THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

ROAD FLAGGERS & POLICE DETAILS
701 CMR 7.00

Submitted Written Testimony at the September 15, 2008 Public Hearing

Individual	Organization
John Aufiero, President	Somerville Police Superior Officers Association
Vincent Barletta, President	Utility Contractors' Association of New England
Geoffrey C. Beckwith, Executive Director	Massachusetts Municipal Association
Richard Brown, President	State Police Association of Massachusetts
Hugh Cameron, President	Massachusetts Coalition of Police
Chief George J. DiBlasi, (ret.) Director of Government Affairs	Massachusetts Fraternal Order of Police
Chip Faulkner, Associate Director	Citizens for Limited Taxation
Paul Larkham, Legislative Director	New England Police Benevolent Association
Alan Macdonald, Executive Director	Massachusetts Business Roundtable
Harold MacGilvray, President	Massachusetts Municipal Police Coalition

John Pourbaix, Executive Director	Construction Industries of Massachusetts
Joe Rizutti, Night Steward/Legislative Team	Revere Patrol Officers Association
Jim Stergios, Executive Director	Pioneer Institute
David Tuerck, Executive Director	Beacon Hill Institute
NA	Plymouth Police Brotherhood

SOMERVILLE POLICE
SUPERIOR OFFICERS ASSOCIATION

SPSOA Opposes the Proposed Use of Civilian Flagmen

The Somerville Police Superior Officers Association (SPSOA) submits the following document to be included in the official transcript.

The SPSOA strongly opposes the use of civilian flagmen within the Commonwealth of Massachusetts for the following reasons:

First, over the past several years, with the increase of violent crimes, particularly at schools and workplaces, and other Homeland Security / Emergency Management events that might occur, the Somerville Police Department created new policies and procedures to address the urgent need for mobilizing police officers in such an event. The Somerville Police Department presently incorporates the activation of all Detail Officers in the event of an "Active Shooter" in a school or workplace. Without the ability to activate detail officers, the Somerville Police Department would be at a great disadvantage if forced to rely on patrol officers on duty to properly respond to the multitude of simultaneous duties that must occur within minutes of such an event. Specifically, those duties include establishing a contact team to confront the shooter, establishing one or more rescue / extraction teams to remove injured persons, establishing both a perimeter around the shooting site and an outer perimeter to allow for emergency response vehicles to access the scene and to establish staging areas for additional responding resources.

In an event last November at the Kennedy School in Somerville, a cell phone report through State Police Communications reported a shooter inside the school. As all patrol units were being dispatched, on duty detail officers were immediately activated. Three of the first four Somerville officers to arrive at the school came from construction details just a few blocks away. Fortunately, the call was a hoax and the caller was quickly identified and arrested.

In addition to the above, in the event of an ordered or self evacuation either within Somerville locally, or in the event of an ordered or self-evacuation from Boston, detail officers would be activated and assigned to specific traffic posts along established evacuation routes. The Somerville Police Department, and probably no other local police department, would not be able to effectively manage evacuating traffic using on duty resources alone. Unless the event is known significantly in advance and traffic management planning is in place such as during the DNC, the city would likely gridlock very quickly without the ability to mobilize the twenty to twenty-five detail officers that are on our streets everyday.

Secondly, there is much discussion about how much flagmen will be paid, but nobody is discussing what will be the final cost. The pay rate for flagmen is not and will not be the final cost. In addition to the rate per hour, there are cost factors that will be added to this hourly rate. Specifically, payroll taxes that the employer must match, mandatory unemployment compensation, mandatory workers compensation insurance and liability insurance are all calculated based on the hourly pay rate. In addition, there will be Supervision, Management and Administration costs and general overhead costs must be added to the hourly rate. Finally, and

by no means least, there will be an added cost for profit. If the services are provided by a private company as we believe is the intent of this legislation, a percentage for profit to the company will be added to the hourly rate. A reasonable estimate of these expenses would increase the final cost by about one third, bringing the real hourly rate to somewhere around $44.00 per hour or more. There will be no cost savings realized to the taxpayers and more likely, this legislation will increase costs.

Lastly, the use of civilian flagmen will be a burden to our already busy patrol forces. In cities such as Somerville, detail officers must often locate vehicle owners, get vehicles moved and if cars impeding construction cannot be moved, they must be towed. This can only be done by a police officer with the approval by a Sergeant or higher. If flagmen are assigned to constructions sites where cars are parked illegally, impeding the construction, an on duty police cruiser will have to be assigned to this task, which will reduce our capacity to respond to other calls or perform other required tasks. We should add that locating or moving illegally parked cars in construction zones is not an infrequent or merely random event. This occurs daily not only for posted construction areas, but for other areas that were not posted for various reasons.

In conclusion, it is the opinion of the Executive Board of the SPSOA that this legislation will adversely affect our ability to respond to emergencies within our city, will have no cost savings to the citizens and will drain existing patrol assets that are needed to perform functions presently handled by assigned detail officers.

Very truly yours,

John Aufiero,
President

Gerald Reardon
Vice President

Gerald Rymill
Secretary

Paul Upton
Treasurer

Pres. S.P.E.A.

Utility Contractors' Association of New England, Inc.

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September 15, 2008

Mr. Bernard Cohen, Secretary
Executive Office of Transportation
10 Park Plaza, Room 3170
Boston, MA 02116

Dear Secretary Cohen,

Good afternoon. My name is Vincent Barletta and I am President of Barletta Heavy Division, located in Canton, MA; I am also President of the Utility Contractors Association of New England (UCANE), an association which represents over 250 union and non-union underground utility construction companies and associated businesses.

These companies specialize in the construction of wastewater and clean drinking water pipeline distribution projects and clean water treatment facilities, primarily in Massachusetts and throughout the other New England states. Collectively, our member companies represent tens of thousands of skilled Massachusetts construction workers.

One of UCANE's highest priorities is the safety of our employees and the general public. To that end, I want to thank you for the opportunity to offer comments on 701 CMR 7.00, relating to the "Use of Road Flaggers and Police Details on Public Works Projects". The use of police details is an issue that is very important to our members because, again, on-the-job safety is our priority. Our members are supportive of regulations that maintain this safety, yet are fully aware of financial issues facing our cities and towns. When implemented, we respectfully request that your agency ensures that these regulations maintain that safety standard.

Second, in the event of an emergency, when immediate action is required, the proposed regulations do not account for flaggers or police details in the event of a time sensitive, emergency situation. If an accident does occur, contractors do not have the time to wait for the awarding authority to develop or implement a response plan – action is required immediately. These regulations should be amended to reflect an appropriate course of action in the event of an emergency situation – one that allows contractors to complete such activities in a timely and safe manner.

Third, a careful reading of the proposed regulations has identified some administrative language which should be amended so that the implementation of the final regulations can proceed smoothly. In particular, I respectfully request the inclusion of specific changes to the proposed regulations. These matters include:

(a) Section 7.02 Definitions. The definition for the authorized representative should read: "<u>The person or persons designated by the awarding authority shall be either 1). an employee of the awarding authority or the commonwealth entity or 2). an impartial third party; and shall be designated prior to bidding of a public works project, and shall be responsible for implementing and enforcing these regulations</u>.....

This recommendation specifically eliminates the potential for awarding authorities to make the contractor the Authorized Representative.

(b) In the same section, the definition of "Construction Zone Safety Plan or The Plan" should be amended to read: "A plan, prepared prior to bid and included in the bid package, for the public works project...."

This recommendation assures that all bidders have the information necessary to responsibly bid all items in the bid package.

(c) Under Section 7.09 "Miscellaneous", please insert language which keeps a separate line item in the bid package for "Police Detail & Road Flagger". Accordingly, we recommend the following paragraph be added: "(4) The Awarding Authority shall provide unit price or allowance items for police and flagger services; and shall provide an estimate of manhours for both police details and road flaggers within the bid document."

This amendment maintains the current practice and obligation of the owner to provide reasonable cost estimates for project traffic control prior to soliciting bids. Details have historically been a reimbursable cost. Before a construction project has begun, it is next to impossible for a contractor to determine how many details will be needed and how long the project will take to complete. Without providing contractors with flaggers or police details as a bid item, there is a potential to reduce cost savings as a whole. Contractors are conservative by nature and, forced to carry risk by awarding authorities, will inevitably plan for the worst. If we are required to "guess" on how many details are needed or how long they will be needed, we will be forced to plan for delays and the unknowns that inevitably arise with any construction project. As a result, please amend the proposed regulations to address this potential cost inflator.

UCANE appreciates the opportunity to offer this testimony before your agency. At the end of the day, UCANE's members seek to complete their work responsibly – both in terms of safety and cost. As such, we urge you to include these modest amendments to ensure that we can achieve our desired goals – not just for our benefit, but that of the residents of the Commonwealth as well.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely

Vincent Barletta
President
Utility Contractors Association of New England, Inc.

MASSACHUSETTS MUNICIPAL ASSOCIATION

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September 15, 2008

Charlie D. Rennick, Esq.
Legal Counsel
Executive Office of Transportation and Public Works
Ten Park Plaza
Boston, Massachusetts 02116

Re: Proposed Regulations Governing the Use of Flaggers and Police Details on Public Works Projects, 701 CMR 7.00 et seq.

Dear Mr. Rennick,

The Massachusetts Municipal Association ("MMA") has had an opportunity to review the Executive Office of Transportation and Public Works' ("the EOTPW") newly proposed regulations, to be enumerated as 701 CMR 7.00, *et seq*. These regulations are proposed pursuant to the Transportation Bond Act signed into law in April.[1] Plainly, these regulations were adopted in response to repeated calls to reign in the costs associated with delivering public road and bridge projects and effectuate reform to the system to realize savings and maximize transportation investment dollars

Before beginning, the MMA wishes to express our great appreciation to EOTPW and the Executive Office of Public Safety ("EOPS") in drafting the regulations and initiating this rulemaking. The MMA also expresses our appreciation to the Legislature for directing the promulgation of such regulations. Further, the MMA is sincerely grateful to the Transportation Finance Commission ("TFC")[2] for addressing this issue with a recommendation to allow the use of civilian "flaggers" on public transportation work.

In March 2007, the TFC released a report that estimated "that over the next 20 years, the cost just to maintain our transportation system exceeds the anticipated resources available by $15 billion to $19 billion."[3] In the fall of that same year, the TFC released a subsequent report that made many recommendations to address this monumental shortfall, including a provision to bring Massachusetts in line with the rest of the nation by allowing the use of civilian "flaggers" on public road and bridge projects.

> "Over ten years ago the then Chairman of the Senate Public Safety Committee issued a study proposing changes that would allow for the increased use of flagmen instead of police officers on road and bridge projects. Since then, the problem has spiraled out of control. Costs for police details on MassHighway projects alone have increased from $15.5 million in 2003 to $22.6 in 2006, a 48 percent increase over the three years. Currently, 4.5 percent of the total cost of MassHighway's construction projects goes to pay for

[1] *See* St. 2008, c. 86, §10.
[2] The Commission was established pursuant to St. 2004, c. 196, §13. The law charged the Commission "to develop a comprehensive, multi-modal, long-range, transportation finance plan for the commonwealth."
[3] *See generally* "*Transportation Finance in Massachusetts: An Unsustainable System.*" Massachusetts Transportation Finance Commission (March 28, 2007).

> police details. If we conservatively estimate that 20 percent of the cost of flagmen can be reduced through this measure, it would save the Commonwealth $100 million over 20 years just for MassHighway projects.
>
> The Secretary of Transportation, in consultation with the Secretary of Public Safety, should establish and publish by regulation a set of criteria for the appropriate use of police or flagmen on road construction projects. *Forty-nine other states have found a way to manage road projects utilizing flagmen; Massachusetts should join them* [emphasis added]."[4]

In response to this TFC recommendation and the sobering outlook for transportation financing, the Legislature enacted as part of an "immediate needs" transportation bond act language directing EOTW, in conjunction with EOPS, to issue regulations governing the use of civilian flaggers on certain public transportation projects.

Notwithstanding the enabling legislation's exemption of collective bargaining agreements or local statues on the same, the MMA, after its careful review, still views the draft set of regulations as a positive first step in allowing for the use of civilian flaggers instead of paid police details on local transportation project sites thereby addressing the concerns raised by TFC. In those instances where the community is not exempt, the MMA is pleased that the municipal awarding authority would now enjoy a level of control and discretion, in consultation with local law enforcement agencies, in the determination and placement of civilian flaggers and police details on such project sites.

While the MMA is supportive of the direction the regulations will be taking, there are two specific concerns that need to be clarified and revised in any final rulemaking.

First, the MMA seeks clarification under the foregoing circumstance. In the instance that a private contractor or other private entity is performing any type of work on or contiguous to the public way that requires any traffic control, it is not clear who shall be considered the "awarding authority" for the purposes of the draft regulations. Would the host municipality be considered such? If not, which party would be responsible for developing the Construction Zone Safety Plan, thereby exercising the discretion embedded in the regulation for determining the use and placement of either flaggers or police details? It is the strong position of the MMA that cities and towns must be considered to be the awarding authority, as they issue the permits for this work on the public ways, and that local governments must have the full authority to determine o approve the Construction Zone Safety Plan, as it is the cities and towns of Massachusetts that are accountable to their residents for appropriate decisions on public ways.

Second, the MMA wishes to raise concern regarding the language contained in proposed Section 7.08(2) that appears to impose a responsibility on municipalities to pay for compensation costs above a state-approved rate for municipal police details on state projects, even in those instances where municipalities have little or no discretion in utilizing police details due to binding agreements and/or local statutes. In such cases, these draft regulations would inadvertently impose an unacceptable unfunded mandate and fiscal hardship on said cities and towns. The MMA strongly opposes any language that would have the effect of imposing an unfunded mandate.

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[4] "*Transportation Finance in Massachusetts: Building a Sustainable Transportation Financing System, Volume 2.*" Massachusetts Transportation Finance Commission (Sept. 17, 2007) at 10.

Third, the MMA's interpretation of the draft regulations is that cities and towns would have full and complete discretion in determining who their authorized representative(s) would be in the development and execution of the Construction Zone Safety Plans. We strongly urge you to maintain this local discretion to the fullest extent in your final regulations.

As you well know, the only share of the state's gas tax that cities and towns receive for transportation purposes is the so-called Chapter 90 Local Roads Program.[5] The Chapter 90 program has recently been authorized annually at $150 million, a 50 percent increase over previous levels, and a benchmark level first set over a decade ago.[6] During those years, the cost of materials, notably asphalt, and labor have skyrocketed at an alarming rate while the Chapter 90 funding level has not.[7] By promulgating these regulations, EOTPW provides a new tool to municipalities to contain certain costs in order to maximize these limited dollars.

Again, thank you for affording the MMA the opportunity to offer our comments to these proposed regulations. We strongly urge you to incorporate the aforementioned recommendations into your final product. Please do not hesitate to contact Matthew Feher at our office if you have any questions. Along with you, the MMA looks forward to our work together to end what TFC describes as an "unsustainable" transportation finance system, and these new regulations are a first step in doing so.

Sincerely,

Geoffrey C. Beckwith
Executive Director

GBC/mgf

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[5] Pursuant to G.L. c. 90, §34.

[6]

Fiscal Year	Ch.90 program funding
1995	$150 million
1996	$150 million
1997	$175 million
1998	$150 million
1999	$150 million
2000	$100 million
2001	$100 million
2002	$100 million
2003	$100 million
2004	$100 million
2005	$120 million
2006	$120 million
2007	$120 million (plus a $55 million one-time infusion of cash)
2008	$150 million
2009	$150 million

[7] The TFC estimates a $1 billion Chapter 90 spending shortfall if needs are not met. According to MMA research, the actual annual Chapter 90 need is well over $300 million annually to maintain roads and safe and passable condition.

State Police Association of Massachusetts

REPRESENTING SERGEANTS AND TROOPERS
OF THE MASSACHUSETTS STATE POLICE

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September 15, 2008

Mr. Bernard Cohen, Secretary
Massachusetts Executive Office of Transportation and Public Works
10 Park Plaza, Suite 3170
Boston, Massachusetts 02110

Dear Secretary Cohen:

On behalf of the State Police Association of Massachusetts ("SPAM"), I am writing to comment on the proposed regulations 701 CMR 7.00, relating to guidelines on the use of road flaggers and police details on public projects. As we have from the start of this process, SPAM continues to stress the importance of ensuring worker and public safety on our Commonwealth's roads. While SPAM understands this agency's mandate under law, I respectfully request that the regulations not be promulgated until the changes recommended below are implemented. Too many safety and legal issues remain unresolved in these proposed regulations in its current form.

As you know, State Police officers on construction sites serve as both a deterrent to crime and a first responder in the event of criminal activity or any public safety incident. Unlike flaggers, State Police officers have the ability and, in fact, the requirement to enforce the laws of the Commonwealth. This includes those laws directly related to safeguarding the construction worksite (i.e. unsafe operation of machinery, reckless endangerment) and protecting the general public (e.g. traffic violations, crimes against people and/or property). As well, State Police officers are extremely visible allowing them to assist motorists or other law enforcement personnel as needed.

SPAM reiterates our concern expressed throughout this entire process that these regulations may in fact result in less police officers on the street at any given time. This means that the public will likely have less contact with police officers. Not being on a detail does not mean a police officer will be on patrol, it means he or she will not be working at all. With this in mind, SPAM regularly tracks the police work undertaken by its members while on police details. From January 2008 to August 2008, State Police officers on details wrote 1,250 citations for everything from misdemeanors to felonies. During this same period, State Police officers on details responded to 116 accidents and assisted 82 disabled motor vehicles.

These figures do not include the 134 arrests and summons issued by State Police officers on details. Finally, State Police officers on detail assisted motorists and the general public at least 567 times on issues not requiring further activity and 311 times while traveling to and from the police detail. Over the previous eight months, State Police officers have performed 2,378 instances of police work while assigned to details, including, but not limited to arresting wanted fugitives, removing intoxicated motorists from the roads and assisting with accidents.

In addition to the specific comments below, SPAM would like to highlight one other central concern. As written, the regulations do not provide a mechanism for the use of police details or, even, flaggers in the event of an emergency. In the event of an emergency road or bridge repair, any time sensitive repairs would still be subject to the development of a construction zone plan by the awarding authority. Regardless of the use of flaggers or police detail officers, trained specifically to handle emergencies; the regulations provide no time sensitive method for addressing such contingencies. As a result, costly delays and reductions in public safety will be the unintended consequence of these regulations. SPAM respectfully requests that the EOTPW develop language that allows for the use of police details in the event of an emergency notwithstanding the procedures mandated by these regulations.

To further ensure the public's safety and that of worksite employees, SPAM also respectfully requests that the EOTPW consider amending the regulations in the following manner:

Page 1. 701 CMR 7.01(2). Scope: Exemption for Aviation and Port Roadways. Due to the heightened security risk associated with these areas, roadways used/owned for state aviation and port purposes should be exempted from the application of 701 CMR 7.01 *et. seq.* Given the unique circumstances attached to each of these uses (i.e. heightened security under federal and state laws, state property, etc), SPAM wholeheartedly believes this exemption should be in place.

RECOMMENDATION (changes in **bold underline**): Insert the following language at the end of 701 CMR 7.01(2): "These regulations apply to any public works projects that is performed within the limits of, or that impacts traffic on, any public road**; provided that said road is not located within a designated aviation or port area.**

Page 1. 701 CMR 7.01(2)(b). Commonwealth Entity Limitation. This section exceeds the authority granted the EOTPW under §10 of Chapter 86 of the Acts of 2008. The EOTPW's efforts to extrapolate the Legislature's intent to the Commonwealth's awarding authorities, not just municipalities, has no basis in §10. Moreover, the existing language appears to create more jurisdictional issues than it purports to solve. Accordingly, this section should be removed in its entirety.

RECOMMENDATION: Strike 701 CMR 7.01(2)(b) as it overreaches both the intent and authority granted by the Legislature.

Page 4. 701 CMR 7.03(2). Tiers of Public Works Projects: Low Traffic High Speed Roads. As written, the proposed regulation leaves the determination of the traffic volumes up to each Awarding Authority. Again, this works against the idea of consistency. Two awarding authorities in the same town could interpret traffic data to suit their needs depending on the time, type and character of traffic analysis completed. As such, two separate projects on the same road, experiencing the same traffic patterns could have differing detail compositions. (i.e. flaggers at one site; police at the other – despite an increased public safety risk.) This serves no public benefit – whether measured in cost or public safety.

RECOMMENDATION: Please change 7.03(2) to reflect: "Low Traffic High Speed Roads are High Speed Roads with volumes of traffic**, as determined by MassHighway,** with less than a maximum of 4000 vehicles per day."

Page 4. 701 CMR 7.04(4). Construction Zone Safety Plan: Elements of Plan. In discussing the elements of the construction zone safety plan, SPAM again urges the EOTPW to keep some measure of consistency. Taken to its logical conclusion, the existing regulation would permit each awarding authority to establish differing protocols for establishing and meeting the requirement of the construction zone safety plan. (i.e. 351 ways to fill an empty police detail or flagger in the event of an absence.) This uncertainty/inconsistency may actually cause all parties involved (awarding authorities,

police, flaggers, etc.) to expend greater funds to achieve compliance with a varying standard. Accordingly, the SPAM would respectfully suggest that this language be tied to a standard —whether it be explicitly laid out (State Police to local police to sheriffs to jersey barriers and flaggers) or generally "according to accepted industry practices".

RECOMMENDATION: Please amend 7.04(4), last sentence, to reflect: "When the Awarding Authority has determined it is a necessary plan . . . shall include the number of road flaggers and police details required on the site daily and the procedures, **established in accordance with said law enforcement agency**, to be followed if the designated personnel fail to arrive at the Construction Zone as agreed."

Page 5. 701 CMR 7.05(1). Use of Road Flaggers and Police Details: High Speed Roads. The issue of traffic flow on high speed roads is directly related to public safety. As discussed, SPAM continues to hold that State Troopers' responsibility remains safeguarding the public on the Commonwealth's high speed roads (i.e. state highways, federal highways, numbered routes, etc.). To ensure the greatest public protections and coordination of activity, this language should be amended to reflect the use of appropriate law enforcement personnel.

RECOMMENDATION: After the words "Police Details" in the first sentence, please insert the following language: "**, from a law enforcement agency with jurisdiction throughout the entire project area,**"

Page 5. 701 CMR 7.05(1). Use of Road Flaggers and Police Details: High Speed Roads. The issue of traffic separation is directly related to public safety as well. As discussed previously, traffic flow can be separated from the work zone by a variety of methods that provide more or less protection to a work crew. (Jersey barrier – high public/worker protections / elevated cones – low public/worker protection). As written, the proposed regulations might allow for the establishment of an unsafe environment where traffic flow is separated, but still leaves open the possibility that something less than a substantial barrier will be used to protect the public. This is not likely what the Legislature or EOTPW had in mind when trying to ensure driver/worker safety on high speed roads. Accordingly, this language should be amended to remove any ambiguity so that awarding authorities have a consistent and clear standard to follow.

RECOMMENDATION: Amend the last sentence of this section by striking the words "or other traffic divider" and inserting the following language to the end thereof: "**or other similar median barrier.**"

Page 5. 701 CMR 7.06(1). Authority of the Authorized Representative: Determination by the Authorized Representative. Again, the obvious concerns about public safety is amplified when one realizes that this regulation is tied to no standard or completed in consultation with anyone else with potential insight into public safety/worker protection. On top of that, this creates the potential for 351 standards for determining whether a person (police officer / flagger) must even be present. To prevent potentially arbitrary and capricious decisions to the detriment of maintaining public/worker safety (i.e. example of local water authority commissioners with no experience in public safety/traffic management), the awarding authority should be required to consult with law enforcement or public safety personnel with traffic management expertise in developing and implementing "alternative plans".

RECOMMENDATION: Please change 7.06(1), after the words "Awarding Authority" to reflect: "**, in consultation with law enforcement or public safety personnel with traffic management expertise**"

Despite arguments that 49 other states use flaggers instead of police officers at details, this is simply not true. While most states use a combination of flagmen and police details, worksites on high speed or high risk roads are exclusively overseen by police officers in some jurisdictions. For example, the State of New York has State Police officers dedicated to all Department of Transportation and New York State Thruway work zones. Minnesota utilizes State Police officers at Minnesota Department of Transportation construction details; while New Jersey has a significant number of State Police officers specifically assigned to a "construction unit" and supplemented by other State Police officers. In summary, 49 other states do not rely on flagmen instead of police officers – particularly in high speed or high risk areas.

In Massachusetts, it is the sworn job of Massachusetts State Troopers to protect the public, generally, and ensure the safety of our high speed roads, specifically. Without the implementation of the aforementioned recommendations, the State Police Association of Massachusetts respectfully requests that EOTPW postpone the promulgation of these regulations. The safety of the general public, construction zone workers, police officers and, even, flaggers is too important to make a mistake.

I appreciate your consideration of this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Richard Brown

Richard Brown
President

Cc: Secretary Kevin Burke
Massachusetts Executive Office of Public Safety and Homeland Security

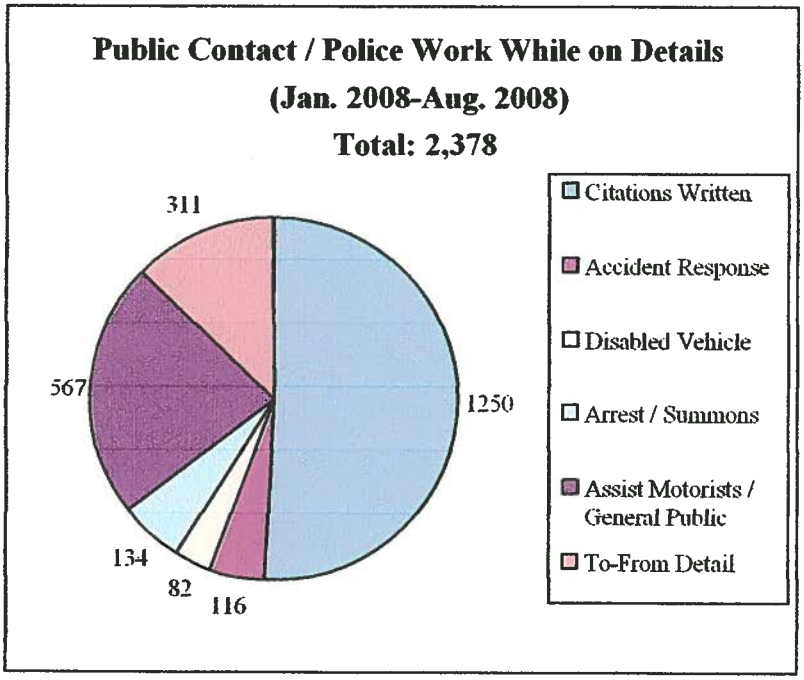
Colonel Mark Delaney
Massachusetts Department of State Police

Massachusetts State Police Presence on Paid Details

Cost Effective Public Safety -
Protecting the Public While Safeguarding the Worksite

How do State Police officers on construction details protect the general public?
State Police officers on construction sites serve as both a deterrent to crime and a first responder in the event of criminal activity or any public safety incident. Unlike flagmen, State Police officers have the ability and, in fact, the requirement to enforce the laws of the Commonwealth. This includes those laws directly related to safeguarding the construction worksite (i.e. unsafe operation of machinery, reckless endangerment) and protecting the general public (e.g. traffic violations, crimes against people and/or property). As well, State Police officers are extremely visible allowing them to assist motorists or other law enforcement personnel as needed.

How often do State Police officers working on details provide these services?
The State Police Association of Massachusetts regularly tracks the police work undertaken by its members while on police details. From January 2008 to August 2008, State Police officers on details wrote 1,250 citations for everything from misdemeanors to felonies. During this same period, State Police officers on details responded to 116 accidents and assisted 82 disabled motor vehicles. These figures do not include the 134 arrests and summons issued by State Police officers on details. Finally, State Police officers on detail assisted motorists and the general public at least 567 times on issues not requiring further activity and 311 times while traveling to and from the police detail. Over the previous eight months, State Police officers have performed 2,378 instances of police work while assigned to details, including, but not limited to arresting wanted fugitives, removing intoxicated motorists from the roads and assisting with accidents.



Will the Commonwealth experience cost savings by using flagmen instead of police officers?
No. Under Massachusetts law, flagmen must be paid the prevailing wage on worksites. According to the numbers used by the Secretary of the Executive Office of Transportation and Public Works, flagmen in Massachusetts will be paid $31 to $38 per hour, depending on region and exclusive of benefits. Average union benefits and matching employer tax contributions for this pay range are an additional $20 to $21.40 per hour. State Police officers, however, receive $40 per hour, inclusive of benefits – regardless of rank and location of the detail. This means that in many circumstances, using flagmen will cost more than using a State Police officer.

Do all other states in the Nation really rely on flagmen alone?
No. Despite arguments that 49 other states use flagmen instead of police officers at details, this is simply not true. While most states use a combination of flagmen and police details, worksites on high speed or high risk roads are exclusively overseen by police officers in some jurisdictions. For example, the State of New York has State Police officers dedicated to all Department of Transportation and New York State Thruway work zones. Minnesota utilizes State Police officers at Minnesota Department of Transportation construction details; while New Jersey has a significant number of State Police officers specifically assigned to a "construction unit" and supplemented by other State Police officers. In summary, 49 other states do not rely on flagmen instead of police officers – particularly in high speed or high risk areas.

If there wasn't a law that requires the use of police details, why have they been so prevalent?
Construction companies, public works departments and even state agencies recognized long ago that police officers ensure a safer worksite environment and, ultimately, a more cost effective solution to a host of problems. Whether through reduced crime in and around worksite areas, a reduction in accidents affecting the general public and worksite personnel or, even, a reduction in workers' compensation and liability claims, police officers have a beneficial impact on contractors and awarding authorities ability to meet project goals in a safe and affordable manner over the long term.

MASSACHUSETTS
COALITION OF POLICE

"The Only Union for Law Enforcement Officers"

AFL-CIO

P.O. Box 768
Millbury, MA 01527

Written Testimony for the Transportation Bond Bill Public Hearing September 15, 2008 5:00p.m.

I would like to thank the Executive Office of Transportation for giving me the opportunity to address the draft "flagger" regulations. Earlier this month, Governor Patrick, in discussing the regulations on the radio, stated that "public safety" is the number one priority of the Administration in addressing this issue. Unfortunately, the draft regulations show that the Administration's real priority is to kowtow to the media's hunger for a pound of flesh and to protect special interests. The draft regulations will diminish public safety. This is ill conceived change for the sake of change, hardly change we can believe in.

From the start, when the Legislature attached Sections 10 and 11 to the Transportation Bond Bill, MCOP has been gravely concerned that the Administration is more interested in scoring media points than in thoughtful governing. By attaching this issue to the Bond Bill, the General Court absolved itself of the duty to publicly consider whether it makes sense to replace trained police officers at road construction sites with civilian flaggers. Instead, the legislature gave that task to the Departments of Transportation and Public Safety. The fact that all mention of this issue is contained on the DOT website, with nothing on the Public Safety site, shows where the Administration's priorities lie.

When the Administration received the task of drafting regulations, the Massachusetts Coalition of Police entered into this process with the hope that it would abide by the legislature's directives to act in a reasoned fashion, taking ACTUAL, not speculative cost savings into account, and respecting the collective bargaining rights of police officers. After all, the Governor pledged to respect collective bargaining and to put more police officers on the street when he ran for office. Unfortunately, the draft regulations side step our collective bargaining agreements, and will lead to LESS police presence in our communities.

WOBURN PRINTING 56

MCOP joined the outer working group as a means to provide accurate information to the Administration so that it could be informed prior to completing the task assigned them by the legislature. We have provided a large amount of information such as multiple police reports involving detail officers and the wage study we completed. In addition, we have raised numerous concerns about the process. At this point it appears that none of this information has been taken into consideration, and that the working group model used in this process was nothing more than a front to give this process an air of legitimacy.

So, where are we? We have draft regulations that are designed to protect special interests at the cost of public safety, and we have a flawed cost study that nonetheless claims only minimal savings will be accomplished by removing police officers from duty.

The draft regulations protect special interests at the cost of public safety by crediting only speed limit as the criteria for when a trained police officer should be used at a construction site. The simplistic use of speed limit as the criteria for safety shows no consideration for the statutorily mandated subjects of criminal and civil offenses committed in the area and proximity to schools, playgrounds and other youth activity locations. Under the draft regulations, a major construction job at the intersection of Bolyston and Tremont streets, blocks from here, with tremendous pedestrian, bike and automobile traffic, would be manned by civilian flaggers.

This bears repeating. Under the draft regulation, every road with a speed limit under 45, meaning every urban intersection and every downtown in the Commonwealth, would have construction sites manned by flaggers, while only high speed roads would receive police details. How is that serving public safety? Ask yourself, where do you want a trained police officer? The urban area where the speed is less than 45 MPH is the area where a police detail is most needed to actually direct the traffic around the hazard to facilitate its safe and effective movement. It is the area where pedestrian traffic is at its highest volume. This is where a police officer will be needed to intervene in illegal activity. Our cities and towns are where the real need for police details exists. Does the Administration actually expect us to believe that the draft regulations are about public safety?

Turning to cost, the Executive Office of Transportation's cost study is fatally flawed on a number of levels. The listing of municipal detail rates is inflated by numerous inflated quotes. We have located incorrect calculations which have increased their cost savings percentages. The vast majority of the alleged savings is speculative and has nothing to do with the cost of replacing police details with flaggers. The study compares actual current police detail cost against what it would cost to have fewer numbers of "safety personnel" on the site whether they are police or flaggers. It is misleading to the public which has been the order of the day since this has started. When you tell exaggerated cost savings to the public, they will believe it. This is nothing less than the government caving into special interest groups and the media. There has been no

scientific study completed on this topic, only misinformation and untruths that these groups, the media, and now the government, want to accept as fact.

The one area of actual cost study, the cost of an average police detail rate and the average civilian flagger rate, shows that the "cost savings" are minimal at best. Again, the average detail rate derived at by the study is improperly inflated. However, for the sake of argument, let's say the study is absolutely correct. The average detail officer costs about $38 per hour, and the average civilian about $34. The difference? $4.00 per hour. That's right, this media circus is about the cost of a happy meal at McDonalds. Or, to put it in a manner the administration can understand, about the cost of a Grande Latte. It isn't, as the media would like you to think, about $38 v. $10 per hour. It's a grand total of $4.00.

I join Boston Mayor Menino in saying that $4.00 is a very small price to pay for increased police presence on our streets. Would I, as a police union official, like to have the towns and cities of the commonwealth hire thousands and thousands of more officers to properly police our Commonwealth. Of course I would. But, with the prospects of Question 1 looming, this is simply not viable. Aside from providing the highest level of traffic direction, police details serve the important societal function of putting "officers on the streets." Can we really afford to take them off?

The Governor promised 1,000 more police officers. The current economic downturn, with its devastating impact on state receipts, has made that goal unattainable. So, what is the response? It's to take more officers OFF the street. It just doesn't make sense.

The draft regulations only makes sense if they are viewed as what they are, a blatant political ploy to placate the media by delivering "change," regardless of whether that change makes sense or improves public safety. While we were beginning discussions with the working group, we found a very interesting item on Governor Patrick's website. The Governor's self proclaimed eleventh top accomplishment of his administration was putting flaggers on the street. They had deemed the process completed before it had even started. No regulations were drafted at that point and they were patting themselves on the back for putting flaggers on the street. No study had been completed, yet that was one of their biggest accomplishments

In addition to creating a flawed study in order to appear that they have complied with section ten of the statute, the Executive Office of Transportation has told us that they do not have the means in their record keeping to go back and breakdown the cost difference between Municipal police details vs. State Police details as mandated by section eleven of the statute. They have admitted that they cannot comply with the mandate, yet the process moves forward. If they cannot comply with the mandate why is the process moving forward? While section eleven of the statute does not have to be completed until December 31st, the Patrick Administration should recognize and the E.O.T. has admitted that without those cost figures it is difficult to proceed. Yet they have proceeded without them anyway.

The Massachusetts Coalition of Police proudly asserts that it is worth $4.00 an hour to have a trained police officer with the authority to actually stop vehicles, with the training to deal with medical situations, and with the authority to intervene in any criminal activity in proximity to the worksite. To say a flagger is a better choice for public safety only solidifies that lack of understanding of the Patrick administration.

Perhaps most troubling, the draft regulations take the determination of public safety on our municipal roads away from our police chiefs and gives it to construction engineers. It seems amazing to me that we are allowing these engineers to determine public safety on any jobsite. These are the same engineers who signed off on the failed tunnel collapse project claiming that it was safe. That resulted in a tragic loss of life. They have no interest in public safety, they only have an interest in completing the job as quickly as possible and as cheaply as possible. Is that who you want in charge of protecting your family while you are driving on any road, whether highway or city street?

Is it worth any of your family member's lives to empower this administration to play political games to feather their beds? To allow them to take away collective bargaining rights that working families have enjoyed in this state for decades. This is a very disturbing time in this commonwealth. Not only for the working families that may have their rights trampled on by this administration, but for anyone that walks the streets or rides on the roads. This administration needs to do their due diligence and look at this issue fully before making rash political decisions.

ARNIE LARSON
PRESIDENT

TODD BRAMWELL
VICE PRESIDENT

LARRY CROSMAN
SECRETARY / NATIONAL TRUSTEE

FRANK D. LARANGE SR.
TREASURER

JOSEPH GRASSI II
SERGEANT AT ARMS

CHIEF GEORGE J. DIBLASI (RET.)
DIR. OF GOVERNMENTAL AFFAIRS

MASSACHUSETTS FRATERNAL ORDER OF POLICE STATE LODGE
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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: **September 15, 2008**
RE: **Public Hearing: Use of police Details and Flaggers**

The Massachusetts Fraternal order of Police would like to remain on record opposed to the utilization of Flagmen to replace Police officers on construction details. As previously stated the savings will be miniscule and a very high cost reflected in the loss of police presence and public safety in Massachusetts. After reading the Draft financial report provided by the Department of Transportation the estimated savings is in the $4,000,000 to the $7,000,000 range (nobody really knows for sure). Also in the report is a lengthy description of savings by the Beacon Hill Institute that touts saving millions of dollars however they left out the most important factor their report does not utilize the prevailing wage standard that must be paid to Laborers Union members who are going to perform the services of Flagmen and replace trained police officers at construction sites if this legislation is enacted as proposed. What caught my eye in the Executive Summary was that Flaggers provide additional functions on work sites when not performing traffic duties, that means they resume to Laborers duties.. However there is no mention of the additional functions performed by police officers while doing traffic duties at work sites. The additional functions performed by police officers are many, they catch bank robbers and bad guys fleeing from their handy work, they insure motorists obey traffic laws and hand signals while directing traffic, if somebody needs immediate CPR or first aid the policeman is there to do it. Police officers have portable radios that provide instant communication to a host of emergency services if they need to be provided. Many incidents have been documented over the years. Also a police officers presence on the street is a deterrent to people in the area who have any kind of criminal intent. It seems to me someone should be doing what the financial cost of the loss of these public safety services is. In these difficult financial times cities and towns across Massachusetts have cut police officers meaning generally there are fewer police on the streets. By using Flagmen at construction sites hundreds more police officers will be removed from the streets every day and replaced by Laborers in fluorescent vests for a proposed estimated minuscule financial savings (which is a guess at best). I ask you how much in public safety services are we giving up for Flaggers? There must be a reason that the Mayor of Boston is on record supporting the use of police officers rather than flagmen. There must be a reason the city of Revere is proposing legislation to insure police remain at construction sites, not to mention the many cites and towns who already have By Laws on the books insuring police rather than flaggers are utilized in their communities. I have read all the hype about how much money is being wasted on the use of police officers which has yet to be substantiated by fact. What I ask you to do is think about what is being lost in the transition if this law is passed.

Instead of adding the 1000 police officers to the streets as proposed during the last election, this legislation will remove hundreds of police officers from our streets daily!

Respectfully Submitted

To: Bernard Cohen, Secretary of Transportation

From: Citizens for Limited Taxation

Re: Paid Police Details

We commend Governor Patrick for taking the first step to replace police details with civilian flagmen like those which are used in the rest of the country.

CLT has supported replacing police details with civilian flagmen for many years, to no avail. We have attended hearings on the issue in the past but cannot get to Boston tonight; still we want to be on record as supporting Governor Patrick on this. We would also recommend an amendment to the prevailing wage law that would allow students and senior citizens to take the jobs, as they do in other states.

If he does this, we applaud him. But if police union intransigence kills this small attempt at reasonableness, and makes it clear that larger attempts will never succeed, we can continue to use paid police details as a poster child for passage of Question One this November, a reason to resist any new taxes, and an example of why government in Massachusetts doesn't work.

Perhaps if voters are finally fed up in November, you can use repeal of the income tax to achieve not only replacement of all police details with civilian flagmen, but some of your other union-control initiatives as well.

Chip Faulkner, associate director, CLT contact: 508-384-0100

9/15/2008

Paul V. Larkham, Legislative Director
New England Police Benevolent Association, Inc.,
I.U.P.A. Local 9000, AFL-CIO

Commonwealth of Massachusetts

Proposed Regulations pursuant to Section 10 of Chapter 86 of the Acts of 2008

POLICE DETAILS

Testimony given in Opposition of Regulations

Good evening, my name is Paul Larkham and I am a retired Police Captain from the Town of Tyngsboro, MA, and presently serve as the Legislative Director for the New England Police Benevolent Association, INC, AFL-CIO. The NEPBA represents over 3200 Law Enforcement officers, with over 70 locals here in Massachusetts. This testimony, for the record, is presented on their behalf, who I would like to point out are also taxpayers within the Commonwealth.

In addressing these drafted regulations my focus will remain on Public Safety, the benefit of Police Officers working details, and the authority of Local Police Chiefs to maintain safety and security within their jurisdiction. There (is/will be) testimony before this committee on the Collective Bargaining Rights of Police Officers. Although not the focus of my specific testimony, I would like to thank Mr. George Noel from the Massachusetts Department of Labor for his efforts in protecting Collective Bargaining which is the cornerstone of this Commonwealth.

My first focus is on the Tier System of the regulations. The Bill called for a Tier system of roads using specific criteria including, speed limits, time of day, length and duration of project, location of project, and roadway design, etc.

The resulting Tier system in the proposed regulation emphasizes speed limit of a road along with vehicular traffic numbers. The result leaves no emphasis on actual location or design of the particular public way where work is to be done. The NEPBA maintains that any Tier system must place the same emphasis on all of these other factors in determining the number of details for a particular project.

I will use my own experience of working a construction detail along Rte. 3A in Tyngsboro where speeds are set at or below 30MPH due to design. Many projects along areas of this corridor require upwards of 4 details due to the number of feeder roads and short site distances between blind spots.

The NEPBA maintains that each and every Public road would have to be closely studied rather than simply classified by speed limit and vehicle counts.

This brings me to my next point in this testimony, regarding the authority of the local Chief of Police. Under sections 7.05 and 7.06 of the regulations, it is the authorized representative who makes final determination of details, their placement, and whether a detail will be used at all. In fact, even after meeting with the Chief of Police, to develop an agreed upon safety plan, the authorized representative is empowered to institute an alternative plan of his choosing. This includes whether any detail will be used.

So in essence, the person hired by a municipality, charged with maintaining its' safety and security, presumed to have the most knowledge about the area, has no say if the State decides to place major impacts on the municipality and its' citizens.

Once again the NEPBA states that any regulation formulated under this bill must include wording that sets the Chief of Police or his designee as the person with final

authority over all construction safety plans that will impact vehicular or pedestrian traffic within the municipality. Furthermore, the number of Police details used on such projects will be determined by him or his designee.

The last part of my testimony will deal with the cost and benefits of having a police officer working a detail as opposed to a civilian flagger.

Over the past several months the general public has been bombarded with all kinds of figures and terms regarding police working details. The Beacon Hill Institute released its earlier study where they made estimates of Ninety Million dollars a year being paid out on State Public Works Projects. The report indicates that the state would save hundreds of millions of dollars if the Police Officers were replaced by Civilian Flaggers. They used words like details being Police Perks. The media itself jumped on these findings adding to the confusion about police details in Massachusetts. There were even several reports stating that Massachusetts is the only State that uses police on construction details.

Of Course today we know these figures were not accurate at all. In fact the NEPBA's own research team showed that if the Beacon Hill Institute report was correct, it meant that the municipalities would have earned ***Nine Million Dollars*** in administrative fees from officers working those details, and the Commonwealth would have realized another ***Five Million Dollars*** in income tax from those very same officers. As I previously stated, these very same police officers are taxpayers also.

A closer look at the real numbers and the actual cost for civilian flaggers due to prevailing wage statutes, shows the cost savings to be minimal as compared to the benefits. Early in the beginning stages of these hearings, Executive Director David Tuerck, of the Beacon Hill Institute, stood and gave testimony recommending the Legislature pass Laws that would prevent Civilian Flaggers from organizing, and allow them to be given rates of pay below the prevailing wages set for that position. He conceded without such Laws, there would be no real savings.

On September 8, the Executive Office of Transportation posted its cost analysis study on Police Details. The NEPBA believes that the cost difference is even closer than this report proposes. We maintain that the per hour cost for a police officer used in the report includes the ten percent administrative fee charged by the municipality.

On September 14, a WBZ Radio survey showed, that based on the small actual money savings, that may result from the use of civilian flaggers, **67%** of those responding, stated they would prefer a police officer on the detail.

More importantly than these figures, are the actual and perceived numbers that have never been given any real value throughout this process. I am speaking of the hundreds if not thousands of times that police officers, while working a detail were in a position to respond rapidly to a number of types of emergencies. These include ***medical,***

which run the gamut from the very minor to where their immediate response was the difference in saving a life, to ***criminal***; from stopping a drunk driver to bank robberies. See, Police Officers are trained to do more than direct traffic. Although their primary responsibility at any detail is the safety of that construction site, they are equipped to respond to do so much more.

Many agencies carefully plan around details within the Community on any given day. They know that by having a trained professional in constant communication with operations, the chance of a construction project causing or adding to any emergency is minimized.

And of course, finally, we come to the numbers that are not known or cannot be quantified. I am talking about the number of crimes that have been prevented solely due to the fact, a uniformed officer was working in a particular area. Every Community Police Model, recognized in the United States today, indicates that there is less crime when there is a visible presence of Police.

In closing I will reiterate that the members of the NEPBA; hard working, taxpaying, law enforcement professionals are against the adoption of these draft regulations as written.

Thank You

MBR

MASSACHUSETTS BUSINESS ROUNDTABLE

Executive Office of Transportation and Public Works - Public Hearing
September 15, 2008 – State Transportation Building, 10 Park Plaza, Boston

RE: 701 CMR 7.00 – Use of road flaggers and police details on public works projects

On behalf of the Massachusetts Business Roundtable (MBR), we would like to be recorded in support of the Administration's proposed regulations to use flagmen rather than police details on certain public works projects. This is an important step to reduce costs while "ensuring the safety of workers, motorists, and pedestrians traveling through construction work zones."

It is also an important reform, as highlighted in the September 2007 report issued by the state's Transportation Finance Commission (TFC). MBR had two appointees to the twelve-member Commission, which emphasized the need for reform as its first principle. The regulations being proposed today meet two of the Commission's criteria by both spending dollars more resourcefully and eliminating a practice that undermines public confidence in the cost-effective delivery of transportation services. While initial estimates of savings range between $5.7 million and $7.2 million annually, with the promise of greater savings in the future, the value will come in reversing what the TFC called the "long-standing and unnecessary system" of requiring police officers to work as flagmen at road construction sites. This is a requirement that should come to an end, and Governor Patrick and his Administration deserve tremendous credit for taking it on.

MBR members convened last February in a "Summit on State Fiscal Policy" to discuss corporate tax policy and long term transportation planning. In our transportation discussion, members agreed that adopting a few key recommendations from the TFC report would be a prudent way to reduce costs and begin to build momentum toward a more comprehensive solution to the $15B to $19B funding gap which was identified in the state's twenty-year transportation plan. Chief among the recommendations suggested by MBR members was the elimination of mandatory police details. MBR therefore supports the proposed regulations as a necessary reform and an important step in addressing the state's long term transportation funding and planning issues.

MBR has heard from some of its member companies that police details add an unnecessary cost to their doing business in Massachusetts. MBR continues to advocate that the state's long term public policy must promote an environment conducive to corporate investment and job creation. And while the use of flagmen may be only a start to reducing costs, it will create savings and build public confidence that the Commonwealth is serious about addressing transportation construction costs. As the TFC report points out, "Forty-nine other states have found a way to manage road projects utilizing flagmen; Massachusetts should join them."

Respectfully submitted,

Alan G. Macdonald
Executive Director

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MASSACHUSETTS MUNICIPAL POLICE COALITION

TESTIMONY
EXECUTIVE OFFICE OF TRANSPORTATION
POLICE DETAIL REGULATIONS
SEPTEMBER 15, 2008

The Massachusetts Municipal Police Coalition (MMPC) thanks you for the opportunity to present testimony here today. The MMPC represents more than 1,300 police officers in communities throughout greater Boston, including Quincy, Newton, Framingham, and Marlborough.

When this debate first began we urged policy makers and regulatory officials that decision making:

1) be driven by public safety;
2) include careful evaluation of any actual savings that the substitution of flaggers for police officers would provide; and
3) be based upon advice and counsel from trained law enforcement professionals on the content of the regulations since they are charged with managing the public safety of our cities and towns.

We would respectfully suggest that the existing set of regulations fails to account for these basic parameters.

The MMPC believes the proposed regulations:

- **Diminish the role of local law enforcement officials that are charged with protecting public safety**
- **Create arbitrary one-size fits all automobile speeds used to develop the tiers**
- **Identify no demonstrable cost savings for communities**

<u>The role of law enforcement officials is diminished</u>

The regulations relegate police executives in cities and towns to an ancillary, advisory role in the determination of when sworn police officers should be assigned to control traffic on highway construction and maintenance projects. Under the proposed regulations, a municipality's "authorized representative" is given broad power to decide when and how flaggers will be deployed. Police chiefs and commissioners are left with a post hoc review of the Construction Zone Safety Plan authored by non-public safety personnel. This is clearly not in the interest of public safety. It is akin to removing a fire chief from the direction of deploying firefighters to fight a fire.

We urge you to rethink and reorganize the process you have created by moving police leadership from the periphery of the process to its center.

Arbitrary one-size fits all automobile speeds are used to develop tiers

The regulations are flawed because they use highway speed as the central element in determining whether sworn police officers or flaggers may be used at roadway projects. In fact, routinely traffic flow in areas of low traffic is as dangerous and otherwise problematic as is traffic on high speed roadways. Traffic management in the center of our cities and densely populated towns is difficult without ongoing roadway maintenance and construction projects. When maintenance and construction projects occur, traffic control, with attendant propensity for accident, concern over compliance with traffic laws, inevitable driver frustration and other factors, strongly warrant a police presence rather than a civilian flag waver.

We strongly urge that the regulations be redrafted to eliminate central reliance on speed as the touchstone for use of flaggers over sworn police officers. In lower speed areas more consideration must be given to density, land use, and volume of road and foot traffic and other local characteristics.

No demonstrable cost savings has been identified

We are aware of no reliable study that demonstrates any savings whatsoever from the use of flaggers over police officers for cities and towns. Certainly the simple recitation of the actual costs of using police details historically in public works projects alone does not demonstrate that a cost savings could be achieved by the use of flaggers. Rather, a comparison of the actual costs, direct and indirect, of using flaggers, to the actual costs of using police officers is the only reliable measure of cost efficiency. In that regard, if it readily apparent that direct costs for the use of flaggers would alone equal or exceed the direct cost of using police details. That is so because the clear predominance of public works projects in Massachusetts are covered by Massachusetts General Laws, Chapter 149, Section 27B, familiarly known as the prevailing wage law. Under that law, and by way of example, as of May 31, 2008, the hourly minimum for the use of a flagger on road projects in Newton is set at $34.05 an hour. Adding twenty percent to that cost for fringe benefits and another ten percent for the profit margin likely assessed by a flagger's employer leaves the total direct cost per hour at around $45. Compared to the direct cost of police officers with an average hourly rate of $40 to $42, this leads to an inescapable conclusion that flaggers will cost as much or more as police officers.

Indirect public safety and taxpayers costs of flaggers to communities

A look at indirect costs to cities and towns for the replacement of police officers with flaggers at roadway projects leaves no doubt that there is simply no cost justification for such replacement. Presently, cities and towns are able to put police officers on the streets both through on duty deployment and through the use of paid police details. They are able not only to control traffic at the detail sight, but also provide an important police presence that is highly useful, if not essential, to the overall success of public safety in our communities. Additionally, they routinely respond to other public safety problems occurring in the vicinity of their details, and are equipped and available to respond to emergency situations anywhere in the community without the need for mobilization. In fact, many communities include officers at paid details within their emergency response plans.

Although communities would not be forced to deploy regularly scheduled police officers to replace every police officer no longer available through the paid detail system, they would have

to increase deployment over current levels to at least some degree. This added deployment would result in substantial extra costs to cities and towns through increased staffing levels and/or increased overtime costs for the extra deployment of existing staff.

Public safety will be sacrificed and costs will go up

To maintain adequate staffing levels, regular income and benefit costs to communities will increase proportionately to the loss of income from limited paid detail opportunities. Thus, taxpayers will bear the same or greater burden for the costs of deploying a similar number of police officers and will also bear the extra costs for flaggers who have replaced police officers at paid detail sites. They will also be responsible for increased pension costs attributable to increased regular income levels that it now avoids because detail payments do not constitute regular compensation for pension purposes. At the same time, our communities will have lost the public safety advantages concededly now available from the use of sworn police officers at detail sites.

The regulations need further review

Accordingly, we urge you to pull back the proposed regulations until such time as you have better data and can effectively tell yourselves that the outcome we have foretold today is the end point of your efforts. I note in this regard, that the enabling legislation under which the proposed regulations have been drafted, Chapter 86 of the Acts of 2008, specifically calls upon you at Section 10 to examine "the actual costs savings from the utilization of alternate personnel." Until you have undertaken that process, any regulations that you produce with be subject to legal challenge for failure to comply with this legislative mandate, and unfaithful to the dual purposes of the regulations themselves.

Thank you for your time and your consideration. We appreciate the work that you do for the citizens of the Commonwealth and ask for your careful assessment of our comments today in the best interests of those citizens.

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September 15, 2008

Bernard Cohen, Secretary
Executive Office of Transportation & Pubic Works
10 Park Plaza
Boston, MA 02116

Dear Secretary Cohen,

On behalf of Construction Industries of Massachusetts (CIM), we commend you and your staff for the professional and thorough manner in which you have undertaken the important and difficult task of developing regulations relative to the use of police details and flaggers across the Commonwealth. Having served on the Transportation Finance Commission which explored this very topic, we fully appreciate the complexities involved.

The members of CIM perform work for EOT, MassHighway, the MBTA, MWRA, Turnpike, Massport, cities, towns and several other awarding entities. When undertaking projects for each of these entities, there is no question the highest priority of our members is the safety of their employees and the public. Work zone safety cannot be compromised. We are pleased the draft regulations before you today recognize safety as being of the highest importance and they appropriately require safety plans for each individual project rather than prescribe rigid, uniform rules.

CIM strongly believes the majority of work zones should be covered by police details, but we also believe Massachusetts should follow the lead of forty-nine other states and allow for the use of flaggers when appropriate. We have had the opportunity to work with MassHighway on, and to review, the traffic management plates which address the various work zone configurations. Having been involved in this process, we can express our continued confidence in knowing that the undisputed goal will continue to be protecting the safety of everyone impacted by work zones.

In reviewing the regulations, we suggest the addition of a new section under *7.08 Administration* to address the pay item for police details and flaggers. Currently, the Massachusetts Highway Department directly reimburses contractors for the cost associated with the police details. We strongly urge you to maintain this currently effective process and extend it to the payment for flaggers. The issue of paying for these important, and required, safety personnel should not be left to the bidding process.

There is little dispute in Massachusetts that we face a nearly $20 billion – 20 year gap between the funding needs and available resources necessary to address the current needs of our transportation infrastructure. There is also little dispute that the citizens of Massachusetts demand that every effort is made to make the most efficient use of current resources before there is consideration of adding new resources. The regulations governing the use of road flaggers and police details on public works projects is a necessary step in this process and one that has been undertaken with a continued focus on safety and needed attention on efficiency.

We again commend you and your office for your approach to this difficult task and we remain committed to working with you and all involved parties to cooperatively provide for the safety of our members, their employees and the public at large.

Sincerely yours,

John M. Pourbaix, Jr.
Executive Director

Revere Patrol Officers Association
400 Revere Beach Parkway
Revere , Ma 02151

Dear Chairman Cohen and Respected Officials:

On behalf of the Revere Patrol Officers Association and hard working officers across the Commonwealth, I ask you to reconsider the passing of the proposed police detail reform regulations. Ask yourself, what is the cost and impact to public safety of these regulations? This never seems to be mentioned by those so-called tax saving folks. Is a flagger going chase a bank robber, write a speeding ticket, or deliver a baby?

On any given day within the city of Revere there are approximately 10 to 15 trained police officers on the streets assigned to details. There are only seven officers on patrol duty at any given time. The extra police officers on details have been responsible for a number of arrests. These arrests have included assisting the officers that are on patrol, as well as enforcing the law within the detail site, issuing traffic and parking citations, and looking out for the safety and welfare of the construction workers and the citizens of Revere. Will a flagger do this?

Just this year on a state funded road detail one of our sergeants heard screams and observed two Rottweilers, that weighed over 150 pounds each, ripping the arm off a female citizen on her way to work. That sergeant was able to put the dog down and save that lady's life. The other dog, seeing this, made the right choice and ran back in its yard.

In addition to enforcing the laws, officers in Revere have on a number of occasions performed CPR and provided other medical assistance to Revere's citizens. I am sure you can also see the value of having extra armed trained police officers on the street who are able to fend off a possible terrorist attack or respond to a school shooting, if it is ever required. Will a flagger do this? In fact, how many crimes might detail officers have prevented by their mere presence? More officers on the street means less crime in the Commonwealth. Can you say that about flaggers?

I would like to correct the erroneous statement that the other forty-nine states use flaggers, not police details. In truth, more and more states are using police officers. Just take a ride over the border to any of our neighboring states and you will witness police details. Yes, there are still some projects on small rural roads in the woods that use flaggers, but all of the projects in larger cities and towns and on state highways are using trained police officers. This is happening in places that have not nearly the problems and congestion that we do.

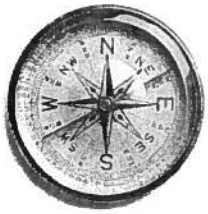
As for the financial costs of eliminating details, the city of Revere gets an administrative fee of 5% on every detail an officer works. Last year, that amounted to over $100,000. That's money that goes towards public safety, money which will be lost with the new system. The state aims to take away this money at a time when the city needs it the most.

The Commonwealth has stated that the wage of a civilian flagger will be about $36.50 per hour, without adding in the cost of health and safety insurance and retirement benefits. This is based on the state's prevailing wage, and let me point out that the state's prevailing wage has never gone down! It will only go up from here. On top of the cost mentioned, there will be the additional expense of creating a whole new bureaucracy to oversee the flagger system. Some of the specific costs that haven't been mentioned include the cost of training flaggers, hiring flag supervisors, performing background checks, drug testing, and overall administrative costs of running the program. I would also like to ask what happens if flaggers hurt themselves on the job, or better yet cause an accident due to lack of experience and authority. Who will pay for those costs? The fact is that this new system is actually going to cost the state money.

I strongly believe that this proposed system, in addition to costing the state more money, will cost the lives of citizens of our great Commoneweath. Having a trained police officer who can enforce the law and save lives for the same cost or less than that of a flagger is a bargain. I trust you agree with me: One can't put a price on human life.

Thank you for you time

Joe Rizzuti
Revere Patrol Officers Association
Night Steward / Legislative Team



PIONEER INSTITUTE

PUBLIC POLICY RESEARCH

Testimony to the Executive Office of Transportation on Police Details
Monday, September 15, 2008

Thank you for the opportunity to testify. My name is Jim Stergios. I am the Executive Director of Pioneer Institute.

Reform of police details is of real and symbolic importance to the prospects of addressing our long-term transportation infrastructure needs. It can achieve significant savings that could be used to fix more roads. At the same time it can help address a credibility gap faced by the Commonwealth 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. Effective reform on the issue of police details will tell the citizens of Massachusetts a lot about how intent the state is on rebuilding that credibility.

Pioneer Institute has also expressed skepticism about the legislation and the ensuing regulations. This is not because we believe these reforms were easy to achieve. We appreciate that the Governor and Secretary Cohen have taken on the police detail issue. We understand that previous administrations were unable or unwilling to take on the issue. We also understand the limits of what could be accomplished given the wording of the relevant legislation.

Our skepticism is the result of our belief that the Commonwealth is in a new place – and transportation policies must be crafted with a sense of responsibility holding that new reality in mind. The Big Dig is completed, but we have billions of dollars in unmet needs across the state. We must face the fact that, at some point in the future, the state will have to seek additional resources to adequately address the maintenance needs of our transportation infrastructure.

Seeking new revenue requires public buy-in and therefore building public trust. That trust is premised on a demonstrated commitment to significant reform, greater transparency, and good execution. If these reforms don't deliver the expected savings, it will damage the Commonwealth's credibility. Savings of $5.7 million, or even $7.2 million, are to be applauded. But they will not seem significant to citizens who may be called upon to provide hundreds of millions of dollars in new revenue.

We are concerned that the realized savings will not match the expectations and the need – real and symbolic. We are pleased, after review of the draft report just released by the Executive Office of Transportation, that lower compensation costs, updated safety plans, and reformed

work rules will result in savings while preserving safety. Two things must happen: First, we must ensure that these savings projections are not diluted by changes to the regulation or by poor implementation in the field.

Second, we must revise the initial legislation, written by the Legislature and signed by the Governor, because it is fundamentally flawed. It allows a massive loophole for municipal police officers, whose collective bargaining agreements can supersede this regulation. These collective bargaining agreements lock in unnecessary police details, for many roads with low speeds and traffic volumes that would otherwise be covered by this regulation. The loophole perpetuates an unneeded cost that is borne by the taxpayer at the end of the day. It will also clearly be exploited in municipal contract negotiations.

Opponents of this reform argue that since flagmen and signalers are paid at rates similar to detail officers under collective bargaining, this reform is ineffective. The argument is flawed for three reasons: The September 9th Cost Report details significant near-term savings from lower compensation rates for flaggers. There is significant potential for collective bargaining to change pay rates in the future. And, finally, it ignores the thicket of work rules and conventions, such as minimum duty hours and unclear (or unenforced) cancellation policies that drive up costs.

The predictions of doom and disorder that other speakers will deliver today fail the common sense test for most citizens. We are the only state that utilizes police details in this manner. Can we face taxpayers with a straight face and say that we have delivered on the promise of reform?

All of these criticisms do, however, convey something important: To be successful, the Secretary's Office will need to be vigilant about advancing reform of these rules, and the legislative and executive leadership must address the exclusion for municipal collective bargaining.

Today is a good first step. But only by taking these actions will we demonstrate to the public that we will not allow expediency to derail our work to address the state's backlog of transportation needs.

Thank you for the time and opportunity to address this issue.

Hearing on Police Details
Executive Office of Transportation and Public Works

David G. Tuerck
Chairman and Professor of Economics
Executive Director, Beacon Hill Institute
Suffolk University

September 15, 2008

I am offering these comments in connection with the hearing today on police details. The state has already conducted a hearing on this matter and has, on the basis of that hearing, promulgated new regulations. In order to avoid belaboring points that I and others have already covered, I will focus my remarks on the document entitled, "Cost Analysis and Report," which the Executive Office of Transportation and Public Works posted on its website on September 9. My comments are my own and not those of Suffolk University.

In its report, EOTPW estimates that the state will save 28.76%, or $5.7-$7.2 million, on current year highway construction by using road flaggers rather than police details at specified work sites. The estimate takes into account changes in traffic management plans, as well as the savings in labor costs, that the new policy will bring about.

From every appearance, the EOTPW estimate is accurate, given its underlying assumptions. I wish, however, to dispute one of those assumptions, namely, that the state prevailing wage for the job category known as "flagger/signaler" is the correct benchmark against which to compute cost savings. My argument is that current measures of the prevailing wage are unrealistically high and that EOTPW has therefore underestimated the actual cost savings.

Consider the prevailing wages for flaggers, which, according to the report, vary from $31.70 in Adams to $34.85 in Boston. The underlying problem with these numbers is that they are entirely contrived and bear no relation to what the prevailing wage – or any wage – is likely to be once the state starts utilizing flaggers.

The prevailing wage is not decreed by God but is rather a number that the Commissioner of the Division of Occupational Safety discovers in a union contract somewhere. To test the meaningfulness of this number, I would ask someone – anyone – to tell me where he or she has ever seen a civilian flagger at work in Massachusetts. Having driven around this state for more than 26 years now, I personally have yet to see one.

The reality is that the prevailing wage for flaggers is seldom, if ever, paid to anyone for actually flagging traffic at work sites on public roads. The wage that the state would have to pay for flaggers cannot be determined, therefore, from the current, published prevailing wage, which is a wage for a service not, or mostly not, performed.

Let's see why the prevailing wage is also an exaggerated wage. First, the EOTPW report estimates that the state would save13.01% in labor costs by substituting flaggers for police details. But this number is based on an exaggerated estimate of what contractors or the state would have to spend on benefits for flaggers. The report puts the average statewide flagger rate at $33.09 and the "base wage" for flaggers at $18.50 per hour. This implies that contractors pay benefits costing $14.59 per hour, or 44.1% of compensation.

Nationally, benefits for civilian workers make up only 30.3% of compensation. There is no reason why flaggers, whether unionized or not, should receive benefits that make up a far larger fraction of their compensation. If benefits made up the same fraction of compensation for flaggers as they do for all civilian workers, the hourly cost of flaggers would fall from $33.09 to $26.54, in which case the saving on labor cost would be 19.8%, not 13.01%. And there is every reason to believe that benefits for flaggers would be substantially less than the national average, since the work could be done by part-time workers and retirees not needing benefits.

Another reason to consider the projected cost saving an underestimate is that civilian flaggers and their unions will see themselves in competition with the police unions to perform flagging services and will want to compete on price. Once civilian flaggers come on the scene in meaningful numbers, the wage, meaning the prevailing wage, will come down with this competition.

Finally, there is an easy solution to the obstacle posed by the state prevailing wage law in the state's efforts to cut costs: Take the job of "flagger/signaler" out of public works contracts. There is nothing to stop the state from contracting separately for this work, just as municipalities contract separately for school crossing guards. There is traffic safety and there are public works, and the first has nothing to do with the second. The notion that the state has been contracting for flaggers is a fiction anyway. There is no need to perpetuate that fiction under its new regulations.

In short: If the state takes the simple step of excluding the flagger/signaler job category from public-works construction contracts and then contracts separately for flagger services, the cost of hiring flaggers will reflect market realities, not some trumped-up union wage. And the cost will come down by far more than EOTPW estimates in its report.

We have heard that the police unions are pressuring local officials to negotiate collective bargaining agreements that will frustrate the Governor's efforts here. By taking the prevailing wage issue off the table and by letting the market determine flagger wage rates, state officials could provide their local counterparts with a much-needed object lesson in intestinal fortitude.

Voters and taxpayers are becoming increasingly skeptical about the idea that they should have to pay upwards of $80,000 a year for a job that takes a few hours of training. That should be reason enough for state officials to act boldly. Thank you

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September 15, 2008

Statement of the Plymouth Police Brotherhood

Regarding Proposed Regulations at 701 CMR 7.00

The Plymouth Police Brotherhood is the legally recognized collective bargaining agent for police patrol officers in the Town of Plymouth, Massachusetts. This statement is submitted on behalf of these officers in response to the draft regulations issued by the Executive Office of Transportation and Public Works and the subject of the public hearing on September 15, 2008.

Although the Brotherhood is convinced that this regulatory proposal will save little taxpayer money while reducing overall police presence and having the detrimental effect of jeopardizing public safety at roadway construction sites, those arguments are ably advanced in the testimony offered by others today. The focus of the Brotherhood's concern is the way in which the draft regulation interferes and limits the process of collective bargaining rights for public employees without any demonstration that the regulatory proposal on this issue advances even the goals of the advocates for so-called civilian "flaggers". Specifically, the draft regulations at 7.01 (2) (b) limit the application of negotiated collective bargaining provisions on this subject to those which "have an effective date" prior to the implementation of the new regulations. In other words, both municipal governments and labor organizations have been subjected to an artificial bargaining deadline throughout Massachusetts as a result of the publication of the draft regulations. As to situations where the municipality is the Awarding Authority under the draft regulations, there is no similar limitation on the timeline under which collective bargaining negotiations can occur or local bylaws adopted.

The dual system of bargaining incentives (depending only upon whether the Awarding Authority is the Commonwealth or a Municipality) affecting labor and management should not be continued in any final regulations. It is the strong belief of the Plymouth Police Brotherhood that no deadline should be imposed on labor negotiations in this situation. As reported in statewide print media as recently as September 14, 2008, this hastened bargaining process which is presently underway in several municipalities has created a situation which is unfair to both sides in the labor area. For that reason, you have apparently received requests from some municipalities as well as employee organizations that the deadline for collective bargaining on this issue be extended well into the next year.

The merits for eliminating the bargaining deadline or extending it beyond the life of any existing labor contract is to allow labor and management to negotiate any changes in street traffic enforcement within a normal collective bargaining cycle when other issues which may arise can be considered in the balance. As contemplated in the proposed regulations, negotiations are now occurring in many communities with no other issue on the table and with an imposed deadline. Imposed deadlines are explicitly contrary to the intent of G.L. chapter 150E which promotes good faith bargaining without artificial constraints. The Department of Transportation draft regulations, however, upset this balance which has existed in Massachusetts municipalities for decades with little apparent grounding in the authorizing statute or the inherent purposes contained within the new law.

The normal and expected "give and take" of collective bargaining is constrained by the draft regulations which have a deadline only for projects where the Commonwealth is the Awarding Authority. As a result, parties have been forced to consider negotiations over the last several weeks for only one kind of road project. The overall value of collective bargaining

should not be limited in this way. The better result, and that urged by the Brotherhood, is that if regulations are even necessary, then the collective bargaining which is to occur should be allowed to proceed on their own merits as the parties negotiate successor agreements. If the parties wish to engage in earlier mid-term bargaining, then that decision can be made where the law puts, between management and labor. The Executive Office of Transportation and Public Works does not need to interfere with labor negotiations in meeting its responsibility under the new law.