



Office of the
Inspector General
Commonwealth of Massachusetts

Gregory W. Sullivan
Inspector General

2007 Annual Report

July 2008



The Commonwealth of Massachusetts
Office of the Inspector General

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His Excellency the Governor

The Honorable President of the Senate

The Honorable Speaker of the House of Representatives

The Honorable Chair of the Senate Ways and Means Committee

The Honorable Chair of the House Ways and Means Committee

The Directors of the Legislative Post Audit and Oversight Bureaus

The Office of the Inspector General is dedicated to preventing and detecting fraud, waste, and abuse in the expenditure of public funds. To that end, we responded to scores of complaints, initiated dozens of investigations and trained hundreds of government employees last year.

Much of our work is confidential, but this report details completed projects that we can make public.

Among the highlights for 2007:

- A case uncovering widespread abuse of disabled person's parking placard abuse;
- The continued monitoring of Chapter 40B;
- A case that led to the indictment of two men who allegedly defrauded the state out of \$250,000 on the Central Artery/Tunnel project;
- An investigation that led to the indictment of two City of Haverhill employee; and
- A review that led to increased tunnel inspections.

Additional copies are available on our website www.mass.gov/ig or from our Office.

Sincerely,

A handwritten signature in black ink that reads "Gregory W. Sullivan".

Gregory W. Sullivan
Inspector General

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Introduction

The Massachusetts Office of the Inspector General is the oldest state-level inspector general's office in the nation.

It was established in 1981 on the recommendation of the Special Commission on State and County Buildings, a legislative commission that spent two years probing corruption in the construction of public buildings in Massachusetts.

The commission, commonly referred to as the Ward Commission in honor of its chairman John William Ward, produced a 12-volume report documenting massive fraud and waste and detailing reform recommendations.

"Corruption is a way of life in the Commonwealth of Massachusetts," Ward, who resigned his post as president of Amherst College to devote all his energies to investigating public corruption, wrote in his fiery introduction to the commission's final report. "It was not a matter of a few crooks, some bad apples which spoiled the lot. The pattern is too broad and pervasive for that easy excuse."

Part of the Ward Commission's solution was to create an independent Office of the Inspector General. The commission also recommended creating an Office of Campaign and Political Finance and an Ethics Commission.

"The basic concept behind the Office of the Inspector General is that any institution, a corporation, a university, let alone the institution of government, must build into itself a mechanism for self-criticism and self-correction," Ward continued. "To prevent and detect (and the emphasis falls as much upon prevention as detection) fraud and waste in the procurement of many millions of dollars of goods and services by the Commonwealth, the Commission designed the Office of the Inspector General to be a neutral, impartial and independent office to fulfill that critical function."

The Massachusetts Inspector General has a broad mandate under Massachusetts General Laws (M.G.L.) Chapter 12A to prevent and detect fraud, waste and abuse in government. M.G.L. c.12A gives the Inspector General the power to subpoena records and people for investigations and management reviews, and to investigate both criminal and non-criminal violations of law.

The Inspector General employs a staff of experienced specialists, including investigators, lawyers, a certified public accountant, an architect, computer experts and analysts to investigate fraud, waste, and abuse of public resources. In addition, the Inspector General's office also has attorneys specializing in procurement to assist local governments with best value contracting under the Uniform Procurement Act, M.G.L. c. 30B. The Inspector General also certifies public procurement officials through the Massachusetts Certified Public Purchasing Official training program.

Inspector General Gregory W. Sullivan meets quarterly with the Inspector General Council to consult with them about the duties and responsibilities of the Office of the Inspector General. In 2007, the seven members on the council were: Attorney General Martha Coakley, Auditor A. Joseph DeNucci, Comptroller Martin Benison, Secretary of Public Safety Kevin Burke, James Morris, Alan MacDonald, and Christopher Scott.

The Inspector General receives numerous complaints alleging fraud, waste or abuse in government. The staff evaluates each complaint to determine whether it falls within our jurisdiction and merits action. Some complaints lead to extensive investigations. The Inspector General closes others almost immediately – after a preliminary inquiry fails to substantiate the allegations.

When the staff completes a project, the Inspector General generally issues a letter or report detailing findings and recommending reforms to prevent future problems. The Inspector General reports information concerning criminal or civil violations of law to the appropriate authorities, including the Massachusetts Attorney General and the U.S. Attorney for the District of Massachusetts.

Investigations

The Inspector General's investigations of criminal and civil violations of law arise from a variety of sources including complaints, information developed during the course of other reviews and activities, and requests for review and assistance by other investigative agencies such as local and state police and the attorney general. The Inspector General forwards complaints to other agencies if a preliminary investigation reveals that the complaints are outside the Inspector General's jurisdiction or would be more appropriately handled by another agency.

In 2007, the Inspector General reported complaints to and worked with a host of agencies, including: the Federal Bureau of Investigation; the Massachusetts Office of the Attorney General; the Massachusetts State Police; the Registry of Motor Vehicles; the Boston Transportation Department; the United States Attorney for the District of Massachusetts; the State Ethics Commission; the Department of Revenue; and several local police departments.

M.G.L. c.12A restricts disclosure of ongoing investigations – cases in which no official disposition has been made – and on-going joint investigations that are governed by nondisclosure agreements. Therefore, this report details only a portion of the investigations the Inspector General pursued last year.

Disabled Person's Parking Placard Abuse

Beginning in spring 2006, and continuing through summer 2007, the Inspector General, in conjunction with the Registry of Motor Vehicles (RMV), Massachusetts State Police and City of Boston Transportation Department, investigated allegations of wide-spread fraud and abuse in the use of handicapped parking placards.

The investigation looked into whether able-bodied individuals avoided paying hundreds of thousands of dollars annually in parking meter and other fees to the City of Boston. The investigation also looked into whether the alleged offenders avoided parking citations by using these placards. Furthermore, the investigation focused on the illegal use of handicapped parking spaces, which deprived genuine placard holders the use of these spaces.

During the investigation, the Inspector General collected information on more than 965 placards in three areas of Boston: the Haymarket/North

Station area, the Financial District and Newbury Street/Shopping District areas.

Information gathered and used in the investigation included placard holder information, vehicle data, location and time spans of parked vehicles, and other critical data. From this information, the Inspector General selected about 30 subjects that appeared to be fraudulently using handicapped placards, including individuals using placards belonging to deceased persons.

From the summer through early fall 2007, investigators from the Inspector General's office conducted surveillance of these vehicles with Massachusetts State Police troopers. State troopers stopped vehicles whose operators did not appear to be legally using the placards. Upon confirming illegal use, the trooper seized the placard and issued applicable citations including a \$500 citation for the illegal use of a placard. If the offender had parked in a handicapped parking space, the trooper also issued a parking ticket for that violation.

As a result of this investigation, the state police cited 17 operators and seized the placards in the possession of these operators. Additionally, the Governor filed legislation in August 2007, House bill 4220, which would add disability placards to the list of motor vehicle-related documents that a person can not "falsely make, steal, alter, forge or counterfeit." There is a \$500 fine or imprisonment for between two and five years for a violation of this law. The punishment also applies to anyone who assists another in these actions, or someone who possesses such a document. The bill has been engrossed in the House and is currently pending in the Senate. The Governor cited this Office's report in his filing letter.

In addition, the RMV has begun improving placard monitoring including use of a web-based monitoring program to allow citizens to anonymously report abuse of disabled plates and placards. The Inspector General continues to work with the RMV on this issue.

Charles B. Lincoln update

In May 2006, the Inspector General reported that Charles B. Lincoln, a former lieutenant with the Brockton Police Department, manipulated state pension rules to receive a pension of more than \$139,000 annually. Lincoln worked two jobs during his last three years of active employment. He worked as a Lieutenant with the Brockton Police Department and as the Director of Security with the Plymouth County Sheriff's Office. Lincoln used the total of both salaries as the basis for his pension claim even though he only worked for the Sheriff's Office at the end of his active service.

Pension rules allow a public employee to claim the average of their highest three yearly salaries as the basis of their pension. However, an investigation by the Inspector General found Lincoln had used 251 sick days during this three-year period, often calling in sick for one job while reporting to the other job. The investigation involved an analysis of hundreds of pages of attendance records, sick leave accrual records, contract documents, retirement policies, and other documents. The analysis also uncovered other manipulations of the system for personal gain, some that occurred with the complicity of superiors.

Following publicity about the Inspector General's report, the U.S. Attorney and the FBI launched an investigation in conjunction with the Inspector General's Office. As a result of the joint investigation, the U.S. Attorney's Office brought the case to a Federal Grand Jury that indicted Lincoln on two counts of mail fraud. Lincoln's trial began on June 4, 2007 and after nearly three days of deliberation the jury returned a verdict of not guilty.

Despite the not guilty verdict in the criminal matter, the City of Brockton and the Plymouth County Sheriff's Office are currently pursuing civil lawsuits against Lincoln in an attempt to recover the value of the sick days paid to Lincoln by one job while he worked at the other. Also, the Massachusetts State Ethics Commission issued an "Order to Show Cause" alleging that Lincoln violated the state's conflict of interest law. Generally, you cannot hold two or more paid public positions simultaneously. A public hearing is pending.

The Inspector General believes that the prosecution of Lincoln – regardless of the outcome – sends a message to public officials across Massachusetts that placing personal interest and gain above their fiduciary duty to the citizens they represent can be very costly.

City of Haverhill Highway Department

The Inspector General investigated the City of Haverhill Highway Department upon receiving an anonymous letter that noted James Flaherty, Superintendent, Haverhill Highway Department (DPW) and his son Kevin Flaherty, DPW Foreman, used DPW employees, material and equipment on city time to complete paving work for their private business. Sources alleged that both James and Kevin Flaherty also worked on these private paving jobs when they should have been working for the city.

Surveillances and interviews conducted by investigators from this office and the Massachusetts State Police have substantially corroborated the allegations contained in the initial complaint.

Information developed during the investigation led to search warrants for the DPW, James Flaherty's home, and a storage facility that housed his equipment.

An Essex County Grand Jury in Salem indicted both James and Kevin Flaherty June 29, 2007. The court charged Kevin Flaherty with larceny over \$250 by a continuous scheme, procurement fraud, presentation of false claims and conflict of interest. James Flaherty received a charge of larceny over \$250 by continuous scheme, procurement fraud, conflict of interest, and three counts of fraudulent income tax returns.

James Flaherty retired prior to the indictment and Kevin Flaherty has been fired by the City of Haverhill. Both men are awaiting trial.

Durod Ltd. And Y2Krush Corp

In September 2007, a special grand jury indicted two Marshfield men, James Roderick Sr. and his son James Roderick Jr., for allegedly defrauding the state of \$250,000 on the Central Artery/Tunnel (CA/T) project. The pair allegedly inflated the weight of construction debris hauled away from the Big Dig between 2004 and 2007 while their firms, Durod Ltd. and Y2Krush Corp. worked as project subcontractors.

The Inspector General began the investigation in February 2006 when a staff investigator learned of the alleged tampering with truck load weights. After reviewing documentation for more than 4,000 trips taken by Durod Ltd. and Y2Krush Corp. vehicles, investigators determined that the companies had routinely and repeatedly inflated the weight of the material hauled away from the CA/T project. The office notified the state attorney general's office, which subpoenaed additional records from the firms and brought the truck drivers before a grand jury. The grand jury's indictments alleged that the Rodericks had used inaccurate truck weights and manipulated the scale at their Marshfield headquarters to generate falsely high cargo weights. According to the indictments, the Rodericks received an estimated \$250,000 more than they should have.

On June 13, 2008, the Rodericks each entered guilty pleas to charges of Larceny over \$250 by Continuous Scheme (2 counts), Fraud in Procurement, Presentation of False Claims, and Conspiracy (3 counts). James Roderick Sr. was sentenced to two and a half years in the House of Correction, with six months of the sentence to be served under house arrest. The balance of Roderick's sentence is to be suspended following the successful completion of house arrest. In addition, Roderick Sr. was sentenced to five years probation on one of the counts of larceny over \$250. James Roderick Jr. was also sentenced to five years probation for his role in the scheme.

Middlesex Retirement System

On February 1, 2007, the Middlesex Retirement System transferred about \$600 million of its assets for management by the state's Pension Reserves Investment Trust. The action followed a series of disclosures by the Inspector General to state officials of bid-rigging, fraud, and lax oversight on the part of Middlesex Retirement System board members and employees.

In October 2006, the Inspector General wrote to the state's Public Employee Retirement Administration Commission (PERAC) to inform commission officials that one of the Middlesex Retirement System board members, Lawrence P. Driscoll, had submitted more than \$10,000 in fraudulent expense receipts between 2000 and 2004. Furthermore, Mr. Driscoll had double-billed more than \$60,000 to both the Middlesex Retirement System and his private employer, a stock brokerage firm. Earlier in the year, the Inspector General also informed PERAC that numerous documents had been created to cover up bid-rigging relating to the Middlesex Retirement System's 2002 renovation of its Billerica headquarters.

In January and November 2006, the Inspector General wrote to PERAC officials detailing Middlesex Retirement System's lack of oversight that led to a \$37 million loss on currency trades by one of the system's investment managers.

The State Ethics Commission launched an official investigation into the Middlesex Retirement System in response to the Inspector General's October 2006 letter to PERAC officials. In April 2008, Lawrence P. Driscoll admitting violating state ethics laws by awarding a \$557,000 contract to renovate the pension fund's headquarters to a close friend and by submitting thousands of dollars in fraudulent expense receipts for which he was reimbursed. Driscoll signed a disposition agreement with the State Ethics Commission to resolve the case, agreeing to pay a \$10,000 civil penalty and a civil forfeiture of \$2,683.

Review of Older Tunnels

In 2007, the Inspector General reviewed various maintenance and inspection agreements for the sections of the covered portions of the Metropolitan Highway system not part of the Central Artery/Tunnel (CA/T) Project.

These roadway sections are governed by air-right agreements between the Turnpike Authority and private parties.

In most cases, these decked roadways are inspected and maintained by private parties – not the Turnpike Authority. The maintenance and inspection responsibilities may include roof, ceiling, lighting, ventilation, building supports, utilities and other components.

The Inspector General found that although the Turnpike Authority has no legal mandate to ensure the safety of these particular deck structures, it should do so nevertheless to protect Turnpike motorists.

In a letter to the Chairman of the Turnpike Authority, the Inspector General wrote that the safety of the public should remain an Authority priority regardless of where the legal liability rests.

The Turnpike has initiated new testing practices and required air right risk holders to inspect all ceiling and deck structures.

Analysis of Construction Projects within the Commonwealth

In August 2007, the Inspector General released a report outlining public agency spending on construction projects within the commonwealth.

For the report, the office reviewed and analyzed construction project data from January 2006 through December 2006. The data analyzed in the report came from the Central Register, a weekly publication produced by the Secretary of the Commonwealth.

The report is intended to assist public officials in identifying types and costs of projects that account for capital expenditures.

Town of Huntington Road

Representative Stephen Kulik's office forwarded a complaint from the Town of Huntington to the Inspector General regarding a three mile section of Route 66 in Huntington. According to town officials, the road constructed by MassHighway five years earlier, appeared to be failing prematurely.

MassHighway initially told the Inspector General the responsibility for the road lay with the town. However, this office believed MassHighway had some responsibility for roads it designs and constructs, especially when quality issues arise.

After Commissioner Paiewonsky assumed leadership at MassHighway, she agreed to re-examine the issue. Upon review, Commissioner Paiewonsky agreed to have MassHighway partially reconstruct the roadway. In addition, the Inspector General

recommended MassHighway consider adding contractor warranties on roadway projects to help ensure quality and to put the responsibility for premature roadway failure onto contractors rather than the taxpayers.

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Financial Investigations

Chapter 40B

The Inspector General continued the investigation into the M.G.L. c.40B (Chapter 40B) cost monitoring process for affordable home ownership. Under Chapter 40B, a developer may construct a housing project that does not comply with local zoning and land use controls in return for providing a percentage (usually 20 to 25 percent) of affordable homes or units and for limiting project profits to an agreed upon percentage (usually 20 percent). At the completion of the project, the developer is required to submit a cost certification detailing income and expenses. Profit in excess of the agreed upon limit must be paid to the municipality by the developer.

This office selected ten Chapter 40B projects for detailed cost review. During 2007 the office completed four of the ten project reviews. (The office had completed three in 2006 and the remaining three are in various stages of evaluation.) The four projects completed in 2007 are highlighted below:

- The Sumner Cheney Place project in Reading developed by 1375 Main Street Partners, LLC,
- The Preserve at Padelford Woods project in Berkley developed by Meridian Padelford, Inc.,
- The Millbrook Estates project in Wakefield developed by Millbrook Estates, LLC,
- The Salisbury Hill Estates project in Billerica developed by Salisbury Hill Corporation.

The developers for these four projects had previously submitted cost certification reports that reflected profit percentages ranging from 6.7 percent to 17.7 percent. The Inspector General's review highlighted a significantly different profit picture. In all four developments, this Office found excess profits owed to each municipality. The office determined that the total owed to these four towns exceeded \$5 million. The actual recalculated profit percentages for the four projects ranged from 24.2 percent to 77.6 percent.

Exploitation of the Chapter 40B process by unscrupulous developers appears widespread and pervasive. Abuses include the flipping of market rate units at below market prices to related party trusts, in order to report

lower profits through the cost certification process. For example, in the Millbrook Estates project (Wakefield), the developers concealed excess profits by selling eight units at nearly \$1 million below market value to two related party trusts comprised of their wives.

Expenses are also routinely inflated by developers, especially through related party transactions. The net effect of underreported revenues and inflated costs is to reduce the profits owed to municipalities.

Land valuation fraud is one of the most commonly used devices employed by developers to overstate costs. Developers have been successful at obtaining land appraisals reflecting values significantly higher than comparable land values. These inflated land values are then included as an allowable development cost thereby reducing the project's profit. An egregious example of this land valuation fraud is the proposed Pine Woods Housing Development in Sharon. The developer had submitted a land appraisal of \$10 million along with a purchase and sale agreement in line with this appraisal of the underlying assumptions. Working with Senator Timilty and Representative Kafka, the office made a request of MassHousing (the project's subsidizing agency) to conduct an independent land appraisal. MassHousing agreed and the independent arms length appraisal determined the market value of the land to be only \$2.5 million. Based on this information, the developer canceled the project.

These developer abuses have been enabled by the lack of oversight and control exerted by the Department of Housing and Community Development (DHCD).

To eradicate the fraud and abuse in the Chapter 40B cost certification and cost monitoring process, this office has identified and proposed several basic regulatory or legislative changes necessary to address these oversight and control issues.

Massachusetts International Marketing Partnership Inc.

The Inspector General reviewed the use of tourism funds between 2005 and 2007 by the Massachusetts International Marketing Partnership, Inc. (Tourism Massachusetts). Tourism Massachusetts is a non-profit organization that received contracts to provide international marketing and tourism promotion services.

The review focused on the propriety of both the expenditures made on behalf of the commonwealth by Tourism Massachusetts and the selection process that resulted in selecting Tourism Massachusetts as the vendor for these services. The review included determining whether Tourism Massachusetts made any payments to or on behalf of state employees, including legislators; understanding the competitive procurement process;

and determining how the contract came to be awarded to Tourism Massachusetts. The financial examination included a validation of the expenditures reflected in the vendor's financial records.

This office conducted a comprehensive review of all the expenditures (\$8.8 million) made by Tourism Massachusetts from April 2005 through May 2007 and included a detailed examination and verification of more than 99 percent of the total dollars expended.

The review found that Tourism Massachusetts properly accounted for its expended funds. Funds did not pay for trips or other inappropriate benefits to state employees, including state legislators.

Judge Rotenberg Center

In March 2007, the office directed a letter to the Department of Mental Retardation regarding potential cost recovery against the Judge Rotenberg Center (JRC) in Canton. A previous report by the Division of Professional Licensure (Division) concluded that unlicensed clinicians had been referring to themselves as psychologists, an act that violates state law. This office's review recommended that the DMR initiate cost recovery action against JRC for billing for psychologists determined to be unlicensed. The office recommended that the DMR review the potential for recovery and work with other state agencies that have JRC contracts to ensure that the state recoup money for misrepresented services. The state may be entitled to recovery from JRC if the provided services did not meet contractual and or regulatory requirements. The office estimates a possible overcharge by JRC of almost \$400,000 on state contracts since 2002 and an additional \$400,000 for individual school districts with JRC contracts.

Amesbury Mayor

The office received a complaint that the mayor of Amesbury wrongfully received a Chapter 61A property tax exemption for agricultural land. Based on the office's and the Department of Revenue's review, it did not appear the current tax exemption had been granted in error. However, the office advised that this exemption needs to be monitored by the Amesbury Board of Assessors to ensure its continued compliance with statutory requirements. This office also brought certain procedural issues regarding the approval of required property plan to the attention of the Department of Conservation and Recreation (DCR). DCR must approve property plans before local assessors may grant tax exemptions for a Chapter 61A exemption.

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Effective and Ethical Contracting

Plymouth County Stop Loss Health Insurance Contract

The Inspector General received a complaint pertaining to the Plymouth County Commissioners' award of a Plymouth County (County) 2006 Stop Loss insurance contract to Cook & Company (Cook). The complainant alleged that Cook should not have been permitted to bid on the insurance contract because Cook was acting as the county's health insurance consultant during the proposal submission. The complainant alleged that this gave Cook an advantage over other bidders and posed a conflict of interest. This office investigated the allegations and found that despite assertions to the contrary, Peter Kenney, the president of Cook's Health Plan Management Group, acted as the county health care consultant, and helped the County prepare its 2006 Stop Loss Insurance Request for Proposals (RFP). The investigation determined that Cook received a special and unfair competitive advantage over other insurance vendors during the RFP process, including having access to competitors' price information during bidding. Kenney obtained the information in his role as county health care consultant.

The investigation further disclosed that Cook failed to fulfill its contractual obligation to Plymouth County during the RFP process. Cook dropped out of the RFP process in midstream and no longer provided consulting services to the county during the remainder of the process. Despite dropping out of the RFP review process, Cook received its full annual compensation of more than \$78,000 for its consulting work. The investigation also uncovered that Cook attempted to over bill the county for more than \$63,000 dollars after being awarded the stop loss insurance contract. Finally, the investigation concluded the county awarded Cook the insurance contract despite significant warnings that Cook had a conflict of interest in the matter.

As a result of the investigation, the Plymouth County Commissioner referred the matter to the State Ethics Commission.

Mahar Regional School

In March 2007, the Inspector General released a report on procurement deficiencies at the Ralph Mahar Regional School District in Orange. The report detailed problems that befall a school system when administrators do not have basic knowledge of legal requirements for public expenditures. The district superintendent had

no training in or understanding of Massachusetts procurement practices and the school system did not have a business manager or procurement officer. As a result, the school system did not put out bids for contracts, the superintendent engaged in favoritism, and wasteful spending occurred. The Inspector General recommended school personnel take part in comprehensive training in the areas of municipal finance as well as more comprehensive procurement training regarding M.G.L. c.30B. The Inspector General also recommended the district create a position for a chief procurement officer who would be fully responsible for ensuring that supplies and services contracts are conducted in full compliance with the commonwealth's procurement and municipal finance laws. In addition, office staff members traveled to Mahar Regional to train the superintendent and the assistant treasurer as well as several individuals from surrounding regional schools in municipal procurement practices.

Massachusetts Convention Center Authority Garage

The office reviewed a complaint that the convention center garage vendor, Central Parking System (CPS), violated the terms of its management services agreement with the Massachusetts Convention Center Authority (MCCA). The complaint alleged CPS billed an additional maintenance fee for services that should have been covered in the "Basic Maintenance Fee," as defined in the parking garage management services request for proposal (RFP).

The MCCA stated that CPS did recover an additional fee, but that extenuating circumstances existed. Specifically, a vendor that received the initial RFP package claimed the price matrix was ambiguous. The MCCA issued an addendum to address the apparent ambiguity. Based on the MCCA's own admission, the addendum did not effectively clarify the price matrix. Therefore, CPS argued, it improperly calculated its proposed contract price. The MCCA's procurement procedures give the authority discretion to award contracts based on factors other than price and CPS received a favorable evaluation based on technical requirements. MCCA indicated that an increase in the proposed contract price by CPS would not have changed MCCA's award decision. The Inspector General agreed that the MCCA had the discretion to continue the contract. However, the office strongly recommended that future solicitation documents are written with clarity, especially when an issue of ambiguity is raised by a proposer or bidder.

Repairs to High Street in Lawrence

The Inspector General investigated a complaint regarding a procurement made by the Department of Public Works (DPW) for road

reconstruction on High Street in Lawrence. In early 2006, the City issued an invitation for bids (IFB) for a citywide roadway, curb, drain, and landscape reconstruction contract. Newport Construction Inc. (Newport) submitted the low bid. The city awarded a one-year contract to Newport executed on April 19, 2006. However, the DPW Director allowed work to commence even though it appeared that costs would far exceed the amounts that were originally authorized and sought approval for cost overruns after work begun. The City had no choice but to proceed with the work.

The Inspector General made the following recommendations to the city, to prevent similar situations in the future: 1) establish clearly defined disciplinary sanctions and reasonable penalties, 2) require all expenditures of capital improvement funds be made only with affirmative written approval, 3) establish detailed procedures for spending capital improvement funds, and 4) monitor all significant projects from a financial perspective.

H. Olive Day School

The Inspector General completed a review of the H. Olive Day School in Norfolk after receiving a complaint that the town approved \$75,000 to make school repairs as a result of plan, design, and construction flaws, and other deficiencies. The complaint also stated that the town had sought no compensation from the architect or contractor, even though the Norfolk Advisory Board recommendations stated the school needed repairs as “a direct result of poor design and poor construction ...” The office review found there was a deviation from the architect’s plans that had resulted in continuous malfunctions and expenses for almost seven years.

The Inspector General recommended several management safeguards for future construction and renovation projects such as assigning a qualified project manager to oversee the project from the feasibility study to project completion and maintaining complete, accurate project records, particularly with respect to any deviation from approved plans. All changes in the project, together with an analysis of the impact, should be documented in writing and countersigned by the designer, the general contractor, and any affected sub-contractors and contracts with vendors should be reviewed to assure accountability, should be executed under seal and be governed by Massachusetts law.

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Uncompensated Care Pool Audit

The Uncompensated Care Pool Audit Unit, created by Section 1 of Chapter 240 of the Acts of 2004, and most recently extended by Section 79 of Chapter 61 of the Acts of 2007, oversees and examines practices in Massachusetts' hospitals that include – but are not limited to – the care of the uninsured and the resulting free care charges.

Since the enactment of Chapter 58 of the Acts of 2006, “An Act Providing Access to Affordable, Quality, Accountable Health Care,” the Uncompensated Care Pool Audit Unit has also been tracking Uncompensated Care Pool (now known as the Health Safety Net Trust Fund) expenditures for Pool users moving out of the Pool and into the Commonwealth Connector insurance products.

As of December 31, 2007, nearly 170,000 uninsured individuals had enrolled in the Commonwealth Connector subsidized insurance products, offered by one of four certified Medicaid managed care organization (MMCO) plans approved to participate in Commonwealth Care. It has been estimated by the Commonwealth Connector that approximately 100,000 of the original 170,000 individuals formerly used the Health Safety Net/Pool. As of October 2007, Health Safety Net inpatient utilization had decreased by 4,500 (8.7 percent) from the prior year and outpatient hospital visits decreased by over 180,000 (12.1 percent) from the prior year.

During 2007, emphasis had been placed on the enrollment process of previously uninsured individuals enrolling into one of the Commonwealth Care MMCO plans. As a result, the legislature asked the Uncompensated Care Pool Audit Unit to report on the enrollment performance of the Connector's contractor for the customer support center and premium billing and reporting services, Maximus, Inc. The Office of the Inspector General issued a memorandum to the legislature regarding this vendor.

Status Report on Issues Related to Health Care Reform Raised by the Joint Committee on Health Care Financing

The Uncompensated Care Pool Audit Unit has been reviewing and tracking hospitals' use of the Health Safety Net's Emergency Room Bad Debt (ERBD) funding. The Office raised issues regarding the monitoring, eligibility and reimbursement of ERBD claims in its 2005 report on the Uncompensated Care Pool and its 2006 report on the Virtual Gateway. The following year ERBD hospital discharges decreased by 36 percent and ERBD outpatient visits decreased by 24 percent. In addition, ERBD

claims decreased 19 percent. Resulting improvements in eligibility enforcement, auditing and reimbursement reform are most likely responsible for this dramatic improvement. ERBD utilization and claims volume has subsequently leveled off at this decreased level in 2007.

Part of the examination and oversight of uninsured practices by hospitals involved the monitoring of activity of the Commonwealth Connector. The Uncompensated Care Pool Audit Unit staff has attended every one of the 30 to 40 Connector Board and committee meetings during 2007, and has met a number of times with Connector staff and leadership involving procurement, enrollment, contracting, waiver and affordability/sustainability issues.

Finally, as designated in Chapter 58, the Inspector General's Office is participating in the activities of the Health Care Quality and Cost Council. The Uncompensated Care Pool Audit Unit provides assistance to the Inspector General on all issues related to hospital practices and costs as well as insurer practices and costs affecting the Commonwealth's ability to provide and subsidize health insurance benefits to the uninsured.

Construction Reform

The Inspector General played an integral role in drafting Chapter 193 of the Acts of 2004, "An Act Further Regulating Public Construction in the Commonwealth." The legislature intended the new construction reform law to save money for cities and towns by adding flexibility to the procurement process while increasing local accountability to taxpayers.

The construction reform law also charged the office with determining whether a municipality is eligible to use alternative construction delivery methods, including construction manager (CM) at risk and design build. In the latter half of 2004, the OIG developed regulations and an application process for municipalities to help the inspector general make those decisions.

Since 2005, the office has approved 12 CM at risk projects. The projects approved in 2007 included:

- Barnstable Municipal Airport Commission's new airport terminal building construction;
- Taunton's addition and renovation project to the high school and Parker Middle School;
- Worcester's new North Comprehensive High School

The office also approved the procedures to be used on certain building projects conducted by the following entities:

- Massachusetts State College Building Authority;
- University of Massachusetts Building Authority;
- Massachusetts Port Authority;
- Division of Capital Asset Management

In 2007, the office reviewed and approved the release of the MassHighway Design Build Procurement Guide.

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Real Estate Dealings

The Inspector General reviews a variety of real property transactions each year to ensure that the public interest is adequately protected.

In addition, the legislature frequently mandates that the office review and approve independent appraisals of real property interests being conveyed or acquired by the state, counties, and municipalities. The Inspector General provides a report on each appraisal to the Commissioner of the Division of Capital Asset Management (DCAM) for submission to the House and Senate Committees on Ways and Means and the Joint Committee on State Administration.

The office also reviews and comments on the disposition agreements controlling certain conveyances.

The Inspector General requires that all real property appraisal reviews conducted at the direction of the legislature follow the Uniform Standards of Professional Appraisal Practice published by the Appraisal Standards Board for the Appraisal Foundation.

The Inspector General's appraisal reviewers form an opinion as to whether the analyses, opinions, and conclusions in the work under review are appropriate and reasonable. If the reviewer disagrees with an appraisal, the reasons for any disagreement are set forth in the Inspector General's response.

Below are a few real property deals reviewed by the office:

Harvard Vanguard: The office reviewed the proposed sale by the Massachusetts Health and Educational Facilities Authority (HEFA) of the Harvard Vanguard Medical Associates building in Boston's Fenway neighborhood. An affiliate of Massachusetts HEFA called Civic Investments Inc., had acquired title to the medical center in 2002 as part of a sale-leaseback arrangement which enabled Harvard Pilgrim Health Care and Harvard Vanguard Medical Associates to dissociate. The Inspector General recommended that HEFA hire an independent firm to conduct a full appraisal of the property prior to any disposition. HEFA followed that recommendation and the proposed \$78 million sale, along with an associated bond issuance by HEFA, took place in the first half of 2007.

Salem State College Assistance Corporation: The office reviewed and approved a final commitment letter, additional documents, and other related information regarding a proposed loan from the Massachusetts Development Finance Authority (MDFA) to the Salem State College

Assistance Corporation. According to the terms of the loan agreement, MDFA will provide up to \$440,000 of funding for renovations and tenant build-out of about 5,900 square feet in the Enterprise Center at the former GTE/Sylvania property and for certain structural repairs to the building.

Sale of Fore River Shipyard Lot 7C1: This office reviewed and approved the disposition for the Sale of Fore River Shipyard Lot 7C1 and determined that awarding the contract to the second highest bidder, following disqualification of the highest bidder, was in accordance with policy and statute, and that documentation provided supported a fair sale price for the lot. The disposition did not require a re-bid because the other bidders had an opportunity to submit their best bid during the MWRA's Request for Proposals process.

Below are a few examples of legislatively mandated disposition agreements the Inspector General reviewed in 2007.

Easements in Somerville: The office reviewed and approved drafts of a grant of an easement from Conwell Capen Limited Partnership to the Massachusetts Water Resources Authority (MWRA) and a partial release of an easement from DCAM to Conwell Capen Limited Partnership. The easement transactions would facilitate an affordable senior housing development, including an assisted living component in Somerville.

Easements in Saugus: The office reviewed and approved transaction documents related to the easements between the various parties for the purpose of relocating a portion of a Massachusetts Water Resource Authority (MWRA) water supply pipeline to the benefit of a developer of commercial property along Route 1. The office also reviewed the appraisals related to the complex deal.

Disposition of Property in Foxborough: The office reviewed and approved a release deed relative to a disposition to Feeling Foxy, LLC of property in Foxborough. The parcel contains about 1.57 acres of land improved with a pumping station and is part of the former Foxborough State Hospital. The land is under development.

Lease Disposition to Community Rowing Inc.: This office reviewed and approved a proposed ground lease agreement between DCAM and Community Rowing Inc. According to the legislation, the commonwealth is authorized to lease about 3.8 acres of land in Boston along the Charles River for 50 years so that Community Rowing may construct a boathouse, operate public access rowing programs and store shells and trailers.

Old Colony Greenbush Railroad Land Exchange Transaction: The office reviewed and approved certain transaction documents, including two Quitclaim Deeds, a Release Deed and a Declaration of Restrictions, submitted by DCAM. These documents affirm the term and conditions related to the disposition of land in Hingham and Cohasset to the

Massachusetts Bay Transportation Authority (MBTA) to be used for the Old Colony Greenbush rail line and an associated acquisition of land from the MBTA of a secondary track through Abington. Since the land to be conveyed to the MBTA is land acquired from the federal government for use as a state park, these transaction documents ensure that other land is obtained and is restricted in perpetuity for recreation and conservation purposes.

The following are some examples of appraisal reviews conducted by this office:

Appraisal of property in Lowell: The office reviewed and approved the appraisal of a 13,161 square-foot parcel of land at 719 Broadway Street. A house owned by the city was moved to the site from another location and according to the legislation, the parcel will be conveyed to Lowell.

Appraisal of Land in Winthrop: This office reviewed and approved the appraisal of a 5,470 square-foot parcel of land under the care and control of the Department of Conservation and Recreation, in the Town of Winthrop to be conveyed to an abutter. The parcel will be sold with certain restrictions, including that the land must be kept in an “open, natural, and vegetated condition free from paving and structures.”

Appraisal of Property in Marlborough: The office reviewed and approved the appraisal of a parcel of land and improvements at Maple Street in Marlborough. The parcel contains about .95 acres of land improved with a 3,234 square-foot circular building that formerly housed a Registry of Motor Vehicles office.

Appraisal of property at former Rutland Heights State Hospital: The office reviewed and approved the appraisal of land and improvements at the former Rutland Heights State Hospital that are to be conveyed to the Rutland Development and Industrial Commission. The entire parcel contains about 88 acres of land.

Appraisal of Land in Boston: The office reviewed and approved the appraisal and the addendum to the appraisal of a 116,791 square-foot parcel to be conveyed to the Greater Boston Food Bank.

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Local Government Procurement Assistance and Enforcement

The Office of the Inspector General provides extensive technical assistance to local government officials regarding Massachusetts public procurement laws. The Inspector General encourages effective and ethical public purchasing by local governments by providing training and professional development, publishing manuals and a quarterly "Procurement Bulletin," and by answering inquiries, complaints and protests. The Inspector General also interprets and formulates policy on M.G.L. c.30B, the procurement law that local governmental bodies follow when they buy supplies, services, equipment and real property or dispose of surplus property.

Training and Professional Development

The Inspector General's office administers the Massachusetts Certified Public Purchasing Official Program (MCPPO), which the office created 11 years ago to certify municipal officials in public purchasing principles. The training program is designed to develop the capacity of public purchasing officials to operate effectively and promote excellence in public procurement and, more recently, to assist the members of the private sector in meeting requirements for certification as designers and owner's project managers for the Massachusetts School Building Authority.

About 675 state and local purchasing officials and staff members took MCPPO courses in 2007, bringing the total number of participants since 1997 to 6,852.

Public purchasing officials are responsible for procuring the supplies, services, and facilities required to provide public services. These procurements involve significant expenditures of public funds.

Throughout 2007, the MCPPO program offered three, three-day seminars: 1) "Public Contracting Overview," a prerequisite for other courses that includes segments on Massachusetts purchasing and construction laws, purchasing principles, prevailing wage law, public records law, and ethics; 2) "Supplies and Services Contracting", which assists participants on how to interpret M.G.L. c.30B, how to use invitations for bids (IFBs) and requests for proposals (RFPs), writing effective specifications, soliciting price quotations, common bidding problems and best practices advice using statewide contracts and making collective purchases; and 3) "Design and Construction Contracting," which provides in-depth instruction in the procurement laws governing public design and construction in Massachusetts, effective design and construction contract administration, prequalification and alternative

delivery methods, and special issues in construction bidding. Each of the above training seminars culminates in an examination.

The MCPPO program also offered in the spring and the fall of 2007 the two-day "Charter School Procurement" seminars, which assist charter schools in satisfying statutory requirements (Section 11 of Chapter 46 of the Acts of 1997). In addition, the program offered the "Advanced Topics Update" seminar and the one-day "Construction Management at Risk Under M.G.L. c.149A" seminar.

The Inspector General also introduced a new four-day course held exclusively for members of the private sector. This course, "Certification for School Project Designers and Owner's Project Managers" is in response to a requirement of the Massachusetts School Building Authority (MSBA) that Designers and the Owner's Project Managers on school building projects become certified in the MCPPO program. Due to overwhelming demand, the office offered this course six times during fiscal year 2007.

Each participant who successfully completes a core-curriculum seminar receives a certificate of completion. Participants who complete the requisite seminars and who meet education and experience requirements may apply for any one of six MCPPO designations, which includes three associate levels.

The Inspector General's office also made presentations on procurement related topics to various groups, including the Massachusetts Association of Public Purchasing Offices (MAPPO), the Massachusetts Association of School Business Officials (MASBO), Fire Chiefs Association of Massachusetts (FCAM), Massachusetts Collectors and Treasurers Association (MCTA), The Association of Commercial and Institutional Builders (AGC Massachusetts) and the Massachusetts Association for Public Transportation (APT).

Inquiries, Complaints and Protests

In 2007, the office responded to 2,946 inquiries about M.G.L. c.30B and other public bidding laws. The Inspector General regularly advises purchasing officials on how to obtain best value and increase competition for public contracts. The staff also responds to requests from local officials, aggrieved bidders and concerned citizens by reviewing bid and proposal documents for compliance with M.G.L. c.30B.

Publications

The office publishes a wide range of materials designed to educate and inform local procurement officials, to provide guidance on best value contracting and to disseminate lessons learned. All publications listed in this section are available from the Inspector General's website: www.mass.gov/ig.

In 2007, the Inspector General published an updated edition of “A Local Official's Guide to Procuring and Administering Audit Services.” This manual provides a comprehensive overview for local officials to understand the procurement rules for hiring and using a Certified Public Accountant.

The Inspector General also continued to publish the “Procurement Bulletin,” a newsletter distributed to about 900 procurement officials and other interested parties across the state. Launched in 1994, the “Procurement Bulletin” summarizes current procurement-related news and issues, addresses frequently asked questions about M.G.L. c.30B, provides legislative updates and highlights special topics in procurement.

Current and past issues of the “Procurement Bulletin” and an index of past issues can be downloaded from the Inspector General's website.

Bylaw and Charter Amendment Reviews

Each year, the Inspector General's office provides critical input to the Attorney General's office as it conducts reviews of municipal by-laws and charter amendments to ensure compliance with state law. Specifically, the Inspector General's office offers input on whether such by-laws and charter changes comply with the Uniform Procurement Act, M.G.L. c.30B of the General Laws. In 2007, the office reviewed nine of these by-law and charter amendments.

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Legislative Reviews

The Office of the Inspector General reviewed and commented on numerous pieces of legislation during the first half of the 2007-2008 legislative session. In addition, the Office regularly assisted individual legislators in both the development of legislation specific to the districts they represent, as well as legislation that affected the operation of state and local government. The Office is often called on by legislators to meet with and provide guidance to municipalities on matters not related to legislation. The Office also responds to requests from the governor's office to review legislation that has been passed by the legislature and is awaiting the governor's signature.

The Inspector General testified before legislative committees on issues related to affordable housing, public construction oversight, and public cost-savings initiatives. In all cases, the main theme involved transparency and safeguards ensuring appropriate oversight of taxpayer dollars, while allowing for innovation. The office has also been asked by legislative committees to gather information on a variety of topics, including health care and public construction.

In addition to commenting on specific legislation, the office sent to the legislature a general set of guidelines for lawmakers as they look to craft legislation dealing specifically with land disposition bills that seek to exempt certain property transactions from M.G.L. c.7 or M.G.L. c.30B. In letters sent to the Joint Committee on Bonding, Capital Expenditures and State Assets, and to the Joint Committee on Municipalities and Regional Government, this office called for all such bills to: state the purpose of the disposition and any use restrictions; identify the property to be conveyed, including the precise location and total acreage; require an independent appraisal establishing fair market value of the property; require the private party to pay no less than the established value; require the private party to pay all direct transaction costs; require the property to revert in the event the property is not used for the intended purpose; and require that the disposition be subject to disclosure requirements.

This office also sent letters to lawmakers strongly opposing bills that sought to weaken the Uniform Procurement Law, M.G.L. c.30B.

The Inspector General reviewed and provided comment on the following:

- Chapter 113, "An Act Relative to Authorizing the Town of Natick to Enter into a Certain Lease Agreement;"
- Chapter 121, "An Act Authorizing the Town of Orleans to Lease Certain Town Land;"

- Chapter 209, “An Act Authorizing the Board of Selectmen of Easton to Lease a Certain Parcel of Land;”
- H1975, “An Act Authorizing the Town of Weymouth to Make Conveyance and Sale of Certain Water Supply Land;”
- H3179, “An Act to Exempt Fire and Ambulance Apparatus From Bidding Laws;”
- H3201, “An Act Relative to Chapter 30B,” allows for a preference in M.G.L. c. 30B for Massachusetts vendors;
- H4122, “An Act Relative to the Change From Conservation Use to General Municipal Use of a Portion of the Property Known as Ridge Hill Reservation in the Town of Needham;”
- H4190, “An Act Relative to An Easement on a Certain Parcel of Land in Marlborough;”
- S1847, “An Act Providing for Reform in Public Construction” which calls for the establishment of an independent owner’s engineer on public works projects over \$50 million.

Legislative Recommendations: 2007-2008 Session

Under M.G.L. c.12A, the Office of the Inspector General has the authority to recommend policies that will assist in the prevention or detection of fraud, waste, and abuse. The Inspector General must report these recommendations annually to the governor and the legislature.

During the first half of the 2007-2008 legislative session, the Inspector General co-sponsored the following bills for consideration:

Senate 1847, An Act Providing for Reform in Public Construction

The bill mandates that MassHighway, the Massachusetts Port Authority, the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation Authority, and other such agencies seeking to construct a public work competitively procure an independent "Owner's Engineer" if the project is estimated to cost \$50 million or more. The procurement would use a qualifications-based scoring system. Owner's engineers would assist in oversight of design and construction contractors. The legislation also forbids any such firms from engaging in either the design or construction phases of the project, to avoid conflicts of interest. Owner's engineers would file sworn annual reports on the projects they oversee with the Legislature's Joint Transportation Committee, the Executive Office of Transportation, the Massachusetts Office of the Inspector General, and the Massachusetts State Auditor. Payment of owner's engineers on a "cost-plus" basis would not be allowed.

Senate 1980, An Act Regulating Public Entities Licensed by the Department of Telecommunications and Energy

The bill applies to public energy suppliers and would allow certain competitively sensitive or proprietary information used in the procurement of energy services to remain confidential and exempt from the public records law in instances where its disclosure would adversely affect the ability of the energy supplier to conduct business. Under this legislation, the Office of the Inspector General will have the right to inspect the procurement records of any governmental body that enters into these energy contracts. The records related to the procurement will remain confidential. This will allow companies to contract with public entities without the fear of losing a competitive advantage.

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Listing of 2007 Reports and Publications

The Office of the Inspector General published dozens of reports and letters in 2007. The following documents are available on the Inspector General's Internet site www.mass.gov/ig:

- Status Report on Issues Related to Health Care Reform Implementation Raised by the Joint Committee on Health Care Financing, December 2007.
- Municipal Fees for Licenses to Carry Firearms, letter to Kelly Downs, Esq., Cambridge Police Department, December 2007.
- Review of Developer Profits on a Town of Billerica Chapter 40B Project -- Salisbury Hill Estates, letter report to Michael S. Rosa, Chairman, Board of Selectmen and Rocco J. Longo, Town Manager, December 2007.
- Office of the Inspector General, Procurement Bulletin, Volume 13, Issue 4, December 2007.
- A Local Official's Guide to Procuring and Administering Audit Services (Update - 12/07), December 2007.
- Recommended Changes to Ensure Better Oversight and Control of Chapter 40B Developments, letter to Undersecretary Tina Brooks, Department of Housing and Community Development, October 2007.
- Practices Associated with M.G.L. Chapter 40B, the Comprehensive Permit Law, and Recommendations for Reform, letter to Joint Committee on Housing, October 2007.
- Office of the Inspector General, Procurement Bulletin, Volume 13, Issue 3, September 2007.
- Disabled Person's Parking Placard Abuse: A Multi-Agency Investigation, August 2007.
- An Analysis of Construction Projects Within the Commonwealth: January 2006 through December 2006, August 2007.
- Office of the Inspector General, Procurement Bulletin, Volume 13, Issue 2, June 2007.
- Review of Policies and Procedures of the City of Holyoke Treasurer's Office, letter to David Donoghue, Holyoke City Treasurer, May 2007.

- Letter Requesting MassHousing To Rescind a M.G.L. Chapter 40B Project Eligibility Approval for Pine Woods Development in Sharon, letter to Thomas R. Gleason Executive Director, MassHousing, April 2007.
- The Plymouth County 2006 Stop Loss Insurance Bidding Process: A Question of Conflict, April 2007.
- Maintenance and Inspection of Covered Roadways and Highway Decks, letter to John Cogliano, Chairman, Massachusetts Turnpike Authority, April 2007.
- Office of the Inspector General, Procurement Bulletin, Volume 13, Issue 1, March 2007.
- Procurement Deficiencies at the Mahar Regional School, March 2007.
- Review of Overcharges by the Judge Rotenberg Center and Recommendation to the Department of Mental Retardation to Initiate Cost Recovery Actions, letter to Marianne Meacham, Esq., General Counsel, Department of Mental Retardation, March 2007.
- Review of Developer Profits on a Town of Wakefield M.G.L. Chapter 40B project, letter to John F. Carney, Chairman, Board of Selectmen and Thomas Butler, Town Administrator, March 2007.
- Review of a Roof Project in the Town of Norfolk, letter to Jack Hathaway, Town Administrator, February 2007.
- Review of a Proprietary Specification Bid for Automation of Certain Special Education Services, letter to Purchasing Coordinator Diane Fisk Johnson, Cambridge Public Schools, February 2007.
- Review of Developer Profits on a Town of Berkley M.G.L. Chapter 40B project, letter to Julie E. Taylor, Chairwoman, Board of Selectmen and Carolyn Awalt, Town Clerk - Treasurer, February 2007.
- Review of Developer Profits - 1375 Main Street Partners, LLC and a Town of Reading M.G.L. Chapter 40B Project, letter to Ben Tafoya, Chairman, Board of Selectmen and Peter Hechenbleikner, Town Manager, January 2007.