7 s.300.
G.L. c.7 s.300 para. (f). (Tr. 9-26-79, p. 195).
DESIGNER SELECTION
(Volume 7, pages 187 - 249)

According to an Opinion of the Attorney General dated August 22, 1973, the procedure described in this section need not have been complied with when appointing a designer for maintenance projects initiated by the director of the BBC pursuant to c. 7 s. 46.

Report on the BBC Enabling Act

Testimony of Albert Zabriskie, Sp. Comm. 4/16/80 at 19 et seq.

G.L. c. 7, s. 30B.


Ibid., at 15.


Shepard testimony, supra n. 10, at 19.

Yasi testimony, supra n. 11, at 20.

Cowin testimony, supra n. 12, at 12.


Cowin testimony, supra n. 12, at 28.


Frank Masiello testimony, supra n. 24.

Waldrom testimony, supra n. 28, at 26.


Based on Commission reviews of DCA contract files. See appendix for details.

William Masiello testimony, supra n. 17, at 48-51.


William Masiello testimony, supra n. 34, at 70.


See public testimony of Stephen Demos and Barbara Manford, 10/10/79.


Demos testimony, supra n. 46, at 27.


Masiello testimony, supra n. 34, at 20.


GSA, p. 10.

Id. p. 20.

Id. p. 5-1.


Id. p. ii.


GSA Report, p. 5-2.

GAO Report, p. 11.

Schnitzen, p. 9.

GAO, p. 11.

GSA, p. 5-3.

Schnitzen, p. 10.
In Stephens County v. McCammon, 40 S.W. 2d 67, 71.

American Bar Association report, op. cit., n. 52, at 6.

Id. p. 82-84.

GSA, pp. 5-36, 37.

Florida report, p. 45.

GAO, pp. ii, iii, and 26-29.

Schnitzer, p. 11.


Maryland Task Force Report, dissenting view, at 34.

See, e.g., the GAO Report, p. 3

ABA, p. 20


Id. p. 16.

Id. p 45, 46.

Id. p. 396-402.

Id. p 398.

See ABA, Summary and p. 19

See ABA, pp. 20 - 31, and see also ABA Appendix A, pp. 32-48 for a review of most state’s statutes

Id. p. 24.

Sec. 30. G.c.; Sec. 30.H

Sec. 30.H

Sec. 30.G.c.

Sec. 30.H.a&b.

Sec. 30.G.a.

Sec. 30.E.b.iii.

Sec. 30.E.a.

Sec. 30.E.b.l

Sec. 30.E.b.ii

Sec. 30.E.b.i

Sec. 30.F.a&b.

Sec. 30.F.c.

Sec. 30.F.a.
Sec. 30.L.b.
Sec. 30.G.a.iv
Sec. 30.E.b.iv
Sec. 30.I.a.
Sec. 30.G.a.
Sec. 30.G.a.
Sec. 30.F.d.
Sec. 30.G.b.
Sec. 30.G.
Sec. 30.G.c.
Sec. 30.M.a.ii
Sec. 30.N.
See Chapter 30A.
Sec. 30.H.a&b.
Sec. 30.E.b.v
Sec. 30.H.a.
Sec. 30.H.b.
Sec. 30.I.b.
Sec. 30.H.b.
Sec. 30.H.c.
Sec. 30.I.e.
Sec. 30.F.e.
Sec. 30.I.c.
Defined at Sec. 30.B.b.
Sec. 30.D.e.
Sec. 30.D.a.
Sec. 44.A.1&2.
Sec. 30.D.b.
Sec. 30.D.f.ii
Secs. 30.D.f.1; & 30.J.
Sec. 30.D.f.ii
Sec. 30.D.b.
DESIGN

(Volume 7, pages 253 - 283)

1 G.L. c. 7, s. 44
3 BBC project T65-l
7 Rankine testimony, supra n. 5, at 23
10 Flynn testimony, supra n. 9, at 17
12 Cusack testimony, supra n. 4, at 93.
13 Atkins Testimony, supra n. 8, at 12.
15 G. L. c. 30, s. 39M, para. (b).
16 Testimony of George Sargent, Sp. Comm. 4/28/80, at 19
19 Rankine Testimony, supra, p. 30-31; Ernst & Whinney, "Operations Appraisal of the BBC," September 1979, pp. 25-26
20 Letter of Miles Mahoney to Hudson Housing Authority, 12-29-72
21 G. L. c. 7, s. 30I.
22 G. L. c. 7, s. 42J.
24 G. L. c. 7, s. 420, para. (6)
25 G. L. c. 7, s. 30I, para, (f)
26 G. L. c. 7, s. 420, para, (5)
27 G. L. c. 7, s. 7K
28 G. L. c. 149, s. 44C, para (A)
29 G. L. c. 149, s. 44F, para. 4a

CONSTRUCTION BIDDING
(Volume 8, pages 284 - 342)

1 c. 149, s. 270
2 c 149, s. 24
3 c. 149, s. 248
4 c. 149, s. 27C
5 See c. 149 s. 44G
6 See sec. 44H
7 See sec. 44D
8 See sec. 44H
9 See sec. 44I
10 See sec. 44F
11 See sec. 44B
12 See sec. 44F
13 See sec. 44D
14 See sec. 44A
Id. at 30-31.
G.L. c. 149, s. 44D.
Tibbetts testimony, supra n. 22, at 61.
Kennedy testimony, supra n. 21, at 40.
Id. at 26-7.
Id. p 45.
Id. p. 55.
Id. p. 64.
Tibbetts testimony, supra n. 22, at 101.
Letter dated 11/5/73 from C. Chaloff (of C. E. Maguire) to W. Poitrast (BBC Director).
William Masiello testimony, supra n. 34, at 55-57.
Masiello testimony, supra n. 34, at 85-88.
Letter: Mozzetta to Masiello, 1/9/70, (sic), apparently dated with the wrong year
See, for example, AIA Standard General Conditions, A201, sections 1.1.3 and 1.2.3; and GSA Standard form 23A, clause 2
MSAA Memorandum dated March 13, 1972, pp. 3-5.
Id. pp. 237-238.
Notes of 2/19/80 interview with Earl Flansburg, AIA, by Commission staff.
MACE, supra n. 44, at 244.
Suffolk Superior #94370, (March 1, 1972).
Testimony of the Massachusetts Commission Against Discrimination (MCAD) before the Legislative State Administration Committee, March 19, 1980.
April 15, 1980.

April 10, 1980.


*See* testimony of Joseph Corwin, Esq., before the Legislative State Administration Committee, March 19, 1979, p. 224

There appears to be a small error in the Gilbaine study in the "mechanical" category.

Gilbaine, p. 55.

*Id.* p. 101.

MACE, p. 247.

Contained in a letter dated April 18, 1980 to the House and Senate Chairpersons of the legislature's State Administration Committee.

32 Law & Contemporary Problems 528, 534.


Letter dated March 19, 1979 from Charles Townshend (New Jersey Division of Building Construction) to Germansson (Wisconsin).


*See* House document number 1250 of 1934.


*See* Engineering New Record, September 18, 1980, "Federal Procurement Hearing Stirs Debate," pp. 51, 52

H.R. 3345 & 11245


*Id.* p. 4.

41 CFR 14-7.602-50(1)

*Meva Corp. v. United States* 511 Fed 2d 548 (1975)

*See, e.g.*, transcript of State Administration Committee hearing, March 19, 1980

Letter dated November 20, 1978, from ASC Vice President to Special Commission Chairman.

Letter dated November 13, 1979, from Louis A. Guidry to Commission.

CONTRACTOR QUALIFICATIONS
(Volume 8, pages 343 - 359)

2 Testimony of Barbara Manford, Sp. Comm. 10/10/79 at 73.
3 Id. at 74.
4 Id. at 82.
5a Woollett testimony, supra n. 4a, at 15.
8 Id. at 63-67.
9 Id. at 75-76.
10 Manford testimony, supra n. 2, at 72.
11 Id. at 75.
12 Spence testimony, supra n. 5, at 95-98.

13a Table (1) Time Chart of Prequalification Procedure

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<th>Statutory Authority</th>
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<td>1</td>
<td>Advertisements soliciting applications to bid placed by awarding authority.</td>
<td>M.G.L. c. 29, s. 8A; c. 43, s. 28.</td>
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<td>7</td>
<td>Bidder must file application to bid and prequalification statement (unless statement filed within preceding 12 months) with awarding authority.</td>
<td>M.G.L. c. 149, s. 440 (1)</td>
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<td>21</td>
<td>Awarding authority or Division of Capital Planning and Operations must evaluate bidders, notify ineligible bidders by certified mail, and publish list of eligible bidders.</td>
<td>M.G.L. c. 149, s. 440 (3), (5) and (6).</td>
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<td>35 or later</td>
<td>Deadline by which eligible bidders may submit bids to awarding authority.</td>
<td>M.G.L. c. 149, s. 440 (4).</td>
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<td>2 business days after receipt of notice of ineligibility to bid.</td>
<td>Ineligible bidder may file written appeal of determination of ineligibility with Commissioner of Labor &amp; Industries. Commissioner must issue written ruling within one week of appeal.</td>
<td>M.G.L. c. 149, s. 440 (7).</td>
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<td>5 business days after receipt of notice of ineligibility to bid.</td>
<td>Ineligible bidder may submit written objections to determination of ineligibility to awarding authority.</td>
<td>M.G.L. c. 149, s. 440(6).</td>
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Section 44A (2). All statutory citations, unless otherwise noted, refer to Chapter 149 of the General Laws, Enabling Act Section 55.

Sec. 44D(1)
Sec. 44D(1)(a)
Sec. 44D(1)(b)
Sec. 44D(3)
Sec. 44D(5)
Sec. 44D(3)
Sec. 44D(3)
Sec. 44D(1)(a), (3)
Sec. 44D(6)
Sec. 44D(7)
Sec. 44D(6)
Sec. 44D(9)
Sec. 44E(1)

A Systems Approach for Mass. Schools. p. 245

Ibid., p. 246

Interview with Ann McDonough, MBTA Contract Administration Division, October, 1979

Telephone interview with Joseph Febo, Prequalification Officer, and Charles Townsend, Deputy Director, N.J. Division of Building and Construction, September, 1979

Sec. 44D(1)(a)
Sec. 44C(3)(b)
Sec. 44C(1)

Ibid.

Ibid.

Sec. 44C(5)

G.L. c. 30A, s. 14

Sec. 44C(2)

41 CFR 1-1.601-1(b)

Enabling Act, Section 59, c.149, S.44(B)
ACCESS TO PUBLIC CONTRACTS
(Volume 8, pages 360 - 371)

1 Enabling Act (Acts of 1980, Chapter 579) Section 7; G.L. c. 7, s. 40 C (2).
2 Enabling Act Section 40; G.L. c. 9, s. 20.
3 Associated General Contractors v. Altshuler at 18.
5 Memorandum dated 3/15/80 to Members of the Mass. Port Authority, at 3.
6 Preface to City of Boston Supplemental Minority Participation and Resident Preference Section, pp. ii-iv.
7 G.L. c. 23A, s. 36.
9 42 U.S.C. s. 6705 (f) (2).
10 Fullilove, at 4984.
11 Goals and Timetables for Female and Minority Participation in the Construction Industry, 41 CFR s. 60-4-1 et seq.
14 Enabling Act, Section 7.
15 Altshuler, at 19.
16 Fullilove, at 4982.
17 Chapter 9, Section 20.
19 Id. at 107.

CONSTRUCTION MANAGEMENT
(Volume 8, pages 372 - 404)

1 G.L. c. 7, s. 42.
2
3 G.L. c. 149, s. 44I (2).
4 G.L. c. 149, s. 44K.
5 G.L. c. 7, s. 45.

Ernst & Whinney, pp. 28-30.

G.L. c. 7, s. 45.


Id. at 16.

Id. at 15-16.


Ernst & Whinney, p. 28.

Welch testimony, supra n. 12, at 189-190; Ernst and Whinney, pp. 28-30.


Welch testimony, supra n. 12, at 152.

Id. at 153.

Id. at 158-9.


Jacobs testimony, supra n. 16, at 187-8.

Welch testimony, supra n. 12, at 187-8.


Id. at 110.

Id. at 96.


Welch testimony, supra n. 12, at 178-182.

Ernst & Whinney, p. 35.


See Welch testimony, supra n. 12, at 171-4.

Id.


Ernst and Whinney, p. 5.

Id. p. 3.

Spence testimony, supra n. 22, at 97.

Footnote numbers 9, 10, and 11 erroneously appear twice in the text.
See Ernst & Whinney, p. 4.
Welch testimony, supra n. 12, at 160-3.
Jacobs testimony, supra n. 16, at 126.
Ernst & Whinney, p. 33.
Nason testimony, supra n. 33, at 11.
G.L. c. 7, s. 44.
Ernst & Whinney, p. 33.
Good testimony, supra n. 44, at 206-8.
G.L. c. 7, s. 42B, as most recently amended by the Acts of 1980, Chapter 579, s. 12.
G.L. c. 7, s. 42J, as most recently amended by the Acts of 1980, Chapter 579, s. 12.
Id. at 10.
Dudley Report, at 17.
Id. at 19.
Ernst & Whinney, at 29.
See Enabling Act, Section 7, G.L. c.7, S.40C: "The deputy commissioner shall, after providing an opportunity for the attorney general and other interested parties to comment, promulgate and from time to time revise uniform contract conditions appropriate to the type of service being rendered to be incorporated in all contracts for services of that type related to capital facility projects."
G.L. c. 7, s. 40.
G.L. c. 7, s. 42J.
G.L. c. 7, s. 42E.
For a detailed analysis of the federal change order provisions, on which sections 42E to 42G were modelled, see Report of the Working Group Studying the Changes Clause of SF-23A, March 1, 1966 and Modification Letter dated May 8, 1967.
G.L. c. 7, s. 42E.
G.L. c. 7, s. 42F.
G.L. c. 7, ss. 42E & F.
G.L. c. 7, s. 42G.
See G.L. c. 30, ss. 39I and 39N.
G.L. c. 7, s. 42H.
Id.

Good testimony, supra n. 44.

BUILDING MAINTENANCE AND REPAIR
(Volume 8, pages 406 - 421)

1 Memorandum dated July 31, 1978, from Frederick J. Kussman to George Rushton, "Informal End of F.Y. 1978 Report" at 3

2 Department of Community Affairs, Modernization Inspection: Chapter 200 State Aided Family Housing (Commonwealth of Massachusetts, 1978)

3 Policies and Procedures Committee, University of Massachusetts Building Authority, Final Report (Commonwealth of Massachusetts, 1978), at 3-4


5 Testimony of Senator Chester Atkins, Sp. Comm. 10/19/79, at 7-9

6 Id., at 8-9

7 Id., at 5


10 United States District Court Monitor, Report to the Court (1980), at 2-3


13 Id., at 3

14 See Section of Special Commission Final Report entitled "Construction Defects: State and County Buildings."


16 Honorable Walter H. McLaughlin, "Of Men and Buildings--Crisis in Judicial Administration" (address before Midwinter Meeting of the Massachusetts Bar Association, 1971)


18 The following cases have been brought as a result of poor building conditions in other facilities. In Inmates of Suffolk County Jail v. Eisenstadt, 360 F. Supp. 676 (D. Mass. 1973), aff'd 494 F.2d 1196 (1st. Cir. 1974), conditions at Charles Street Jail were found to violate

19

Inmates of Suffolk County Jail v. Eisenstadt

20


21

Senate No. 220D, May 15, 1980, at 3-5

22

Memorandum dated January 11, 1980 from Rudy Sibilio to Mr. Larry White, "Snow Removal Procedures"

23


24

Memorandum dated November 13, 1980 from the Suffolk County Courthouse Commission to All Department Heads and Employees of the Suffolk County Courthouse, "Energy Conservation"

RECORD KEEPING

(Volume 8, pages 422 - 438)

1

Commonwealth of Massachusetts, Department of the State Auditor, "Report on the Examination of the Accounts of the Government Center Commission," July 1, 1975, p. 10

2

Clarence Rainess & Co., certified public accountants, "Review of Accounting Procedures and Financial Reporting of the University of Massachusetts at Amherst (Phase II) for the University of Massachusetts Building Authority," p. 3.

3

G. L. c. 30, s. 42.

4

G. L. c. 66, s. 1; and G. L. c. 4, s. 7 (2b).

5


6

G. L. c. 7, s. 4OC (1).

7

G. L. c. 7, s. 4OA.
<p>| | | |</p>
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<td>8</td>
<td>G. L. c. 7, ss. 40a and 40B.</td>
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<td>G. L. c. 7, s. 40K.</td>
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CAMPAIGN FINANCE

(Volume 8, pages 1 - 39)

4 G.L. c. 55, s. 1.
5 G.L. c. 55, s. 5.
6 G.L. c. 55, s. 18.
7 G.L. c. 55, s. 8.
8 G.L. c. 55, s. 8.
9 G.L. c. 55, s. 10.
10 G.L. c. 55, s. 9.
11 G.L. c. 55, s. 18.
13 Private communication from Jerry Ferwerda, Executive Director of the Wisconsin State Elections Board.
THE SPECIAL COMMISSION IN COURT

(Volume 8, pages 131 - 149)


4 Matter of Fishele, 557 F. 2d 209, 212-13 (9th Cir. 1977); Colton v. U.S., 302 F. 2d 633, 640 (2d Cir. 1962). cert. den. 371 U.S. 551 (1963) (to be protected, the documents must have been prepared for and in anticipation of litigation).


7 Ward v. Peabody, Superior Court Department No. 38481 (Civil). These papers were unimpounded by the Supreme Judicial Court at the time it heard the case.


13 Id.

14 Id.

15 Id.

16 Id.

17 Id.


23 In the Matter of Harold Greene, Superior Court No. 41274 (1980).
25 Ward v. Thissen, Superior Court Civil Action No. 41545; Ward v. Kelly, Superior Court Civil Action No. 41546.
27 Coletti v. Ward, Superior Court Civil Action No. 43117.
28 Ward v. Coletti, Superior Court Civil Action No. 43445.
29 Ward v. Coletti, Appeals Court No. 80-922 (Civil).
30 Ward v. Coletti, Supreme Judicial Court No. 2309.
31 Superior Court Civil Action No. 38365 (Impounded).
32 Ward v. Manzi, Superior Court No. 41919 (Civil) (1980).
APPENDIX TO

DESIGNER SELECTION SECTION
### APPENDIX  DESIGNER SELECTION SECTION

**Designers**

**Distribution of Work**

Department of Community Affairs  
Elderly Housing Projects  
1968-1979

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Number of Leading Firms: 5 (6%), 11 (13%)
APPENDIX TO

SUBCONTRACTOR SELECTION
REPORT OF THE
GENERAL SERVICES ADMINISTRATION
ADVISORY PANEL ON
SUBCONTRACTOR LISTING

DECEMBER 30, 1977

- B. J. McKinney, Chairman
  New York, NY

Alan W. Oerthick
Chattanooga, TN 37403

Robert S. Ingram
Chicago, IL 60684

R. Kenneth Smith
Dayton, OH 45403

Robert L. Wilkinson
Washington, DC 20014
INTRODUCTION

In November 1977, Joel W. Solomon, Administrator of General Services, established the Advisory Panel on Subcontractor Listing in accordance with the provisions of the Federal Advisory Committee Act (Public Law 92-463) to review and submit recommendations on the GSA requirement for the Listing of Subcontractors. The objective was to utilize the experience and expertise of the private sector to assist in making a decision as to whether to continue the listing requirement.

The mission of the Panel (copy attached) was to review the GSA requirement for a listing of subcontractors with construction bids, problems that had resulted from the requirement, and GSA's proposal to delete the requirement from its regulations; review and evaluate comments for and against elimination of the requirement and suggested alternatives; and make recommendations to GSA as to proposed solutions, considering various alternatives. In carrying out its assignment, the Panel reviewed the background material on GSA's requirement for subcontractor listing; the regulations; a report on recent problems resulting from the requirement including copies of Comptroller General's Decisions, the proposed rule change to delete the regulatory requirement, published in the June 1, 1977 Federal Register; a sampling of comments on the change; and a summary of comments.

After the review, the Panel met in the General Services Administration in Washington, D.C., on November 17, 1977, for briefing by GSA personnel, discussion, deliberation, and development of recommendations.

FINDINGS

The requirement for a listing of subcontractors is set forth in the General Services Administration Procurement Regulations (GSPR) Chapter 3B, Sections 3B-2.202-70 and 3B-2.404. It applies to new construction contracts exceeding $150,000 and repair and alteration contracts exceeding $500,000 (with the exception of certain phased construction contracts in the Construction Manager program where few subcontracts are involved).

Contracting officers are responsible for determining the categories to be listed for each project based on criteria in the regulations. They are required to include mechanical, electrical, elevator and escalator categories of work and all other general categories estimated to exceed 3% of the total contract price. The categories are developed from Government estimates and are inserted on the supplemental bid form.
The major reasons given for opposing the elimination of the requirement, mostly from subcontractors, were:

a. Listing prevents bid shopping after bid opening, which is an unfair, unethical and otherwise undesirable practice.

b. Bid shopping increases the prime contractor's profit and lowers the subcontractor's profit.

c. Bid shopping results in less reliable subcontractors and can result in substandard work and materials in the performance of the work.

d. Listing encourages fair competition and good business.

e. Listing means the Government gets the benefit of the lowest prices.

f. Bid shopping delays subcontract awards and reduces the subcontractor's time to complete the work.

On the other hand, those in favor of GSA's proposed change to discontinue the requirement, primarily general contractors, gave the following major reasons:

a. The right to purchase at the most competitive price should not be denied the Federal Government.

b. GSA has not been influenced by the opinion of its Regional Administrators, 3 of 10 of whom have stated that subcontractor listing should be eliminated but, instead, has been influenced by external pressures in hesitating to eliminate subcontractor listing.

c. The Federal Government appears to be more interested in knowing the names of subcontractors through use of the listing requirement rather than reducing the contractor's price to a reasonable amount.

d. Listing adds confusion to bidding procedures and causes errors due to lack of time to review subbids.

e. Listing costs the Government money; it makes contracting with GSA more costly than with other agencies.

f. Prime contractors are responsible to the Government for the project and should be permitted to manage without interference.

g. Listing delays contract awards; causes errors in bids, protests, and rejection of bids.
h. Subcontractors could control bid shopping by quoting best price initially; listing does not prevent subcontractors from bid shopping.

DISCUSSION

The Panel recognizes the difficulties of the general contractor in preparing a bid, taking last minutes subbids, coordinating the trades, and ensuring that the subbids are complete. The last minute rush seems to be almost unavoidable in competitive bidding. It is believed that some of these problems can be alleviated by general contractors' requiring timely subbids with scope abstracts to provide time for computations and evaluation. However, this matter concerns the prime contractor-subcontractor relationship which is difficult for a third party (the Government in this case) to control. General contractors contend the Government should not become involved in the prime-contractor relationship since there is privity of contract between contractor and subcontractor and since listing violates the right of the general contractor to manage the project.

Bid shopping itself is between the prime contractor and the subcontractor, and it requires the participation of both. However, it creates an unhealthy bidding climate in which the subcontractor's profits may be so drastically cut that GSA's project may suffer from attempts of subcontractors to cut corners and recover lost profits.

Many subcontractors say that, when the listing is required, they quote their best prices initially to the general contractor, which gives the Government the benefit of their best prices, but that when no listing is involved, they may bid higher with the expectation of being bid shopped.

On the other hand, those in opposition to the listing say the requirement costs the Government money because prime contractors include in their bids an allowance for errors of subcontractors which they have to absorb after making a commitment to use that subcontractor. They add, however, that general contractors have to try to keep their bids at a competitive level.

It is difficult to assess the validity of these opposing views and the actual effect of the requirement on the Government, so far as the bid prices are concerned. It seems reasonable to assume, however, that there is an advantage to the Government in having all major costs established and reflected in the bid prior to bid opening. There are no price adjustments because of lower subbids after bid opening. Although not a major point in the GSA report, there would seem to be an advantage to the contracting officer in knowing at the outset who the major subcontractors will be and whether or not they are qualified.
The question arises as to whether the Government should (or can) regulate ethics. However, it is realized that the Government does not always operate simply to get a building constructed in the shortest time and at the least cost. There are many efforts made to promote equality and fairness in Government procurements which involve expenditure of public funds.

Of further concern to the Panel is the need to avoid excessive Government regulation and constraint on free enterprise; that there remains little latitude for the exercise of independent judgement by contracting officers; and that Federal contract requirements are becoming more complex. In the private sector, contracting officers can prequalify bidders for the general contract and furnish a list of acceptable subcontractors to the general contractor for the major components of a building. They can also waive requirements such as bonds to simplify procurements under certain conditions. However, the Government attorney advises these practices are not permitted by Federal regulations.

Further discussion of the problems and possible solutions are reflected in the minutes of the November 17 meeting.

CONCLUSION

The Panel's review has not revealed sufficient justification to recommend that the subcontractor listing requirement be discontinued. Bid shopping is an undesirable practice, and there is merit in taking some measures to try to prevent the practice. Listing also can provide GSA with useful information, prior to award, as to the firms who will perform the major subcontracts.

Retaining the existing regulations, as written, would not be practical because of the scope of the problems experienced from the listing requirement by general contractors, in preparing their bids, and by GSA in the bid and award process.

After considerable deliberation, the Panel concluded that GSA should continue to require a listing of subcontractors with construction bids but that the existing regulations should be revised to reduce the scope of the requirement and thereby reduce the number of subcontractors to be named with each bid. The mandatory categories should be the trades that provide the three major components for an office building: (1) HVAC (heating, ventilating and air-conditioning), (2) electrical and (3) vertical transportation. In addition, it was decided by the majority of the panel members that the listing shall include all other categories comprising at least 6 percent (in lieu of the current 3½ percent) of the estimated contract cost.
RECOMMENDATIONS

The Panel recommends that the General Services Administration retain the requirement for a listing of subcontractors with construction bids, with modifications. The recommendation of the Advisory Panel on Subcontractor Listing, which was submitted to the Administrator of General Services on November 17, 1977, is as follows:

"After due deliberation, the members of this panel have unanimously agreed that the practice of the General Services Administration on Subcontractor Listing be modified as follows:

1. The General Contractor must list the HVAC, electrical and vertical transportation.

2. In addition, the majority agreed that such listing shall include all other general construction categories of work in the project specifications which, individually, are determined by the contracting officer to comprise at least 6% of the estimated cost of the entire contract; categories estimated to cost less shall not be included."

The foregoing report to the General Services Administration represents the consensus of the Panel but does not necessarily reflect the opinion of any individual member nor does it extend to determination of policy for any member's company or association.

GSA ADVISORY PANEL ON SUBCONTRACTOR LISTING

B. J. McKinney, Chairman

Alan W. Derthick

Robert S. Ingram

R. Kenneth Smith

Robert L. Wilkinson
ADVISORY PANEL ON SUBCONTRACTOR LISTING
APPOINTED BY THE ADMINISTRATOR OF GENERAL SERVICES
TO STUDY THE SUBCONTRACTOR LISTING
NOVEMBER 17, 1977

PANEL MEMBERS

B. J. McKinney, Chairman
Robert S. Ingram
Alan W. Derthick
R. Kenneth Smith
Robert L. Wilkinson

After due deliberation, the members of this panel have unanimously agreed that the practice of the General Services Administration on Subcontractor Listing be modified as follows:

1. The General Contractor must list the HVAC, electrical and vertical transportation.

2. In addition, the majority agreed that such listing shall include all other general construction categories of work in the project specifications which, individually, are determined by the contracting officer to comprise at least 6% of the estimated cost of the entire contract; categories estimated to cost less shall not be included.

B. J. McKinney
Chairman
APPENDIX TO SUBCONTRACTOR SELECTION

Data from Massachusetts Department of Public Works on the Cost of Filed Sub-bid Projects

There is almost no data comparing the cost of a project built without the taking of filed sub-bids with an identical project on which filed sub-bids were taken. The comparative data that is available supports the conclusions in the main body of the Report that filed sub-bidding adds to a project's cost. Data is available from the Massachusetts Department of Public Works. The data is based on comparisons of actual construction of virtually identical buildings, some built using standard private sector bidding techniques and others requiring filed sub-bidding. In both cases, filed sub-bidding proved to increase the cost of construction contracts.

The Department of Public Works was authorized by the legislature in 1970 and 1971* to build a series of skating rinks without the taking of filed sub-bids. Only general contractor bids were to be taken.

The DPW proceeded (whether intentionally or not is not known) to create a controlled experiment on the effect filed sub-bidding has on the cost of construction. A single design firm, Thurston Munson & Associates, prepared identical plans and specifications for thirteen skating rinks, to be built at different locations all across the

Commonwealth. Ten of these rinks were put out to bid without filed sub-bidding, while three were put out to bid during the same period with filed sub-bidding.** Although site conditions may have varied from one location to another, site work in all cases was the exclusive responsibility of the general contractor. It was not included in filed sub-bids. Variations in the cost of site work are therefore not reflected in subcontractors' prices. Subsequent to the original design, small modifications were made in certain specifications having little overall effect on the total cost of the rinks.

The result was that on the average subcontract prices were 1.8% less on the unregulated projects than on the filed sub-bid projects. Subcontract prices for the largest categories of work which were entirely identical among all projects (heating ventilating and air conditioning; plumbing, electrical; painting; flooring; roofing; masonry; miscellaneous metal-work) were 2.5% less on the average when these subcontracts were unregulated. The effect of these savings on total average project bids was that unregulated projects total prices average 1.6% lower than the average for filed sub-bid projects. The following table presents these results. Approximately $5.026 billion of construction costs for buildings were incurred by public agencies in the Commonwealth subject to the filed sub-bid law between 1969 and 1980. In addition, finance charges add approximately 70% to this cost over time, bringing the total construction cost to the public to approximately $8.3 billion. If even 1% of this cost were due to filed sub-bidding, then the filed sub-bid law

** The Commission had originally been told by the DPW that eleven of the rinks did not use filed sub-bids. Inquiries in December, 1980 produced this new data.
## 1. AVERAGE PRICES

<table>
<thead>
<tr>
<th>ITEMS</th>
<th>Unregulated</th>
<th>Filed Sub-bid</th>
<th>Saving (or loss)% on Unregulated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Bid</td>
<td>1,089,401</td>
<td>1,107,450</td>
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<tr>
<td>Final Cost</td>
<td>1,123,788</td>
<td>1,138,740</td>
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<tr>
<td>General Contractor Only</td>
<td>622,757</td>
<td>632,252</td>
<td>1.5%</td>
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## 2. COMPARISON

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<tr>
<th>ITEMS</th>
<th>Holyoke (10-21-71)</th>
<th>Plymouth (1-4-72)</th>
<th>Franklin (2-15-72)</th>
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<td>Final Cost</td>
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<td>General Contractor</td>
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<td>647,206</td>
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## Subcontracts

<table>
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<tr>
<th>Items</th>
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<th>Filed Sub-bid</th>
<th>Saving (or loss)% on Unregulated</th>
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<tr>
<td>Masonry</td>
<td>89,325</td>
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<td>Roofing/Siding</td>
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<td>Painting</td>
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<td>24,982</td>
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<td>Plumbing</td>
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<td>34,373</td>
<td>(0.8%)</td>
</tr>
<tr>
<td>HVAC</td>
<td>80,364</td>
<td>79,762</td>
<td>(0.8%)</td>
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<tr>
<td>Electrical</td>
<td>78,030</td>
<td>82,825</td>
<td>5.8%</td>
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<tr>
<td>Ice System*</td>
<td>94,705</td>
<td>96,406</td>
<td>1.8%</td>
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<tr>
<td>Caulking</td>
<td>2,552</td>
<td>3,092</td>
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<tr>
<td>Misc. Metal</td>
<td>11,322</td>
<td>14,039</td>
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<tr>
<td>Aluminum*</td>
<td>17,959</td>
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<td>(9.4%)</td>
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<tr>
<td>Glass*</td>
<td>1,963</td>
<td>1,674</td>
<td>(17.3%)</td>
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<tr>
<td>Ceramic Tiles</td>
<td>863</td>
<td>923</td>
<td>6.5%</td>
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<tr>
<td>Acoustical Insulation</td>
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<td>1,331</td>
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<td>Total Subcontracts</td>
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<td>475,198</td>
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Note: * Design modified among rinks on these items.
### 4. INDIVIDUAL UNREGULATED PROJECTS (§ bid dates)

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<td>1,145,793</td>
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<td>1,074,648</td>
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<td>590,875</td>
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<td>Subcontracts</td>
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<td>93,300*</td>
<td>85,000*</td>
<td>88,000*</td>
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<td>13,000</td>
<td>14,000</td>
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<td>20,000</td>
<td>14,700</td>
<td>17,500</td>
<td>14,500*</td>
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<tr>
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<td>1,954</td>
<td>1,850*</td>
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<td>3,000</td>
<td>1,200*</td>
<td>1,775</td>
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<td>851</td>
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<td>500</td>
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<td>453,711</td>
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<td>498,100</td>
<td>468,400</td>
<td>488,125</td>
<td>413,796</td>
<td>425,300</td>
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</table>
requires an expenditure of $83 million tax dollars during the period under study.

Average prices are the sum of the total prices for each item on each category of project divided by the number of projects in that category. Comparisons are found by dividing the price of the filed sub-bid average for an item by the unregulated price average, yielding a percent greater or lesser than 100%. The difference is the loss (for per cents over 100%) or savings (per cents under 100) realized as a result of unregulated bidding. The bid dates on the individual projects show that the filed sub-bid projects were bid roughly in the middle of the period when the unregulated projects were bid. "Total bid" is the price submitted by the general contractor for its work and all subcontractors' work. "Final Cost" is similarly for all work. "General Contractor Only" is the price for that portion of the work not assigned to filed sub-bidders on filed sub-bid projects. "Subcontracts" are those items of work designated for filed sub-bids on projects for which filed sub-bids were required. The subcontract prices for unregulated projects are taken from the payment schedule established at the outset of each project. These amounts are the basis of subcontractors' payments and subject to their inspection. Their validity would be contested by the subcontractor if they did not correspond to contract prices because they are the basis of subcontractors' payments and direct payment rights. "Total subcontracts" is the sum of all the prices in the "Sub-contracts" column. "Total bid" equals the sum of "General Contractor Only".
Only" plus "Total Subcontracts".

The validity of this comparison has been questioned by the Associated Subcontractors of Massachusetts. In doing so, they have brought to the Commission's attention data which they collected to show the wage rates required to be paid on each of the projects cited above. (These wage rates are established pursuant to the state's prevailing wage law.) The data they presented to the Commission is presented below, although the Commission cannot vouch for its accuracy.

The assertion by the association is that the lower cost of unregulated projects is solely a reflection of the lower labor costs then in effect on the projects built without filed sub-bids. They claim that the 5.8% higher wage rates on average for all filed sub-bid projects, as compared to the unregulated projects, accounts for the higher bid prices on the filed sub-bid projects.

A closer examination of these figures, however, reveals that the differences in wage rates do not correspond to differences in project costs. For example, compare the highest wage rates on unregulated projects in the electrical category with the wage rates of any filed sub-bid project. The highest electrical wage rate among unregulated projects was on the Auburn project, at $9.62, and the price of electrical work on that project was $76,000. This can be compared to the electrical wage rates on the filed sub-bid projects and their electrical work cost: at Holyoke, the wage rate was $8.30 (more than $1 an hour below the rate on Auburn) yet the sub-category bid price was $88,000,
over $10,000 more than on the Auburn (unregulated) project. Again, on the other two filed sub-bid projects, the wage rate differences do not correspond to the sub-bid price differences. The Plymouth wage rate was higher that Auburn's -- by about 30 cents -- yet the price for the category at Plymouth was two thousand dollars lower than at Auburn. At Franklin, the wage rate was again about thirty cents higher than at Auburn, yet the price at Franklin was $7,000 higher than at Auburn. The prices for the subcontract work and the wage rates simply do not correspond. Similar comparisons can be made on other subcontract categories and similarly show the lack of correspondence of the wage rates to the subcontract prices.

In conclusion, the Commission disagrees with the Associated Subcontractor's implicit contention that the prevailing wage law is the cause of these higher prices. The more consistent correlation with higher prices is filed sub-bidding.
### Average Field Sub-Bid Ranks

<table>
<thead>
<tr>
<th></th>
<th>Average</th>
<th>Plymouth</th>
<th>Hotyoke</th>
<th>Franklin</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Field</td>
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### Average Non-Field Ranks

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</table>

### Field Sub-Bid Ranks

- **Field:** Average, Plymouth, Hotyoke, Franklin
- **Non-Field Ranks:** Average, Painter, Electric, Plumber, Mason, Carpenter
June 23, 1977

Honorable Jimmy Carter
President
White House
Washington, D.C.

Dear President Carter:

Our Association was shocked to receive advice in the Federal Register that the General Services Administration is planning to eliminate the requirement they have for the designation of the names and addresses of subcontracts for the major categories of work - particularly in building construction. The General Services Administration inaugurated this practice in an effort to provide fair competition by eliminating bid shopping on subcontractors after the general contractors price had been filed and opened by the General Services Administration. The purpose of the practice was to protect small business subcontractors. In this time of lessening construction, the practice is most important to prevent the elimination of the small business subcontractors by bid shopping down to prices which really make it almost impossible for them to continue in business. This is the time when bid listing in the bid of the general contractor is most important.

Small business supported you on the basis that you had a feeling for the little man. I enclose a copy of the letter I have sent to Mr. Peyton objecting to the elimination of the practice. I hope you will take it up with the Administration and see to it that the practice is continued and improved.

JOSEPH M. CORWIN

enclosure
AN ACT TO FOCUS ACCOUNTABILITY FOR PUBLIC BUILDING CONSTRUCTION EXCLUSIVELY ON GENERAL CONTRACTORS, TO ENCOURAGE THE USE OF EFFICIENT COST SAVING ARCHITECTURAL TECHNOLOGY, AND TO BROADEN ACCESS TO PUBLIC BUILDING CONTRACTS, TO BE KNOWN AS THE "CONSTRUCTION ACCOUNTABILITY ACT".

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section forty-four B of chapter one hundred and forty-nine of the General Laws, as most recently amended by section 55 of chapter 579 of the acts of 1980, is hereby amended by striking the following:

(A) In section 2 of said section forty-four B, the words, "and every sub-bid submitted in connection with such a contract for a subtrade pursuant to section forty-four F";
(B) Section (4) of that section in its entirety;
(C) From section (5) of that section the words, "and (4)".

SECTION 2. Section forty-four D of chapter one hundred and forty-nine of the General Laws, as most recently amended by section 55 of chapter 579 of the acts of 1980, is hereby amended by striking section (9) in its entirety.

NOTE. — Use ONE side of paper ONLY. DOUBLE SPACE. Insert additional leaves if necessary.
SECTION 3. Section forty-four E of chapter one hundred and forty-nine of the General Laws, as most recently amended by section 55 of chapter 579 of the acts of 1980, is hereby amended by striking the following:

(A) In section 1 of said section forty-four E the words, "and whenever sub-bids are invited in connection with such a contract subject to section forty-four F(1)", and the words, "and one place for filing such sub-bids, which need not be the same place", and the second sentence of the second paragraph of said section 1 in its entirety;
(B) From section (2) of said section forty-four E, subsection (d) in its entirety;
(C) In section 3 of said section forty-four E, in the first paragraph the words, "and shall include the names of sub-bidders and the amounts of their sub-bids;", and in the third paragraph of said section 3, subsection 1 and subsection 2 in their entirety;

SECTION 4. Section forty-four F of chapter one hundred and forty-nine of the General Laws, as most recently amended by section 55 of chapter 579 of the acts of 1980, is hereby stricken in its entirety and in its place is inserted the following:

Section 44F. The selection of subcontractors shall be the exclusive responsibility of the general contractor awarded a contract pursuant to sections forty-four A through forty-four H of this chapter, subject to all requirements otherwise.
provided by the laws of the Commonwealth and of the United States and the provisions of this chapter. The general contractor awarded a contract pursuant to this chapter shall, within seven days after such award, Saturdays, Sundays, and legal holidays not included, furnish to the awarding authority in writing the names and proposed contract prices of the persons or entities who will perform labor or perform labor and furnish materials under a contract with the general contractor. The awarding authority will promptly reply to the general contractor in writing stating whether or not the awarding authority, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the awarding authority to reply within seven days, Saturdays, Sundays, and legal holidays not included, following submission of such names by the general contractor shall constitute notice of no reasonable objection. Any person or entity debarred pursuant to this chapter shall be deemed thereby objectionable to all awarding authorities subject to this chapter, provided proper notice of the debarment has been placed in the central register, and no separate notice of objection need be provided by the awarding authority.

The general contractor shall not contract with any such proposed person or entity to whom the awarding authority makes objection under the provisions of this chapter or who is debarred pursuant to this chapter. The general contractor shall not be required to contract with any person or entity to whom it has a reasonable objection.
If the awarding authority has objection to any such proposed person or entity, the general contractor shall submit a substitute to whom the awarding authority has no reasonable objection. The contract sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate change order shall be issued; provided, however, that no increase in contract sum shall be allowed for any such substitution occasioned by the submission of the name of a person or entity debarred pursuant to this chapter, and that no increase in contract sum shall be allowed unless the general contractor has acted in accordance with the requirements of this chapter in submitting names to the awarding authority.

The general contractor shall make no substitution for any such person or entity previously selected and named without written notification to the awarding authority at least three days, Saturdays, Sundays, and holidays not included, in advance of such substitution and shall make no such substitution if the awarding authority makes reasonable objection to such substitution.

The general contractor shall require each subcontractor performing labor or both performing labor and furnishing materials to the general contractor to enter into a written contract with the general contractor in accordance with a form for subcontract promulgated by the Division of Capital Plan-
ning and Operations. Such subcontract shall require each subcontractor to be bound to the general contractor by the terms of the plans, specifications (including all general conditions), and addenda, and to assume toward the general contractor all the obligations and responsibilities which the general contractor assumes toward the awarding authority.

SECTION 5. Section thirty-nine F of chapter thirty of the General Laws, as most recently amended by section 53 of chapter 579 of the acts of 1980, is hereby amended by striking from part (3) the words, "(i) for contracts awarded as provided in sections forty-four A to forty-four H, inclusive, of chapter one hundred and forty-nine shall mean a person who filed a sub-bid and receives a subcontract as a result of that filed sub-bid or who is approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contract" and inserting in their place the following:

"(i) for projects subject to the provisions of sections forty-four A to forty-four H of chapter one hundred and forty-nine shall mean a person or entity which is performing labor or both performing labor and furnishing materials pursuant to a contract with any other party performing labor or both performing labor and furnishing materials for said project"
provided that said person or entity has served a written notice to the general contractor, by registered or certified mail, postage prepaid in an envelope addressed to the contractor at any place at which it maintains an office or conducts its business, and to the awarding authority prior to said person or entity commencing work, stating with substantial accuracy that said person or entity is a party in interest to the general contract, the name of the party said person or entity is under contract with to perform labor or both perform labor and furnish materials, and the amount of said person or entity's contract, and provided further that said notice is acknowledged by the awarding authority in writing within three days, Saturdays, Sundays, and legal holidays not included, following receipt of said notice.

SECTION 6. Section thirty-nine K of chapter thirty of the general laws, as most recently amended by sections 2 of chapter 887 of the acts of 1971, is hereby amended by striking the second sentence of the third paragraph thereof and inserting in place thereof the following: "All periodic estimates shall contain a separate item for each subcontractor named in accordance with the provisions of section forty-four F of chapter one hundred and forty-nine, and a column listing the amount paid to each such subcontractor as of the date the periodic estimate is filed."
APPENDIX TO

CONTRACTOR QUALIFICATIONS
Subject: Contractor Performance Evaluation

Gentlemen:

A Performance Rating on the above referenced Contractor is an essential element in determining his qualification for future work with the State. The attached rating sheets (2) should be filled out only on those aspects of the Contractors Performance with which you are familiar. Your rating will be combined with those from other sources to provide a complete picture of the Contractors ability and willingness to perform.

Your Rating Sheets will be held in strictest confidence. It will not be shown to, or be processed through, anyone else. You should be candid, direct and honest in your evaluation.

Please return completed forms. at the 50% and 100% completion stage, to Mr. John S. Peterson.

Very truly yours,

John S. Peterson
Chief, Bureau of Contractor Services

JSP/
Attachments: (2) rating sheets

cc: Records Section
**CONTRACTOR PERFORMANCE EVALUATION**

**RATING EVALUATION (0 - 10)**

- 0 - 2.0* - Unsatisfactory
- 2.1 - 4.0* - Poor
- 4.1 - 6.0 - Average
- 6.1 - 8.0 - Above Average
- 8.1 - 10.0* - Superior

* Ratings of less than 4.0 and more than 8.0 will be explained on reverse side of sheet.

**OVERALL PERFORMANCE**

( ) SATISFACTORY
( ) UNSATISFACTORY

: John S. Peterson
Dept. of Treasury, Div. of Bldg. & Constr.
West State & Willow Streets
Taxation Bldg., 8th Floor
Trenton, N.J. 08625

<table>
<thead>
<tr>
<th>ITEM</th>
<th>RATING 0 - 10</th>
<th>WEIGHT 1 - 10</th>
<th>TOTAL (a) x (b)</th>
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</thead>
<tbody>
<tr>
<td>SCHEDULE ADHERENCE**</td>
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<tr>
<td>WORKMANSHIP</td>
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<td>GENERAL COOPERATION (INCLUDING MTG. ATTENDANCE)</td>
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<td>MATERIAL SUBSTITUTION; (SCORE LOW IF EXCESSIVE)</td>
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<td>PROMPT PAYMENTS TO SUBS &amp; SUPPLIERS</td>
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<tr>
<td>SUB-CONTRACTOR PERFORMANCE</td>
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<tr>
<td>JOB PLANNING, SCHEDULING &amp; MANNING</td>
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<tr>
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<tr>
<td>SHOP DRAWING/MATERIAL SUBMISSIONS</td>
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<td>ADHERENCE TO LETTER &amp; INTENT OF Specs</td>
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<tr>
<td>CHANGE ORDER PROCESSING/PRICING</td>
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<td>6</td>
<td></td>
</tr>
</tbody>
</table>

* Allowances to be made for weather, A/E design changes and other factors over which contractor had no control.

**TEN**
ADDITIONAL COMMENTS AND EXPLANATIONS ON CONTRACTOR'S PERFORMANCE

NOTE: (Be reminded that your comments are private and confidential. They will be held on file in the Prequalification Section and used in establishing a Contractor's right to bid on future State (DBC) jobs. Your rating will be one of several; it will be only one element in computing the final evaluation.

I. Comments on Ratings A Through M:

II. Other Comments: (Include any strong or weak points not otherwise explained; recommendations on whether this Contractor should be used for future projects; special limitations on scope and type of work; volume and degree of claims filed by the Contractor.)

III. Have any three (3) day notices been issued? If so, give dates and explanations.

SIGNED: ________________________

DATE: ________________________
**CONTRACTOR PERFORMANCE EVALUATION**

**RATING EVALUATION (0 - 10)**

<table>
<thead>
<tr>
<th>Rating</th>
<th>Description</th>
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<tbody>
<tr>
<td>0 - 2.0*</td>
<td>Unsatisfactory</td>
</tr>
<tr>
<td>2.1 - 4.0*</td>
<td>Poor</td>
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* Ratings of less than 4.0 and more than 8.0 will be explained on reverse side of sheet.

**OVERALL PERFORMANCE**

( ) SATISFACTORY  
( ) UNSATISFACTORY

**REQUEST DATE**

**CONTRACTOR TRADE**

**PROJECT NO.**

**PROJECT TITLE & LOCATION**

**CONTRACT AMOUNT**

**SUBJECT**

**Contractor Performance Evaluation**

**ITEM**

<table>
<thead>
<tr>
<th>Item</th>
<th>Rating (0 - 10)</th>
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Allowances to be made for strikes, weather, A/E design changes and other factors over which contractor had no control.

**TOTAL**

**AVERAGE**

**RETURN TO:** John S. Peterson  
Dept. of Treasury, Div. of Bldg. & Constr.  
West State & Willow Streets  
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Trenton, N.J. 08625
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I. Comments on Ratings A Through M:

II. Other Comments: (Include any strong or weak points not otherwise explained; recommendations on whether this Contractor should be used on future projects; special limitations on scope and type of work; volume and degree of claims filed by the Contractor.)

III. Have any three (3) day notices been issued? If so, give dates and explanations.

SIGNED: __________________________
DATE: __________________________

AUDITED BY ______________ DATE ____________
APPENDIX TO

ACCESS TO PUBLIC CONTRACTS
1. (A) NAME OF BUSINESS ________________________________
ADDRESS __________________________________________
MAILING ADDRESS ____________________________________
CITY/TOWN __________________________________________
STATE ______________________________________________

PHONE NUMBER ( ) ________________________________

(B) NATURE OF BUSINESS (GOODS OR SERVICES RENDERED)
____________________________________________________
____________________________________________________
____________________________________________________
____________________________________________________
____________________________________________________

(C) TYPE OF BUSINESS
Construction ( ) Engineering ( )
Consulting ( ) Service ( )
Architect ( ) Supplier ( )
Manufacturing ( ) Other (specify) ( )

(D) NUMBER OF YEARS IN BUSINESS _______________________

(E) SIC CODE (optional) ________________________________

(F) NAME(S), TITLE(S), AND ADDRESS(ES) OF PERSON(S) PREPARING THIS APPLICATION
NAME ________________________________________________
ADDRESS _____________________________________________
TITLE ________________________________________________

LIST NAMES OF MINORITY PRINCIPAL(S) WHO ARE PERMANENT RESIDENTS OF THE U.S., AND PLACE NEXT TO THE NAME(S) THE NUMBER CODE THAT CORESPONDS TO THE MINORITY GROUP TO WHICH HE/SHE IS A MEMBER (Refer to Code on next page).

NAME OF PRINCIPAL CODE
__________________________________________ ( )
__________________________________________ ( )
__________________________________________ ( )
__________________________________________ ( )
__________________________________________ ( )
MINORITY BUSINESS CERTIFICATION APPLICATION

A MINORITY GROUP MEMBER IS ONE OF THE FOLLOWING (See page 14)

1. Black
2. Mexican
3. Puerto Rican
4. Cuban
5. Central or South American
6. American Indian
7. Eskimo or Aleut
8. Asian
9. Cape Verdean

3. AGE (Check One)

1. Under 19 ( )
2. 19 - 25 ( )
3. 26 - 30 ( )
4. 31 - 35 ( )
5. 36 - 40 ( )
6. Over 40 ( )

4. EDUCATION (Check One)

1. Elementary Grade School ( )
2. High School Graduate ( )
3. College - at least 2 years ( )
4. Business or Tech School ( )
5. College Graduate ( )
6. Graduate Degree ( )
7. None of the above ( )

5. SALES FOR THE LAST THREE FISCAL YEARS

FISCAL YEAR ENDED SALES FISCAL YEAR ENDED SALES FISCAL YEAR ENDED SALES

6. NUMBER OF EMPLOYEES (Fulltime Paid Employees and/or Equivalent)

1. Administrative ( )
2. Sales ( )
3. Manufacturing ( )
4. Other ( )

ANNUALIZED WAGES UNION ( ) NON-UNION ( )

7. LEGAL STRUCTURE (Check One)

a) Corporation ( )
b) Sole Partnership ( )
c) Partnership ( )
d) Limited Partnership ( )
e) Other (describe) ( )

8. PERCENTAGE OF MINORITY OWNERSHIP IN THE BUSINESS ( )
9. **LIST BELOW THE NAME(S) OF THE PERSON(S) WHO PERFORM(S) THE VARIOUS TASKS AND IDENTIFY THOSE WHO ARE MINORITY GROUP MEMBERS BY CODE** (See page 14 for extended definitions or page 2 for codes)

   a) Decides which jobs the business will do:

   [ ] [ ]

   b) Decides on the geographical location in which the business will operate:

   [ ] [ ]

   c) Signs the performance bonds which the business obtains (Attach copy of latest bond)

   [ ] [ ]

   d) Negotiates and signs for the insurance for the business:

   [ ] [ ]

   e) Signs checks in the name of the business. Indicate any limitations including amount per check and requirements for multiple signatures. (Attach copy of Bank Resolution and at least five (5) cancelled checks)

   [ ] [ ]

   f) Supervises the jobs the business undertakes:

   [ ] [ ]

   g) Holds any licenses (Attach copy of licenses):

   [ ] [ ]

   h) Hires and fires employees of the business:

   [ ] [ ]
i) May the above person(s) fire any minority employee who has an ownership interest in the business?  
   Yes ( )  No ( )  
   If yes, please list the name(s) of the person(s) who have this authority, and identify the minority group member(s) by code.  
   (See page 2 for codes)  

10. AREA/BONDING/BANKING  

   a) Are you willing to work in other states  
      Yes ( )  No ( )  
      If yes, please list the states.  

   b) What areas in the state of Massachusetts will you work?  

   c) What is the largest job (in dollars) that your company can handle?  
      $___________  

   d) Name of Bank  
      Telephone Number ( )  
      Banking Agent___________  

   e) Bonding Company  
      Telephone Number ( )  
      Bonding Agent___________  
      Address____________________  
      City/Town___________ State___________ Zip___________  

   f) What is your bonding limit per job?  
      $_____________  

   g) Is your firm 8a Certified?  
      Yes ( )  No ( )  
      If yes, please give the date of certification Mo. / Day/ Yr  

   h) Have you ever failed to complete any contract awarded to you?  
      Yes ( )  No ( )  
      If yes, please state when, where, and why:  
_____________________________
AREA/BONDING/BANKING

i) Has any officer or partner of your organization ever been an officer or partner of another organization that failed to complete a construction project?

Yes ( ) No ( ) If yes, please describe the circumstances:


11. SOURCE OF CAPITAL

Indicate the source(s) of investment capital for both minority and non-minority group member who have an ownership interest in the business:

a) Personal Savings ( )
b) Proceeds From sale of real estate or personal property ( )
   (If property was sold with the past 6 months, state the date the sales contract was executed)
c) Gift ( )
d) Personal Loan ( )
e) Other (specify) ( )

COMPLETE THE FOLLOWING

Name of owner or shareholder (indicate Minority Group Members)
Source of Capital (Indicate by letter of sources above, e.g. (a) personal savings)

Name __________________________ ( ) Source of Capital ( )
Name __________________________ ( ) Source of Capital ( )
Name __________________________ ( ) Source of Capital ( )
Name __________________________ ( ) Source of Capital ( )

( If business is one year old or less attach copies of all cancelled checks reflecting initial investment)

IF THE SOURCE(S) OF CAPITAL IS A GIFT, STATE THE FOLLOWING

Name of Source(s) __________________________

Date of the Gift(s) __________________________
Conditions of the Gift(s) __________________________

Is the source(s) of the Gift a minority person or a minority business?
Yes ( ) No ( )
MINORITY BUSINESS CERTIFICATION APPLICATION

IF THE SOURCE OF THE CAPITAL IS A LOAN(S), STATE THE FOLLOWING:

NAME OF THE SOURCE(S) ____________________________________________

DATE OF THE LOAN(S) ____________________________________________

IS THE SOURCE OF LOAN(S) A MINORITY PERSON, MINORITY INSTITUTION OR MINORITY BUSINESS? Yes ( ) No ( )

If yes, state the terms of repayment (attach copy of loan agreement)

____________________________________________________________________

LIST ALL OTHER SOURCE(S) OF CAPITAL

NAMES OF SOURCES AMOUNT TYPE
(Person or Institution ) (Indicate by letter from page 5)

____________________________________________________________________

____________________________________________________________________

12. IF THE BUSINESS IS A SOLE PROPRIETORSHIP, SKIP TO QUESTION 15

IF THE BUSINESS IS A PARTNERSHIP, SKIP TO QUESTION 13

CORPORATIONS - IF THE BUSINESS IS A CORPORATION COMPLETE THE FOLLOWING:

A. ATTACH A COPY OF THE FOLLOWING ITEMS:

   a) Articles of Organization
   b) By Laws
   c) Current financial statements
   d) Stock Certificates

B. LIST THE NUMBER OF SHARES AND CLASS AUTHORIZED

   NUMBER OF SHARES CLASS AUTHORIZED

   ____________________________________________
   ____________________________________________
   ____________________________________________

C. LIST THE NUMBER OF SHARES ISSUED AS OF THE DATE OF THIS AGREEMENT AND TO WHOM ISSUED (Indicate minority group shareholders)

   NO. OF SHARES ISSUED SHAREHOLDER CLASS

   ____________________________________________ ( ) ____________________________________________
   ____________________________________________ ( ) ____________________________________________
   ____________________________________________ ( ) ____________________________________________
   ____________________________________________ ( ) ____________________________________________
D. IF THE BUSINESS IS A PUBLIC CORPORATION, LIST THE FOLLOWING INFORMATION:
   a) Total shares issued as of the date of this agreement
   b) Name of Minority Principals Who Own Shares
      No. of Shares Owned by Minority Principals
      Class

   __________________________________________________________________
   __________________________________________________________________
   __________________________________________________________________

E. DESCRIBE BELOW THE VOTING RIGHTS OR POWERS OF EACH CLASS OF STOCK

   Voting Rights or Powers
   Class of Stock

   __________________________________________________________________
   __________________________________________________________________
   __________________________________________________________________

F. ARE THERE ANY RESTRICTIONS TO LIMIT THE VOTING RIGHTS OF MINORITY GROUP MEMBERS WHO ARE SHAREHOLDERS WITHIN THE BY LAWS OR ARTICLES OF INCORPORATION OR ANY OTHER DOCUMENTS?  Yes ( )  No ( )

G. LIST ALL MEMBERS OF THE BOARD OF DIRECTORS. INDICATE THOSE NAMES WHICH ARE MINORITY GROUP MEMBERS

   ________________________________________________ ( )
   ________________________________________________ ( )
   ________________________________________________ ( )
   ________________________________________________ ( )

H. STATE THE NAMES AND TITLES OF ALL THE OFFICERS OF THE COMPANY AND INDICATE THOSE NAMES WHICH ARE MINORITY GROUP MEMBERS:

   NAMES  TITLE
   ________________________________________________  ( )
   ________________________________________________  ( )
   ________________________________________________  ( )
   ________________________________________________  ( )

I. DESCRIBE AND EXPLAIN ANY CHANGES IN THE DUTIES, POWERS, BY LAWS OR PERSONNEL MADE DURING THE PAST SIX MONTHS, WITH RESPECT TO PRINCIPALS, OFFICERS AND/OR DIRECTORS OF THE CORPORATION:

   ________________________________________________
   ________________________________________________
   ________________________________________________
   ________________________________________________
   ________________________________________________
13. TO BE COMPLETED BY GENERAL PARTNERSHIPS

a. Date Partnership established ____________________________

b. Attach a copy of the Partnership Agreement and current financial statements.

c. List the names and addresses of all partners and the amount of each partner’s initial investment. Check those partners who are minority group members:

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>AMOUNT INVESTED</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

   d. If any of the partners obtained their interest within the last six months, state the following:

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>PURCHASE PRICE</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

14. TO BE COMPLETED BY LIMITED PARTNERSHIP

a. Date Limited Partnership established ____________________________

b. Attach a copy of Limited Partnership Agreement and current financial statements.

c. List below the names and addresses of all the general partners and the amount of initial investment. Check those partners who are minority group members.

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
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</tbody>
</table>
14. d. List below the names and addresses of all Limited Partners and the amount of each Limited Partner's initial investment. Check those Limited Partners who are minority group members:

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>AMOUNT INVESTED</th>
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</tbody>
</table>

14. e. If a Corporation is a General Partner, state the percentage of shares in the Corporation which are owned by minority group members.

Percentage of Shares ____________________________

14. f. If any of the general or limited partners obtained their interest within the last six months complete the following

<table>
<thead>
<tr>
<th>Name</th>
<th>Date Acquired</th>
<th>Purchase Price</th>
<th>From Whom Purchased</th>
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</tr>
</tbody>
</table>

14. g. Are any of the partners affiliated in any way with another business?

Yes [ ]    No [ ]

Name of Partner       Name of Other Business       Address       Position Held

________________________________________________________________________
________________________________________________________________________
MINORITY BUSINESS CERTIFICATION APPLICATION

15. TO BE COMPLETED BY SOLE PROPRIETORSHIP

a. Date Sole Proprietorship established ________________

b. Is business registered? Yes ☐ No ☐
   If yes, state city or town in which business is registered
   ___________________________________________________________________________________

   Date of Registration ___________________________________________________________________

   c. If title of the business was sold to or made a gift to the present owner, state the following:

   Date Title was transferred to present owner ________________

   Name(s) of Previous Owner(s)
   ___________________________________________________________________________________
   ___________________________________________________________________________________
   ___________________________________________________________________________________

   d. State the purchase price if business was sold to present owner:
   ________________
16. TO BE COMPLETED BY SUPPLIERS

A. INDICATE THE TYPE OF SUPPLIER

Broker [ ] Franchise [ ]
Distributor [ ] Dealership [ ]
Manufacturing Representative [ ] Wholesaler [ ]
Other [ ] (Please Specify) ____________________________

B. DOES YOUR BUSINESS STOCK, ON PROPERTY OWNED OR LEASED BY THE BUSINESS, THE GOODS THAT YOU SUPPLY TO CUSTOMERS?

YES [ ] NO [ ]

IF YES, WHAT IS THE ESTIMATED AVERAGE VALUE OF GOODS THAT ARE STOCKED DURING THE PERIOD OF ONE MONTH? $ ____________________

C. DOES YOUR BUSINESS TAKE OWNERSHIP TITLE TO THE GOODS SUPPLIED TO CUSTOMERS?

YES [ ] NO [ ]

IF YES, FOR WHAT PERIOD OF TIME IS TITLE NORMALLY RETAINED?

________________________________________________

D. WHAT ARE THE MAIN LINE OF PRODUCTS SUPPLIED BY YOUR BUSINESS?

________________________________________________

________________________________________________

E. DOES YOUR BUSINESS INSURE GOODS (i.e. FOR DAMAGE, THEFT, OR FIRE) THAT ARE SUPPLIED TO CUSTOMERS?

YES [ ] NO [ ]

IF YES, DESCRIBE THE TYPE OF INSURANCE: _______________________________

________________________________________________

________________________________________________
MINORITY BUSINESS CERTIFICATION APPLICATION

16. (F) DOES YOUR BUSINESS NORMALLY REQUIRE A PERFORMANCE BOND FOR SUPPLY CONTRACTS WITH CUSTOMERS?
   YES ☐ NO ☐

   IF YES, WHAT IS THE CAPACITY OF YOUR BONDING? $ ______________________

   (G) IN THE EVENT OF DISSATISFACTION ON THE PART OF THE CUSTOMER, DUE TO UNTIMELY DELIVERY, DAMAGED OR DEFECTIVE GOODS OR FAILURE TO PERFORM BY YOUR BUSINESS, TO WHOM DOES THE CUSTOMER HAVE THE LEGAL RECOURSE?

   YOUR BUSINESS _______________________________________________________
   MANUFACTURER _______________________________________________________
   OTHER (Please specify) ________________________________________________

   EXPLAIN IF CUSTOMER HAS LEGAL RECOURSE TO MORE THAN ONE PARTY
   _______________________________________________________________________

17. OPERATIONAL BACKGROUND:

   (A) EQUIPMENT (LIST MAJOR PIECES OF EQUIPMENT BELOW AS INDICATED):
       ATTACH COPIES OF LEASE AGREEMENT ON EQUIPMENT

       EQUIPMENT MODEL PRESENT VALUE
       ____________________ ____________________ ____________________
       ____________________ ____________________ ____________________
       ____________________ ____________________ ____________________

   (B) PLANT: DESCRIBE OWNED OR LEASED WAREHOUSE, OFFICE AND YARD BELOW AS INDICATED, ATTACH COPIES OF LEASE AGREEMENTS FOR SPACE RENTAL

       ADDRESS GENERAL DESCRIPTION SQ. FT PRESENT VALUE OR AMOUNT OF LEASE/RENTAL PAYMENT
       ____________________ ____________________ ____________________ ____________________
       ____________________ ____________________ ____________________ ____________________
       ____________________ ____________________ ____________________ ____________________
       ____________________ ____________________ ____________________ ____________________
       ____________________ ____________________ ____________________ ____________________
17. C. IS THE SPACE SHARED WITH ANOTHER COMPANY? YES  □  NO  □  
IF YES, LIST NAME OF COMPANY ____________________________

______________________________
NAME OF PRINCIPAL OWNER(S) ____________________________

______________________________

D. TRADE REFERENCES
LIST SUB-CONTRACTORS OR MATERIAL SUPPLIERS THAT YOU HAVE NOW, OR HAVE HAD IN THE PAST UNDER CONTRACT.

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>TELEPHONE NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
A. MINORITY GROUP MEMBERS

A minority group member is a person with a permanent residence in the United States and who is:

1. Black
   All persons having origins in any of the Black racial groups of Africa.

2. Mexican
   All persons of Mexican, Puerto Rican Cuban, Central or South American origin.

3. Puerto Rican

4. Cuban

5. Central or South American origin

6. American Indian
   All persons having origins in any of the original peoples of North American, and who maintain cultural identification through tribal affiliations or community recognition.

7. Eskimo & Aleut, or
   All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands. This area includes for example, China, Japan, India, Korea, the Phillipine Islands and Samoa.

8. Cape Verdean
   All persons having origins in any of the original peoples of the Cape Verdean Islands who are of Black Heritage

B. MINORITY BUSINESS ENTERPRISE

Minority Business Enterprise (or Minority Business) means a business organization which is beneficially owned and controlled by one or more minority group member.

1. The business must be at least 51% beneficially owned and controlled by minority group members. Beneficial ownership and control shall be indicated by at least the following where applicable to the particular form of business organization: Ownership of at least 51% of each class of stock; unrestricted voting rights; right to receive profits and all other benefits attached to ownership.

2. The minority owners must demonstrate that they have dominant control over management and provide evidence of dominant participation in the daily affairs of the enterprise.

3. The firm has not been solely established for the purposes of taking advantage of a special program which has been developed to assist minority businesses. SOMBA reserves the right to deem the existence of any agreements, options, rights of conversion or other restraints that may be exercised, and which if exercised, could reduce minority ownership or control to less than the requisite percentage to be grounds for rejection of the existing enterprise as a minority business enterprise.
If Construction Company/Contractor: List names of Project, Owner, Architect, Contract Amount, Percent Complete to Date, Bonding Company, date started and scheduled completion date of all Construction projects your company has in process.

<table>
<thead>
<tr>
<th>PROJECT NAME AND LOCATION</th>
<th>OWNER OR GENERAL CONTRACTOR</th>
<th>ARCHITECT</th>
<th>CONTRACT AMOUNT</th>
<th>PERCENT COMPLETED TO DATE</th>
<th>BONDING CO. DATE STARTED</th>
<th>SCHEDULED COMPLETION DATE</th>
</tr>
</thead>
</table>

List names of Projects, Owner or General Contract, Architect, Contract Amount, Date Started, Date Completed, Bonding Company and percent of work done with own forces on the major projects your organization has completed in the past five years. Be sure to list the three largest project completed.

<table>
<thead>
<tr>
<th>PROJECT NAME AND LOCATION</th>
<th>OWNER OR GENERAL CONTRACTOR</th>
<th>BONDING COMPANY</th>
<th>CONTRACT AMOUNT</th>
<th>DATE STARTED</th>
<th>DATE COMPLETED</th>
<th>PERCENT OF WORK DONE WITH OWN WORK FORCE</th>
<th>ARCHITECT</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME OF ORDERER</td>
<td>AMOUNT OF ORDER</td>
<td>GOODS OR SERVICES</td>
<td>CONTRACT OR AGREEMENT</td>
<td>AMOUNTING AGENCY</td>
<td>AGENCY OR COMPANY</td>
<td></td>
<td></td>
</tr>
<tr>
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<td></td>
</tr>
</tbody>
</table>

List your (4) largest orders or contracts that your company has had in the past three (3) years:

<table>
<thead>
<tr>
<th>DATE ORDER</th>
<th>PHONE NO.</th>
<th>NAME OF ORDERER</th>
<th>AMOUNT OF ORDER</th>
<th>GOODS OR SERVICES</th>
<th>CONTRACT OR AGREEMENT</th>
<th>AMOUNTING AGENCY</th>
<th>AGENCY OR COMPANY</th>
</tr>
</thead>
</table>

List three (3) largest orders or contracts that your company presently has in progress:

<table>
<thead>
<tr>
<th>DATE ORDER</th>
<th>PHONE NO.</th>
<th>NAME OF ORDERER</th>
<th>AMOUNT OF ORDER</th>
<th>GOODS OR SERVICES</th>
<th>CONTRACT OR AGREEMENT</th>
<th>AMOUNTING AGENCY</th>
<th>AGENCY OR COMPANY</th>
</tr>
</thead>
</table>

NON-CONSTRUCTION

WORK HISTORY FORM
ATTACHMENTS

The following items must be attached and submitted with this application.

1. CURRENT FINANCIAL STATEMENTS; including a beginning statement if a new business, a profit and loss statement and a position statement.
2. ARTICLES OF ORGANIZATION (If a Corporation)
3. CORPORATE BY-LAWS (If a Corporation)
4. COPIES OF ALL STOCK CERTIFICATES
5. CANCELLED CHECKS REFLECTING CAPITAL INVESTMENT BY PRINCIPALS (If Company is less than one year in business).
6. AT LEAST 5 CANCELLED CHECKS WRITTEN ON BUSINESS ACCOUNT
7. COPY OF BANK RESOLUTION ON ALL COMPANY CHECKING AND OTHER ACCOUNTS
8. COPIES OF ALL LOAN AGREEMENTS
9. COPIES OF CURRENT RESUMES ON ALL PRINCIPALS, MANAGERS AND KEY PERSONNEL.
10. COMPLETED WORK HISTORY FORM
11. COPY OF PARTNERSHIP AGREEMENT
12. COPY OF MINUTES OF CORPORATION MEETING HELD WHEN COMPANY WAS FORMED
13. COPY OF BUSINESS REGISTRATION CERTIFICATE
14. COPY OF JOINT VENTURE AGREEMENTS
15. COPIES OF LEASE AGREEMENTS FOR SPACE RENTAL
16. COPIES OF TITLE OR LEASE AGREEMENTS ON EQUIPMENT
17. COPIES OF BIRTH CERTIFICATES FOR ALL MINORITY OWNERS
18. COPY OF LATEST BOND
19. COPY OF TRIBAL IDENTIFICATION CARD OR CERTIFICATE IF CLAIMING TO BE AN AMERICAN INDIAN.
20. COPY OF LAST TWO YEARS PERSONAL INCOME TAX RETURN OR BUSINESS TAX RETURN
We, the undersigned agree to the following conditions:

1. To abide by all of the rules and regulations of the State Office of Minority Business Assistance (SOMBA), governing the certification process.

2. Not to seek judicial review until we have exhausted all of the administrative remedies of SOMBA.

3. To Notify SOMBA within thirty (30) days of any change in the ownership, control, management or status as an ongoing concern.

4. That SOMBA has the right to conduct a review of the company's books, contracts, company structure, facilities and to request whatever additional information it deems necessary from time to time, in order to monitor the status of the company, if the firm is certified as a bonafide minority owned and controlled firm by SOMBA.

5. That SOMBA may, at any time, withdraw the certification after applying its own procedures.

6. That SOMBA may automatically deny certification, if during the certification process it finds that the undersigned have submitted false, inaccurate or misleading information.

We certify under the pains and penalties of perjury that the information supplied to this application is correct and complete and SOMBA is entitled to rely solely on it as the basis for its decision.

We also recognize the six (6) conditions stated above governing the consideration of this application and the maintenance of the certified status.
Signed* ____________________________
Print ______________________________
Date __________________________________

*Must be signed by at least one officer if a Corporation; one general partner if a Partnership; or the proprietor if a Sole Proprietorship.

Signed* ____________________________
Print ______________________________
Date __________________________________

NOTORIZATION

COUNTY, SS COMMONWEALTH OF MASSACHUSETTS

Date __________________________________

Then personally appeared the above named ____________________________
and ____________________________ and acknowledged the foregoing instrument o his/her their free act and deed before me.

NOTARY PUBLIC
My Commission Expires ____________________________ Date ____________________________
RULES, REGULATIONS, PROCEDURES AND CRITERIA GOVERNING
THE CERTIFICATION AND DECERTIFICATION OF MINORITY BUSINESS ENTERPRISES

BY THE

STATE OFFICE OF MINORITY BUSINESS ASSISTANCE
# TABLE OF CONTENTS

1.00 PURPOSE
2.00 DEFINITIONS
3.00 LEGISLATIVE BASIS
4.00 APPLICATION
5.00 INTAKE PROCEDURES
6.00 COMMITTEE PROCEDURES
7.01 OPEN HEARINGS
7.02 CONDUCT AT THE HEARINGS
7.03 STIPULATIONS
7.04 EVIDENCE
7.05 ADMINISTRATIVE NOTICE
7.06 TRANSCRIPT
7.07 APPEALS
8.00 DECERTIFICATION PROCEDURES
8.01 GROUNDS FOR COMPLAINT
8.02 INFORMAL RESOLUTION
8.03 DECERTIFICATION HEARING
9.00 CERTIFICATION CRITERIA
9.01 MEMBERSHIP REQUIREMENT
9.02 OWNERSHIP REQUIREMENT
9.03 CONTROL REQUIREMENT
9.04 SUBSTANTIAL INVESTMENT IN BUSINESS REQUIREMENT
9.05 ON-GOING CONCERN REQUIREMENT
10.00 MISCELLANEOUS
10.01 EFFECT OF PRIOR CERTIFICATION
10.02 JUDICIAL REVIEW
10.03 SEVERABILITY
PURPOSE

These regulations govern the conduct of hearings before the Certification Committee of the State Office of Minority Business Assistance. They are also promulgated for the purpose of establishing the internal procedures, the standards and the specific criteria which the Committee will use to determine whether an applicant is a bonafide minority business enterprise.

DEFINITIONS

1. SOMBA is the State Office of Minority Business Assistance as defined by M.G.L. Chapter 23A.
2. MBE is a Minority Business Enterprise that has been certified by SOMBA.
3. Committee is the Certification Committee of SOMBA. It shall be composed of three (3) members of the SOMBA staff, the Legal Counsel, a Field Representative, and one member designated by the Director. The Legal Counsel will be Chairperson of the Committee.
4. Certified means considered by the Committee and found to meet the five-pronged test set out in the Certification Criteria provided in these regulations.
5. Certification Meeting means a meeting of the Committee for the purpose of determining whether an applicant meets the five-pronged test set out in the Certification Criteria provided in these regulations.
6. Director is the Deputy Commissioner of the Department of Commerce and Development who is the Director of SOMBA as authorized by M.G.L. Chapter 23A.
7. Coordinator is a staff member of SOMBA who is designated by the Director to be the Special Projects Coordinator.
8. Regulations means all the provisions contained in this document.
10. Awarding Authority means any agency or department of Federal Government, the Commonwealth of Massachusetts or their political subdivisions that award contracts using public funds.
11. Applicant means any business that applies to SOMBA for certification, reconsideration, or appeal.
12. Representative means the Field Representative on the SOMBA staff who is designated by the Director to be on the Committee.
13. Site Visit means a visit by a SOMBA staff member to an applicant or MBE's business facilities or job locations.
LEGISLATIVE BASIS

SOMBA is promulgating these regulations by virtue of the authority vested in it by M.G.L. Chapter 23A, Sections 41(1) and (2), and the legislative mandate contained in M.G.L. Chapter 23A, Section 37.

APPLICATION

Applicants must complete the application supplied by SOMBA, supply all the information requested therein, agree to supply any additional information requested by SOMBA, and agree to be bound by all the provisions governing the certification process. SOMBA is not and cannot be required to take any action in a case where an applicant has not supplied requested information or has violated the provision of the certification process.

INTAKE PROCEDURES

i. The Coordinator will review each application to determine whether it contains all requested information. If the applicant has failed to submit all requested information, the Coordinator will then follow the steps outlined in the Flow Chart for dealing with incomplete applications.

ii. The life of an application will not exceed six (6) months; any applicant who fails to supply all requested information within this period will be denied certification and be required to file a new application. The Coordinator shall not extend the life of any application beyond six (6) months without prior approval of the Committee.

iii. The Coordinator will review and verify the contents of each completed application and after review and verification submit it to the Legal Counsel.

COMMITTEE PROCEDURES

i. The Legal Counsel, after reviewing each completed application, will assign to each member of the Committee an appropriate number of cases.

ii. Each member of the Committee will review the cases assigned and will complete SOMBA's Case Evaluation Form.

iii. After completing the Case Evaluation Form, the Committee member will conduct a site visit of each applicant assigned and complete a Site Visit Report.

iv. The Case Evaluation Form and the Site Visit Report will form the basis of the Committee's report to the entire Committee.

v. Each Committee member will, after completing the Site Visit Report return the files to the Coordinator. The Coordinator will, four (4) days before each Certification Meeting, prepare a list of all the cases submitted by Committee members, make copies of the list, the Case Evaluation Forms, and the Site Visit Report and distribute them to each member of the Committee.
vi. The Committee will meet every Thursday at a time designated by the Chairperson unless the Chairperson notifies the Committee members otherwise.

vii. Each Committee member will present to the entire Committee the cases assigned to him; the entire Committee will consider each case and all decisions will be made by majority vote.

viii. The Committee shall make a final decision on each case it considers at each Certification meeting. In exceptional circumstances, however, the Certification Committee can, by unanimous vote, postpone final action on a case or grant an extension of time to the applicant.

ix. The Committee may, in its discretion, grant or request an interview, if it feels an interview is essential to complete the thorough fact-finding it considers necessary to the making of its decision.

x. After the Committee has made its final decision, it will send a letter to the applicant advising it of the Committee’s reasons for its action. The letter will also inform the applicant of its right to seek appeal, reconsideration, or judicial review whichever is applicable.

xi. An applicant that has been denied certification may reapply no earlier than six (6) months after the date of the Committee's decision unless the Director requests that the Committee grant the applicant an earlier reconsideration.

The Committee will grant an applicant reconsideration only if the new evidence the applicant submits indicates that there has been a substantial change in the minority owner's control, management, or ownership of the business.

HEARING PROCEDURES

The Committee may elect to hold hearings whenever, in the interest of justice, it deems it necessary to hold hearings. Such hearings shall be informal and shall not be subject to the requirements of M.G.L. Chapter 30A.

OPEN HEARINGS

The hearings will be open and the applicant or MBE shall appear and may bring a representative and witnesses, if it so chooses. The Hearing Officer may, in the interest of an orderly meeting, have the discretion to limit the number of people who may attend the hearing and the number of witnesses that may testify.

HEARING OFFICER

The Hearing Officer shall be the Director of SOMBA or a staff member designated to conduct the hearing.
CONDUCT AT THE HEARING

The applicant and all parties present at the hearing shall conduct themselves in a manner consistent with the standards of judicial decorum accepted by the courts of the Commonwealth. The Hearing Officer will have the authority to take any action necessary to enforce these standards during the course of the hearing.

STIPULATIONS

Both SOMBA and the applicant may enter written stipulations if they are signed by the parties sought to be bound thereby and if the opposing side does not disagree or object. If the opposing side disagrees or objects, the Hearing Officer will rule on the propriety of admitting or rejecting the stipulation.

Oral stipulation may be made on the record, at the discretion of the Hearing Officer, during the course of the Hearing.

EVIDENCE

The Committee shall not be bound by the formal rules of evidence observed by the courts. The Hearing Officer can, in his discretion admit any evidence that may be helpful and that is not patently untrustworthy.

The Hearing Officer may apply Rule 803(8) of the Federal Rules of Evidence which permits admission of records, reports, statements, public records, and other forms of documentary evidence as exceptions to the hearsay rule.

ADMINISTRATIVE NOTICE

The Hearing Officer may take administrative notice of such matter as might be judicially noticed by the courts of the Commonwealth or the United States, and of technical and general facts within its specialized area of knowledge.

TRANSCRIPT

The Hearing Officer may allow a party to bring a stenographer or electronic recording equipment to the hearing. The Hearing Officer will allow the party to record the hearing on the condition that the party agrees to furnish SOMBA with a copy of the record in the event that appeal is made or a suit is instituted. The party will bear the cost of preparing, producing and supplying SOMBA with the record.

APPEALS

An applicant that has been denied certification may, within ten (10) days of that decision, request an appeal. The applicant's request must be in writing, and it must state the grounds for its appeal. SOMBA reserves the right to grant an appeal only in cases where it finds, after reviewing the decision being appealed, either (i) that the Committee's decision was clearly against the weight of the evidence presented; or (2) that the Committee harmed the applicant's case by failing to adhere to the procedures and criteria established in these regulations.
SOMBA will respond to the applicant's request for an appeal within thirty (30) days after it receives the applicant's request. If SOMBA decides to grant an appeal, it will notify the applicant of the date, time, and place of the hearing. When SOMBA denies an applicant's request for an appeal, it will write to the applicant stating the reasons for the denial and advising the applicant of its right to seek reconsideration.

DECERTIFICATION PROCEDURES

SOMBA may at any time after it has certified an MBE, withdraw that MBE's certification if the state of that MBE's ownership, control or management make such action necessary or if that MBE fails to maintain its status as an on-going business.

GROUNDS FOR COMPLAINT

Any person, including a SOMBA staff member can, orally or in writing, make a complaint to SOMBA against any MBE if that person believes that the MBE is abusing its certified status or failing to conduct itself as a bonafide MBE. SOMBA reserves the right to investigate any and all complaints.

If, after its investigation, SOMBA finds that an MBE:

i. Submitted inaccurate or false information to SOMBA during the certification process,

or

ii. Has violated the contract guidelines of its awarding authority,

or

iii. Has changed its minority ownership, control, or management without notifying SOMBA within thirty (30) calendar days of such change,

or

iv. Has failed to conduct itself as a bonafide MBE or to maintain its status as an on-going concern.

it shall seek an informal resolution to the problem.

INFORMAL RESOLUTION

If SOMBA chooses to seek an informal resolution of the problem it will:

- advise the enterprise of the allegations made against it;

- inform it of the findings of the Field Representative who investigated its case;

- Request that the MBE take voluntary action to correct the problem within thirty (30) days of notification.

When the Committee in its judgement, concludes that the MBE has failed to take corrective action within thirty (30) days of notification, it will recommend to the Director that a decertification hearing be held to determine whether the MBE's certification should be removed.
DECERTIFICATION HEARING

In addition to the General Hearing Procedures outlined in these regulations, the following rules shall apply to decertification hearings. The Committee shall:

1. Inform the MBE that the Committee considers a Decertification Hearing to be necessary.
2. Inform the MBE ten (10) days in advance of the date, time and place of the hearing.
3. Inform the MBE that failure to appear will result in default and automatic removal of its certification.
4. Conduct the hearings in accordance with the General Hearing Procedures established by these regulations.
5. Render a decision, give the MBE notice of that decision and advise it of its right to seek judicial review.

Any MBE that, after receiving notice, fails to attend the hearing will be considered in default. A default will have the effect of automatically removing an MBE certification.

After the Committee has rendered its decision, SOMBA will, in writing inform all awarding authorities that the MBE is no longer certified, is ineligible for future contract awards, and it will recommend that the authorities take appropriate sanctions against the decertified MBE on existing contracts.

CERTIFICATION CRITERIA

SOMBA will certify only those firms which meet the five-pronged test set out below: An applicant firm must satisfy each of the following test requirements:

1. Owners are members of a definable minority group.
2. Minority partners/shareholders must own at least 51% of the business.
3. Minority owners must possess dominant control of the business.
4. Minority owners must be substantial investors in the business.
5. The business must be an on-going concern.

The following general guidelines outline the requirements of the SOMBA certification test.

MEMBERSHIP REQUIREMENT

Member of a definable minority group means a person with permanent residence in the United States who is Aleut, Asian (including the sub-continent of India), Black, Cape Verdean, Eskimo, North American Indian, Pacific Islander, or Western Hemisphere Hispanic.

Minority Business Enterprise (MBE) means a business enterprise that has been certified by SOMBA as meeting the five-pronged test set forth in these criteria.

The following are more definitive descriptions of the definable minority groups to which these regulations apply:
**CATEGORY**

- Black
- Hispanic
- American Indian
- Eskimo and Aleut
- Asian
- Cape Verdean

**DEFINITION**

Black

All persons having origins in any of the Black groups of Africa.

Hispanic

All persons of Mexican, Puerto Rican, Cuban, Central or South American origin.

American Indian

All persons having origins in any of the original peoples of North America, and who are recognized as an Indian by a tribe or tribal organization.

Eskimo and Aleut

All persons having origins in any of the peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia.

Asian

All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes for example, China, Japan, Korea, the Phillipine Islands and Samoa.

Cape Verdean

All persons having origins in any of the original peoples of the Cape Verdean Islands who are of Black African origin.

**OWNERSHIP REQUIREMENT**

An applicant must satisfy A, B, or C, and D, E, and F below in order to be considered 51% owned by members of a definable minority group.

A. In a Corporate form of organization, the minority shareholders of the corporation must own at least 51% of each and every class of shares, including 51% of all voting stock in the corporation;

or

B. In a Partnership form of organization, the minority partners must own at least 51% of the partnership;

or

C. In any other form of organization, the minority owners must own at least 51% of the business interest of the organization including but not limited to 51% of the ownership of assets, dividends, and intangible assets such as copyrights and patents;

and,

D. The minority owners must demonstrate that they are entitled to receive profits from the business firm and that they are entitled to share in any other benefit which accrues to all owners of the business firm;

and

E. The minority owners must substantially share in all the risks assumed by the business firm;

and,
E. The business firm cannot at any time enter into any agreement, option, scheme or create any rights of conversion which, if exercised, would result in less than 51% minority ownership of the business firm.

9.03 CONTROL REQUIREMENTS

To prove that the minority owners possess dominant control over the business, an applicant must satisfy all the requirements of Sections A, B, and C below:

A. The minority owners must demonstrate that they have dominant control over:

1. Every aspect of the day-to-day management of the business; and
2. The policy making mechanism of the business.

The minority owners must establish their dominant control by providing substantial evidence that they meet all of the following:

a. Have dominant control over the purchase of goods, equipment, business inventory and services needed in the day-to-day operation of the business.

b. Have the authority to hire and fire employees.

c. Control corporate accounts—checking, savings, and other financial accounts.

d. Have a thorough knowledge of the financial structure of the business and control over all financial affairs.

e. Have the capability, knowledge, and experience required to make decisions regarding that particular type of work.

f. Have displayed independence and initiative in seeking and negotiating contracts, accepting and rejecting bids and in conducting all major aspects of the business.

B. Anyone of the following conditions creates an irrebuttable presumption that the minority owners do not have dominant control of the business that is applying for certification if:

i. The minority owners are current employees of a non-minority business corporation, or individual, or partnership which has a significant ownership interest in the business firm applying for certification.

ii. The directors and/or management of the applicant is substantially the same as the affiliated non-minority firm.

iii. The applicant is a wholly-owned subsidiary or affiliate of a non-minority firm.

iv. The applicant has an extremely dependent relationship on a non-minority firm or individual.
C. Any agreement, option, right of conversion, scheme or other restraint, which, if exercised, would result in less than dominant control by the minority owners, is prohibited.

9.04 SUBSTANTIAL INVESTMENT IN BUSINESS REQUIREMENT

The minority owners must demonstrate that they have substantial personal investment in the business. Proof of such substantial investment must be established by producing evidence of the following:

i. A substantial amount of money invested in the business;

or

ii. Investment in the form of capital, equipment, contribution of property, space, patents and copyrights.

Contribution of personal or professional services alone will not be considered "substantial investment" for the purpose of this section. However, a contribution of such services will receive consideration when given in conjunction with other tangible forms of investment.

There will be an irrebuttable presumption that the minority owners have not made a substantial investment in the business if a significant portion of the applicant's equity is financed by a loan or gift from a non-minority corporation, partnership, or individual that has a significant interest in the applicant.

10.00 ON-GOING CONCERN REQUIREMENT

The applicant must be an on-going business concern; it must demonstrate to the satisfaction of the Certification Committee that it was not established solely for the purpose of competing for MBE programs. However, a newly founded business organ: to compete for MBE programs is acceptable if its intent is to be an on-going business concern, and it can prove to the satisfaction of the Certification Committee that it could survive if the non-minority owners or the affiliated non-minority business withdrew its support.

10.01 MISCELLANEOUS

Effect of Prior MBE Certification by Another State or Federal Agency

Prior MBE Certification of the applicant by another state or federal agency shall be considered by the Committee, but in no case shall this prior certification be considered conclusive proof that the applicant is eligible for SOMBA certification.

10.02 Judicial Review

An applicant may seek judicial review of any adverse decision of SOMBA, but it shall do so only after it has exhausted all SOMBA administrative remedies.

10.03 Severability

The provisions of this document are severable, and if any of the provisions shall be held to be unconstitutional by any court or competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.
APPENDIX TO

RECOMMENDED BUDGET
COMPARISON OF COST OF COMMISSION PROPOSAL FOR DIVISION OF CAPITAL PLANNING AND OPERATIONS, AND CURRENT AND PROJECTED COSTS OF EXISTING SYSTEM OF CAPITAL PLANNING AND BUDGETING, REAL PROPERTY MANAGEMENT AND PROJECT MANAGEMENT:

1. Current Staff for Capital Planning and Budgeting, Project Management, and Real Property Management (as of March 26, 1980) : 83 positions
   $1,657,000 (estimate of cost)

2. Current Authorized Staff for Capital Planning and Budgeting, Project Management, and Real Property Management (as of March 26, 1980) : 116 positions
   $2,456,000 (estimate of cost)

3. Agency Requested Staff for Capital Planning and Budgeting, Project Management, and Real Property Management (for fiscal year 1981) : 141+ positions
   $3,235,400 (estimate of cost)

4. Estimated Staff for Capital Planning and Budgeting, Project Management, and Real Property Management Based on Consultant Study to Administration (Ernst & Whinney Report) : 135+ positions

5. Special Commission Recommendation for Staff of Division of Capital Planning and Operations to Do Capital Planning and Budgeting, Project Management, and Real Property Management : 141 positions
   $3,235,400 (estimate of cost)

6. House and Senate Budget for Capital Planning and Budgeting, Project Management, and Real Project Management (for fiscal year 1981) : $1,845,000 (estimate of cost)
DIVISION OF CAPITAL PLANNING AND OPERATIONS

A. ADMINISTRATIVE/POLICY STAFF

1 Deputy Commissioner
2 Assistant Deputy Commissioners
3 Attorneys
8 Real Property Management
9 Capital Planning and Budgeting
2 E.E.O Officers
9 Accounting/Budget/Internal Audit
1 Personnel
4 Contractor Prequalification
2 Bid Section
16 Clerical

57 $1,236,700

B. OFFICE OF PROJECT MANAGEMENT

1 Director
1 Deputy Director
12 Project Managers
16 Technical Staff for Project Managers
5 Cost Estimators and Schedulers
7 Clerical

42 $ 992,600
C. OFFICE OF FACILITIES MANAGEMENT

1 Director
1 Deputy Director
7 Project Managers
11 Technical Staff for Project Managers
3 Cost Estimators and Schedulers
4 Clerical

27 $ 645,200

D. OFFICE OF PROGRAMMING

1 Director
1 Deputy Director
7 Programmers and Program Analysts
2 Cost Analysts
1 Post Occupancy Evaluation
3 Clerical

15 $ 360,000

TOTAL: 141 $3,235,400
## DIVISION OF CAPITAL PLANNING AND OPERATIONS

### A. ADMINISTRATIVE POLICY/STAFF

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deputy Commissioner</td>
<td>39,200</td>
</tr>
<tr>
<td>Assistant Deputy Commissioner (2)</td>
<td>31,800</td>
</tr>
<tr>
<td>Administrative Secretary</td>
<td>14,200</td>
</tr>
<tr>
<td>General Counsel</td>
<td>34,000</td>
</tr>
<tr>
<td>Assistant Counsel</td>
<td>30,200</td>
</tr>
<tr>
<td>Land Acquisition Agent</td>
<td>24,000</td>
</tr>
<tr>
<td>Real Property Planning/Management</td>
<td>32,000</td>
</tr>
<tr>
<td>Real Property Planning/Management/Leasing (2)</td>
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<tr>
<td>State Leasing Officer/Property Inventory (2)</td>
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</tr>
<tr>
<td>Real Estate Officer/Leasing/Appraisal/Property Inventory (2)</td>
<td>21,100</td>
</tr>
<tr>
<td>State Space Operations Coordinator/Inventory</td>
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</tr>
<tr>
<td>Secretary (2)</td>
<td>13,500</td>
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<tr>
<td>Personnel Manager</td>
<td>27,200</td>
</tr>
<tr>
<td>E.E.O. Officer</td>
<td>30,600</td>
</tr>
<tr>
<td>E.E.O. Compliance Technician</td>
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<tr>
<td>Records Technician</td>
<td>15,500</td>
</tr>
<tr>
<td>Accounting/Manager</td>
<td>27,200</td>
</tr>
<tr>
<td>Accounting/Supervisor</td>
<td>27,200</td>
</tr>
<tr>
<td>Chief Project Accountant</td>
<td>27,200</td>
</tr>
<tr>
<td>Accountant</td>
<td>19,200</td>
</tr>
<tr>
<td>Accountant Technician</td>
<td>13,900</td>
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<tr>
<td>Clerk</td>
<td>12,000</td>
</tr>
<tr>
<td>Division Budget - Financial Analyst</td>
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</tr>
<tr>
<td>Division Budget - Budget Analyst</td>
<td>24,000</td>
</tr>
<tr>
<td>Position</td>
<td>Salary</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>Internal Auditor (Senior)</td>
<td>27,200</td>
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<tr>
<td>Internal Auditor (Junior)</td>
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<tr>
<td>Contractor Qualification/Manager</td>
<td>30,600</td>
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<td>Contractor Qualification - Technicians (3)</td>
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<td>Clerk</td>
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<tr>
<td>Bidding - Contract Technician (2)</td>
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<tr>
<td>Records Technician</td>
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<tr>
<td>Clerk</td>
<td>12,000</td>
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<tr>
<td>Data Processing Analyst</td>
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<tr>
<td>Data Input Operator</td>
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<tr>
<td>Word Processing Operator (Senior)</td>
<td>17,600</td>
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<tr>
<td>Word Processing Operator (Junior)</td>
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<tr>
<td>Clerk</td>
<td>10,500</td>
</tr>
<tr>
<td>Central File/Supervisor</td>
<td>17,600</td>
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<tr>
<td>Central File/Microfilm Operator</td>
<td>11,000</td>
</tr>
<tr>
<td>Document Production</td>
<td>17,600</td>
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<tr>
<td>Capital Planning and Budgeting/Manager</td>
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<tr>
<td>Planner - Long Range (2)</td>
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<tr>
<td>Budget Review/Preparation - Grade 3</td>
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<tr>
<td>Budget Review/Preparation - Grade 2</td>
<td>20,900</td>
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<tr>
<td>Budget Review/Preparation - Grade 1</td>
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<tr>
<td>Cost Analyst</td>
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<tr>
<td>Technical Cost Analyst</td>
<td>25,700</td>
</tr>
<tr>
<td>Administrative Assistant/Data Compilation</td>
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### B. OFFICE OF PROJECT MANAGEMENT

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director</td>
<td>35,000</td>
</tr>
<tr>
<td>Deputy Director</td>
<td>31,400</td>
</tr>
<tr>
<td>Project Manager (Senior) (4)</td>
<td>30,600</td>
</tr>
<tr>
<td>Project Manager (Grade 2) (4)</td>
<td>27,400</td>
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<tr>
<td>Project Manager (Grade 1) (4)</td>
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<tr>
<td>Architect - Design Review (Grade 2)</td>
<td>23,100</td>
</tr>
<tr>
<td>Architect - Design Review (Grade 1)</td>
<td>20,500</td>
</tr>
<tr>
<td>Technical Support - Structural Engineer (Grade 2)</td>
<td>27,300</td>
</tr>
<tr>
<td>Technical Support - Structural Engineer (Grade 1)</td>
<td>21,600</td>
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<tr>
<td>Technical Support - Civil Engineer (Grade 2)</td>
<td>26,100</td>
</tr>
<tr>
<td>Technical Support - Civil Engineer (Grade 1)</td>
<td>20,900</td>
</tr>
<tr>
<td>Technical Support - Mechanical Engineer (Grade 3) (2)</td>
<td>27,000</td>
</tr>
<tr>
<td>Technical Support - Mechanical Engineer (Grade 2)</td>
<td>24,200</td>
</tr>
<tr>
<td>Technical Support - Mechanical Engineer (Grade 1)</td>
<td>20,000</td>
</tr>
<tr>
<td>Technical Support - Electrical Engineer (Grade 3) (2)</td>
<td>28,400</td>
</tr>
<tr>
<td>Technical Support - Electrical Engineer (Grade 2)</td>
<td>23,200</td>
</tr>
<tr>
<td>Technical Support - Electrical Engineer (Grade 1)</td>
<td>20,400</td>
</tr>
<tr>
<td>Technical Support - Roofing Specialist</td>
<td>20,900</td>
</tr>
<tr>
<td>Technical Support - Architect Specification Standards and Review</td>
<td>27,300</td>
</tr>
<tr>
<td>Cost Estimator - Architect</td>
<td>27,200</td>
</tr>
<tr>
<td>Cost Estimator - Mechanical</td>
<td>27,200</td>
</tr>
<tr>
<td>Cost Estimator - Electrical</td>
<td>27,200</td>
</tr>
<tr>
<td>Position</td>
<td>Salary</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>Cost Estimator/Project Scheduler (2)</td>
<td>27,200</td>
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<tr>
<td>Record Clerk</td>
<td>15,400</td>
</tr>
<tr>
<td>Secretary</td>
<td>13,600</td>
</tr>
<tr>
<td>Clerk Stenographer (Grade 2) (2)</td>
<td>11,500</td>
</tr>
<tr>
<td>Clerk Stenographer (Grade 1)</td>
<td>10,800</td>
</tr>
<tr>
<td>Clerk Typist (Grade 2)</td>
<td>10,400</td>
</tr>
</tbody>
</table>

C. OFFICE OF FACILITIES MANAGEMENT

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director</td>
<td>35,000</td>
</tr>
<tr>
<td>Deputy Director</td>
<td>31,400</td>
</tr>
<tr>
<td>Project Manager (Senior) (3)</td>
<td>30,600</td>
</tr>
<tr>
<td>Project Manager (Grade 2) (2)</td>
<td>27,400</td>
</tr>
<tr>
<td>Project Manager (Grade 1) (2)</td>
<td>21,100</td>
</tr>
<tr>
<td>Technical Staff - Architect</td>
<td>22,800</td>
</tr>
<tr>
<td>Technical Staff - Structural Engineer</td>
<td>21,000</td>
</tr>
<tr>
<td>Technical Staff - Civil Engineer - Masonry</td>
<td>23,500</td>
</tr>
<tr>
<td>Technical Staff - Civil Engineer - Roofing</td>
<td>20,400</td>
</tr>
<tr>
<td>Technical Staff - Civil Engineer</td>
<td>18,600</td>
</tr>
<tr>
<td>Technical Staff - Mechanical Engineer</td>
<td>27,400</td>
</tr>
<tr>
<td>Technical Staff - Mechanical Engineer</td>
<td>26,200</td>
</tr>
<tr>
<td>Technical Staff - Electrical Engineer</td>
<td>28,700</td>
</tr>
<tr>
<td>Technical Staff - Electrical Engineer</td>
<td>23,000</td>
</tr>
<tr>
<td>Technical Staff - Energy Management Engineer</td>
<td>21,400</td>
</tr>
<tr>
<td>Technical Staff - Buildings Management Specialist</td>
<td>25,500</td>
</tr>
<tr>
<td>Cost Estimator - Architect</td>
<td>27,200</td>
</tr>
<tr>
<td>Cost Estimator - Mechanical/Electrical</td>
<td>27,200</td>
</tr>
<tr>
<td>Cost Estimator/Project Scheduler</td>
<td>27,200</td>
</tr>
</tbody>
</table>
Record Clerk 15,400
Secretary 13,600
Clerk Stenographer (Grade 3) 10,500
Clerk Typist (Grade 3) 10,400

D. OFFICE OF PROGRAMMING
Director 35,000
Deputy Director 31,400
Program Analyst (Senior) 30,600
Program Analyst (Grade 2) (2) 27,200
Program Analyst (Grade 1) (2) 21,400
Estimating/Design Architect (2) 27,200
Estimating/Design Mechanical Engineer 27,200
Estimating/Design Electrical Engineer 27,200
Secretary 14,000
Clerk (Grade 4) 12,000
Clerk Stenographer (Grade 3) 10,500
Analyst - Post Occupancy Evaluation 21,400
NOTES

1. The above estimate for the staff of the Division of Capital Planning and Operations does not include Resident Engineers mandated by statute. The Resident Engineer, who will be employed by the Commonwealth, replaces the Clerk of the Works who is currently employed by the Architect but whose salary is paid by the Commonwealth. Thus, the fact that the Resident Engineer is directly on the Commonwealth's payroll will not result in an increase in cost to the Commonwealth. Indeed, it might result in a decrease because the Clerk of the Works' salary is a so-called "reimbursable expense" and the Architect is paid 23% above that reimbursable expense for "overhead".

According to Ed Vaughn, Deputy Commissioner of Central Services, approximately 40 resident engineers would be required by the Office of Project Management and 10 resident engineers would be required by the Office of Facilities Management. The current salary range for a Clerk of the Works is approximately $350 - $450 per week.

The only difficulty in the mechanism for funding Resident Engineers arises out of the fact that currently the expense for the Clerk of the Works is charged against the capital appropriation for the particular project for which the person is the Clerk; the expense is not part of the operating budget for the BBC or any other agency. However, since the Resident Engineer - who replaces the Clerk - would be an employee of the Commonwealth the salary would ordinarily come out of the employing agency's operating budget. Some means must be established to continue to permit a charge against the capital appropriation to pay the Resident Engineer salary but have the funds transferred to the 01 or 02 account for Office of Project Management or Office of Facilities Management salaries.

2. The Commission believes that it is essential to have distinct Offices of Project Management and Facilities Management to assure that the particular functions required of each are performed. However, from year to year, and perhaps even month to month, the relative load on each Office may vary considerably. Thus, there must be provision for transfer of employees - primarily project managers, technical support staff, and resident engineers between the two offices - to assure the right balance between the two in relation to their respective loads. And in turn, the operating budget should be organized in a fashion to permit this. Perhaps the technique would involve a single overall division budget or at least a combined budget for the Offices of Project Management and Facilities Management.
3. The dollar estimates provided on the preceding pages are made for the current or projected staff under the current organization and the projected staff under the Commission proposed organization. The actual budget for say, the BBC, is slightly higher than the salary budget because of overhead expenses. Since 1968, the BBC overhead expense (non-salary expenses divided by total expenses) has ranged from a low of 4.8% (in 1974) to a high of 8.2% (in 1969). In 1979 the overhead was 6.2%. The average for the past 12 years was 6.0%.

Using 6.0% overhead figure for the current staffing (with an estimated salary cost of $1,657,000) would result in overhead of about $100,000 and a total budget of about $1,757,000.

Using the same 6.0% figure for the agency requested staff for fiscal year 1981 (with an estimated salary cost of $2,456,000) would result in overhead of about $147,000 and a total budget of $2,603,000.

Using the same 6.0% figure for the Division of Capital Planning and Operations (with an estimated salary cost of $3,235,400) would result in overhead of about $194,000 and a total budget of $3,429,400. However, the overhead as a percentage may very well be lower because of the larger size of the division relative to fixed overhead costs.
4. Under the Commission's proposal the Bureau of State Buildings is changed in the following way: all real property management functions (the few that there are) are removed from the authority of the Bureau and transferred to the administrative policy office of the Division of Capital Planning and Operations; the Bureau of State Buildings is renamed the Bureau of State Office Buildings and placed within the Office of Facilities Management.

According to the budget proposal submitted by the Bureau of State Buildings there were

\[
\begin{align*}
&407 \text{ full-time positions} \\
&32 \text{ temporary positions} \\
&439 \text{ 01 + 02 positions} \\
&379 \text{ full-time positions} \\
&22 \text{ temporary positions} \\
&401 \text{ 01 + 02 positions}
\end{align*}
\]

authorized to be filled as of June 30, 1980

\[
\begin{align*}
&407 \text{ full-time positions} \\
&32 \text{ temporary positions} \\
&439 \text{ 01 + 02 positions} \\
&379 \text{ full-time positions} \\
&22 \text{ temporary positions} \\
&401 \text{ 01 + 02 positions}
\end{align*}
\]

actually filled as of June 30, 1980 (expected)

The 1980 appropriation for fiscal year 1980 was

\[
$12,032,100
\]

The Bureau of State Buildings requested for the 1981 fiscal year a budget of

\[
$14,108,980
\]

including

the same number of authorized positions as in 1980 and a projected

\[
\begin{align*}
&393 \text{ full-time positions} \\
&22 \text{ temporary positions} \\
&415 \text{ positions}
\end{align*}
\]

to be filled in fiscal year 1981

The House Budget authorized

\[
407 \text{ permanent positions with a budget of} \\
$14,100,385
\]

The Senate Budget authorized

\[
402 \text{ permanent positions with a budget of} \\
$13,803,849
\]

***ONLY 6 OF THE POSITIONS FILLED AT THE BUREAU OF STATE BUILDINGS CURRENTLY ARE INVOLVED WITH REAL PROPERTY MANAGEMENT.

We have estimated an average salary of $20,000 per person for 1980 (equal to $120,000) and $22,000 for 1981 (equal to $132,000) and those estimates are included in the estimate
of the current cost of Capital Planning and Budgeting, Real Property Management, and Project Management functions.

5. Under the Commission's proposal capital planning and budgeting would be done by the Division of Capital Planning and Operations rather than as currently by the Budget Bureau. Currently there is only one person at the Budget Bureau who is involved in preparing the capital budget. We have estimated a salary of $20,000 for that person in 1980 and $22,000 in 1981 and included that estimate in the estimate of the current cost of Capital Planning and Budgeting, Real Property Management, and Project Management Functions.

*** 6. The reason for the higher cost of the Commission proposal in comparison to the current and projected costs of the existing system are because of

(a) increase in number of staff: 83 to 141

(b) change in composition of staff: relatively speaking there are many more professional and technical employees

(c) higher salary schedule assumed: the assume salaries are on the average probably 10 - 15% higher than the Commonwealth currently pays; in some instances, the salary might be as much as 25% higher
### Current BBC Salaries (as given in Auditor’s report for October 15, 1979)

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director</td>
<td>33,100</td>
</tr>
<tr>
<td>Deputy Director</td>
<td>32,900</td>
</tr>
<tr>
<td>Administrative Assistant to Director</td>
<td>29,200</td>
</tr>
<tr>
<td>Supervisor of Administrative Services</td>
<td>23,600</td>
</tr>
<tr>
<td>Supervisor of Fiscal Management</td>
<td>23,600</td>
</tr>
<tr>
<td>Planning Engineer, Long Range Planning Section Head</td>
<td>29,200</td>
</tr>
<tr>
<td>Plans and Specifications Engineer, Examining Section Head</td>
<td>29,200</td>
</tr>
<tr>
<td>Building Construction Engineer, Construction Section Head</td>
<td>29,200</td>
</tr>
<tr>
<td>Building Construction Mechanical and Electrical Engineer, Mechanical and Electrical Section Head</td>
<td>29,200</td>
</tr>
</tbody>
</table>
APPENDIX TO

CAMPAIGN FINANCE
SECTION 1. Adds definition of new Campaign and Political Finance Commission. Amendment of c. 55 s. 1.

SECTION 2. Eliminates definition of Director of old Office of Campaign and Political Finance. Amendment of c. 55 s. 1.

SECTION 3. Adds definition of "person". Revises definition of "political committee". Amendment of c. 55 s. 1.

SECTION 4. Increases period for retention of records by candidate to six years. Amendment of c. 55 s. 2.

SECTION 5. Establishes new Campaign and Political Finance Commission as follows:

Section 3. Establishes commission of five members, three appointed by governor according to prescribed procedure and one each appointed by attorney general and secretary of state. Members limited to one non-renewable five year term; restricted in political activity during and after membership. Commission to have general counsel and executive director.

Section 3B. Establishes standards for statements and reports to be prepared and submitted to commission. Such documents are public, available for inspection and copying. Commission required to inspect all reports and statements within specified period of time and to notify in writing those who fail to report or report properly. Commission to do field audits in addition to office inspection of documents. Such audits are mandatory for certain candidates and committees which raise large sums of money. For other candidates and committees such audits are to be done on a random basis. Commission to render advisory opinions upon request, subject to certain limitations. Commission to issue interpretive bulletins and provide information to candidates, committees, and members of the public.

Section 3C. Commission empowered to make preliminary inquiry into violations of campaign finance law and to authorize full-scale investigation if there is reasonable cause for belief that violation has occurred.

Section 3D. In addition to turning over evidence to attorney general pertaining to criminal violations, Commission may issue order to person to cease and desist from violation; to file a report, statement or other information required by the campaign finance laws; to pay a civil fine for failure to report properly or for unlawfully contribution, expending, giving, or receiving monies or for failure to report in a timely manner. Commission authorized to file civil action to enforce its orders.

Section 3E. Provides penalties for violation of confidentiality requirements and for false statements before Commission.

Section 3F. Commission to prepare reports on accuracy and completeness of documents submitted to it, compile statistics, and issue analyses and studies of impact of campaign finance laws.
SECTION 6. Replaces Director of old Office of Campaign and Political Finance with new Campaign and Political Finance Commission. Amends c. 55 s. 4.

SECTION 7. Specifies which political committees are required to organize pursuant to statutory provisions: all single and multiple candidate committees; those committees a principal purpose of which is to receive contributions or make expenditures; and all other committees, if they receive in the aggregate of more than $1,000 or expend in the aggregate of $1,000 in a calendar year.

SECTION 8. Replaces Director with Commission.

SECTION 9. Makes grammatical change relating to the change made in SECTIONS 7 and 8.

SECTION 10. Amends c. 55 s. 6 to limit campaign expenditures by all candidates and their political committees to reasonable and necessary expenditures directly related to the campaign, and to prohibit contributions by candidates or their political committees to other political committees or campaign funds.

SECTION 11. Amends c. 55 s. 7 to limit contributions by persons and political committees to a maximum of $1,000 to a candidate for statewide office and his political committee and $500 for other candidates and their political committees. Provides that all contributions made by political committees established, financed, maintained or controlled by a single group will be deemed to have been made by a single political committee for the purposes of the above contribution limits.

SECTION 12. Adds new sections 10A through 10E to chapter 55.

Section 10A. Requires persons doing business with public agencies to report annually ( and in a supplemental statement ) their contributions to candidates and officials holding elective office.

Section 10B. Requires identification of the agencies with which business was done, the nature and amount of that business, the amount of the contributions and the candidates or committees to whom they were given. Also requires similar reporting of attributed contributions ( see below ).

Section 10C. Requires certain individuals associated with business entities or others acting on behalf of persons required to report to submit information concerning their contributions to be included in the report under section 10B.

Section 10D. Defines "business" as any one or combination of sales, purchases, leases or contracts, involving $10,000 or more ( on a cumulative basis ) entered into during a calendar year. Also defines "business entity" and "public agency".

Section 10E. Provides for criminal penalties for violation of sections 10A through 10D.
SECTION 13. Adds new section 16A to chapter 55 making it illegal to coerce any person doing business with a public agency, and certain persons associated with that person to make political contributions or render political services or to grant any advantage to such a person for making a contribution or rendering a political service.

SECTION 14. Amends chapter 55 s. 18 to require certain reports and statements of contributions and expenditures of political committees organized pursuant to chapter 55 s. 5.

SECTION 15. Increases the frequency of the reports required to be filed by legislative candidates under c. 55 s. 18(a). In addition to the reports filed 8 days before a primary and an election, the provision requires a report 30 days before the primary and quarterly reports at the end of any calendar quarter in which a candidate receives contributions or makes expenditures in excess of $5,000.

SECTION 16. Retains provisions of Alexander amendment passed last year restricting use of residual campaign funds except restricts use to account in banking institution in Massachusetts with sum to be used in future campaigns, pro-rata return to contributors, donation to Commonwealth or donation to the Local Aid Fund. Revised chapter 55 s. 18(h).

SECTION 17. Excludes dues or assessments payable on a regular basis to and other income received by an organization in the normal course of its business and not received or solicited for the purpose of making contributions or expenditures from reporting requirements of organization required to report as political committee by chapter 55 s. 5. Makes clear that any expenditures by an organization which would otherwise have to be reported by it under chapter 55 s. 18 (if it must organize as a political committee under chapter 55 s. 5) must be reported even if the funds originate from dues, assessments, etc. New chapter 55 section 18A. In addition, new section 18B requires persons and political committees making independent expenditures on behalf of a candidate in excess of $100 in a calendar year to report to the Commission (or the city or town clerk in the case of a local election) the name and address of the person or political committee making the expenditure, the name of the candidate on whose behalf the expenditure was made, the name and address of the person to whom the expenditure was made, and the amount, date and purpose of the expenditure. Must be reported within 7 business days of the date of expenditure.

SECTION 18. Amends c. 55 s. 19(b) to extend the length of time in which a candidate or the treasurer of a political committee must deposit contributions in a depository from 3 to 7 days after receipt of the contribution, and provides that contributions not deposited within 7 days must be returned to the original donors.
SECTION 19. Replaces Director with Commission in c. 55 s. 22.

SECTION 20. Replaces Director with Commission in c. 55 s. 22A.

SECTION 21. Replaces Director with Commission in c. 55 s. 24.

SECTION 22. Amends c. 55 s. 25 to require that Commission keep records filed with it for six years after the year of the election to which they pertain or after the year in which they are filed, whichever is later. For committees other than those authorized by candidates records filed with the Commission are to be kept for six years from the date filed.

SECTION 23. Eliminates provision with regard to making records public and available for copying; this is taken care of under the new c. 55 s. 3B(d). Amendment to c. 55 s. 25.

SECTION 24. Replaces Director with Commission in c. 55 s. 27.

SECTION 25. Makes grammatical changes corresponding to those in SECTION 24 in c. 55 s. 27.

SECTION 26. Eliminates references to Director in c. 55 s. 28; Subject matter shifted to c. 55 ss. 3A through 3F.

SECTION 27. Eliminates references to Director in c. 55 s. 29; Subject matter shifted c. c. 55 ss. 3A through 3F.

SECTION 28. Changes reference from Director to Secretary of State in c. 55 s. 33 - corrects drafting error in earlier amendments to c. 55.

SECTION 29. Changes reference from Director to Secretary of State in c. 55 s. 42 - corrects drafting error in earlier amendments of c. 55.

SECTION 30. Amends c. 63 s. 6C to provide for an individual $2 checkoff on the state income tax for publicly funding campaigns for statewide and legislative office. Requires the Commissioner of Revenue to make the checkoff, with a notice that the checkoff will not increase the taxpayer's tax liability or decrease the amount of any refund owed the taxpayer.

SECTION 31. Amends c. 10 s. 42 to provide that funds allocated to statewide accounts and the legislative account of the state election campaign fund be available for immediate withdrawal after June 30 of an election for statewide office and that funds allocated to the legislative account be available for immediate withdrawal after June 30 of any year in which elections for legislative office are or may be held or after the 9th Tuwedday before a special primary, if that occurs before June 30.

SECTION 32. Makes minor conforming changes in c. 55 s. 42.
SECTION 33. Replaces c. 10 ss. 43 and 44 with new ss. 42A, 43, and 44.

Section 42A. Requires that by the first Tuesday in November of the year before a biennial or statewide election the Comptroller is to determine the balance of the state election campaign fund as of June 30th and prepare an estimate of the balance as of June 30th of that election year. On that basis the Comptroller is then required to determine, based on that estimate, which elective offices would receive under the public finance allocation scheme outlined in ss. 43 and 44. The Comptroller is to publish the results of his estimate and the offices which would qualify the following year for public finance. The statute provides that, in fact, only those offices will be publicly funded in the next election year.

Section 43. Describes the scheme according to which the statewide election campaign fund is to be divided up. Essentially, the procedure is as follows: in a statewide election year a determination is made of the maximum amount publicly financed candidates for governor could have received in the last statewide election (primary and general). That amount is set aside as an account for gubernatorial candidates. Next a determination is made of the maximum amount publicly financed candidates for lieutenant governor could have received in the last statewide primary election. That amount is set aside for lieutenant governor candidates. Then a determination is made of the maximum amount publicly financed candidates for attorney general could have received in the last state election (primary and general). That amount is set aside for attorney general candidates. Then a determination is made of the maximum amount publicly financed candidates for other statewide offices could have received in the last state election (primary and general). The full amount or pro-rated shares are set aside in accounts for candidates for each of these other statewide offices. Finally, a determination is made of the maximum amount publicly financed candidates for legislative office could have received in the last statewide election year. That amount, if available, is set aside for those candidates. Essentially the same procedure is used in a biennial election year except that the amounts allocated to statewide races are simply retained in the state election campaign fund for use in the next statewide election year. The scheme for further subdividing the accounts for individual candidates is basically the same for statewide office candidates as in the current year. That scheme includes separate funding of the primary and general elections. In contrast, legislative candidates are funded for an entire election provided that they are opposed in either the primary or general election.

Section 44. Describes the scheme for disbursing money from the accounts established by Section 43. Disbursements are made on the 8th, 6th, 4th, and 2nd Tuesday before the primary election and the 4th and 2nd Tuesday before the general election. This is basically the same procedure currently in the law.
SECTION 34. Makes conforming changes in c. 10 s. 45.

SECTION 35. Amends c. 55A s. 1 to include definition of "legislative elective office" for purpose of establishing public finance scheme.

SECTION 36. Amends definition of "qualifying contributions" in c. 55A s. 1 to include only gifts of money from individuals in the form of a written instrument. Provides that only a contribution of $500 or less to a statewide candidate counts as a qualifying contribution; that only a contribution of $25 or less to a legislative candidate counts toward making such a candidate eligible for public finance; that that only a contribution of $100 or less counts toward determining the amount such a candidate can receive from public finance.

SECTION 37. Replaces Director with Commission in c.55A s. 1.

SECTION 38. Replaces Director with Commission in c.55A s. 2.

SECTION 39. Adds section 2A to c. 55A providing for certification by the Secretary of State of legislative candidates to receive public finance before both the primary and state elections. Provides that legislative candidates are eligible to receive public funds if they qualify for the primary ballot or state election ballot and are opposed in the primary or will be, after the primary, opposed in the state election.

SECTION 40. Amends c. 55A s. 3 to require the Commission to certify to the State Treasurer those legislative candidates eligible for public finance and the amounts due them. Provides that if there are insufficient funds in the account for an office to fund all eligible candidates, funds will be prorated among the candidates, with additional funds paid out as they become available.

SECTION 41. Makes conforming changes in c. 55A s. 3 to include reference to elections for legislative office.

SECTION 42. Makes conforming changes in c. 55A s. 3 to include reference to elections for legislative office.

SECTION 43. Replaces Director with Commission in c. 55A s. 3.

SECTION 44. Replaces Director with Commission in c. 55A s. 4.

SECTION 45. Replaces Director with Commission in c. 55A s. 5.

SECTION 46. Makes certain conforming change in c. 55A s. 5 to correspond to change in c. 55A s. 43.

SECTION 47. Corrects drafting error in c. 55A s. 5.

SECTION 48. Replaces Director with Commission in c. 55A s. 6.
SECTION 49. Replaces Director with Commission in c. 55A s. 7.

SECTION 50. Makes certain conforming change in c. 55A s. 7 to correspond to change in c. 55A s. 43.

SECTION 51. Adds sections 7A and 7B to chapter 44A. Section 7A establishes minimum amounts of qualifying contributions which must be received in order for legislative candidates to qualify for public finance: $2,500 for candidates for senator, $1,250 for candidates for representative. Note according to the amended definition of "qualifying contribution" these minima must be reached by counting no more than $25 from any individual contributor. Provides for determinations and certifications of eligibility by the Director before the primary and election based on information contained in statements of qualifying contributions filed by candidates with the Commission. Section 7B provides for matching qualifying contributions received by eligible legislative candidates dollar for dollar up to the following ceilings; $12,000 for candidates for senator, $6,000 for candidates for representative up to the amount of the balance in each candidates account. Note according to the amended definition of "qualifying contribution" for the purposes of matching no more than $100 from any individual contributor will be counted.

SECTION 52.
SECTION 53. Extends bonding requirement of c. 55A s. 8 to include candidates for legislative office who are required to post bond in the following amounts: senator $12,000, representative $6,000, for candidates who accept public finance.

SECTION 54. Replaces Director with Commission in c. 55A s. 8.

SECTION 55. Amends c. 55A s. 9 to require candidates who accept public finance and who have a surplus in their campaign accounts two weeks after the election to make a dollar for dollar return of the public funds received to the extent of the balance of the campaign account.

SECTION 56. Replaces Director with Commission in c. 55A s. 9.

SECTION 57. Amends c. 55A s. 10 to restrict personal contributions to their own campaigns by candidates who participate in public finance to the following maximum amounts: candidates for governor - $50,000, other statewide offices - $25,000, state senator - $4,000, state representative - $2,000. Provides that candidates who have not expended the permissible maximum by the date of the election may expend from personal funds only that amount needed to defray their campaign debts. Provides that candidates for statewide office may not accept contributions in excess of $500 from a single contributor; candidates for legislative office, $250. Candidates who have accepted larger contributions may return the excess to the donors and report the return to the Commission, in order to qualify for public finance.
SECTION 58. Replaces Director with Commission in c. 55A s. 11.

SECTION 59. Adds section 13 to c. 55A requiring the Commission to study the effects of changes in the cost of living on the adequacy of the dollar figures mentioned in the bill and elsewhere in c. 55A every 4 years and recommend to the General Court that the figures be adjusted to reflect changes in the cost of living.

SECTION 60. Notwithstanding the provisions of the amended c. 10 s. 43 limits public financing in 1982 to only candidates for governor and lieutenant governor, with 10/11 of the balance of the state election campaign fund to go to the former and 1/11 to the latter.

SECTION 61. Notwithstanding the provisions of the amended c. 10 s. 43 bars public financing of legislative races in the 1984 biennial election year or any special election before the 1986 statewide election year.

SECTION 62. Notwithstanding the provisions of the amended c. 10 s. 43 prescribes the scheme according to which races will be funded in the 1986 statewide election year. The method very closely tracks the procedure outline in c. 10 s. 43 as amended.

SECTION 63. Provides for transfer of all employees below Director to the new Campaign and Political Finance Commission.

SECTION 64. Abolishes Office of Campaign and Political Finance and effects transfer of legal responsibility, papers, resources to the new Commission.

SECTION 65. Severability clause.

SECTION 66. Effective date of act January 10, 1982, with the exception of the tax checkoff provision which goes into effect in the tax year beginning January 1, 1981.
AN ACT TO FURTHER REGULATE THE REPORTING AND DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES AND TO PROVIDE FOR PARTIAL PUBLIC FINANCING OF THE POLITICAL CAMPAIGNS OF CERTAIN CANDIDATES FOR PUBLIC OFFICE.

SECTION 1. Section 1 of chapter 55 is hereby amended by inserting after the definition of "Candidate" the following definition:

"Commission", the Campaign and Political Finance Commission.

SECTION 2. Said section 1 is hereby further amended by striking out the definition of "Director".

SECTION 3. Said Section 1 is hereby further amended by striking out the definition of "political committees" and inserting in place thereof the following definitions:

"Person," an individual, partnership, committee, association, society, corporation, labor organization, or any other organization or group of persons acting in concert.

"Political committee," any person, other than an individual, or any combination of persons who directly or indirectly receives contributions or makes expenditures, including without limitation, a nation, regional, state, county or municipal committee.

SECTION 4. Section 2 of Chapter 55 of the General Laws, as most recently amended by section 102 of chapter 329 of the Acts of 1979, is hereby amended by striking out the tenth paragraph beginning with the words "The candidate" and inserting in place thereof the following paragraph:

The candidate shall preserve all receipted bills and accounts required to be kept pursuant to the provisions of this section for a period of six years from January tenth of the year following the year of the election for the office sought by the candidate.

SECTION 5. Said chapter 55 of the General Laws is hereby amended by striking out section 3 and inserting in place thereof the following sections:

Section 3. a) There is established a campaign and political finance
commission composed of five members. At no time shall more than three members be from the same political party.

(b) Three members of the commission shall be appointed by the governor, one of whom shall be designated as chairman, and one member shall be appointed by the state secretary and one member shall be appointed by the attorney general. At no time shall more than two of the members to be appointed by the governor be from the same political party. One member appointed by the governor shall be at the time of his or her appointment the president, chief executive officer or dean of a private institution of higher learning in the commonwealth; one such member shall be the president-elect of the Massachusetts Bar Association or another member of that association designated by him; and one such member shall be a former or retired justice of the superior court, appeals court or supreme judicial court of the commonwealth.

(c) Members of the commission shall serve for terms of five years.

(d) No person shall be appointed to more than one full five year term on the commission.

(e) Not less than thirty days prior to making any appointment to the commission, the appointing official shall give public notice that a vacancy on the commission exists.

(f) No members or employee of the commission shall:

(1) hold or be a candidate for any other public office while a member or employee or for one year thereafter;

(2) hold office in any political party or political committee;

(3) participate in or contribute to the political campaign of any candidate for public office.

(g) Members of the commission may be removed by a majority vote of the governor, state secretary, and attorney general, for substantial neglect of duty, inability to discharge the powers and duties of office, violation of subsection
(f) of this section, gross misconduct, or conviction of a felony.

(h) Any vacancy occurring on the commission shall be filled within ninety days by the original appointing authority. A person appointed to fill a vacancy for the unexpired term of the member he succeeds, and shall be eligible for appointment to one full five year term.

(i) The commission shall elect a vice chairman. The vice chairman shall act as chairman in the absence of the chairman or in the event of a vacancy in that position.

(j) Three members of the commission shall constitute a quorum and three affirmative votes shall be required for any action or recommendation of the commission; the chairman or any three members of the commission may call a meeting; advance notice of all meetings shall be given to each member of the commission and to any other person who requests such notice;

(k) Members of the commission shall be compensated for work performed for the commission at such rate as the secretary of administration and finance shall determine and shall be reimbursed for their expenses.

(l) The commission shall annually report to the general court and the governor concerning the action it has taken; the names and salaries and duties of all individuals in its employ and the money it has disbursed; and shall make such further reports on matters within its jurisdiction as may appear necessary;

(m) The commission shall employ an executive director, a general counsel, and, subject to appropriation, such other staff, including but not limited to clerks, accountants, and investigators, as are necessary to carry out its duties pursuant to this chapter and chapter fifty-five A. The staff shall serve at the pleasure of the commission and shall not be subject to the provisions of chapter 31 or section 9A of chapter 30. The executive director shall be responsible for the administrative operation of the commission and shall perform such other tasks as the commission shall determine. The general counsel shall be the chief legal
officer of the commission. The commission may employ, subject to appropriation, the services of experts and consultants necessary to carry out its duties. The commission of public safety, the state auditor, the comptroller, the attorney general, and the state ethics commission may make available to the commission personnel and other assistance as the commission may request.

Section 3B. The commission shall: (a) prescribe and publish, pursuant to the provision of chapter 30A, rules and regulations to carry out the purposes of this chapter, including rules governing the conduct of proceedings hereunder; (b) prepare and publish, after giving the public an opportunity to comment, forms for the statements and reports required to be filed by this chapter and make such forms available to any and all persons required to file statements and reports pursuant to the provisions of this chapter and chapter 55 A; (c) prepare and publish, pursuant to the provision of chapter 30A, methods of accounting and reporting to be used by person required to file statements and reports by this chapter and chapter 55 A; (d) make statements and reports filed with the commission available upon the written request of any individual for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost; (e) compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements; (f) inspect all statements and reports of candidates, or non-elected political committees supporting such candidates, filed with it, within thirty days of the reporting dates required by this chapter, and all other statements and reports within sixty days of the reporting dates of this chapter unless otherwise provided for by chapter fifty-five A or other law, in order to ascertain whether any reporting person has failed to file a statement or report as required by law, or has filed a deficient statement or report. If, upon
inspection, it is ascertained that a reporting person has failed to file such a statement or report, or if it is ascertained that any such statement or report filed with the commissions fails to conform to the requirements of this chapter or chapter fifty-five A, then the commission shall, in writing, notify the delinquent; such notice shall state in detail the deficiency and the penalties for failure to file such a statement or report;

(g) in addition to the inspection of statements and reports required to be performed by the commission pursuant to sub-section (f) of this section, the commission shall make field audits with respect to reports and statements of:

(1) each candidate for statewide elective office in a primary, general, or special election for whom the commission determines that twenty-five thousand dollars or more in contributions have been received or twenty-five thousand dollars in expenditures have been made, whether by the candidate or by a political committee operating on behalf of such candidate. Each candidate for statewide elective office whose contributions or expenditures are less than twenty-five thousand dollars shall be subject to an audit on a random basis of ten percent of the number of candidates.

(2) each candidate for legislative elective office in a primary, general or special election for whom the commission determines that ten-thousand dollars or more in contributions have been received or ten thousand dollars in expenditures have been made, whether by the candidate or by a political committee which is operating on behalf of such candidate. Each candidate for legislative elective office whose contributions or expenditures are less than ten thousand dollars shall be subject to an audit on a random basis of fifty percent of the senate districts and fifty percent of the house districts.

(3) each political committee operating on behalf of a candidate who is being audited pursuant to subdivisions (1) and (2); and

(4) every political committee required to organize pursuant to the provisions
of section 5, in other than those specified by subsections (1), (2), and (3) of this section, if the commission determines that the political committee has received contributions or made expenditures in the aggregate of more than ten thousand dollars during any calendar year, shall be subject to audit by a random selection of fifty percent of such political committees.

In accordance with subsections (1), (2), (3) and (4) of this section, the commission shall select by lot the candidates, political committees and districts to be audited on a random basis.

Any field audit made by the commission pursuant to the provisions of this section shall involve at least an inquiry and determination of whether the statements and reports required to be submitted can be reconciled with the records kept by the candidate and political committee to be audited, whether or not such records are required to be kept pursuant to this chapter or chapter fifty-five A. In addition to the inspections and audits required by sub-section (f) and this section, the commission may make inspections and audits with respect to any reports or statements required by this chapter and chapter fifty-five A.

(h) Upon written request from a person who is or may be subject to the provisions of this chapter or chapter fifty-five A, render advisory opinions on the requirements of said chapters. An opinion by the commission, until and unless amended or revoked, shall be a defense in criminal action brought under chapter fifty-five and fifty-five A and shall be binding on the commission in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such requests shall be confidential; provided, however, that the commission may publish such opinions, but the name of the requesting person and any other identifying information shall not be included in such publication unless the requesting person consents to such inclusion;

(i) issue interpretive bulletins and respond with reasonable promptness to
requests for information and interpretations presented by candidates, political committees, or members of the public; and

(j) make available to investigative, accounting and law enforcement agencies of the commonwealth or any one or more of them, all information necessary or advisable to fulfill their duties, with respect to this chapter, chapter fifty-five A, or other campaign finance law.

Section 3C. Upon receipt of a sworn complaint signed under pains and penalties of perjury, or upon receipt of evidence which is deemed sufficient by the commission, the commission shall initiate a preliminary inquiry into any alleged violation of this chapter, chapter fifty-five A or any other campaign finance laws of the commonwealth pertaining to campaign contributions and expenditures. At the beginning of a preliminary inquiry into any such alleged violation, the general counsel shall notify the attorney general of such action. All commission proceedings and records relating to a preliminary inquiry shall be confidential, except that the general counsel may turn over to the attorney general evidence which may be used in a criminal proceeding. The general counsel shall notify any person who is the subject of the preliminary inquiry of the existence of such inquiry and the general nature of the alleged violation within thirty days of the commencement of the inquiry.

If a preliminary inquiry fails to indicate reasonable cause for belief that this chapter or chapter fifty-five A or other campaign finance law has been violated, the commission shall immediately terminate the inquiry and so notify, in writing, the complainant, if any, and the person who had been the subject of the inquiry. All commission records and proceedings from such an inquiry shall remain confidential.

If a preliminary inquiry indicates reasonable cause for belief that this chapter or chapter fifty-five A or other campaign finance law has been violated, the commission may, upon a majority vote, initiate a full investigation and
appropriate proceedings to determine whether there has been such a violation.

The commission may require by summons the attendance and testimony under oath of witnesses and the production of books, papers and other records relating to any matter being investigated by it pursuant to this chapter and chapter fifty-five A. Such a summons may be issued by the commission only upon a majority vote of the commission and shall be served in the same manner as summonses for witnesses in civil cases, and all provisions of law relative to summonses issued by the commission. Any justice of the superior court may, upon application by the commission, in his discretion issue an order requiring the attendance of witnesses summoned as aforesaid and the giving of testimony or the production of books, papers, and other records before the commission in furtherance of any investigation pursuant to the provisions of this chapter or chapter fifty-five A or other campaign finance law in the same manner and to the same extent as before said courts.

Any member of the commission may administer oaths and any member of the commission may hear testimony or receive other evidence in any proceeding before the commission.

All testimony in commission proceedings shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, to submit evidence, and to be represented by counsel. Before testifying, all witnesses shall be given a copy of the regulations governing commission proceedings. All witnesses shall be entitled to be represented by counsel.

Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby may appear personally before the commission on his own behalf or file a written statement for incorporation into the record of the proceeding.

All proceedings of the commission carried out pursuant to the provisions of
this subsection shall be public, unless the members vote to go into executive session.

Within thirty days after the end of proceedings pursuant to the provision of this subsection, the commission shall meet in executive session for the purpose of reviewing the evidence before it. Within thirty days after completion of deliberations, the commission shall publish a written report of its findings and conclusions.

Section 3D. The commission, upon a finding pursuant to the provisions of section 3C that there has been a violation of this chapter or chapter fifty-five or other campaign finance law, may issue an order requiring the violator to (1) cease, and desist from such violation and (2) file any report, statement or other information as required by this chapter, chapter fifty-five or other campaign finance law. In addition to turning over to the attorney general, pursuant to the provisions of section 3C, evidence which may be used in a criminal proceeding, the commission may issue an order requiring a violator to (1) pay a civil fine for each violation of this chapter or chapter fifty-five not to exceed the greater of $1000 or three times the amount the violator failed to report properly or unlawfully contributed, expended, gave or received and (2) pay a civil fine for failure to file an original or amended statement or report after any deadline imposed by this chapter or chapter fifty-five A. The fine for failure to report shall not exceed the greater of one thousand dollars or ten dollars per day for each day after the deadline but before notice has been sent by the commission pursuant to sub-paragraph (f) of section three B and one hundred dollars per day for each day after such notice has been sent, until the required statement or report is filed. The commission need not issue an order requiring payment of a fine pursuant to the provisions of this paragraph if it determines that the late filing was not willful and that enforcement of the fine will not further the purposes of this chapter, except that it shall issue such an
order if the statement or report is not filed within seven days after the commission has sent specific written notice of the filing requirement.

No fine imposed on any person by the commission pursuant to this section shall be paid for directly or indirectly by a political committee, whether or not organized or operating on behalf of a candidate.

The commission may file a civil action in superior court to enforce an order issued by it pursuant to this section.

Any final action by the commission made pursuant to this chapter shall be subject to review in superior court upon petition of any interested person filed within thirty days after the action for which review is sought. The court shall enter a judgement enforcing, modifying or setting aside the order of the commission or it may remand the proceeding to the commission for such further action as the court may decide.

Section 3E. Any person who violates the confidentiality of a commission inquiry under the provisions of section three C of this chapter shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

Any person who wilfully affirms or swears falsely to any material matter before a commission proceeding section three C of this chapter shall be punished by a fine of not more than one thousand dollars or by imprisonment in a state prison for not more than two and half years, or both.

Section 3F. The commission shall periodically, but in no event less often than once a year by June first of that year, prepare reports which shall be public documents and which shall contain in detail at least the commission's findings with respect to the accuracy and completeness of each report and statement received and its findings with respect to any report or statement that should have been but was not filed. The commission shall also compile statistics pertaining to campaign contributions and expenditures and shall include in its
report any analyses or studies thereof for the purpose of explaining the impact and efficacy of the provisions of this chapter, chapter fifty-five A and any other campaign finance law.

SECTION 6. Section 4 of Chapter 55 of the General Laws is hereby amended by striking out the word "director" as it appears in the second, third, and fourth sentences thereof, and by inserting in place thereof the word: commission

SECTION 7. Section 5 of Chapter 55 of the General Laws is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:

Every political committee organized or operating on behalf of a candidate or candidates, every political committee, a principal purpose of which is to receive contributions or make expenditures, and every other political committee which receives contributions aggregating in excess of one thousand dollars during a calendar year or which makes expenditures aggregating in excess of one thousand dollars during a calendar year shall organize by filing with the commission or, if organized for the purpose of a city or town election only, with the city or town clerk, a statement of organization.

SECTION 8. Said section is hereby further amended by striking from the first sentence of the fourth and the first sentence of the fifth paragraph the word "director" and inserting in place thereof the word: commission

SECTION 9. Said section is hereby further amended by inserting in the first sentence and the third sentences of the fifth paragraph and the first sentence of the sixth paragraph before the words "political committee" the word: such

SECTION 10. Said chapter 55 of the General Laws is hereby amended by striking out section 6 and inserting in place thereof the following section:
Section 6. A candidate or a political committee organized or operating on behalf of a candidate under the provisions of this chapter may receive into and pay and expend money or other things of value from the campaign account of such candidate or political committee for reasonable and necessary expenses directly related to the campaign of the candidate, but shall not make any expenditure that is primarily for the personal use of the candidate or any other person. The commission shall establish reasonable rules and regulations concerning such expenditures. No such political committee, other than the state committee of a political party, may contribute to any other political committee or to the campaign fund of any other candidate.

Any other political committee, duly organized, may receive, pay and expend money or other things of value for reasonable and necessary expenses directly related to the promotion of the principle for which the political committee was organized or for reasonable and necessary expenses directly related to the campaign of a candidate, but shall not make any expenditure that is primarily for the personal use of a candidate or any other person. The commission shall establish reasonable rules and regulations concerning such expenditures.

A political committee may place surplus finds in an account with a banking institution located in the commonwealth and may earn interest thereon but it may not invest its funds or other things of value in any other manner.

Violation of any provision of this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars.

SECTION 11. Section 7 of said Chapter 55 of the General Laws, as inserted by section 1 of chapter 151, is hereby amended by striking out the third through the fifth sentences of the first paragraph and inserting in place thereof the following sentences:

Any person or political committee which may otherwise lawfully contribute to a candidate's campaign, other than a non-elected political committee organized on
behalf of a candidate, may make campaign contributions to candidates or non-elected political committees organized on behalf of candidates, provided that the aggregate of all such contributions for the benefit of any one candidate and the non-elected political committee organized on such candidate's behalf shall not exceed in any one calendar year the sum of one thousand dollars, in the case of a candidate for statewide elective office, and the sum of five hundred dollars, in the case of a candidate for other than statewide elective office. Any person or political committee which may otherwise lawfully contribute to political committee organized on behalf of political party, other than a non-elected political committee organized on behalf of a candidate, may in addition make campaign contributions for the benefit of elected political committees or non-elected political committees organized on behalf on a political party; provided that the aggregate of such campaign contributions for the benefit of the political committees of any one political party shall not exceed in any one calendar year the sum of one thousand dollars. Any person or political committee which may otherwise lawfully contribute to political committees not organized on behalf of a candidate or candidates or a political party, other than a non-elected political committee organized on behalf of a candidate, may in addition make campaign contributions not exceeding in any one calendar year the sum of one thousand dollars to non-elected political committees not organized on behalf of any candidate or candidates or political party. For the purposes of the limitations established by this section, all campaign contributions made by political committees established, financed, maintained or controlled by any person, including any parent of subsidiary of any person other than a natural person, shall be considered to have been made by a single political committee.

SECTION 12. Said chapter 55 is further amended by inserting after section 10 the following sections:

Section 10A. Every person who, and business entity which, has done business
with any public agency during the current calendar year, or the preceding
calendar year, shall file a statement pursuant to the provisions of this section
and sections ten B, ten C and ten D, inclusive if the person or business entity
directly or indirectly made or caused to be made a contribution to a person
holding elective office or to a candidate for elective office or to a political
committee organized or operating on behalf of a candidate or candidates during
the current calendar year. The statement required to be filed by a business
entity shall be filed by the chief executive officer of such business entity.
Such statement shall be filed on or before October twenty-third of each year, and
shall include all contributions directly or indirectly made or caused to be made
during the current calendar year up to and including October twentieth of the
current calendar year; if the person or business entity directly or indirectly
makes or causes to be made a contribution or contributions between October
twentieth and December thirty-first of the current calendar year, a supplementary
statement shall be filed on or before February first of the succeeding calendar
year which shall include all contributions directly or indirectly made or caused
to be made during the period of October twentieth through December thirty-first
of the calendar year preceding February first.

Section 10B. Every statement required to be filed pursuant to section ten A
shall contain the following information:

(a) the names of all persons, candidates or political committees to which a
    contribution was directly or indirectly made or caused to be made and
    the office which the individual held or for which the candidate was
    seeking election;

(b) the amount of the aggregate contributions to each person, candidate or
    particular committee;

(c) the name of each public agency with which the person or business entity
    did business. However, the name of each public agency with which the
person or business entity did business may be omitted upon the written approval of the commission. The commission may grant such approval if it finds that it would be unduly burdensome to require this information, that the public interest would not be substantially impaired by its omission, and that such person or business entity submitting the statement stipulates that he, she or it has done the requisite business in the amount of ten thousand dollars or more during the period in question;

(d) the nature and amount of business done with each public agency. However, information concerning the amount of business done with each agency may be omitted upon the written approval of the commission. The commission may grant approval if it finds that it would be unduly burdensome to require this information, that the public interest would not be substantially impaired by its omission, and that the person or business entity submitting the statement stipulates that he, she or it has done the requisite business in the amount of ten thousand or more during the period in question;

(e) if the business was done or the contribution was directly or indirectly made or caused to be made by another person or business entity and is attributed under section ten C to the person or business entity filing the statement, the name of the person of business entity who did the business or directly or indirectly made or caused to be made the contribution, and the relationship of that person or business entity to the person or business entity filing the statement;

(f) such statement shall be filed with the commission and shall be retained as a public record for at least six years from the date of its receipt. The commission shall make the statements available for examination and copying by the public during normal office hours, free of charge or at
a charge not to exceed actual cost and subject to such reasonable administrative procedures as the commission may establish from time to time; and

(g) the commission shall prepare and make available forms for the statements required by this section.

Section 10C. A contribution directly or indirectly made, or caused to be made, by an officer, director, partner or trustee of a business entity or by a beneficial owner of more than ten percent of any class of the outstanding equity in such business entity, and a contribution directly or indirectly made or caused to be made by an employee, agent, or other person at the suggestion or direction of a person required by section ten A herein to file a statement or of an officer, director, partner or trustee of a business entity, shall for purposes of this section be attributed to such person or business entity and shall be included in the statement filed by such person or business entity as though made directly by it;

Each officer, director, partner, and trustee of a business entity and each beneficial owner of more than ten percent of any class of the outstanding equity in such business entity, who directly or indirectly makes or causes to be made a contribution which, if made by the business entity, would have to be disclosed under section ten A, shall report the contribution to the chief executive officer of the business entity so that it may be included in the statement filed by the business entity.

Each employee, agent, or other person who, at the suggestion or direction of (a) a person or business entity required by section ten A herein to file a statement; (b) an officer, director, partner or trustee of a business entity required by section ten A to file a statement; or (c) a beneficial owner or more than ten percent of any class of the outstanding equity in such business entity, directly or indirectly makes or causes to be made a contribution shall report the
contribution to the person or chief executive officer of the business entity so that it may be included in the statement filed by the person or business entity.

Business done with a public agency by a subsidiary business entity shall be attributed to its parent and shall be included in the statement filed by such parent. Contributions made by, or caused to be made by, or attributed to a subsidiary shall for purposes of this section be attributed to its parent and shall be included in the statement filed by such parent;

If under this section a contribution made by a director is attributed to a business entity of which such director is an officer, partner, employee, trustee, or beneficial owner of more than ten percent of any class of the outstanding equity in such business entity and which is required to be be included in a statement filed by a business entity, the contribution may not be attributed to, and need not be included in a statement of, any other non-profit business entity solely because the contributor is a director thereof.

Section 10D. For purposes of section ten A, ten B, and ten C, the term "business" shall mean any one or combination of sales, purchases, leases, or contracts, involving consideration of ten thousand dollars or more on a cumulative basis entered into during a calendar year. If an agreement calls for the consideration to be paid over a period extending beyond one calendar year, the total ascertainable consideration to be paid under the agreement shall be included as business done during the calendar year in which the agreement was entered into. Business of less than ten thousand dollars with a public agency shall be reported if the aggregate business done with all public agencies amounts to more than ten thousand dollars. Business shall not include salaries paid directly by a public agency.

For purposes of Sections ten A, ten B, and ten C herein, the term "business entity" shall include any business entity organized for profit, including but not limited to any firm, corporation, trust, unincorporated association, or other
organization, any corporation organized under the provisions of chapter one
hundred and eighty and any other entity organized for any of the purposes set
forth in chapter one hundred and eighty.

For purposes of Section ten A, ten B, and ten C herein, the term
"contribution" shall include a contribution or contributions in an aggregate
amount of fifty dollars or more directly or indirectly made or caused to be made
to an individual holding elective office, or a candidate for elective office, or
to a political committee organized or operating on behalf of a candidate or
candidates, and an expenditure or expenditures in an aggregate amount of fifty
dollars or more directly or indirectly made or caused to be made on behalf of an
individual holding elective office, a candidate for elective office, or to a
political committee organized or operating on behalf of a candidate or candidates.

For purposes of this section, the term "public agency" shall mean any
department, agency, board, commission, authority or other instrumentality of the
commonwealth or political subdivision of the commonwealth or two or more
subdivisions thereof.

Section 10E. Violation of any provision of sections ten A, ten B, ten C or
ten D, shall be punished by imprisonment for not more than one year or by a fine
of not more than one thousand dollars, or both.

SECTION 13. Said Chapter 55 is further amended by inserting after section 16
thereof the following section:

Section 16A. No person, including a business entity as defined in section
ten D, no officer, director, partner or trustee, or beneficial owner of any class
of outstanding equity thereof, or employee or agency thereof shall for the reason
that such person, including a business entity, does any business, no matter how
small, with a public agency, be under any obligation to contribute to any public
fund or to render any political service. No such person, including a business
entity and no such officer, director, partner or trustee, or beneficial owner of
any class of outstanding equity thereof, or employee or agent thereof shall be
prejudiced or threatened with prejudice in any manner by any candidate for or
individual holding elective office or by any person acting on behalf of or under
the color of acting on behalf of any such candidate or individual or the
political committee operating on behalf of such candidate or individual for
refusing to contribute to any political fund or to render any political service
or granted any advantage or promise of advantage for contributing to any
political fund or rendering any political service.

Violation of any provision of this section shall be punished by imprisonment
for not more than one year or by a fine of more than one thousand dollars, or
both.

SECTION 14. Section 18 of said chapter 55 of the General Laws is further
amended by striking out the first paragraph and inserting in place thereof the
following paragraph:

Each candidate and each treasurer of a political committee organized under
the provisions of section five shall file with the commission, or if the
candidate seeks public office at a city or town election, or if the committee is
organized for the purpose of a city or town election, with the city or town
clerk, reports of contributions received and expenditures made on forms to be
prescribed by the commission. A committee organized under the provisions of
section five to favor or oppose a question submitted to the voters shall file its
report with the commission if the question appears on ballots at a state
election, or with the city or town clerk if the question appears on ballots at a
city or town election.

SECTION 15. Said section 18 is hereby further amended by striking out
subsection (a) and inserting in place thereof the following subsection:

(a) by each candidate for nomination or election to the state senate or
house of representatives, and by the non-elected political committee organized on
behalf of such candidate, on or before: (1) the thirtieth and the eighth days preceding a primary, the tenth day of January in the following year complete as to the thirty-first of December of the prior year; (2) the thirtieth and eighth days preceding a special primary, including a convention of a caucus, the eighth day preceding a special election, the thirtieth day following a special election, the tenth day of January in the following year complete as to the thirty-first day of December of the prior year; and (3) the tenth day following the close of any calendar quarter, other than a calendar quarter during or with respect to the end of which a report is otherwise required by this subsection to be made, in which the candidate or the non-elected political committee organized on behalf of such candidate received contributions in excess of five thousand dollars or made expenditures in excess of five thousand dollars, complete as of the last day of such calendar quarter.

SECTION 16. Sub-section (h) of said chapter 18 as most recently amended by section 102 of chapter 329 of the Acts of 1979, is hereby amended by striking out the third sentence of the eleventh paragraph and inserting in place thereof the following sentences:

All such residual funds shall be placed in an account with a banking institution located in the commonwealth and reserved for use with the interest earned thereon in the candidate's future political campaigns, returned on a pro-rata basis to contributors in proportion to the aggregate contributions by such contributors during the period between the most recent election for the office sought by the candidate and the previous election for that office, donated to the Local Aid Fund established under the provisions of section two D of chapter twenty-nine, or donated to the commonwealth.

SECTION 17. Chapter 55 is further amended by inserting after section 18 thereof the following new sections:

Section 18A Notwithstanding any requirements that an entity organized as a
political committee pursuant to the provisions of section five, no dues or assessments payable on a regular basis to and no other income received by an entity in the normal course of its business and not received or solicited for the purpose of making contributions or making expenditures shall be required to be reported as contributions to that entity under the provisions of section eighteen. The fact that a contribution or expenditure is made by such an entity from its own funds or property, including dues or assessments payable on a regular basis to or other income received by it in the normal course of its business, shall not exclude such contribution or expenditure by the entity from the reporting requirements of section eighteen.

Section 18B. Every person who makes an expenditure or expenditures in an aggregate amount exceeding one hundred dollars during any calendar year for the purpose of promoting the election or defeat of any candidate or candidates shall file with the director, or with the city or town clerk if such candidate or candidates seek public office at a city or town election, within seven business days after making such independent expenditure or expenditures, on a form prescribed by the commission, a report stating the name and address of the individual or political committee making the expenditure or expenditures; the name(s) of the candidate or candidates whose election or defeat the expenditure promoted; the name(s) and address(es) of the person or persons to whom the expenditure or expenditures were made; and the total amount or value, the purpose(s) and the date(s) of the expenditure or expenditures.

For the purposes of this section the term "independent expenditure" means an expenditure by a person or political committee expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or a non-elected political committee organized on behalf of a candidate, or any agent of a candidate, and which is not made in concert with, or at the request or suggestion of, any
candidate, or any non-elected political committee organized on behalf of a
candidate or agent of such candidate.

SECTION 18. Section 19 of said chapter 55 of the General Laws, as most
recently amended by section 1 of chapter 151 of the acts of 1975, is further
amended by striking out the first sentence of subsection (b) and inserting in
place thereof the following sentence:

(b) Every candidate and the treasurer of every committee required to
designate a depository shall, by the end of the seventh day after receipt of any
contribution, deposit it in the form received in the designated depository or
return it in the same form to the original donor.

SECTION 19. Section 22 of said chapter 55, as most recently amended by
chapter 491 of the acts of 1975, is hereby amended by striking from the first
sentence of the first paragraph the word "director" and inserting in place
thereof the word:
commission

SECTION 20. Section 22A of said chapter, as inserted by chapter 572 of the
acts of 1978, is hereby amended by striking from the first sentence of the first
paragraph the word "director" and inserting in place thereof the word:
commission

SECTION 21. Section 24 of said chapter 55, as inserted by section 1 of
chapter 151 of the acts of 1975, is hereby amended by striking from the first
sentence of the first paragraph the word "director" and inserting in place
thereof the word:
commission

SECTION 22. Section 25 of said chapter 55, as most recently amended by
section 102 of chapter 329 of the Acts of 1979, is hereby amended by striking out
the first paragraph and inserting in place thereof the following paragraph:

The commission shall retain all statements and reports filed with it under
the provisions of this chapter until January tenth of the year following the year in which is held the election for the office sought by the candidate or the year following the year in which said statements and reports are filed with it, whichever is later.

The commission shall retain all statements and reports filed with it under the provisions of this chapter until the later of (a) January tenth of the year following the year in which is held the election for the office sought by the candidate and (b) the date on which said statements and reports are filed with the commission. In the case of committees other than those authorized by a candidate, the commission shall retain all required statements and reports filed with it for a period of six years from the date on which said statements and reports are filed.

SECTION 23. Said section 25 is hereby further amended by striking out the second paragraph thereof.

SECTION 24. Section 27 of said chapter 55, as inserted by section 1 of chapter 151 of the acts of 1975, is hereby amended by striking from the first and second sentences of the first paragraph and the first sentence of the second paragraph the word "director" and inserting in place thereof the following word: commission.

SECTION 25. Said section 27 is hereby further amended by striking from the second sentence of the first paragraph the word "him" and inserting in place thereof the word: it.

SECTION 26. Said chapter 55 of the General Laws is hereby amended by striking out section 28 and inserting in place thereof the following section.

Section 28. The clerks of cities and towns shall inspect all statements and reports of candidates, or non-elected political committees supporting such candidates filed with them, within thirty days of the reporting dates required...
by this chapter, and all other statements and reports within sixty days of the reporting dates required by this chapter. If upon examination of the records it appears that any candidate or political committee has failed to file a statement or report as required by law, or if it appears to a city or town clerk that such statement or report relating to a city or town nomination or election does not conform to law, or upon written complaint by five registered voters that a statement or report does not conform to law, or that any candidate or political committee has failed to file a statement or report as required by law, or if it appears to a city or town clerk that such statement or report relating to a city or town nomination or election does not conform to law, or upon written complaint by five registered voters that a statement or report does not conform to law, or that any candidate or political committee has failed to file a statement or report required by law, the city or town clerk, as the case may be, shall, in writing, notify the delinquent person. Such complaint shall state in detail the grounds of objection, shall be sworn to by one of the subscribers, and shall be filed with the proper city or town clerk within ten days after the required date for filing a statement or report, or within ten days after the filing of a statement or report, or an amended statement or report.

SECTION 27. Said chapter 55 of the General Laws is hereby amended by striking out section 29 and inserting in place thereof the following section:

Section 29. Upon failure to file a statement or report within ten days after receiving notice under section twenty-eight, or if any statement filed after receiving such notices discloses any violation of any provision of this chapter, the city or town clerk shall notify the attorney general thereof and shall furnish him with copies of all papers relating thereto, and the attorney general, within two months thereafter, shall examine every such case, and, if satisfied that there is cause, he shall in the name of the commonwealth institute appropriate civil proceedings or refer the case to the proper district attorney
for such action as may be appropriate in the criminal courts.

SECTION 28. Section 33 of said chapter 55, as most recently amended by section 34 of chapter 478 of the acts of 1978, is hereby amended by striking from sub-section (j) the word "director" and inserting in place thereof the word secretary of state.

SECTION 29. Section 42 of said chapter 55, as inserted by section 1 of chapter 151 of the acts of 1975, is hereby amended by striking from the first sentence of the first paragraph the word "director" and inserting in place thereof the word: secretary of state.

SECTION 30. Chapter 62 of the General Laws is hereby amended by striking out section 6C, as inserted by section 4 of chapter 774 of the acts of 1975, and inserting in place thereof the following section:

Section 6C. Every individual who files a separate return and whose income tax liability for any taxable year is two dollars or more may designate that two dollars of said liability be paid directly to the state election campaign fund established pursuant to section forty-two of chapter ten.

In the case of a joint return of a husband and wife having an income tax liability of four dollars or more, each spouse may designate that two dollars shall be paid directly to the fund.

A designation under this section may be made with respect to any taxable year at the time of filing the return of the tax imposed by this chapter for such taxable year. The commissioner shall provide that the opportunity to make such designation shall be prominently stated on the face of the return required by section twenty-two, along with language informing the taxpayer that such designation shall not increase the taxpayer's tax liability or reduce any refunds otherwise due.

The provisions of this section shall apply only to residents required to file
a return under this chapter.

For the purposes of this section the phrase "income tax liability for any taxable year" shall mean the amount of tax imposed by this chapter reduced by the sum of the credits allowed by section six.

SECTION 31. Section 42 of chapter 10 of the General laws, as inserted by section 1 of chapter 774 of the acts of 1975, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:

The state treasurer shall deposit the fund in accordance with the provisions of sections thirty-four and thirty-four A of chapter twenty-nine in such manner as will secure the highest interest rate available consistent with the safety of the fund and with the requirement that all amounts on deposit which are allocated to the statewide accounts established by section forty-three be available for immediate withdrawal at any time after June thirtieth in any year in which are held elections for statewide elective office and that such amounts which are allocated to the legislative account established by section forty-three be available for immediate withdrawal in any year in which elections for legislative office are or may be held as the campaign and political finance determines may be necessary for payment to eligible candidates in such elections.

SECTION 32. Said section 42 is hereby further amended by striking out the third paragraph and inserting in place thereof the following paragraph:

The state election campaign fund shall be expended only for payment to eligible candidates, as determined under chapter fifty-five A, of amounts due on account of public financing on campaigns for statewide and legislative elective office and any unexpended balances shall be redeposited, as herein provided, pending the next year in which elections are held for statewide or legislative elective office.

SECTION 33. Said chapter 10 is hereby further amended by striking out sections 43 and 44, and inserting in place thereof the following sections:
Section 42A. On or before the first Tuesday of November of the year preceding one in which a biennial election or an election for statewide elective office is held, the comptroller shall determine the balance of the state election campaign fund as of June thirtieth of that year. The comptroller shall also prepare an estimate of the projected balance of the state election campaign fund as of June thirtieth of the next year. For the purpose of making such an estimate the comptroller shall assume that the increase in the balance of the state election campaign fund from June thirtieth of the current year to June thirtieth of the next year will be equal to (a) in the case of a year preceding one in which a biennial election is held but in which an election for statewide elective office is not held, (i) the increase in the balance of the election campaign fund to June thirtieth of the current year plus (ii) payments made to publicly financed candidates from the state election campaign fund pursuant to sections five, seven, and seven B of chapter fifty-five A minus (iii) any surplus balance paid by a publicly financed candidate for deposit to the state election campaign fund pursuant to the provisions of section nine of chapter fifty-five A during the period from June thirtieth of the preceding year to June thirtieth of the current year, (b) in the case of a year preceding one in which an election for statewide elective office is held, one third of (i) the increase in the state election campaign fund, (ii) plus any payments made to publicly financed candidates from the state election campaign fund pursuant to sections five, seven and seven B of chapter fifty-five A minus (iii) any surplus balance paid by a publicly financed candidate for deposit to the state election campaign fund pursuant to the provisions of section nine of chapter fifty-five A during the period from June thirtieth of the year in which the preceding election for statewide elective office was held to June thirtieth of the current year.

The comptroller shall further determine a list of the elective offices candidates for which will be publicly financed in the year after the then current
year. The comptroller shall make such a determination by (a) assuming that the balance of the state election campaign fund on June thirtieth of the year after the then current year will be equal to the amount of the estimate and (b) calculating which accounts would, under such circumstances, be allocated monies from the state election campaign fund pursuant to the provisions of section forty-three of this chapter.

The comptroller shall, no later than by the first Tuesday of November of the year in which the estimate and list have been prepared, certify to the state treasurer and to the campaign and political finance commission the estimate and the list and by suitable public notice public said estimate and list.

The comptroller shall make no allocations to candidates pursuant to the provisions of section forty-three for the purpose of publicly financing candidates in the biennial or statewide election occurring in the next year, as the case may be, except to those of candidates for the elective offices named on the list certified by him pursuant to the provisions of this section.

Section 43. On or before the eighth Tuesday before a primary election in any year in which an election for statewide elective office is held, the comptroller shall determine the balance of the state election campaign fund as of June thirtieth of that year and the state election campaign fund shall thereupon be divided by the comptroller into accounts as follows:

(a) that portion of the balance equal to the maximum public finance payment for candidates for governor in the last statewide election shall be allocated to a gubernatorial account;

(b) after allocation pursuant to sub-section (a), that portion of any remainder of the balance equal to the maximum public finance payment for candidates for lieutenant governor in the last statewide election shall be allocated to a lieutenant governor's account;

(c) after allocation pursuant to sub-sections (a) and (b), that portion of
any remainder of the balance equal to the maximum public finance payment for candidates for attorney general in the last statewide election shall be allocated to an attorney general's account;

(d) after allocation pursuant to sub-sections (a), (b), and (c), that portion of any remainder of the balance equal to the maximum public finance payment for candidates for secretary plus the maximum public finance payment for candidates for treasurer plus the maximum public finance payment for candidates for auditor in the last statewide election shall be allocated in proportion to the size of such payments to a secretary's account, treasurer's account, and auditor's account, respectively; provided that should there be an insufficient remainder to make the full allocations provided by this subsection, that remainder shall be allocated pro-rata in proportion to the size of the maximum public finance payments for each elective office in the last statewide election;

(e) after allocation pursuant to sub-sections (a), (b), (c), and (d), that portion of any remainder of the balance equal to the maximum public finance payment for candidates for legislative elective office in the year of the last statewide election shall be allocated to a legislative account; and

(f) after allocation pursuant to sub-sections (a), (b), (c), (d), and (e) the remainder of the balance shall be allocated pro rata in proportion to the maximum public finance payments to candidates for governor, lieutenant governor, attorney general, secretary, treasurer, auditor, and for legislative elective office in the year of the last statewide election in addition to the sums allocated pursuant to sections (a), (b), (c), (d), and (e), respectively.

On or before the eighth Tuesday before a primary election for legislative elective office in a biennial election year, other than one in which an election for statewide elective office, a legislative elective office is held, the comptroller shall determine the balance of the state election campaign fund as of June thirtieth of that year and the state election campaign fund shall thereupon
be divided by the comptroller into accounts as follows:

(a) that portion of the balance equal to one half of the sum of the maximum public finance payments for candidates for all statewide elective offices in the last statewide election shall be retained in the state election campaign fund;

(b) after allocation pursuant to sub-section (a), that portion of any remainder of the balance equal to the maximum public finance payment for candidates for legislative elective office during the last statewide election year shall be allocated to a legislative account; and

(c) after allocation pursuant to sub-sections (a) and (b) the remainder shall be divided pro rata according to the sum of all maximum public finance payments to candidates for statewide elective office and the sum of the maximum public finance payments to candidates for legislative elective office during the last statewide election year, respectively, and the former portion shall be retained in the state election campaign fund and the latter portion shall be allocated to the aforementioned legislative account to be in addition to the sum allocated pursuant to sub-section (b).

On or before the eighth Tuesday before a primary election in any year in which a special state election for a legislative elective office is held, the comptroller shall determine the balance of the state election campaign fund as of June thirtieth of that year or as of the ninth Tuesday before the special election, whichever is earlier and the state election campaign fund shall thereupon be divided by the comptroller into accounts as follows:

(a) a portion of the balance equal to the amount credited, pursuant to the provisions of this section, to an individual legislative candidate account for that legislative elective office in the last biennial election year times the number of candidates for that office who qualify for the primary ballot or who qualify for the state election ballot without being entered in a party primary and who are opposed in the primary, or will after the primary, be opposed in the
special state election as certified by the state secretary under section two A of chapter fifty-five A shall be allocated to a legislative account; and

(b) after allocation pursuant to sub-section (a) the remainder of the balance shall be retained in the state election campaign fund.

For the purposes of this section the term "maximum public finance payment" shall mean:

(a) in the case of candidates for governor, the sum of (i) the number of candidates for governor who qualify for public finance in a particular statewide election year during the primary election multiplied by the maximum amount of public finance allowed to such candidates pursuant to section five of chapter fifty-five A plus (ii) the number of candidates for governor who qualify for public finance in that same statewide election year during the general election multiplied by the maximum amount of public finance allowed to candidates for governor and lieutenant governor pursuant to section seven of chapter fifty-five A;

(b) in the case of candidates for lieutenant governor the number of candidates who qualify for public finance in a particular statewide election year during the primary multiplied by the maximum amount of public finance allowed to such candidates pursuant to section five of chapter fifty-five A;

(c) in the case of candidates for statewide elective office other than those for governor or lieutenant governor, the sum of (i) the number of candidates who qualify for public finance in a particular statewide election year during the primary election multiplied by the maximum amount of public finance allowed to such candidates pursuant to section five of chapter fifty-five A plus (ii) the number of candidates who qualify for public finance in that same statewide election year during the general election multiplied by the maximum amount of public finance allowed to such candidates pursuant to section five of chapter fifty-five A; and
(d) in the case of candidates for legislative elective office the sum of (i) the number of candidates for state senator who qualify for public finance in a particular statewide election year multiplied by the maximum amount of public finance allowed to such candidates pursuant to section seven B of chapter fifty-five A plus (ii) the number of candidates for state representative who qualify for public finance in that year multiplied by the maximum amount of public finance allowed to such candidates pursuant to section seven B of chapter fifty-five A; provided that for the purpose of making allocations for publicly financing candidates in a biennial or statewide election, as the case may be, the term "maximum public finance payment" shall mean zero for candidates for any elective office not included in the list certified by the comptroller by the second Tuesday in November of the previous year pursuant to the provisions of section forty-two A.

On or before the eighth Tuesday before a primary election in any year in which an election for statewide elective office is held, and after dividing the state election campaign fund into accounts pursuant to the provisions of this section, the comptroller shall divide each of the accounts for candidates for statewide elective office, except for the account for candidates for lieutenant governor, into primary and state election accounts by placing sixty percent of the balance into a primary election candidate account and the remaining forty percent into a state election candidate account.

Each primary election candidate account shall be further subdivided into as many individual primary election candidate accounts as there are candidates for each statewide elective office who both qualify for the primary ballot and have primary opposition as certified by the state secretary under section two of chapter fifty-five A. The account for candidates for lieutenant governor shall be divided into as many individual primary election candidate accounts for candidates for lieutenant governor who both qualify for the primary ballot and
have primary opposition as certified by the state secretary under section two of chapter fifty-five A. Each individual primary election candidate account shall be credited with an amount determined by dividing the primary election candidate account or the account for candidates for lieutenant governor, as the case may be, by a number equal to the number of certified candidates for that statewide elective office.

On or before the fifth Tuesday preceding the state election, each state election candidate account shall be further subdivided into as many individual state election candidate accounts as there are candidates for statewide elective office who both qualify for the state election ballot and have opposition in the state election as certified by the state secretary under section two of chapter fifty-five A, except that one state election candidate account shall be established in the name of the candidate for governor for each governor and lieutenant governor team of candidates. Each individual state election candidate account shall be credited with an amount determined by dividing the state election candidate account by a number equal to the number of certified candidates for that statewide elective office, except in the case of the individual account established in the name of a candidate for governor it shall be credited with an amount determined by dividing the state election candidate account for governor by the number of certified candidate teams for governor and lieutenant governor.

On or before the eighth Tuesday before a primary election for legislative elective office and after dividing the state election campaign fund into accounts pursuant to the provisions of this section, the comptroller shall subdivide the legislative account into as many individual legislative candidate accounts as there are candidates for legislative elective office who qualify for the primary ballot or who qualify for the state election ballot without being entered in a party primary and who are opposed in the primary, or will after the primary, be
opposed in the state election as certified by the state secretary under section two A of chapter fifty-five A. Each such individual legislative candidate account shall be credited with an amount determined by dividing the legislative account by a number equal to the sum of two times the number of certified candidates for state senator and one times the number of certified candidates for state representative, except that each individual legislative candidate account shall be credited with two times the amount so determined.

Section 44. On or before the eighth, sixth, fourth, and second Tuesday before the primary election in any year in which a biennial or special state election is held, the state treasurer shall without further appropriation distribute from each individual legislative candidate account for candidates for legislative elective office, and in any year in which elections for statewide elective office are held, from each individual primary election candidate account for candidates for statewide elective office, the amounts then certified by the campaign and political finance commission to be due to each eligible candidate. All distributions shall be made by direct deposit to the depository accounts designated by candidates for statewide elective office pursuant to section nineteen of chapter fifty-five, and by check payable to the political committee, if any, designated by each candidate for legislative elective office, or if such candidate does not designate a committee, to the candidate.

All individual primary election candidate accounts established pursuant to section forty-three for candidates for statewide elective office shall be closed immediately after the second Tuesday before the primary election. Any balance remaining therein shall be allocated to the state election candidate account for that statewide elective office, provided that the balance from the individual primary election candidate accounts for candidates for lieutenant governor shall be allocated to the state election candidate account established in the name of candidates for governor. Further allocation shall be made as provided by section
forty-three and distribution as herein provided. All individual legislative candidate accounts established pursuant to section forty-three for candidates for legislative elective office who are not among those who qualify for the state election ballot as certified by the state secretary under section two A of chapter fifty-five A shall be closed on or before the fifth Tuesday before the state election. Any balances remaining therein shall be allocated to the individual legislative candidate accounts of candidates for legislative elective office who qualify for the state election ballot by crediting to each such account an amount determined by dividing the total of such balances by a number equal to the sum of two times the number of certified candidates for state senator and one times the number of certified candidates for state representative, except that each candidate for the office of state senator shall be credited with two times the amount so determined.

On or before the fourth and second Tuesday before the state election in any year in which a statewide, biennial or special state election is held, the state treasurer shall without further appropriation distribute from each individual legislative candidate account for candidates for legislative elective office, and in any year in which elections for statewide elective office are held, from each individual state election candidate account for candidates for statewide elective office, the amounts certified to be due to each eligible candidate in the same manner as he distributed funds to candidates in the primary election.

All individual legislative candidate accounts and all individual state election candidate accounts shall be closed immediately after the second Tuesday before the state election. Any balances remaining in such accounts shall be returned to the state election campaign fund pending the next year in which a statewide, biennial, or special election is held.

SECTION 34. Section 45 of said chapter 10, is hereby amended by inserting after the word "statewide", wherever it occurs, the words: or legislative.
SECTION 35. Section 1 of chapter 55A of the General Laws, as inserted by section 3 of chapter 774 of the acts of 1975, is hereby amended by inserting after the definition of "Statewide elective office" the following definition:

"Legislative elective office", the offices of senator and representative to the general court.

SECTION 36. Said section 1 is hereby further amended by striking out the definition of "Qualifying contribution" and inserting in place thereof the following definition:

"Qualifying contribution", any gift of money from an individual in the form of a written instrument signed by the donor that identifies the donor by full name and mailing address, received during the calendar year in which the election to which it relates is held or during the preceding calendar year, and in the case of a candidate for statewide elective office deposited in the depository account required by section nineteen of chapter fifty-five during either of said calendar years, except that (a) with respect to a candidate for statewide elective office, no contribution shall be considered a qualifying contribution if it exceeds five hundred dollars or to the extent that such contribution, when added to any other contributions from the same individual made during the calendar year in which the election is held and during the preceding calendar year, would exceed five hundred dollars; (b) with respect to a candidate for legislative elective office, (i) no contribution shall be considered a qualifying contribution for the purpose of determining eligibility for public finance pursuant to section seven A to the extent that it exceeds twenty-five dollars or, when added to any other contributions from the same individual made during the calendar year in which the election is held and during the preceding calendar year, would exceed twenty-five dollars; (ii) no contribution shall be considered a qualifying contribution for the purpose of determining the amount of public finance allowed to a candidate pursuant to section seven B, to
the extent that it exceeds one hundred dollars or, when added to.
any other contributions from the same individual made during the
calendar year in which the election is held and during the preceding
calendar year, would exceed one hundred dollars; and (c) with respect
to a candidate for statewide elective office, the same contribution
may be treated as a qualifying contribution for both the primary
election and the state election.

SECTION 37. Said section 1 is hereby further amended by striking out the
definition of "Director" and inserting in place thereof the following definition: "Commission", the campaign and political finance commission.

SECTION 38. Section 2 of said chapter 55A is hereby amended by striking from the first, third, and fifth sentences the word "director" and inserting in place thereof the word: commission.

SECTION 39. Said chapter 55A is hereby further amended by inserting after section 2 the following section:

Section 2A. On or before the ninth Tuesday before a primary in any year in which an election or elections are held for legislative elective office the state secretary shall determine and certify to the commission and the state treasurer the names and addresses of all candidates for legislative elective office who qualify for the primary ballot or who qualify for the state election ballot without being entered in a party primary, and who are opposed by one or more candidates who have qualified for the same ballot in the primary election, or will be after a primary, opposed by one or more candidates who have qualified for the state election ballot. For purposes of this chapter any candidate for legislative elective office for whom certificates of nomination and nomination papers have been filed in apparent conformity with law shall be considered qualified for the ballot notwithstanding any objections thereto that may be filed and notwithstanding any vacancy that may occur following the filing of such certificates of nomination and nomination papers other than a vacancy caused by withdrawal of a candidate within the time allowed by law. On or before the fifth Tuesday before the state election in any such year the state secretary shall determine and certify to the commission and to the state treasurer the names and addresses of all candidates for legislative elective office who qualify for the state election ballot and who are opposed by one or more candidates who have qualified for the state election ballot. For purposes of this chapter any candidate for legislative elective office nominated at the primary election shall
be considered qualified for the ballot notwithstanding any objections thereto that may be filed and notwithstanding any vacancy that may occur other than a vacancy caused by withdrawal of a candidate within the time allowed by law. The state secretary shall promptly determine and certify to the commission and state treasurer the name and address of any candidate who no longer qualifies for the primary or state election ballot or no longer has opposition because of death or withdrawal or ineligibility for office or because objections to certificates of nomination and nomination papers have been sustained or because of a recount or for any like reason.

SECTION 40. Section 3 of said chapter 55A is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:

The commission shall determine and certify to the state treasurer those candidates for statewide or legislative elective office who are eligible for limited public financing as provided in sections four, six and seven A, and shall determine and certify to the state treasurer the amounts due to each eligible candidate as provided in sections five, seven, and seven B. If at the time of the latter certification the treasurer determines that the monies in a primary election candidate account, the account for candidate for lieutenant governor, a state election candidate account or the legislative account, as the case may be, are not, or may not be, sufficient to satisfy the full entitlements of all eligible candidates for statewide and legislative elective offices, respectively, he shall withhold from each payment of such amount as he determines will be necessary to assure that all eligible candidates for such elective office will receive a pro rata share of their full entitlement. At the time of such withholding, the treasurer shall notify each candidate of the amount withheld and the basis for calculating said amount. Amounts so withheld shall be paid when the treasurer determines that the amounts in the particular account have become sufficient to satisfy the full entitlement, or a portion thereof, of all eligible
candidates, in which case each eligible candidate shall be paid all, or a pro-
rata share, of his full entitlement. In determining whether the monies remaining
in an account at any given time shall be sufficient to satisfy the full
entitlements of all eligible candidates, the treasurer shall consider the
potential entitlements of all eligible candidates as well as the actual
entitlement of each candidate at the time such determination is made.

SECTION 41. Said section 3 is hereby further amended by striking out, in the
first sentence of the second paragraph, the words "elections are held for
statewide elective office" and inserting in place thereof the words: the
election is held for the office to which such contributions relate.

SECTION 42. Said section 3 is hereby further amended by adding after the
word "statewide" in the third sentence of the second paragraph the words: or
legislative.

SECTION 43. Said section 3 is hereby further amended by striking from the
first, second, and third sentences of the second paragraph the word "director"
and inserting in place thereof the word: commission.

SECTION 44. Section 4 of said chapter 55A is hereby amended by striking from
the first sentence of the first paragraph and the first and second sentence of
the second paragraph the word "director" and inserting in place thereof the word:
commission

SECTION 45. Section 5 of said chapter 55A is hereby amended by striking from
the first sentence of the first paragraph and from the first and second sentences
of the second paragraph the word "director" and inserting in place thereof the
word:
commission

SECTION 46. Said section 5 is hereby further amended by striking out of the
first sentence of the first paragraph the word "primary" and inserting in place
thereof the words:
UNITED STATE OF AMERICA

155

individual primary election

SECTION 47. Said section 5 is hereby further amended by striking from the first sentence of the first paragraph the word "forty-two" and inserting in place thereof the word:
fifty-three

SECTION 48. Section 6 of said chapter 55A is hereby amended by striking from the first sentence of the first paragraph and the first and second sentences of the second paragraph the word "director" and inserting in place thereof the word:
commission

SECTION 49. Section 7 of said chapter 55A is hereby amended by striking from the first sentence of the first paragraph and the first and second sentences of the second paragraph the word "director" and inserting in place thereof the word:
commission

SECTION 50. Said section is hereby further amended by inserting in the first sentence of the first paragraph before the words "state election candidate" the word:
individual

SECTION 51. Said chapter 55A is hereby further amended by inserting after section 7 the following sections:

Section 7A. Any candidate for legislative elective office certified by the state secretary under section two A as qualifying for the ballot and having opposition in either the primary or the election shall be eligible to receive limited public financing of his campaign, to the extent provided by section seven B, on determination and certification by the commission that the candidate (a) has filed a request for public financing with the commission together with the bond required by section eight and (b) has received qualifying contributions as defined by section one in at least the following minimum amounts for the following legislative elective offices:
Only amounts appearing in statements of qualifying contributions filed with the commission, in such form as it shall prescribe, shall be considered in determining whether any such minimum amount has been met. Determinations and certifications of the eligibility of candidates shall be made by the commission on or before the eighth, sixth, fourth and second Tuesday before the primary election and the fourth and second Tuesday before the state election, and shall be based solely upon information contained in such statements as have been filed prior to such dates.

The fact that a qualifying contribution has previously been considered in determining eligibility for, or the extent of, public financing of a candidate's primary election campaign shall not prevent consideration of the same contribution in determining eligibility for public financing of such candidate's state election campaign.

Section 7B. Any candidate for legislative elective office eligible to receive limited public financing of his campaign shall, on determination and certification by the commission, be entitled to an amount equal to one dollar for each one dollar of qualifying contributions as defined by section one subject to section nine and subject to the following limitations: (a) no candidate shall be entitled to receive any amount in excess of the candidate's share of the balance then remaining in the individual legislative candidate account established for that candidate under section forty-three of chapter ten; (b) no candidate shall be entitled to receive any amount after the primary election if he is not qualified for the state election ballot or does not have opposition in such election; (c) nor shall any candidate be entitled to receive any amount in excess of the following maximum amounts for the following legislative elective offices:

<table>
<thead>
<tr>
<th>Office</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Senator</td>
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<td>Representative</td>
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Only amounts appearing in statements of qualifying contributions filed with
the commission, in such form as it shall prescribe, shall be considered in determining amounts to which candidates are entitled. Determinations and certifications of the amounts to which eligible candidates are entitled shall be made by the commission on or before the eighth, sixth, fourth and second Tuesday before the primary election and the fourth and second Tuesday before the state election, and shall be based solely upon information contained in such statements as have been filed prior to such dates.

SECTION 52. Section 8 of said chapter 55A is hereby amended by inserting in the second sentence of the first paragraph after the word "statewide", the words: or legislative

SECTION 53. Said section 8 is hereby further amended by inserting after the line reading, "Auditor 50,000" the following lines:

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<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Senator</td>
<td>12,000</td>
</tr>
<tr>
<td>Representative</td>
<td>6,000</td>
</tr>
</tbody>
</table>

SECTION 54. Said section 8 is hereby further amended by striking from the second sentence of the first paragraph and the first and second sentences of the second paragraph the word "director" and inserting in place thereof the word: commission.

SECTION 55. Section 9 of said chapter 55A is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:

Within two weeks after any primary or state election for statewide or legislative elective office, any candidate who has received public financing under this chapter shall file a statement with the commission showing the funds remaining in the candidate's control as of the primary or state election less any reserve necessary to defray campaign expenditures incurred in connection with such primary or such state election. Except as herein provided, in the case of any candidate for statewide elective office having a surplus following any such primary election shall thereupon pay to the state treasurer for deposit to the statewide campaign election account for candidates for the same statewide
elective office an amount equal to the total amount of public financing received on account of such primary election campaign, up to the amount of said surplus. Except as herein provided, in the case of any candidate for legislative elective office having a surplus following any such primary election shall thereupon pay to the state treasurer for deposit in individual legislative candidate accounts in the same manner as any remaining balances are allocated to said accounts pursuant to the provisions of section forty-four of chapter ten. Except as herein provided, any candidate for statewide or legislative elective office having a surplus balance following any such state election shall thereupon pay to the state treasurer for deposit to the state election campaign fund an amount equal to the total amount of public financing received on account of such state election campaign, up to the amount of said surplus balance.

No candidate having a surplus balance following the primary election shall be required to make any payment on account of such surplus if such candidate is certified by the state secretary under section two of section two A as qualifying for the ballot and having opposition in the state election and, in the case of candidate for statewide election, is certified by the commission of campaign and political finance as eligible for public financing for the state election within three weeks following such primary election. In determining and certifying the amount to which any such candidate for statewide elective office is entitled under section seven the commission shall reduce the amount that would otherwise be determined thereunder by an amount to the amount that would such candidate would be required to pay to the state treasurer under this section but for the preceding sentence.

SECTION 56. Said section 9 is hereby further amended by striking from the first sentence of the second paragraph the first sentence of the third paragraph and the first sentence of the fourth paragraph the word "director" and inserting in place thereof the word:
commission.

SECTION 57. Section 10 of said chapter 55A is hereby amended by adding the following paragraphs:

Notwithstanding the provisions of section seven of chapter fifty-five with respect to expenditures and contributions by candidates on their own behalf, and subject to the other provisions of this section, no candidate for statewide or legislative elective office who accepts public financing under this chapter shall expend, during the period beginning on January eleventh of the year after the previous election for the office sought by the candidate and ending on January tenth of the year after the election for that office, more than fifty thousand dollars in the case of a candidate for governor, twenty-five thousand dollars in the case of a candidate for any other statewide elective office, four thousand dollars in the case of a candidate for state senator, and two thousand dollars in the case of a candidate for state representative, in the aggregate, on behalf of his own campaign, either by direct expenditures or by contributions to his non-elected political committee or by a combination of such expenditures and contributions.

If such candidate has expended on behalf of his own campaign prior to the primary election an amount less than the maximum amount permitted by this section and does not qualify for the ballot for the state election, then the candidate may expend on his own behalf after the primary election and before January tenth of the year after the state election an amount equal to the lesser of (a) the maximum amount permitted by this section less the amount spent by the candidate on behalf of his own campaign prior to the date of the primary election or (b) the amount necessary to pay debts incurred to defray campaign expenditures during the primary election as reported by the candidate two weeks after the primary election pursuant to the provisions of section nine, for the sole purpose of paying such debts.
If a candidate who accepts public financing under this chapter and who qualifies for the state election ballot has expended on behalf of his own campaign prior to the state election an amount less than the maximum amount permitted by this section, then the candidate may spend on his own behalf after the state election an amount equal to the lesser of (a) the maximum amount permitted by this section less the amount spent by the candidate on behalf of his own campaign prior to the date of the state election or (b) the amount necessary to pay debts incurred to defray campaign expenditures during the primary or state elections as reported by the candidate two weeks after the state election pursuant to the provisions of section nine, for the sole purpose of paying such debts.

Notwithstanding the provisions of the third sentence of the first paragraph of section seven of chapter fifty-five, any candidate for statewide elective office who accepts public financing under this chapter and any political committee organized or operating on behalf of any such candidate shall not accept from any individual or political committee during the period between elections for the office sought by the candidate any contributions that exceed in the aggregate the sum of five hundred dollars in any calendar year and no candidate for legislative elective office who accepts public financing under this chapter and any political committee organized or operating on behalf of any such candidate shall not accept from any individual or political committee during the period between elections for the office sought by the candidate any contributions which exceed in the aggregate the sum of two hundred and fifty dollars in any calendar year. A candidate may, in order to qualify for public financing under this chapter, return to any contributor the difference between the aggregate contributions received and the maximum aggregate contributions from such contributor permissible under this paragraph, and the candidate shall report any such return in the statement filed with the commission pursuant to sections four
through seven B of this chapter.

SECTION 58. Section 11 of said chapter 55A is hereby amended by striking from the first sentence of the first paragraph and the first sentence of the second paragraph the word "director" and inserting in place thereof the word: commission.

SECTION 59. Said chapter 55A is hereby further amended by adding after section 12 the following new section:

Section 13. The commission shall study the effect of changes in the cost of living on the provisions of chapters fifty-five and fifty-five A to the extent that such changes affect the adequacy of the minimum amounts listed in sections four, six and seven A of this chapter, the maximum amounts listed in section seven of chapter fifty-five and in sections five, seven, seven B and ten of this chapter, the amounts of the bonds required in section eight of this chapter, and the amount of the taxpayer's designation as provided in section six C of chapter sixty-two. Not later than June first of each year preceding the year in which an election for statewide elective office is held, the commission shall report to the general court the results of its study and its recommendations for changes in the aforesaid amounts which are required to effectuate the purposes of chapters fifty-five and fifty-five A. In its report the commission shall include a statement of the percentage increase or decrease during the four preceding years in the consumer price index for urban wage earners and clerical workers for the greater Boston area published by the United States Bureau of Labor Statistics or in any other indices which more accurately reflect the effect of changes in the cost of living on the cost of financing campaigns for legislative or statewide elective office and the relation of such changes to its recommendations.

SECTION 60. For the purpose of publicly financing candidates for lieutenant governor and governor in the 1982 state election year all of the balance of the state election campaign fund as determined by the comptroller in 1982,
notwithstanding any provisions of section 43 of chapter 10 of the General Laws as amended by this Act, to the contrary shall be allocated as follows: ten elevenths of said balance to the account for candidates for governor; one eleventh of said balance to the account for candidates for lieutenant governor; and nothing of said balance shall be allocated to the accounts for any other candidates for statewide elective office or for legislative elective office.

SECTION 61. No monies from the state election campaign fund shall be allocated by the comptroller in 1984, notwithstanding any provisions of section 43 of chapter 10 of the General Laws as amended by this Act, to the contrary for the purpose of publicly financing candidates for elective office in the 1984 biennial election year or any special election held prior to the 1986 state election.

SECTION 62. For the purpose of publicly financing candidates for statewide and legislative elective office in the 1986 state election year, the balance of the state election campaign fund as determined by the comptroller in that year, notwithstanding provisions of section 43 of chapter 10 of the General Laws as amended by this Act, to the contrary shall be allocated as follows:

(1) initial allocation to accounts for candidates for governor and lieutenant governor shall be made pursuant to the provisions of sub-sections (a) and (b) of the aforementioned section 43;

(2) after allocation pursuant to section (1) that portion of any balance remaining equal to or less than the base public finance payment for candidates for attorney general;

(3) after allocation pursuant to sections (1) and (2) that portion of any balance remaining equal to or less than the sum of the base public finance payments for candidates for state secretary, auditor, and treasurer shall be allocated to the accounts for state secretary, auditor, and treasurer in proportion to the size of their respective base public finance payments; (4) after
allocation pursuant to sections (1), (2), and (3) that portion of any balance remaining equal to or less than the base public finance payment for candidates for legislative elective office shall be allocated to the account for candidates for legislative elective office; and
(5) after allocation pursuant to sections (1), (2), (3), and (4) that portion of any balance remaining shall be allocated pro rata to accounts for candidates in proportion to the amounts initially allocated pursuant to sections (1), (2), (3), and (4).

For the purposes of the preceding paragraph, the term "base public finance payment" in relation to candidates for a statewide elective office shall mean the sum of (a) the number of such candidates in 1982 who qualified for the primary ballot and were opposed by one or more candidates who qualified for the same ballot in the primary election and who received more than 15 percent of the vote in the primary election times the maximum amount of public finance allowed to such candidates in the primary pursuant to the provisions of section five of chapter fifty-five A plus (b) the number of such candidates in 1982 who qualified for the ballot and had opposition in the state election and who received more than 15 percent of the vote in the state election times the maximum amount of public finance allowed to such candidates in the state election pursuant to the provisions of section seven of chapter fifty-five A. For the purposes of the preceding paragraph, the term "base public finance payment" in relation to candidates for legislative elective office shall mean the sum of (a) the number of candidates for state senator in 1982 who (i) qualified for the primary ballot or who qualified for the state election ballot without being entered in a party primary, and who were opposed by one or more candidates who qualified for the same ballot in the primary election, or who were after the primary, opposed by one or more candidates who qualified for the state election ballot and (ii) received more than 15 percent of the vote in the primary election times the
maximum amount of public finance allowed to such candidates pursuant to the provision of section seven B of chapter fifty-five A plus (b) the number of candidates for state representative in 1982 who (i) qualified for the primary ballot or who qualified for the state election ballot without being entered in a party primary, and who were opposed by one or more candidates who qualified for the same ballot in the primary election, or who were after the primary, opposed by one or more candidates who qualified for the state election ballot and (ii) received more than 15 percent of the vote in the primary election times one half the maximum amount of public finance allowed to such candidates pursuant to the provision of section seven B of chapter fifty-five A plus (c) the number of candidates for state senator in 1982 who qualified for the state election ballot and (i) who were opposed by one or more candidate who qualified for the state election ballot and (ii) received more than 15 percent of the vote in the state elections times one half the maximum amount of public finance allowed to such candidates pursuant to the provisions of section seven B of chapter fifty-five A plus (c) the number of candidates for state representative in 1982 who (i) qualified for the state election ballot and who were opposed by one or more candidates who qualified for the state election ballot and (ii) received more than 15 percent of the vote in the state election times one half the maximum amount of public finance allowed to such candidates pursuant to the provisions of section seven B of chapter fifty-five A.

SECTION 63. All officers and employees below the rank of director of the office of campaign and political finance who immediately prior to the effective date of this act do not hold positions classified under chapter thirty-one not have tenure in their positions by reason of section nine A of chapter thirty are hereby transferred to the services of the campaign and political finance commission established by this act without interruption of service within the meaning of section nine A of chapter thirty and without reduction in compensation
and salary grade, notwithstanding any change in title or duties resulting from such transfer.

All collective bargaining agreements covering any of the aforementioned employees which are in effect immediately prior to the effective date of this act shall continue in full force and effect in accordance with law.

Nothing in this section shall be construed to confer upon any officer or employee any rights not held immediately prior to the effective date of this act or to prohibit any reduction of salary, transfer, reassignment, suspension, discharge, layoff or abolition of position not prohibited prior to said effective date.

SECTION 64. The office of campaign and political finance is hereby abolished.

All books, papers, records, documents, equipment, lands, interests in land, buildings, facilities and other property both personal and real, which immediately prior to the effective date of this act are in the custody of or maintained for the use of the office of campaign and political finance which relate to or are maintained for the purpose of the said office are hereby transferred to the campaign and political finance commission established by this act. All questions regarding the identification of such books, papers, records, equipment, lands, interests in land, buildings, facilities and other property shall be determined by said commission.

All monies heretofore appropriated for the office of campaign and political finance remaining unexpended on the effective date of this act are hereby transferred to, and shall be available for expenditure by the campaign and political finance commission established by this act for the purpose of the exercise of the powers and the performance of the duties for which such monies were appropriated. All questions regarding the identification of such monies shall be determined by said commission.

All duly existing contracts, leases and obligations of the office of campaign
and political finance which are in force immediately prior to the effective date of this act, shall be performed by the campaign and political finance commission established thereunder by this act, in accordance with law. This provision shall not affect any renewal provision or option to renew contained in any such lease in existence of the effective date of this act. All questions regarding the identification of such contracts, leases, and obligations shall be determined by said commission.

Any petitions, hearings and other proceedings duly begun by the office of campaign and political finance or by any official or agent thereof shall continue unabated and remain in full force and effect notwithstanding the passage of this act, and shall thereafter be completed before or by the campaign and political finance commission or by any official or agent thereof in accordance with law.

All orders, rules and regulations duly made, and all licenses, permits, certificates and approvals duly granted by the office of campaign and political finance or by any official or agent thereof shall remain in full force and effect until superseded, revised, rescinded or cancelled in accordance with law.

SECTION 65. If any provision of this act, or its application to any person or any set of facts and circumstances, it held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other provision of this act or the application of the provision in question to any other person, facts or circumstances.

SECTION 66. This act shall take effect on January 10, 1982, except that section thirty shall take effect with respect to taxable years beginning on or after January 1, 1981.
APPENDIX TO

ENFORCEMENT
AN ACT TO INCREASE THE POLITICAL INDEPENDENCE OF THE OFFICE OF INSPECTOR GENERAL.

SECTION 1. Section 2 of Chapter 12A, as inserted by chapter three hundred and eighty-eight of the acts of 1980, is hereby amended by striking from the second sentence thereof the words, "the unanimous vote of the attorney general, the state auditor and the governor for a term of five years." and inserting in place thereof the following: the governor, subject to nomination by a majority vote of the deans of the seven schools of law in Massachusetts, being Boston College Law School, Boston University School of Law, Harvard Law School, New England School of Law, Northeastern University School of Law, Suffolk University Law School, Western New England College School of Law. In the event that no dean is then serving at any school, the acting dean shall vote in his place. The name of the person so nominated by majority vote of said deans shall be submitted to the governor for appointment and shall be acted upon by the governor within fifteen days, Saturdays, Sundays and legal holidays not included, in the affirmative or the negative. In the event that the governor fails to respond within the time or rejects the person so nominated said deans shall again by majority vote forward a single nomination to the governor. This procedure shall be repeated until an inspector general is appointed. The inspector general shall serve for a term of five years.
APPENDIX TO

SYSTEM ISSUES AND FINDINGS
AN ACT AFFECTING THE POWERS AND DUTIES OF THE
INSPECTOR GENERAL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the
authority of the same, as follows:

SECTION 1. Section 3 of chapter 12A of the General Laws, as
appearing in section 1 of chapter 388 of the Acts of 1980,
is hereby amended by striking from the first sentence every-
thing after the words "three such persons submitted by the
president of the senate".

SECTION 2. Section 9 of chapter 12A of the General Laws,
as appearing in section 1 of chapter 388 of the Acts of 1980,
is hereby amended by striking from the first sentence of the first
paragraph of that section the words, "except records under
the provisions of section eighteen of chapter sixty-six as
defined in section three of said chapter sixty-six" and in-
serting in their place the words, "under this chapter"; and
by striking from the second sentence of the second paragraph

NOTE. — Use ONE side of paper ONLY. DOUBLE SPACE. Insert additional leaves, if necessary.
of said section 9 the words, "except records under the provisions of section eighteen of chapter sixty-six as defined in section three of said chapter sixty-six" and inserting in their place the words, "as is not in contravention of any law"; and by striking from the first sentence of the sixth paragraph of said section nine the words, "except records under the provisions of section eighteen of chapter sixty-six as defined by section three of said chapter sixty-six".

SECTION 3. Section 10 of chapter 12A of the General Laws, as appearing in section 1 of chapter 388 of the Acts of 1980, is hereby amended by inserting into the first sentence of the first paragraph of said section, following the words, "to the attorney general", the words, "or any federal prosecutor"; and by striking in its entirety the second sentence of the first paragraph of said section;

SECTION 4. Section 2 of chapter 388 of the Acts of 1980 is hereby amended by striking in the first sentence of the first paragraph of that section the words, "with prior approval of six members of the inspector general council" and substituting in their place the words, "with prior approval of four members of the inspector general council"; and by striking from the second sentence of the first paragraph of said section 2 the words, "The approval of six members of the inspector general council", and substituting in their place the words, "The
approval of four members of the inspector general council"; and by striking from the first sentence of the third paragraph of said section 2 the words, "at least six members of the inspector general council", and substituting in their place the words, "at least four members of the inspector general council".

SECTION 5. Section 3 of chapter 388 of the Acts of 1980 is hereby repealed.
AN ACT TO CLARIFY THE POWERS AND DUTIES OF CERTAIN STATE OFFICIALS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 40A of chapter 7 of the General Laws, as appearing in section 7 of chapter 579 of the Acts of 1980, is hereby amended by striking out the second and third sentences of subparagraph (4) thereof.

SECTION 2. Section 40E of said chapter 7 is hereby amended by inserting in the first sentence after the words "chapter 104;" the following words, "and any other delegations which the general court has made to state agencies pertaining to the acquisition, control, and disposition of real property;".

SECTION 3. Section 40F of said chapter 7, as so appearing, is hereby amended by striking out of the fifth paragraph thereof the words, "the Springfield Office Building".

NOTE. — Use ONE side of paper ONLY. DOUBLE SPACE. Insert additional leaves, if necessary.
SECTION 4. Said section 40F is hereby further amended by striking out of the fourth sentence of the sixth paragraph the words, ", and such transfer shall only be made when the general court is in session, except as provided hereafter.".

SECTION 5. Said section 40F is hereby further amended by striking out the fifth sentence of the sixth paragraph and inserting in place thereof the following sentence, "Such transfer may be made without prior notification of the house and senate committees on ways and means only if the deputy commissioner certifies in writing that an emergency exists; provided that any such transfer may be authorized for a period not to exceed six months, and provided further that the deputy commissioner shall submit his or her certification to and notify the house and senate ways and means committees of such transfer at the earliest possible opportunity.".

SECTION 6. Section 40G of said chapter 7, as so appearing, is hereby amended by striking out of the second sentence of the fourth paragraph the words, "and such agreement shall only be made when the general court is in session, except as provided hereafter.".

SECTION 7. Such section 40G is hereby further amended by striking out the third sentence of the fourth paragraph and inserting in place thereof the following sentence, "Such agreement may be made without prior notification of the house
and senate committees on ways and means only if the deputy commissioner certifies in writing that an emergency exists; provided that any such agreement may be authorized for a period not to exceed six months, and provided further that the deputy commissioner shall submit his or her certification to and notify the house and senate ways and means committees of such agreement at the earliest possible opportunity.

SECTION 8. Section 40I of said chapter 7, as so appearing, is hereby amended by inserting at the end the following sentence, "Such notice period may be shortened or waived only if the deputy commissioner certifies in writing that an emergency exists."

SECTION 9. Section 40K of said chapter 7, as so appearing, is hereby amended by inserting after the first sentence the following sentences, "For the purposes of identifying agricultural lands, the deputy commissioner shall utilize criteria established by the secretary of environmental affairs. Such criteria shall determine agricultural land according to past and present agricultural use, and according to the agricultural production suitability of land as defined by the standards of the United States Department of Agriculture Soil Conservation Service."
SECTION 10. Section 6 of chapter 8 of the General Laws, as most recently amended by section 21 of chapter 579 of the Acts of 1980, is hereby further amended by striking out in lines 4 to 6 the words, "the Springfield Office Building".

SECTION 11. Section 9 of chapter 8 of the General Laws, as most recently amended by section 22 of chapter 579 of the Acts of 1980, is hereby amended by striking out in lines 4 to 6 the words, "the Springfield Office Building".

SECTION 12. Section 42B of chapter 7 of the General Laws, as appearing in section 12 of chapter 579 of the Acts of 1980, is hereby amended by striking out the last sentence of the final paragraph and inserting in place thereof the following sentence, "The director shall state in writing the reasons for not requesting an audit upon approval of any change order or contract modification if: (a) the cumulative cost of all previously approved increases in the contract price exceeds five percent of the original contracted construction cost of the project; or (b) the preliminary estimate of or approved change in the contract price resulting from the change order or contract modification is $5,000 or more.".


SECTION 15. Section 20 of chapter 9 of the General Laws, as most recently amended by section 50 of chapter 579 of the Acts of 1980, is hereby further amended by adding to the second sentence, part (a), after the words "any capital facility" the words, "including but not limited to a building or other structure or part thereof, an airport or port facility, a water resource improvement, a highway improvement, a transportation improvement, or any other such facility as may be designated by the deputy commissioner of capital planning and operations;".

SECTION 16. Section 39Q of chapter 30 of the General Laws, as inserted by section 62 of chapter 579 of the acts of 1980, is hereby amended by striking the first sentence of subsection (1) and inserting in place thereof the following sentence, "Every contract awarded to a general bidder by a state agency, as defined by section thirty-nine A of chapter seven, pursuant to section forty-four A through forty-four H, inclusive, of chapter one hundred and forty-nine or to section thirty-nine M of this chapter shall contain the following subparagraphe graphs (a) through (d) in their entirety."
SECTION 17. Subparagraph (a) of said section 39Q, as so inserted, is hereby amended by striking from the first sentence the words, "which shall constitute the exclusive method for resolving such disputes.".

SECTION 18. Subparagraph (c) of said section 39Q, as so inserted, is hereby amended by striking from the first sentence the words, "and shall serve copies thereof upon all other parties in the form the manner prescribed governing the conduct of adjudicatory proceedings of the division of hearing officers.

SECTION 19. Said subparagraph (c) is hereby further amended by striking from the second sentence the words "The appeal" and inserting in place thereof the words, "An appeal to the division of hearing officers".
Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section thirty-nine A of chapter seven of the General Laws, as appearing in section 7 of chapter 579 of the Acts of 1980 is hereby amended by inserting in sub-section (f) after the words "remodeled for some other use;" the following words, "A highway improvement such as a highway, bridge, or tunnel; a transportation improvement such as a mass transportation or other public transit facility, including a".

SECTION 2. Said section thirty-nine A is hereby further amended by striking from sub-section (f) the words "by the metropolitan district commission".

SECTION 3. Said section thirty-nine A is hereby further amended by striking from sub-section (f) the words ", provided however
that a highway improvement such as a highway, bridge or tunnel; a transportation improvement such as a mass transportation or other public transit facility, but not including a department of transportation building in the Park Square area of the city of Boston, shall not be considered a capital facility as defined herein;".
AN ACT RELATING TO THE STATUS OF CERTAIN PERSONNEL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 41B of chapter 7 of the General Laws, as appearing in section 12 of chapter 579 of the acts of 1980, is hereby amended by striking out the third sentence of the second paragraph and inserting in place thereof the following sentences:

"Except as provided by law, all such appointments shall be made in accordance with chapter thirty-one. Subject to the provisions of sections thirty B through thirty P, inclusive, and to the approval of the deputy commissioner, the director may hire consultants to perform programming, architectural, engineering, surveying, cost estimating and other professional services."

SECTION 2. Section 42A of said chapter 7, as so appearing, is
hereby amended by inserting at the end of the third paragraph thereof the following sentence:-

"Except as provided by law, all such appointments shall be made in accordance with chapter thirty-one."

SECTION 3. Section 42B of said chapter 7, as so appearing, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:-

"If the director considers it in the best interests of the commonwealth, he may hire consultants, subject to the provisions of sections thirty B through thirty P, inclusive, and to the approval of the deputy commissioner, to perform architectural, engineering, quantity surveying, network scheduling, cost estimating, and other professional services."

SECTION 4. Said section 42B is hereby further amended by inserting at the end of the seventh paragraph thereof the following sentence:-

"Except as provided by law, all such appointments shall be made in accordance with chapter thirty-one."

SECTION 5. Section 42D of said chapter 7, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraphs:-

"In every instance of any employee promoted to the position of project manager from a position classified under chapter thirty-one or a position in which at the time of promotion he shall have tenure by reason of section nine A of chapter thirty, upon termination of his service the employee shall, if he shall so
request, be restored to the position from which he shall have been promoted or to a position equivalent thereto in salary grade without impairment of his civil service status or his tenure under section nine A or loss of his seniority, retirement or other rights to which uninterrupted service in such position would have entitled him; provided, however, that if his service shall have been terminated for cause, his right to be restored shall be determined by the civil service commission in accordance with the standards applied by the commissioner in administering chapter thirty-one. Nothing in this section shall be deemed to exempt the position of project manager from the provisions of sections forty-five to fifty, inclusive, of chapter thirty.

"The director may appoint project managers having particular areas of expertise, including such areas as civil, mechanical, electrical and structural engineering.

"The director shall recommend to the deputy commissioner standards governing the volume of work as defined by number of building projects, total dollar volume, or other pertinent criteria to which any individual project manager may be assigned at any one time. The project manager shall participate in all phases of building projects to which he has been assigned by the director. He shall:
SECTION 6. Section forty-two J of said chapter seven, as so inserted, is hereby amended by striking out the second sentence of the first paragraph and inserting in place thereof the following sentence:

"Resident engineers may be hired as permanent or temporary employees subject to the provisions of chapter thirty-one."

SECTION 7. The said section forty-two J is hereby further amended by inserting at the end of the fifth paragraph the following sentence:

"Cost estimators may be hired as permanent or temporary employees subject to the provisions of chapter thirty-one."

SECTION 8. Section forty-three of said chapter seven, as inserted by section 15 of chapter 579 of the Acts of 1980, is hereby amended by inserting at the end of the second paragraph the following sentence:

"Except as provided by law, all such appointments shall be made in accordance with chapter thirty-one."
AN ACT CLARIFYING SECTION 67A OF CHAPTER 266 OF THE GENERAL LAWS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 67A of chapter 266 of the General Laws, as appearing in section 2 of chapter 531 of the Acts of 1980, is hereby amended by striking from the first sentence of said section 67A the words, "as defined in section 6 of chapter 12A", and inserting in their place the words, "as defined in section 1 of chapter 12A".