

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS**

POLICE DETAILS

Written Testimony – May 20, 2008 Public Hearing

Individual	Organization
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Tim King, In-House Counsel	Massachusetts Coalition of Police
Steve Poftak, Research Director	Pioneer Institute
Harold MacGilvray, President	Massachusetts Municipal Police Coalition
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Michael J. Widmer, President	Massachusetts Taxpayers Foundation
Roberta R. Schaefer, President & CEO	Worcester Regional Research Bureau

David G. Tuerck
Executive Director, Beacon Hill Institute
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Testimony on Section 10 of Chapter 86 of the Acts of 2008

Public Hearing
Massachusetts Executive Office of Transportation & Public Works

May 20, 2008

I would like to thank the Executive Office of Transportation & Public Works for this opportunity to testify. My purpose here is to expand on written comments that I sent in an email on May 3rd. I should like to point out that, in offering those comments and the comments that follow, I speak only for myself and not for Suffolk University.

The U.S. Bureau of Labor Statistics reports wage data for “crossing guards,” defined as workers whose job it is to “guide or control vehicular or pedestrian traffic at such places as streets, railroad crossings, or construction sites.” On its website, the Bureau reports the highest mean hourly wage for crossing guards, so defined, to be \$16.23 in the state of Delaware. If the rate for civilian flaggers at work sites in Massachusetts was twice this level, it would still be less than what it costs to hire uniformed officers to do the same work. It is a forgone conclusion, therefore, that, by using civilian flaggers rather than police details, the Commonwealth could save money on public works projects.

There are two major obstacles to this saving, however. These are (1) the possibility that, as claimed by the unions, the pay of civilian flaggers will be deemed to fall under the aegis of the state prevailing wage law and (2) the language of Section 10, which protects the monopoly power that the unions currently exercise over the staffing of work sites. Under this language, whenever a municipality is the “awarding authority,” traffic control measures recommended for consideration “shall be consistent with the ordinances or bylaws of the municipality wherein the public works project is being undertaken.” Further, the control measures “shall not affect any applicable provisions of a collective bargaining agreement under chapter 150E of the General Laws.”

Let me first address the matter of the prevailing wage law. The operative statute, Chapter 149, Section 26 of the Massachusetts General Laws, applies to “the employment of mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works.” The statute further requires the state to determine the prevailing wage according to “collective agreements or understandings in the private construction industry between organized labor and employers” whenever such agreements are in effect.

It is significant that this statute refers to the employment of workers *in the construction of public works* and that it refers to collective agreements in the *private construction industry*. My point is that the job of directing traffic around a work site has nothing to do with the construction going on at that work site. Furthermore, the police and the police departments, through which details are hired, are not part of the private construction industry. They are a public entity, whose purpose has nothing to do with repairing roads or building schools.

The police are not employed in the construction of public works, and they are not part of the private construction industry. Neither, therefore, could the civilian flaggers who would perform identical duties be deemed to be employed in the construction of public works or to be part of the private construction industry. If a police officer or a civilian flagger directs traffic around a site where the construction of a school is underway, he does not perforce become a member of the teaching profession, and neither does he become a member of the construction trades.

Let us suppose, however, and despite this logic, that the prevailing wage law is deemed to apply. Civilian flaggers would still cost less than police details. All that is necessary is that an awarding authority be required to open the job of directing traffic to any qualified private entity that provides flagger services. The workers hired by this entity might well choose to unionize. But if we read the prevailing wage law carefully, we see that it is the wage negotiated with this entity, not the wage negotiated with the police union that would determine the prevailing wage. Because the wage negotiated with this entity would almost certainly be less than the wage negotiated with the police union, cost savings would still be possible.

Next, with regard to local ordinances and collective bargaining contracts, I see nothing in the enabling legislation that prevents the state from hiring civilian flaggers when it is the awarding authority. True, under Section 10, municipalities would be bound in a manner that the state is not. But suppose that civilian flaggers become commonplace on works authorized by the state. It seems unlikely that the municipalities would continue to protect the police union monopoly once the costs savings enjoyed by the state became evident and the need for uniformed police was shown to be mostly nonexistent. In addition, the state could make it a condition for receiving state funding of municipal projects that the municipality repeal any ordinance that limits the staffing of work sites to police details.

Third, in formulating guidelines, you should consider modernizing work and eligibility rules. In general, for example, it seems that one uniformed officer at a single work site is enough. Any other personnel deemed necessary for the job could be civilian flaggers hired to work under the supervision of the police officer on duty. In addition, you should recommend that personnel hired to staff a work site be paid only for the time actually worked, rather than some arbitrary minimum number of hours.

Just one final point: We can predict that, should you succeed in opening up the market to civilian flaggers, many retired police who have experience in this work would be the first to offer their services. So viewed, your efforts would serve two worthy purposes – injecting competition into the market for flagger services and creating opportunities for police to remain active beyond their normal years of service and, in doing so, to provide the very expertise that they provide now. I suspect that, despite the vociferous objections of the police unions to any of this, there is more than one police officer nearing retirement who understands exactly this point.

I submit, in conclusion, that despite the obstacles considered in my foregoing comments, there remain opportunities here to bring about what politicians call “real change.” I wish you well in doing just that.



AFL-CIO

MASSACHUSETTS COALITION OF POLICE

"The Only Union for Law Enforcement Officers"

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Written Testimony for Public Hearing Transportation Bond Bill Police Details Executive Office of Transportation and Public Works State Transportation Building May 20, 2008

Secretary Cohen and Members of the Executive Office of Transportation,

My name is Timothy King. I am the in-house counsel for the Massachusetts Coalition of Police. I would like to take a moment to thank Secretary Cohen and other members of the Executive Office of Transportation for the opportunity to speak on such an important issue. This is an issue that is not simply about police details, but one of public safety at large.

It is a proven fact that police details enhance public safety. Police on detail provide more police on the streets of our communities every single day. They provide extra protection to the people of our communities in the event of crime. They provide a necessary deterrent to opportunity crime that would occur given less police presence. This is one thing that cannot be quantified by any study that one of the think tanks on the other side of this argument can design. One of the major tenets of community policing is police presence in order to prevent these opportunity type crime from occurring, hence the former bicycle patrols and walking beats. Most of the funding for community policing is no longer available and many of the programs that

Member _____

INTERNATIONAL UNION OF POLICE ASSOCIATIONS AFL-CIO LOCAL 100
MASSACHUSETTS STATE LABOR COUNCIL AFL-CIO



provided the extra police presence have ended. One way that cities and towns have been able to maintain police presence on the street is through police details. Most cities and towns appreciate the fact that police details provide extra protection for their communities. These same cities and towns could never provide this amount of service through their budgets alone.

Officers routinely respond to emergency calls while performing paid details. Since they are positioned throughout the community, they are generally first to respond to volatile situations. Case in point is the domestic situation in Boston where an officer on detail overheard a beating taking place in a residence and was able to stop that beating and apprehend the perpetrator. Another example is the recent commuter rail crash in Canton. The first three responding officers were detail officers in the area, who rendered first aid to commuters while maintaining order and directed ambulance and fire personnel into the scene. In 2004 an officer in Fall River apprehended a juvenile that had shot a party in a vehicle down the street from a paid road detail. In January of this year, officers in Spencer observed a suspect wanted on one count of homicide and one count of attempted murder. Through their identification they were able to apprehend the suspect. In August of 2007 a detail officer in Plymouth was able to interrupt a man attempting to commit suicide by hanging. Most recently, just yesterday in fact, Marlborough had a bank robbery. The suspects fled on foot. A perimeter was set up utilizing a number of paid police details that were working in the area and the suspects were apprehended. These are just a few of the many incidents that occur on a daily basis throughout the commonwealth that our detail officers are dealing with.

Officers are able to assist motorists while performing details. An officer familiar with the area is able to direct a motorist more efficiently

through an area that the officer is familiar with, which makes for more orderly detours and safer traffic flow. The Beacon Hill Institute has recently published a letter claiming that Massachusetts's drivers have been number one or two among all drivers in property damage and bodily injury claims. If this were in fact the case, why would we want anyone but a sworn police officer at our construction sites to protect workers and the general public from these hazardous drivers? Sworn police officers are tasked with the responsibility of maintaining safety on the road by enforcing the laws of the commonwealth. Flaggers hold no power whatsoever to control the motoring public other than a sign that says stop and that sign is but a mere request. If a motorist driving a two-ton vehicle decides he is not going to stop, there is nothing a flagger can do but step aside and call the police.

I have in my possession and will be providing to the committee, documented police reports that show numerous incidents where police officers were able to arrest perpetrators, interrupt ongoing criminal activity, deter crime, or otherwise prevent disaster by exercising their police powers to either divert motorists away from a dangerous work site, or take them into custody before they can continue to be a menace on the road. Many of the motorist's were intoxicated and drove into worksites, into cruisers, or caused other dangerous conditions on the road that the officer on detail was able to tend to immediately. Other drivers are simply ignorant to the rules of the road or so self absorbed that they flagrantly disobey an officer's command. A police officer has the authority to deal with this type of situation immediately and safely. The only recourse a flagger has is to call the police after the situation has occurred.

It is not fiscally prudent for any city or town to hire flaggers that can only provide a fraction of the service that a sworn police officer can offer at such minimal savings. Due to the prevailing wage law in the Commonwealth of Massachusetts, the cost savings for the use of flaggers is negligible, if it even exists. According to the Beacon Hill Institute, the average cost for a police officer on detail is \$34.70 per hour. The current prevailing wage for flaggers in the Metro Boston area is \$37.45 per hour, as provided by the Massachusetts Department of Labor. This does not even take into account payroll taxes, health insurance, and the ever forgotten profit margin for flagger companies. There will be little or no monetary cost savings for the replacement of police details with civilian flaggers. At what cost do we undertake such an experiment that provides so little benefit? It is at the cost of the safety to the general public, the cost of our insurance rates rising with the increase in vehicular crashes, the cost of construction costs skyrocketing when the commonwealth is paying out damages to the victims of future tragedies caused by under trained civilians.

Governor Patrick was recently quoted as saying “we will rebuild not only our infrastructure, but also the public’s trust in our ability to deliver projects in a public, safe, and thoughtful but timely manner.” I will submit to you Secretary Cohen and members of the committee, the only way to ensure that the public is provided with the safety they deserve on our roadway system, is to maintain police details at construction sites throughout the commonwealth.



PIONEER INSTITUTE

PUBLIC POLICY RESEARCH

Testimony to the Executive Office of Transportation on Police Details
Tuesday, May 20, 2008

Thank you for the opportunity to testify. My name is Steve Poftak. I am the Research Director at Pioneer Institute.

I want to focus on the strategic importance of detail reform. At the same time the Commonwealth struggles with a backlog of transportation infrastructure needs, the public sector suffers from a credibility problem stemming, in large part, from the management of the Big Dig.

We can argue if this criticism is warranted or properly directed, but the fact remains – the public does not believe it is getting its money's worth from current spending on transportation.

A sensible set of reforms on the issue of police details is one step towards rebuilding credibility. I would agree with a number of other speakers that we should continue to put a priority on public safety.

To that end, I would second the Massachusetts Taxpayers Foundation's suggestion to look at other states and suggest that we select those states with similar infrastructure networks and good safety records. Massachusetts has an admirable record on safety and we should examine ten other states with similar strengths – I suggest Minnesota, New Hampshire, Connecticut, Rhode Island, New Jersey, Michigan, Colorado, Utah, and Ohio.

It is not necessary to reinvent the wheel. Let's examine what some of the 49 other states that seem to have solved this problem are doing.

I would urge you to avoid the red herrings that exist out there.

One such herring states that, since flagmen and signalers are paid at rates similar to detail officers under collective bargaining, we should not worry about reform. This ignores the potential for collective bargaining to change pay rates in the future. It also ignores the thicket of work rules and conventions, such as minimum duty hours and unclear (or unenforced) cancellation policies that drive up costs. This process should be about reforming these rules as well.

The intent of my remarks and, I hope, of this process is not to unfairly single out police officers. An unacknowledged undercurrent of this debate is the perverse ways that police officers are currently compensated, with low initial salaries, seemingly dependent on detail and overtime pay

, with hugely backloaded pension compensation. I don't have a ready-made solution to this at hand, but the public construction process should not be the solution.

Clearly, there will still be great need for police officers at a number of job sites. But even more clearly, there are unnecessary costs associated with police details that we need to begin addressing, even if they may not be realized immediately.

I return to my original point about the strategic imperative to address spending and credibility. At the previous hearing, EOT put the cost of police details at 4% or \$20 million in detail costs on the basis of \$500 million in spending.

Our cities and towns spent \$187 million in Chapter 90 monies last year. At 4%, that's \$7.5 million. They also spent \$1.9 billion on public works; at 4%, that's \$77 million on details.

Given that the Commonwealth's current capital plan calls for \$5.7 billion in total spending on transportation over the next five years, with the prospect of another \$3 billion in spending on bridges over a slightly longer period, the potential costs of our current policy at 4% of \$8.7 billion is close to \$350 million. We need to maximize the effectiveness of our transportation dollars while preserving public safety. I urge the Executive Office of Transportation to carefully examine the example of other states and reform our current practices.

Thank you for the opportunity to testify today.

**TESTIMONY BEFORE THE EXECUTIVE OFFICE OF TRANSPORTATION
RELATIVE TO SECTION 10 OF CHAPTER 86
OF THE ACTS OF 2008 -- POLICE DETAILS**

PRESENTED BY

**HAROLD MACGILVRAY, PRESIDENT
MASSACHUSETTS MUNICIPAL POLICE COALITION
MAY 20, 2008**

Good afternoon. My name is Harold MacGilvray. For over 10 years I have served the citizens of Medford, Massachusetts as a police patrol officer. I am president of the Medford Police Patrolmen's Association and also serve as president of the Massachusetts Municipal Police Coalition, a network of 14 police unions representing hundreds of police patrol officers and police supervisors in communities throughout eastern Massachusetts. Thank you for this opportunity to speak on behalf of all police officers within the communities we serve on this most important issue before you – the protection of the public safety through the use of police details on the streets, roads and highways of Massachusetts.

Through my presentation today I wish to identify and explain three simple, yet most salient, points to help guide you in your regulatory mission. First, you should insist that valid public safety considerations drive your decision-making. Second, you should not be pressured by short-term economic constraints into establishing regulations that are not supported by a comprehensive and accurate body of relevant data. Third, you should elicit and rely most heavily upon the thoughtful opinions of those experts who are most directly responsible for protecting the public safety -- the leaders of local

government, police commissioners and police chiefs, and law enforcement professionals.

On the first point, that public safety considerations should drive decision-making is seemingly self-evident. From compact cars to multi-ton tractor-trailers, motor vehicles can cause serious injury or death even at low speeds and even when driven by sober, attentive and responsible operators. When impaired, stressed, distracted and/or irresponsible drivers are added to the mix, as they are at any given time of the day or night, it is easy to see why an organized and effective system of traffic controls is essential to protect the public. This concern over the operation of motor vehicles is of particular concern in areas where public and private construction, repair, and maintenance crews, and the often-dangerous equipment used by them, obstruct the normal flow of traffic. Unless trained and empowered personnel are in place to direct the flow of traffic, the potential for injury or death to construction workers, drivers, passengers and pedestrians is obvious. Therefore we urge you to keep your eye on the long-term public safety interests of the people you and we are sworn to protect.

There is at this time no body of evidence that reliably demonstrates whether resorting to civilian flaggers in whole or in part would lead to any measurable savings over current costs. In this regard, I take serious issue with testimony previously provided you by Professor Tuerck from the Beacon Institute in which he contended that the use of flaggers would save substantial sums over the use of police officers for traffic control on road projects. It is

questionable from the comments placed on the record by Professor Tuerck whether the average cost he allocated to flaggers was regionalized to the Northeast, whether he accounted for fringe benefits and retirement costs required for flaggers (a cost not relevant to police officers who are paid a flat rate for details without fringe benefits and/or retirement impacts), whether he adjusted the savings estimate for the substantial extra cost communities would incur to put more officers on the streets who are now placed into service by privately funded police details, and/or whether he factored in mandatory minimums required by federal and state prevailing wage laws for those, including flaggers, working on roadways in Massachusetts. In fact, the Professor gratuitously dismisses the application of the higher costs required under prevailing wage laws to flaggers by asserting that "It is hardly a foregone conclusion that the prevailing wage law applies here." Notwithstanding his own inability to deny that the prevailing wage laws apply to flaggers, he urges nonetheless that you base your decision-making on highly speculative cost estimates that will prove to be woefully short of the actual costs of a flagger oriented system of traffic control. That display of wishful thinking proves my point better than anything else I could say to you. The worst thing that you could do would be to establish regulations in the hope of achieving cost savings and then find that you have needlessly dismantled a successful, public safety oriented system and replaced it with a dysfunctional system that costs as much or more.

The point is that relevant data, not presently available, about costs, benefits and experiences needs to be gathered and analyzed *before* any decisions are made. To rely instead upon academic speculation, anecdotal references, wishful thinking, cyclical economic pressures or the unevaluated practices of others without measuring them against objective data and subjecting them to rigorous analysis would be a recipe for disaster. Accordingly, we join Professor Tuerck in the call for a systematic, coordinated fact-finding initiative to gather and assess data relevant to this agency's regulatory mission. We differ with the Professor in that we think, for obvious reasons, that decision-making should follow rather than precede this initiative.

Third, we believe that no prudent regulatory effort would be complete without crosschecking any tentative conclusions with the opinions of those most directly responsible for the public safety in our cities and towns. They are the chief executive officers, the police commissioners and police chiefs, and other police professionals in the communities where the regulations will be implemented. We believe that if you reach out to this group of informed police leaders you will find that there is a solid consistency favoring the continued use of police officers for traffic control. That is so because those officials know from common and valuable first hand experience that the advantages to the public of using police officers on police details far outweigh the incremental costs, if any, of their deployment.

To conclude my remarks, let me list for you the wide ranging, cost effective advantages that police officers provide on a daily basis to the cities and towns of Massachusetts when performing police details:

- Police officers on detail ensure that traffic flows safely and efficiently in work zones. Their police powers, not possessed by flaggers, ensure that their directions will be followed and that traffic passage will be orderly and safe for drivers, passengers, pedestrians and workers.
- Police officers are trained for and required to provide emergency medical relief to anyone within their area of assignment. Flaggers are not so trained and have no obligation to assist a motorist, passenger, pedestrian or worker in distress.
- Police officers on detail supplement the police officers on regular assignment. They exponentially expand the number of police officers immediately available to respond to emergencies unrelated to their details. By way of example, on December 8, 2006, a cadre of police officers on different detail assignments in Cambridge responded to a large gas explosion, cordoned off the affected area, provided emergency assistance to the injured and otherwise ensured the safety of persons and property. Each of our officers in each of the communities we serve can give you similar examples of actual or near tragedies in which police officers on detail have responded to prevent injury or death.
- Cities and towns routinely include a significant number of police officers working details as an integral part of their emergency response plans. Without the availability of detail officers, police response to fires, hazardous spills, public transit accidents, terrorist activities, and other emergencies would be significantly delayed. The precious time needed for response would be eaten up by the time needed to locate off-duty officers and for those officers to dress, equip themselves and report to the scene of the emergency.
- Police officers on detail provide a police visibility and presence throughout our cities and towns that would be prohibitively expensive to replicate. It is well settled that their mere presence is a deterrent to criminal activities.
- Police officers are trained to deescalate tense situations while flaggers are not; all police officers are required to undergo extensive training at the police academy under state guidelines before beginning employment; most police officers are college educated and are better able to analyze

and assess potential problems occurring at a detail site and can respond efficiently and professionally to situations presented. Typically, flaggers have no required training or educational prerequisites and are therefore less able to deal with myriad situations at the detail site.

- Police officers undergo extensive background checks and are not employed unless they have a clean history; there are no background requirements for flaggers who would be working on the streets and in the neighborhoods of our communities;
- Police officers on detail are often deployed near schools or playgrounds and are trained to look for predators, gang activity, and other activity related to the safety of children. Flaggers have no such training and are under no obligation to serve the community as an extra set of eyes and ears sensitive to these public safety issues.

The Massachusetts Municipal Police Coalition believes, if you take into account the critical points that I have outlined today, you will conclude, as we do, that the present system of police details is an enormously valuable bargain for Massachusetts' cities and towns. They essentially have a fully trained, regulated, educated, armed, uniformed and equipped secondary police force deployed on their streets, in their neighborhoods, near their businesses, and around their schools that is largely privately funded. The traffic laws are obeyed and enforced because police offices are empowered by law to enforce them; they have greatly expanded police visibility serving as a deterrent to crime and providing assistance to regularly assigned police officers in the enforcement of the criminal laws; and they have immediately available at any given time up to twice the number of first responders they would otherwise have in the event of fire, explosion, natural disasters, criminal acts or, terrorist activities. Thank you.



UTILITY WORKERS UNION OF AMERICA

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April 2, 2008

His Excellency Deval Patrick
State House, Room 360
Boston, Massachusetts 02133

Dear Governor Patrick:

I write to you today about the importance of police details to the workers I represent. People have called police details unnecessary and offered flag personnel as replacements that could safely do that job. I know firsthand the reality is police details provide things that flag personnel cannot provide.

Police make worksites safer for workers. I have worked in the middle of dangerous traffic conditions, and I represent thousands of utility workers who labor in dangerous situations to keep our electricity and heat on. Speaking for these workers, we cannot imagine how much more dangerous worksites would be without police details. Many times, had it not been for police details lives would be forever changed or lost.

The authority that the police bring to a worksite is indispensable to workers' safety. Drivers observe and obey police details or they face consequences. Flagmen will not get that respect from the public.

Anyone who has driven in Massachusetts knows some drivers take caution and some don't. Why would this state take that chance and put workers, drivers and pedestrians at risk?

Police details also make it easier for workers to do our job quickly and effectively.

When our workers are in bucket trucks or in manholes they are vulnerable to both traffic concerns and crime. When we have police details there are no delays in restoring power because we can focus on our job instead of our surroundings and possible risks beyond those that come with the work.

I know utility workers feel that having highly trained police officers by our side helps us do our job well and gets us home safely afterwards. I also know that we serve the public more efficiently as a result.

Sincerely,

Gary P. Sullivan
President

cc: File

ARNIE LARSON
PRESIDENT

TODD BRAMWELL
VICE PRESIDENT

LARRY CROSMAN
SECRETARY / NATIONAL TRUSTEE



FRANK D. LARANGE SR.
TREASURER

JOSEPH GRASSI II
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CHIEF GEORGE J. DiBLASI (RET.)
DIR. OF GOVERNMENTAL AFFAIRS

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WRITTEN TESTIMONY

TO: Massachusetts Department of Transportation
FROM: Chief George J. DiBlasi
Director of Governmental Affairs
Massachusetts Fraternal Order of Police
DATE: May 20, 2008
RE: Public Hearing: Use of police Details and Flaggers

The position of MA Fraternal Order of Police on the issue of utilizing Flaggers to replace Police Details at construction sites is; we are in strong opposition to the concept. The proposal that this change will help Massachusetts save a great deal of money is without merit or foundation. The proposed savings of \$5,000,000 a year by using Flagmen rather than trained Police Officers is a minuscule amount of money to be saved at the cost of Public Safety, and no one is sure of that figure. It is absurd to replace Police Officers at construction sites utilizing Flagmen, if you must pay Flaggers the Union Laborers prevailing wages which is very close to what you are paying a trained sworn police officer to do the same job. Every time Police officers are assigned to work construction details in MA, what you are getting is hundreds of police officers working daily on the streets in Massachusetts. These officers are also available to enforce traffic laws, catch criminals and render first aid to citizens as a secondary duty while working construction details. In fact last year the BPD arrested three out of four Bank Robbers while on detail assignments in the downtown area of Boston. These are only a few of numerous incidents where police detail officers have utilized their training and powers as a police officer to enhance public safety while assigned to a police detail. Do you think having a Flagman at a construction site would catch a bank robber, arrest a bad guy, or render first aid to a citizen? I think not! Do you think an angry or frustrated motorist is going to obey the hand signals of a Flagman directing traffic at a construction site? I think not! Who do you think would be a deterrent to a House Break or a Burglary on a secondary road construction site a Flagman or a Police Officer? If you believe in the patrol tactic of omnipresence you know the answer to that one! The Commonwealth of Massachusetts is presently under severe budget constraints state wide, police departments are short handed and facing cuts in personnel. By placing Flagmen at construction sites we will be literally taking hundreds of trained police officers off the street daily and replacing them with laborers at little or no financial savings to the community, doesn't sound like a great idea to me but you would probably consider that opinion biased not based on decades of law enforcement experience.

Respectfully Submitted



**Testimony of Michael J. Widmer
President, Massachusetts Taxpayers Foundation**

May 20, 2008
Section 10 of Chapter 86 of the Acts of 2008
Police Details

As a follow up to the May 2nd meeting on police details, the Foundation offers the following suggestions.

In addition to visiting several states, EOT should conduct a thorough telephone survey of several highly populated states, including California, Oregon, Washington, New York, New Jersey, Florida, Texas, and Illinois, to learn how these states manage construction details, whether they have developed a tiered approach for local communities, and what regulations have been promulgated. It would be helpful to know which of these states employ prevailing wage rates and whether they have conducted analyses of cost savings.

We also suggest that EOT examine the MBTA's flagger policy which uses both flaggers and police details at construction sites at separate rates. While the T does not have a job category of flagmen, T employees serve as flagmen on construction projects at the top rate of \$25.97 per hour versus \$33.00 to \$43.75 per hour for MBTA police details. If the MBTA can operate a dual flagger policy with a \$7 to \$18 per hour differential, it would seem that MHD, DCR and local communities should be able to do the same.

We need better data. It is critical that the administration develop and maintain a consistent methodology collecting all necessary data from each city and town annually so that policy makers can know the real costs of police details. This publicly available information should include the total number of hours worked by police details, total number of hours billed by police details, and total amount paid for details by each city and town.

The legislation requests that the secretaries make recommendations to cities and towns on the use of alternative personnel. The Foundation believes that cities and towns should be encouraged to provide for construction details outside of collective bargaining agreements. EOT should publish prevailing wage rates for flaggers in each region to assist community officials. Further, communities should have the option to use current DPW personnel as 'flaggers' at appropriate sites just as the MBTA uses its personnel as flagmen.

Eliminating requirements for four hour minimum shifts and reducing overtime charges is vital to cutting costs and should be included as a requirement in the 'construction zone safety plan' when selecting appropriate number of personnel.

Finally, EOT should provide an ombudsman to assist cities and towns determine how to apply the recommended guidelines.

In examining potential cost savings, a requirement of the legislation, the Foundation offers the following brief analysis.

It is understood that flaggers are subject to prevailing wage rates. Under the federal government Davis-Bacon rate schedule, flaggers, with one of the lowest rates for highway construction work in Massachusetts, would be paid an average of \$34.05 (\$19.15 + \$14.90 in fringe benefits).

Using \$42 as an average rate for patrolmen as a base measure (Melrose paid \$38 per hour for patrolmen and \$48 per hour for supervisors; Stoneham paid \$41.82 for patrolmen and \$49.80 for supervisors), cities and towns pay over \$7 more per hour for police officers than they would pay flagmen under prevailing wage rates.

According to a Beacon Hill Institute report, *Police Details in Massachusetts: Protection or Perk?*, there were approximately 2.7 million hours of community construction police details in 2003. The calculation is an estimate but rounding the number down to 2.5 million hours provides a baseline to compute potential savings.

A \$7 additional savings per hour translates into a \$17.5 million in annual savings (\$7 per hour times 2.5 million hours) for local communities. For Stoneham which paid \$850,000 for detail work in 2007, using the Davis-Bacon rate would have saved over \$140,000.

Thank you for the opportunity to offer this testimony.



The Research Bureau

Can the Other 49 States Be Wrong?

Time and again, we hear that the cost of doing business in Massachusetts is too high, that business is over-regulated and over-taxed. Isn't there any way of reducing these costs so businesses in the Commonwealth can remain competitive with lower- cost states and other nations?

Each spring, in its annual update on Worcester's municipal budget, The Research Bureau makes a number of suggestions, often year-after-year, on how to reduce governmental expenditures without damage to the public.¹ One of those oft-repeated recommendations, switching from paid police details to civilian flaggers at construction sites, is getting attention from Governor Patrick and gaining traction with business owners and residents across the Commonwealth. As well it should!

Hiring off-duty police officers to direct traffic at construction sites is not required by State law, but the practice has been widely negotiated into local police contracts. Changing that practice would probably require action by the state legislature to enable individual communities to overturn this very expensive procedure. Flagmen are the rule in the other 49 states, including eight that use civilian flaggers exclusively.

Let's use Worcester as an example to determine the costs of this practice unique to the Commonwealth. Off-duty police officers in Worcester are paid a four-hour minimum at about \$40 per hour for detail work at construction sites. The City Treasurer's Office collects an additional 10% from City departments and construction and utility companies using the details for administrative costs. In 2006, Worcester police officers were paid more than \$6.6 million for these off-duty assignments. This sum is broken down as follows: The City of Worcester (Department of Public Works and Parks and other departments) paid more than \$1 million to Worcester police officers. Private businesses such as the utilities and construction companies paid about \$5 million for Worcester police details. (A small percentage of these costs is for details at banks, supermarkets, and the like, which are not required.) The costs paid by utility and construction companies are ultimately factored into utility rates paid by customers or rental rates paid by businesses or residents, thereby increasing the cost of doing business and living in Worcester.

¹ <http://www.wrrb.org/documents/ResearchBureau07-03.pdf>

What would be the cost of employing civilian flaggers to perform the same function? Some people argue that they would not cost much less because of the prevailing-wage law in Massachusetts. But as David Tuerck, Executive Director of the Beacon Hill Institute at Suffolk University points out in his November 9th article in the *Boston Globe*, “Throwing a Flag on Paid Details,” that law applies to state-funded construction work itself, not to traffic control at work sites. He points out that the detail work is similar to that of school crossing guards, who control traffic “in the vicinity of elementary schools in order to permit school children to cross safely when going to or returning from school” and “report violations of motorists who fail to stop when directed to do so.” The average pay of these guards in Boston is \$12.83 per hour or about one-third of the police officer’s pay. Thus, using the 2006 figures cited above, a conservative estimate of savings for the City of Worcester would have been at least \$500,000 while the utility companies could have saved \$2.5 million or more.

What happens when we look at the cost of police details for the Commonwealth as a whole? Governor Patrick, who is to be commended for calling attention to this hefty expenditure, has focused on the payments made by state transportation agencies to state police which cost about \$44 million in 2006. In addition, a 2004 study by the Beacon Hill Institute found that local governments across the Commonwealth could save about \$37 to \$67 million a year by replacing police details with flaggers at work sites on local roads. As the Commonwealth and its 351 cities and towns begin to grapple with the revenue shortfalls projected for their FY09 budgets, they need to give to the police detail expenditure serious reconsideration.

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