

Deval L. Patrick  
Governor

Timothy P. Murray  
Lieutenant Governor

*The Commonwealth of Massachusetts*  
*Department of Public Safety*

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Mary Elizabeth Heffernan  
Secretary

Thomas G. Gatzunis, P.E.  
Commissioner

**Minutes**

**Bureau of Pipefitters, Refrigeration Technicians and Sprinklerfitters**  
**Department of Public Safety, Bldg B, 1380 Bay St., Taunton, MA 02780**  
**September 21, 2011, at 10:00 a.m.**

1. Meeting called to order by the Chairman at 10:10 a.m., followed by roll call:

**Board Members Present:**

Mark Sullivan, Chairman  
Mark Fortune  
Michael Torchio  
Dan Dumont  
Pauline Lally  
Frank Norton  
Jennifer Revill  
John Viola  
William Young  
William Gallagher

**Board Members Not Present:**

Leo Fahey

**Guests Present:**

Carrie Torrissi, Assistant General Counsel  
Holly Bartlett, Clerical Assistant

2. A motion to approve the agenda into record was made by John Viola, seconded by Mark Fortune, and agreed upon by a unanimous vote.
3. A motion to enter into record the minutes from the June meeting was made by Mark Fortune, seconded by Mike Torchio, and agreed upon by a unanimous vote.
4. Mark Fortune referenced the matter regarding work being considered by an out of state contractor in the Plympton which was brought up at the May 2011 meeting. Currently, that work for Sisco Foods is moving forward by a contractor from Georgia. Only the Mass sprinklerfitters were successful in getting onto that project, so they will be using licensed sprinklerfitters, and the contractor does have a Mass contractors license. But everyone else, including the refrigeration techs, and this is a huge refrigeration

project, and the pipefitters are coming from out of state. Mr. Fortune has contacted Brian Logan regarding this matter, and once this project gets going, they have started putting the framework in place, this project will go on for over a year. Mr. Fortune pointed out that the matter of 'buying licenses' may potentially come up, given the size of the project. **\*The Chairman will follow up with Brian Logan regarding this matter.**

5. Carrie Torrisi addressed briefly the status of the promulgation process of the proposed changes to 528 CMR, saying that the proposal is still being considered at the Governor's office, which is the last level of review, but there could still be several months before we can move forward. As soon as DPS legal knows anything further, they will contact the Bureau, and move forward with the public hearing phase of the promulgation process.
6. Ms. Torrisi then introduced the Small Business Impact Statement, and asked the members of the Bureau for their input, as to how the proposed regulations may impact small businesses. A comment was made that businesses are not licensed by DPS, so there probably would be little, if any, impact of the proposed regulation. The question of whether apprentice training programs might be impacted was brought up; there is no change in the regulations regarding training. John Viola pointed out that the new regs do require sprinkler contractors hold liability insurance, as there are now more residential sprinkler systems being installed, therefore the sprinkler contractors will have to bear the cost of the additional insurance. (The matter of why sprinkler contractors are required to have this insurance, but not our other license holders was discussed briefly, and will be revisited again at a later time.). Jennifer Revill asked Carrie what specifically in the Small Business Impact Statement could or should be addressed by the Bureau. Ms. Torrisi then brought attention to three specific questions. In regards to the two questions as to whether the regulation might either deter or encourage small business opportunities, the Bureau members agreed with Ms. Revill in that the proposed regulation stands to neither encourage nor deter small businesses. Ms. Torrisi said that she will take into consideration the input from the Bureau, and that she will complete the small business impact statement. **\* The Chairman stated that the Bureau will revisit this matter at the next meeting.**
7. The Chairman asked if there are any other questions regarding 528 CMR, with no responses.
8. New Business
  - a. Pauline Lally asked if the Department has hired new inspectors, specifically for the Suffolk area. The Chairman said that there are currently 14 inspectors, and that assignments by location are posted on the DPS website. He went on to say that the Department will also be hiring additional engineering inspectors, perhaps 10. The question of how the department will pay for additional inspectors was brought up. Currently, the Department does not charge for boiler certificates, however, the Department is in the process of initiating a fee system for boiler certificates. The matter of having DPS inspectors who specialize in pipefitting, sprinklering or refrigeration was discussed briefly. The question of the qualifications of insurance inspectors was also brought up; the Chairman explained how these professionals are licensed, pointing out that Massachusetts has a testing process for state commissions, whereas most other states issue commission based only on an application.
  - b. The matter of DPS engineering inspectors being able to issue tickets/fines was brought up. Mark Fortune pointed out the benefits that this option represents, including both revenue generation for the DPS and compliance incentive.
  - c. Ms. Torrisi clarified that \$1.5 million of the revenue generated by the new boiler certificates will be retained revenue, with \$1 million going to the general fund.

- d. Frank Norton pointed out that the new sheet metal workers license holder are very aggressive in determining their scope of responsibility, causing disruptions in work, whereas the Bureau does not seem to have the same ability to enforce regulations.
  - e. Mr. Norton addressed new federal government requirements for apprentice training. The matter of to what extent, if any, the Bureau has authority over training programs was brought up. At this point, the matter of training is overseen by the Division of Apprentice Training.
  - f. Mr. Norton brought up the matter of having the Bureau provide input into question development for the applicable license exams. **\*The Chairman will contact Brian Logan regarding this, as he is the person responsible for access to the database containing the exam questions.** It was pointed out by Bureau members that it has been at least 10 years since they were able to review the questions, and that there have been many changes to the industry since that time.
  - g. Bill Gallagher asked if any DPS inspectors currently sit on the Board of Boiler Rules. The Chairman stated that Brian Logan has been designated as the Chairman of that Board.
  - h. Mr. Norton spoke about the division of work between plumbers and pipefitters, and at which point pipefitters must defer to plumbers/gasfitters, and when a permit must be pulled. Reference was also made to a document drawn up by the plumbing board that addresses this matter. **\*The Chairman will discuss this matter with Brian Logan.**
  - i. Does an administrative ruling remain in effect until rescinded? **\*Caroline Torrisi will check on this.**
  - j. John Viola asked if DPS is still sending out renewal notices. The Chairman said that that is still happening, with a move towards notices being sent office. **\*The Chairman will check on this, and let everyone know at the next meeting.**
  - k. Mark Fortune spoke about an RFI recently posted by the Town of Millis, for work on the Public Library. The RFI includes a question posed to the fire protection contractors that the work done on the dedicated fire main is theirs, or someone else's. This is the first time such a question has appeared on a RFI, and indicates that the word is getting out that dedicated fire main is now the work of the sprinkler contractor, and that the applicable administrative ruling is becoming more familiar.
9. With no remaining topics on the agenda, a motion was made by Jennifer Revill, seconded by Frank Norton, to adjourn this meeting at 11:05 a.m., motion passed by a unanimous vote.

*\*Action items to be addressed at the next meeting are indicated by an asterisk*

**The next meeting of the Bureau of Pipefitters, Refrigeration Technicians, and Sprinklerfitters will tentatively be on Wednesday, October 19, 2011.**

Massachusetts Bureau of Pipefitters, Refrigeration Technicians, and  
Sprinklerfitters Meeting  
September 21, 2011  
10:00 A.M., Taunton, MA

**ATTENDANCE /SIGN IN SHEET**

**Name/Agency**

**Signature**

Mark Sullivan, Chairman

Jennifer Revill, Public Representative

Frank Norton, Boston AC/Ref Contractor

William Gallagher, Refrigeration Tech.

Pauline Lally, User/Member

Leo Fahey, Pipefitter Member

John Viola, Sprinkler Contractor

Mark Fortune, Sprinkler Fitter

Michael Torchio, Mechanical Engineer

Dan Dumont, NE Mechanical Contractors

William Young, Mass. Building Trades

(Vacant) MA Bldg. Const. Council

Mark Sullivan

Jennifer Revill

William P. Gallagher

Pauline Lally

Leo Fahey

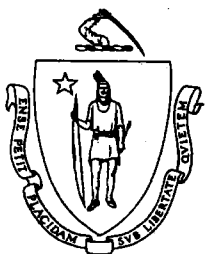
John Viola

Mark Fortune

Michael Torchio

Dan Dumont

William Young



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### Agenda

**Bureau of Pipefitters, Refrigeration Technicians and Sprinklerfitters  
Department of Public Safety, Bldg B, 1380 Bay St. Taunton, MA 02780  
September 21, 2011**

#### 1) Roll Call

Mark Sullivan, Chairman	<input type="checkbox"/> present	<input type="checkbox"/> absent
Dan Dumont	<input type="checkbox"/> present	<input type="checkbox"/> absent
Leo Fahey	<input type="checkbox"/> present	<input type="checkbox"/> absent
Mark Fortune	<input type="checkbox"/> present	<input type="checkbox"/> absent
William Gallagher	<input type="checkbox"/> present	<input type="checkbox"/> absent
Pauline Lally	<input type="checkbox"/> present	<input type="checkbox"/> absent
Frank Norton	<input type="checkbox"/> present	<input type="checkbox"/> absent
Jennifer Revill	<input type="checkbox"/> present	<input type="checkbox"/> absent
Michael Torchio	<input type="checkbox"/> present	<input type="checkbox"/> absent
John Viola	<input type="checkbox"/> present	<input type="checkbox"/> absent
William Young	<input type="checkbox"/> present	<input type="checkbox"/> absent
(Vacant)	<input type="checkbox"/> present	<input type="checkbox"/> absent

2.) Adoption of the meeting agenda.

3.) Adoption of the minutes from the meeting of June 15, 2011.

4.) Review of appeals / considerations:

- None

5.) CMR Review – Progress Report/Small Business Impact Statement (Carrie)

6.) New Business

7.) **Adjournment**



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TO: ALL DPS BOARD AND COMMISSION MEMBERS

FROM: Beth McLaughlin, Chief of Staff/General Counsel

DATE: April 2011

RE: Board Member Immunity under G.L. c. 258

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This memorandum is in response to questions raised regarding the issue of whether members of Department of Public Safety ("Department") boards are protected under G.L. c. 258, the Massachusetts Tort Claims Act, and are thus immune from liability for acts or omissions performed while acting within the scope of their duties as board members.

Immunity for certain acts or omissions for elected or appointed board members is provided for within the plain language of the M.G.L. c. 258, otherwise known as Massachusetts Tort Claims Act (MTCA). G.L. c. 258 provides immunity from liability for public employees for injuries resulting from negligent or wrongful acts or omissions performed while acting within the scope of their office or employment. (Please note, however, that all acts or omissions are not covered by the MTCA, such as criminal acts.)

"Public employee" is defined in G.L. c. 258 § 1, and includes "elected or appointed officers or employees of any public employer, whether serving full or part-time, temporary or permanent, compensated or uncompensated..." The same section also defines "public employer" to include "the commonwealth...and any department, office, commission, committee, council, board, division, bureau, institution, agency, or authority thereof." Pursuant to the plain language of the statute, members elected or appointed to a board or bureau of the Commonwealth would thus be protected under G.L. c. 258.

Furthermore, G.L. c. 258's applicability to board members has been noted in case law. In *Hare v. Holmes*, the court found that the Licensing Board of the City of Newton was a "public employer" within the scope of G.L. c. 258, and that the individual members of the Board were thus protected from liability for acts or omissions performed while acting within the scope of their employment. 2005 WL 503943, 4 (Mass.Super. 2005). Additionally, in *Kuhn v. Kaufman*, the court found that the individual members of the Barnstable Board of Health were immune from liability under G.L. c. 258 for their allegedly unlawful withholding of variances because the actions of the Board members in denying the plaintiffs' requests for variances fell within the scope of their employment duties. 2001 WL 755848, 7 (Mass.Super. 2001).

**Small Business Impact Statement****Overview and Guidelines****Overview**

Pursuant to M.G.L. c. 30A, §§ 2 & 3, as amended by Chapter 240 of the Acts of 2010, prior to the adoption, amendment, or repeal of any regulation, an agency must file with the secretary of state's office a public notice of the proposed action and include a small business impact statement. In the statement, the agency must consider the impact the proposed action will or will not have on small businesses in Massachusetts. The statement must include, but not be limited to, the following:

- (1) an estimate of the number of small businesses subject to the proposed regulation;
- (2) projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation;
- (3) the appropriateness of performance standards versus design standards;
- (4) an identification of regulations of the promulgating agency, or of another agency or department of the Commonwealth, which may duplicate or conflict with the proposed regulation; and
- (5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth.

After the agency has afforded the public an opportunity to present data, views, or arguments related to the small business impact statement, and prior to adopting the proposed regulation, M.G.L. c. 30A, § 5 requires the agency to file an amended small business impact statement with the secretary of state's office. In the amended statement, the agency must consider whether any of the following methods of reducing the impact of the proposed regulation would hinder achievement of the purpose of the proposed regulation:

- (1) establishing less stringent compliance or reporting requirements for small businesses;
- (2) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (3) consolidating or simplifying compliance or reporting requirements for small businesses;
- (4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation;
- (5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth; and
- (6) minimizing adverse impacts on small businesses by using alternative regulatory methods.

A "small business" is defined by M.G.L. c. 30A, § 1 as a business entity or agriculture operation, including its affiliates that: (i) is independently owned and operated; (ii) has a principal place of business in the Commonwealth; and (iii) would be defined as a "small business" under applicable federal law, as established in the United States Code and promulgated from time to time by the United States Small Business Administration.

**A Snapshot of Small Businesses in Massachusetts**

Small businesses in Massachusetts account for a significant share of the state's economic production and hiring. According to the Small Business Administration, as of 2008 there were 594,487 small businesses in Massachusetts. Of these, 138,846 were employers, accounting for 47.8% of private-sector jobs in the state.<sup>1</sup> Given the important role small businesses play in the Massachusetts economy, it is critical that the effects a regulation has on small businesses be justified and mitigated to the greatest extent possible.

### Guidance for Determining How Many Small Businesses will be Impacted by the Proposed Regulation

The U.S. Small Business Administration (SBA) defines small businesses according to size standards which are matched to the North American Industry Classification Systems (NAICS). The SBA table of small business size standards can be found at the following URL: <http://www.sba.gov/content/table-small-business-size-standards>. The SBA defines a small business differently depending on the industrial classification using either employee number or annual revenue. Because staff will most likely not have access to annual revenue data, small businesses should be considered to have an employee size of NO MORE THAN:

- 100 for Wholesale Trade (Sector 42);
  - 200 for Retail Trade (Sector 44-45); and
  - 500 for all other sectors
- **Step 1: Identify Business Sectors to be Impacted:** Staff developing the regulation should generate a list of the business sectors (using the 6-digit NAICS codes) which their program thinks will be impacted by the regulation.
    - For the most current list of NAICS codes with definitions:  
[http://www.census.gov/eos/www/naics/2007NAICS/2007\\_Definition\\_File.pdf](http://www.census.gov/eos/www/naics/2007NAICS/2007_Definition_File.pdf)
  - **Step 2: Determine the Number of Small Businesses in Each Sector:** Once there is a list of 6-digit NAICS codes that are expected to be impacted by the regulation, determine the *number* of small businesses in Massachusetts with those NAICS codes by going to the SBA's online searchable database of self-certified small businesses:  
[http://dsbs.sba.gov/dsbs/search/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm)

Once at the SBA "Dynamic Small Business Search" page:

- i) In the first section ("Location of Firm"), scroll down to highlight Massachusetts. (Leave all other selections [congressional district, county, etc.] blank.)
- ii) Leave the "Government Certifications" selections as "Not Required" (this should be the default setting).
- iii) Leave the "Ownership and Self-Certifications" selections blank.
- iv) In "Specific Nature of Business," enter the 6-digit NAICS code(s) from step one above.
- v) Leave the next four sections blank (General Nature of Business; Profile Last Updated; Maximum Acceptable Bonding Levels; and Quality Assurance Standards).
- vi) In the "Size" section, select "No More Than" and enter 500 employees (leave "Annual Revenue" blank).
- vii) Do not make any entries under "Capabilities" or "Searching for a Specific Profile."
- viii) Under "Search Results Display Options" select the number of results you want to be shown (e.g. 500), and leave the columns to be displayed and tabular format at the default setting.
- ix) At the bottom of the screen, click on "Search Using These Criteria."
- x) The number of firms displayed in your results table is the number of small businesses to be impacted by this regulation for the NAICS codes selected.

**Note:** In some cases, staff will already have a list of businesses in MA that are projected to be impacted because the industry is currently regulated by an existing regulatory program and the information is collected in an existing database. Staff should determine whether this method will yield a more accurate list of small businesses to be impacted as opposed to searching the SBA database by NAICS code.



### **SMALL BUSINESS IMPACT STATEMENT**

*In order to accurately predict the impact the adoption, amendment, or repeal of a regulation will have on small businesses, the promulgating authority must conduct a thorough analysis that not only considers the potential effects of the action but also quantifies the costs, if any, associated with each. The questions below are designed to aid promulgating authorities in conducting their analysis.*

**Agency Submitting Regulation:**

**Subject Matter of Regulation:**

**Regulation No:**

**Statutory Authority:**

**Other Agencies Affected:**

**Other Regulations That May Duplicate or Conflict with the Regulation:**

**Describe the Scope and Objectives of the Regulation:**

**Business Industry(ies) Affected by the Regulation:**

**Types of Businesses Included in the Industry(ies):**

**Total Number of Small Businesses Included in the Regulated Industry(ies)** *Please see the attached guidance documents for assistance determining the total number of small businesses:*

**Number of Small Businesses Potentially Subject to the Proposed Regulation:**

**Effective Date Used In Cost Estimate:**

Yes	No	<b><i>*Note: For each question, please answer "yes" or "no" and offer a brief explanation. Please describe any facts, data, views, arguments, or other input from small businesses, organizations or any other sources that were used to quantify the impacts outlined below.</i></b>
Yes	No	<b>Will small businesses have to create, file, or issue additional reports?</b>
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	<b>Will small businesses have to implement additional recordkeeping procedures?</b>
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	<b>Will small businesses have to provide additional administrative oversight?</b>
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	<b>Will small businesses have to hire additional employees in order to comply with the proposed regulation?</b>
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	<b>Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?</b>
<input type="checkbox"/>	<input type="checkbox"/>	

<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Are performance standards more appropriate than design standards?
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Will the regulation have the effect of creating additional taxes and/or fees for small businesses?
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Can the regulation provide for less stringent compliance or reporting requirements for small businesses?
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Can the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Can the compliance or reporting requirements be consolidated or simplified for small businesses?
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Can performance standards for small businesses replace design or operational standards?
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?
<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Were any small businesses or small business organizations contacted during the preparation of this document? If so, please describe.
<input type="checkbox"/>	<input type="checkbox"/>	

<sup>1</sup> Small Business Administration Office of Advocacy, *Small Business Profile: Massachusetts*, available online at: <http://www.sba.gov/advocacy/848/12387>.