

2015

Annual Report



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Inspector General
Internal Special Audit Unit
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Inspector General Council

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Internal Special Audit Unit, Office of the Inspector General

Address:

Ten Park Plaza
Suite 3510
Boston, MA 02116

Phone:

(857) 368-8663
(855) 963-2580 (hotline)

Email and Fax:

ISAUHotline@dot.state.ma.us
MassDOTFraudHotline@state.ma.us
(857) 368-0663 (fax)

Executive Summary

The Internal Special Audit Unit (“ISAU” or “the Unit”) within the Massachusetts Office of the Inspector General (“Office”) respectfully submits the following annual report in accordance with M.G.L. c. 6C, § 9(e).

The Office is an independent agency charged with preventing and detecting fraud, waste and abuse in the use of public funds and public property. In keeping with its broad statutory mandate, the Office investigates allegations of fraud, waste and abuse at all levels of government; reviews programs and practices in state and local agencies to identify systemic vulnerabilities and opportunities for improvement; and provides assistance to both the public and private sectors to help prevent fraud, waste and abuse in government spending.

In 2009, the Massachusetts Legislature created the ISAU as an independent unit responsible for monitoring the quality, efficiency and integrity of the Massachusetts Department of Transportation’s (“MassDOT” or “Department”) operating and capital programs. As part of its statutory mandate, the ISAU seeks to prevent, detect and correct fraud, waste and abuse in the expenditure of public and private transportation funds. Further, the ISAU is also responsible for examining and evaluating the adequacy and effectiveness of MassDOT’s and the Massachusetts Bay Transportation Authority’s (“MBTA”) operations, including their governance, risk-management practices and internal processes.

In 2015, the Unit investigated MassDOT’s paving operations and identified over \$100,000 in overpayments to a contractor, delays in closing paving contracts and numerous errors in the Department’s administration of its paving contracts. Following the paving investigation, the Unit recommended that MassDOT strengthen its contract administration, enforce its policies, make timely contract closeout a priority and resolve any outstanding amounts owed to contractors. In response to the ISAU’s investigation, MassDOT recovered the overpayment from the contractor and created a working group to address the Unit’s findings and recommendations.

The Unit also performed a follow-up review of disability parking placard (“placard”) abuse in Massachusetts and the process by which the Registry of Motor Vehicles (“RMV” or “Registry”) issues placards. The ISAU uncovered placard abuse in every Boston neighborhood it surveilled, a flaw in the RMV’s placard application and gaps in the state’s placard laws. Much of the abuse the investigation uncovered related to drivers parking for free at parking meters all day, using placards that belonged to someone else. Following its investigation, the Unit recommended that the Registry work with other stakeholders, including the Legislature, local law enforcement, the disability community, parking officials and healthcare providers, in order to combat ongoing abuse.

The Unit also recommended specific legislative changes, including adopting a two-tier placard system or instituting a limit on the time placard holders can park at a parking meter for free. A two-tier system or a time limit would help curtail placard abuse because it would limit the ability to use a placard to park at a meter all day for free.

Background

I. ISAU

The ISAU currently has a staff of five people dedicated to performing audits, investigations and reviews of MassDOT's and the MBTA's operating and capital programs. The Unit assists the Commonwealth, the taxpayers and MassDOT by identifying potential cost savings, internal control weaknesses, the waste of transportation funds, fraudulent activities and the misuse or abuse of public authority.

The ISAU's activities include, but are not limited to:

- Investigating allegations of fraud, waste and abuse in the expenditure of public or private transportation funds.
- Auditing specific operations at the request of the Inspector General Council, the Legislature, MassDOT's Board of Directors or MassDOT's management, as appropriate.
- Reviewing MassDOT's and the MBTA's operations or programs to ascertain whether they are efficient, cost-effective and achieve established results.
- Determining whether MassDOT is complying with applicable policies, procedures, laws and regulations.
- Reviewing MBTA's procurement of certain services, including evaluating bidding practices and identifying cost-saving opportunities.
- Participating in the RMV's Placard Abuse Task Force and supporting the RMV's placard abuse hotline.

These activities enable the ISAU to promote responsible spending of taxpayer funds, prudent business practices and better accountability.

II. MassDOT

Created as part of Transportation Reform in 2009, MassDOT is responsible for managing the Commonwealth's roadways, public transit systems, and transportation licensing and registration. It is made up of four divisions: the Highway Division, the RMV, the Aeronautics Division, and Rail and Transit.

The Highway Division is responsible for the roadways, bridges and tunnels of the former Massachusetts Highway Department and the former Massachusetts Turnpike Authority. The RMV is responsible for the administration of driver's licenses, motor vehicle registrations and vehicle inspections across the state. Among its many duties, the RMV reviews and approves applications for disability parking placards and disability license plates. The Rail and Transit Division includes the MBTA. The Aeronautics Division coordinates aviation policy and oversees the safety, security and infrastructure of thirty-seven public airports across Massachusetts.

Financial Recoveries, Fines and Cost Savings

A high priority for the Unit is to protect transportation funds by identifying opportunities to reduce costs, wasteful government spending, or overpayments in MassDOT's operations. Achieving this objective involves investigating complaints or allegations the Unit receives, performing in-depth reviews of MassDOT's operations and evaluating synergies across the Department. In 2015, the ISAU identified two potential overpayments to a paving contractor, which led MassDOT to recover over \$100,000. The Unit's placard investigation also led to the imposition of over \$12,800 in fines. The table below details the recovery and fines. Further specifics of these investigations are detailed in the Audits, Investigations and Reviews section of this report.

| Transportation Funds | |
|---|-------------------------|
| Investigation | Recovery or Fine |
| Investigation of Commodity Price Fluctuations at MassDOT | \$116,424 |
| The Abuse of Disability Parking Placards in Massachusetts | \$12,800 |
| Total | \$129,224 |

In addition to the recovery and fines listed above, the Unit's placard investigation also determined that placard abuse may cost the city of Boston millions of dollars in lost meter revenue annually. Since vehicles with disability parking placards are not required to pay meter fees, the city of Boston loses revenue each day from persons who misuse placards. Given that the ISAU identified abuse at parking meters in every area of Boston it surveilled, it is likely that placard abuse exists throughout the city. While it is not possible to determine the exact financial cost of city-wide placard abuse, if just 10% of drivers who regularly park at meters in Boston are misusing placards, this translates into approximately \$1.8 million in annual lost revenue for the city.¹

¹ Based on a commuter parking at a meter for eight hours a day for 228 days a year.

Audits, Investigations and Reviews

I. Investigation of Commodity Price Fluctuations at the Massachusetts Department of Transportation

Given the substantial taxpayer dollars that MassDOT spends on paving public roadways, the ISAU examined how the Department manages its paving contracts, including whether MassDOT properly accounts for fluctuations in the price of liquid asphalt and diesel fuel that is used to pave roads. Since the price of asphalt and diesel fuel can fluctuate frequently, both state law and MassDOT's policies require the agency to calculate price adjustments for these commodities on a monthly basis. The investigation uncovered overpayments to one contractor, inaccurate payments in several contracts, non-compliance with state law and significant delays in closing paving contracts. The ISAU also found that MassDOT has robust policies and procedures for administering paving contracts; the agency does not, however, enforce those policies and procedures. Specifically, the Unit found:

1. MassDOT overpaid a frequently used paving contractor \$116,424² for a paving project. After the ISAU brought this issue to the contractor's and MassDOT's attention, the contractor refunded MassDOT.
2. In the contracts that the ISAU reviewed, 44% of the documentation for asphalt pricing and 79% of the documentation for diesel fuel pricing were inaccurate. These errors resulted in nearly \$69,000 in underpayments to paving contractors.
3. State law requires MassDOT to calculate monthly price adjustments on contracts for certain commodities, including for diesel fuel and asphalt. Nevertheless, some MassDOT employees do not calculate asphalt or diesel fuel price adjustments monthly, or at all. Failing to perform these calculations at all could result in inaccurate payments to contractors. Not only is this poor contract administration, it puts MassDOT at risk of fraud, waste and abuse.
4. MassDOT did not perform all required asphalt testing on three of the paving projects the ISAU reviewed. On certain paving projects, MassDOT requires asphalt testing throughout the paving process in order to verify that the paving materials meet the specifications outlined in the paving contract. The failure to collect asphalt samples throughout paving projects affects MassDOT's ability to ensure that state roads meet the quality standards the Department contractually required and paid for.
5. MassDOT does not close out paving contracts and issue final payments to contractors in a timely manner. Some paving contracts that the Unit reviewed remained open years after the contractors had completed the paving work. Closeout delays could hinder MassDOT's process for obtaining federal funding for construction projects,

² The ISAU's report identified a second overpayment to the same contractor. After the Unit issued its report, MassDOT provided the ISAU with a recalculation, which demonstrated that it did not overpay the contractor on the second contract.

limit individual contractors' ability to bid on additional paving projects and increase MassDOT's costs and risks.

MassDOT has weaknesses in its recordkeeping and payment procedures. In particular, paving records are disorderly and are often missing relevant documents. Weight slips, which are essential to ensuring that the agency pays only for asphalt used on the project, were missing in almost half of the files reviewed. The Unit recommended that MassDOT:

1. Recoup any remaining balance due from contractors and resolve all outstanding payments.
2. Explore ways to ensure that staff process price adjustments accurately, such as through increased training, management oversight and audits.
3. Require all districts to calculate commodity price adjustments monthly. Consider monthly reporting or another method to make it easier to track which contracts are (and are not) being reconciled monthly.
4. Require employees to close out contracts in a timely manner; establish timelines for completing specific milestones in the closeout process.
5. Enforce internal policy guidance and ensure consistency among all districts for performing contract reviews at every stage of the paving project.
6. Enhance documentation and recordkeeping standards to maintain complete and accurate records.
7. Explore alternate ways to manage weight slips, such as electronic delivery, storage and retention.

In response to the report, MassDOT immediately created a working group to review the Unit's findings and assess whether the Highway Division follows current policies. The working group also conducted price adjustment training for Highway Department employees, developed a workflow tool to track price adjustments on open contracts and explored the potential for staff augmentation.

II. The Abuse of Disability Parking Placards in Massachusetts

The ISAU performed a follow-up review to the Office's 2013 investigation into the misuse of disability parking placards. The Unit investigated the use of placards to park at meters in Boston, examined the Registry's process for reviewing and approving placards, and assessed the state's authority to prevent and detect placard abuse.

Placards allow persons with disabilities to park at parking meters for free, for an unlimited amount of time. The meter-fee exemption, coupled with the convenience of parking close to work and the high cost of parking in urban areas, can act as an incentive to misuse placards. The Unit uncovered placard abuse in every Boston neighborhood it surveilled. The abuse took many forms, including commuters using placards belonging to deceased individuals,

family members, friends and acquaintances to park at a parking meter all day, for free. The ISAU also found gaps in both the RMV's placard process and the state's placard laws that make it easier for individuals to obtain and use placards inappropriately. Drivers who misuse placards deprive the disabled public from finding accessible parking when they need it, and cost cities and towns parking revenue.

Specifically, the Unit found:

1. Drivers misused placards in order to park for free all day at metered spaces near their workplaces.

The ISAU identified 325 drivers using a placard that did not belong to them, including placards belonging to deceased persons, canceled placards and expired placards. Working with the ISAU, the Massachusetts State Police cited twenty-three of the drivers for placard misuse and confiscated the placards they were using. These violations resulted in drivers paying \$12,800³ in fines to the state.

In addition, fifty-seven drivers covered some or all of the information on their placards (including the placard number and expiration date), or faced the front of the placard away from the windshield, thereby concealing the placard number and expiration date. This conduct enables abusers to use placards that are cancelled, have expired or belong to someone else. None of the fifty-seven vehicle owners had their own placards.

2. Some placard holders have job duties requiring physical activities that contradict the state's mobility limitations⁴ for obtaining a placard, but the RMV has limited oversight or investigatory authority.

The ISAU identified individuals whose job duties require standing and walking for hours. For instance, a chiropractor had received multiple temporary placards and, ultimately, a permanent placard. However, the Unit observed this individual walking more than 200 feet without resting, assistance or ambulatory aids on multiple occasions. His employees signed each of his placard applications. The Unit also identified construction workers and hotel banquet servers who obtained their own placards and used them to regularly park near their workplaces.

While most people who obtain placards truly need them, the RMV has limited authority to reject or question suspicious placard applications. Rather, under the current laws, the RMV must approve nearly all placard applications as long as a licensed medical provider certifies that the applicant meets at least one of the criteria on the application. Furthermore, the current placard laws do not contain a mechanism to protect against fraudulently obtained placards.

³ Including \$100 paid by a placard holder to reinstate his driver's license.

⁴ 540 CMR 17.03(2)(a) states that to qualify for a placard, a medical professional must certify that, because of a described clinical diagnosis, the applicant cannot walk 200 feet without stopping to rest, assistance or an ambulatory aid.

3. Some temporary placards were extended multiple times, sometimes years beyond the original expiration date.

In the Unit's sample, 19% of temporary placards were extended three or more times. The RMV has limited authority to question suspicious applications, such as seemingly excessive temporary placard renewals.

4. The RMV's placard application is inconsistent with state law because it lists arthritis as a stand-alone basis for receiving a placard.

Although arthritis does not, by itself, meet the regulatory requirements for a placard, the RMV's application lists it as one of the qualifying conditions for obtaining a placard. An individual with arthritis only qualifies for a placard if the arthritis prevents him from walking more than 200 feet without resting, assistance or ambulatory aids. This discrepancy between state law and the application allows an applicant to obtain a placard without a medical provider certifying that the condition severely limits his mobility, contrary to state law.

5. The improper use of placards in Boston may cost the city millions of dollars each year.

Individuals who use someone else's placard to park at a meter for free deprive cities and towns of parking revenue. For example, the ISAU found that if just 10% of drivers who regularly park at meters in Boston are misusing placards, this translates into approximately \$1.8 million in annual lost revenue for the city.

6. Approximately 50% of the placard applications the ISAU sampled had incorrect healthcare providers recorded in the RMV's electronic system.

This leads to inaccurate recordkeeping at the RMV, as well as the inability to effectively monitor or analyze provider data.

The ISAU recommended that the RMV take the following steps to continue to combat placard abuse:

1. Work with the Legislature and other stakeholders to revise and update the state's placard laws.

The RMV should consider supporting a two-tier placard system like those adopted by other states. The two-tier system would grant the meter-fee exemption to specific placard holders who are physically unable to reach a parking kiosk or insert coins into a meter. Alternatively, the RMV should work with state lawmakers to add a time limit to the meter-fee exemption. For example, placard holders could be required to observe the posted time limit for metered spaces. Adopting a two-tier system or adding a time limit would help curtail placard abuse because it would limit the ability to use a placard to park at a meter all day for free. It would also help ensure that parking is available for the disabled public.

The RMV and the Legislature should also pursue additional measures to curb placard abuse. For instance:

- a) Make the obstruction of a placard number or expiration date, as well as reversing a placard, a citable offense under state law.
- b) Impose penalties for making a false statement when reporting a placard lost or stolen.
- c) Increase the fines for misusing a placard.
- d) Make it a crime to use a deceased person's placard.
- e) Expand the RMV's ability to detect and correct placard abuse.

2. Make the current placard application consistent with state law.

The RMV should remove arthritis as a stand-alone basis for receiving a placard. An individual with arthritis would still be able to get a placard as long as a medical provider certified that the individual could not walk more than 200 feet without resting, assistance or an ambulatory aid.

3. Consider adopting additional procedures for temporary placard extensions.

The Registry should strengthen its oversight of temporary placards. The agency could, for instance, contact providers who sign an individual's temporary placard application three or more times to verify that the temporary status is appropriate.

4. Work with cities and towns to enforce the placard laws and combat abuse.

The RMV should provide cities and towns with information about common methods of placard abuse, the impact of such abuse and enforcement options, including self-funding enforcement models. The RMV could also explore ways for parking clerks to issue fines for certain placard violations. Since parking clerks monitor parking meters and parked vehicles, they are in an ideal position to identify vehicles with expired placards, as well as obstructed or reversed placards.

5. Educate the healthcare community on the specific criteria required for placards and the impacts of placard abuse.
6. Develop an electronic reporting tool for local law enforcement officials to immediately report cases of placard abuse to the RMV.
7. Update the medical provider information in the agency's electronic records and ensure that its database lists the correct provider who signed each placard holder's application.

8. Formalize the Massachusetts Disability Placard Abuse Task Force (“Task Force”), possibly through legislation.⁵

Combatting placard abuse requires a combined effort among stakeholders at the state and local levels, and the RMV’s task force is the appropriate vehicle for this collaboration.

In response to the ISAU’s report, the Registry agreed to consider the Unit’s recommendations in order to (1) prioritize improvements to its process for issuing placards; (2) enhance its database of medical providers; (3) improve the design of placards; and (4) develop law enforcement training for identifying and citing placard misuse. Additionally, the Registry will conduct meetings with its Medical Advisory Board⁶ and the Task Force to discuss the Unit’s findings and recommendations. Specifically, the RMV will consult with the Medical Advisory Board regarding the RMV’s processes for (1) renewing temporary placards; and (2) reviewing applications that list arthritis as the qualifying disability. Further, the RMV will take steps to formalize the Task Force.

The RMV also reported that it is developing a new procedure for law enforcement to inform the RMV when a placard is confiscated. Finally, the RMV has modified its process for reporting a placard lost or stolen. Specifically, when a placard holder reports a placard lost or stolen, he must now certify that law enforcement has not confiscated the placard.

III. Investigations Referred to the Office of the Inspector General

In accordance with M.G.L. c. 6C, § 9(d), the ISAU may report and refer findings to the investigative division of the Office, and the results of such investigations may be referred to the Attorney General for appropriate action. During 2015, the ISAU investigated or reviewed all complaints internally, and therefore did not refer any items.

⁵ See description of the Task Force in the Hotlines and Task Force section of this report.

⁶ The Medical Advisory Board consists of a panel of approximately fifteen physicians of varying specialties and is appointed to the Registry by statute. See M.G.L. c. 90, § 8(c).

Statutory Mandates

In July 2015, the Massachusetts Legislature adopted Chapter 46 of the Acts of 2015, which suspended M.G.L. c. 7, §§ 52-55 – commonly known as the Pacheco Law – for three years. The Pacheco Law previously prevented the MBTA from outsourcing certain services without first seeking approval from the Office of the State Auditor and completing several other steps.⁷ Section 196 of Chapter 46 requires the Office to review and analyze the contracts for the services that the MBTA outsources. For example, Chapter 46 directs the Office to evaluate whether the outsourcing resulted from a competitive process, saved the MBTA money, and maintained the same level of quality of goods or services. Specifically, the mandate provides that:

The office of the inspector general shall perform a review and analysis of all contracts performed pursuant to subsection (a). The Massachusetts Bay Transportation Authority shall provide the inspector general with all requests for proposals and a copy of any contracts entered into pursuant to said subsection (a). The analysis shall include, but need not be limited to, a review of: (i) the competitiveness and fairness of the procurement process resulting in the contract; (ii) the quality of the services provided by the contract; (iii) the expected and actual cost of the contract; and (iv) an analysis of whether the cost of the contract exceeded the benefits derived from the contract. The office of inspector general shall issue a report of the review and analysis of contracts performed pursuant to subsection (a) not later than 90 days after complete performance of such a contract. The report shall be filed with the clerks of the house of representatives and the senate, the house and senate committees on ways and means, and the joint committee on transportation. The office of the inspector general shall make said reports available on its website.

The ISAU has begun working with the MBTA in accordance with Chapter 46. As of the date of this report, however, the MBTA has not executed any contracts that fall within Chapter 46.

⁷ The Pacheco law still applies to other state agencies.

Hotlines and Task Force

I. ISAU Hotlines

In November 2015, the ISAU established a hotline for members of the public to report suspected fraud, waste or abuse in the expenditure of MassDOT funds. The hotline is available on MassDOT's website (<http://massdot.state.ma.us>). Since November 2015, the Unit has received twenty-five complaints from the public. The ISAU also continues to operate its internal hotline, which it established in 2014. The internal ISAU hotline enables MassDOT employees to anonymously report fraud, waste or abuse in the use of public or private transportation funds, including any wrongdoing, misuse of equipment or other prohibited activity.

The Unit evaluates each complaint it receives to determine whether it falls within its jurisdiction and whether it merits action. Some complaints lead to extensive investigations, some are referred to other agencies and others are closed if a preliminary inquiry fails to substantiate the allegations.

Additionally, the Unit monitors the RMV's disability placard abuse hotline and receives reports of placard abuse from the public. The RMV's Medical Affairs Bureau records this information for further investigation. In 2015, the ISAU received and processed sixty-eight reports of alleged placard abuse on the hotline.

II. Massachusetts Disability Placard Abuse Task Force

In 2013, the Registry created the Disability Placard Abuse Task Force, which is dedicated to addressing and resolving issues surrounding placard abuse. The ISAU participates in the Task Force along with members of the RMV, the Massachusetts Office on Disability, the State Police, the Boston Office of the Parking Clerk, the Boston Commission for Persons with Disabilities, the Boston Police Department, the Burlington Police Department and the Massachusetts Executive Office of Elder Affairs. The Task Force is committed to increasing enforcement of the current laws, amending state law to increase the penalties for placard abuse, and tightening administrative controls to prevent and detect abuse more easily. The ISAU participates in the Task Force's regular meetings and provides input when needed.

Reports and Publications

The ISAU's reports and publications are available on the Inspector General's website. Following are links to the ISAU's most recent reports:

1. The Internal Special Audit Unit's Investigation of Commodity Price Fluctuations at the Massachusetts Department of Transportation:
<http://www.mass.gov/ig/publications/reports-and-recommendations/2016/investigation-of-commodity-price-fluctuations-at-the-massachusetts-department-of-transportation.pdf>
2. The Abuse of Disability Parking Placards in Massachusetts:
<http://www.mass.gov/ig/publications/reports-and-recommendations/2016/abuse-of-disability-parking-placards-in-massachusetts-february-2016.pdf>.