



OFFICE OF THE INSPECTOR GENERAL
COMMONWEALTH OF MASSACHUSETTS

GLENN A. CUNHA
INSPECTOR GENERAL

Internal Special Audit Unit
2018 Annual Report

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ONE ASHBURTON PLACE, ROOM 1311
BOSTON, MA 02108 | (617) 727 - 9140 | WWW.MASS.GOV/IG

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EXECUTIVE SUMMARY

The Internal Special Audit Unit (“ISAU”) 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).

In 2018, the ISAU conducted a variety of investigations, reviews and audits related to the use of public and private transportation funds. The unit also worked collaboratively with the Massachusetts Department of Transportation (“MassDOT”) to help strengthen the agency’s internal controls, procurement practices and contract administration procedures.

Last calendar year, for example, the ISAU reported on its review of change orders and contract overruns for the design and final phase of construction of the Veterans Memorial Bridge, which crosses the Taunton River in Bristol County. The ISAU identified opportunities for MassDOT to strengthen contract administration procedures for large-scale construction projects, with an increased focus on design errors and cost recoveries. The review also highlighted improvements needed for designer oversight and accountability, the importance of conducting public procurements, and the need to secure all appropriate approvals and permits prior to beginning construction.

Overall, the ISAU identified nearly \$20 million in missed opportunities for cost savings. Further, during the review, MassDOT reinstated its cost-recovery process for bridge designers and, to date, has successfully recovered \$2.28 million from design firms.

During its 2016 investigation into the abuse of disability parking placards (“placards”), the unit received a hotline tip that a Boston chiropractor had received several placards even though he did not meet the medical qualifications. After an investigation, the Office referred the matter to the Massachusetts Board of Registration of Chiropractors (“Board”). The chiropractor subsequently relinquished his parking placard and, in May 2018, he entered into a consent agreement with the Board in which he admitted wrongdoing and acknowledged that his conduct violated the Board’s statutes and regulations. The agreement also included a two-year term of probation, a \$2,500 civil administrative penalty and mandatory ethics training.

Following its 2016 report on placard abuse, the Office filed legislation to strengthen the Commonwealth’s placard laws. In 2017, the Legislature passed legislation modeled after the Office’s bill and the new placard law went into effect in July 2018. The new law increases fines, penalties and license suspensions for persons who misuse placards, as well as strengthens the Registry of Motor Vehicles’ (“RMV”) ability to obtain sufficient medical information from placard applicants.

In 2018, the ISAU also continued to participate in the RMV’s Disability Placard Abuse Task Force, which is dedicated to addressing and resolving issues surrounding placard abuse, increasing enforcement of the current laws, and tightening administrative controls to prevent and detect abuse more easily. In 2018, the task force worked to educate cities, towns, police departments and the public about changes to the placard law, including creating and widely distributing an educational flyer outlining the new law. The flyer is available on the Office’s website.

Finally, the ISAU continues to operate public and internal hotlines for individuals to confidentially report suspected fraud, waste or abuse in the expenditure of transportation funds. In 2018, the unit received 298 complaints that it reviewed for possible action.

I. Internal Special Audit Unit

The Massachusetts Office of the Inspector General (“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 training and assistance to both the public and private sectors to help prevent the misuse of government funds.

The Legislature created the ISAU in 2009 to monitor the quality, efficiency and integrity of the Massachusetts Department of Transportation’s (“MassDOT”) operating and capital programs. The ISAU has a staff of five professionals dedicated to performing audits, investigations and reviews in order to prevent, detect and correct fraud, waste and abuse in the expenditure of public and private transportation funds. The ISAU assists the Commonwealth, the public, MassDOT and the Massachusetts Bay Transportation Authority (“MBTA”) by identifying potential cost savings, waste and misuse of transportation funds. The ISAU’s activities include, but are not limited to:

- Investigating allegations of fraud, waste and abuse in the expenditure of public and private transportation funds. This includes handling complaints from members of the public, as well as from MassDOT and MBTA employees, regarding suspected wrongdoing.
- Reviewing MassDOT’s operations and programs to ascertain whether they are efficient, cost-effective and achieve established results. This includes reviewing the MBTA’s operations, as well as the operations of other divisions within MassDOT.
- Determining whether MassDOT is complying with applicable policies, procedures, laws and regulations.
- Evaluating the MBTA’s outsourcing of services under Section 196 of Chapter 46 of the Acts of 2015 to review the quality of the services provided, the expected and actual cost of the contract, and whether the cost of the contract exceeded the benefits derived from it.
- Working with MassDOT to strengthen its internal controls and procurement practices.
- Auditing, investigating and reviewing specific operations at the request of the Inspector General Council, the Legislature, MassDOT’s Board of Directors and MassDOT’s management, as appropriate.
- Participating in the RMV’s Disability Placard Abuse Task Force and supporting its placard abuse hotline.

II. **Massachusetts Department of Transportation**

Created as part of Transportation Reform in 2009, MassDOT manages 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 the Rail and Transit Division.

The Highway Division is responsible for the roadways, bridges and tunnels of the former Massachusetts Highway Department and the former Massachusetts Turnpike Authority. Among other duties, the RMV is responsible for the administration of driver's licenses, motor vehicle registrations and vehicle inspections across the state. The Aeronautics Division coordinates aviation policy and oversees the safety, security and infrastructure of 37 public airports across Massachusetts. The Rail and Transit Division oversees the MBTA, commuter rail and the state's 15 regional transit authorities.

THE RECOVERY OF FUNDS, IMPOSITION OF FINES AND IDENTIFICATION OF POTENTIAL SAVINGS

A priority for the ISAU is to protect transportation funds by identifying opportunities for MassDOT to reduce costs, recover funds, eliminate wasteful spending and uncover the misuse of transportation funds. In 2018, the ISAU identified nearly \$20 million in missed opportunities to best use taxpayer funds related to the design and final phase of construction of the Veterans Memorial Bridge. Based on the ISAU's review of a bridge construction project, moreover, MassDOT reconvened its cost-recovery committee for bridge design and, to date, has recovered \$2.28 million from design firms.

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AUDITS, INVESTIGATIONS AND REVIEWS

The ISAU conducts a variety of investigations, reviews and audits related to the use of public and private transportation funds. Some of the ISAU's work results in public reports and letters, while some activities lead to referrals to other divisions for administrative, civil or criminal action. Below is a summary of reviews that led to public reports or letters.

I. **A Review of Design and Construction Costs for MassDOT's Veterans Memorial Bridge**

In 2018, the ISAU reported on two aspects of the construction of the Veterans Memorial Bridge in southeastern Massachusetts: the design of the bridge and the final phase of construction. The ISAU identified opportunities for MassDOT to strengthen its administration of large-scale transportation projects, especially with respect to design errors and cost recoveries.

The Veterans Memorial Bridge crosses the Taunton River between Fall River and Somerset in Bristol County. MassDOT completed bridge construction in October 2014. The agency formally closed out the final contract with the bridge designer in December 2012 and with the bridge contractor¹ in July 2015.

MassDOT paid an architecture and civil engineering firm ("bridge designer") \$7 million to design the Veterans Memorial Bridge. During construction, however, MassDOT paid the same firm an additional \$9.2 million in consulting fees, largely to address problems with its own design. MassDOT's contracts with the bridge designer expressly provided that the agency would not pay the design firm to correct, complete or clarify its own work. The additional payments therefore were both wasteful and not in accordance with MassDOT's contracts.

Further, during the final phase of construction, MassDOT also paid the bridge contractor an additional \$7.4 million as an "equitable adjustment," primarily for costs that the contractor incurred because of errors and omissions in the bridge design. MassDOT did not seek to recover any part of this payment from the bridge designer. MassDOT should have held the designer responsible for these added costs.

The ISAU also found the bridge designer, without seeking pre-approval from the state plumbing board, specified using a natural gas system as the bridge's backup power source. In accordance with the design plans, the bridge contractor installed three natural gas generators on the bridge; the state plumbing board then rejected the design and would not issue a permit due to safety concerns. After exploring different options with MassDOT, the bridge contractor uninstalled the natural gas generators, transported them to various MassDOT locations, and purchased and installed a diesel system.

¹ "Bridge contractor" refers to the general contractor for the final phase of construction.

The change from natural gas to diesel cost MassDOT an additional \$1.98 million and took nearly three years to complete. Although MassDOT stated that the design firm should have sought pre-approval from the state plumbing board for the original design (*i.e.*, natural gas), the agency did not seek to recover any portion of the \$1.98 million in added costs from the bridge designer. Further, the agency has never used the three natural gas generators. According to MassDOT staff, the generators are no longer operational; the Office recommends that MassDOT appropriately dispose of the generators.

The ISAU’s review highlighted additional potential cost savings. For instance, MassDOT paid the bridge contractor \$932,698 to paint the steel beams on the bridge when, according to MassDOT’s own specifications, the beams were to be left unpainted. Overall, the ISAU identified nearly \$20 million in missed opportunities for MassDOT to more effectively use taxpayer funds. See Table 1.

Table 1. Summary of Missed Opportunities to Best Use Taxpayer Funds

Description of Costs	Dollar Amount
Paid to bridge designer largely to address problems with its own design.	\$9,200,000
Paid to the construction contractor largely for costs related to errors and omissions in design plans.	\$7,400,000
Paid to switch the bridge’s backup power source from natural gas to diesel.	\$1,980,000
Paid to the contractor to paint bridge steel beams, contrary to specifications.	\$1,000,000
Total	\$19,580,000

The ISAU also found that MassDOT used extra work orders to pay the bridge contractor over \$5 million to operate and maintain the bridge for two years rather than conduct competitive procurements. While it may have been permissible to use extra work orders for this purpose, when MassDOT did conduct competitive procurements, the cost to operate the bridge decreased substantially. In fact, the later competitive procurements included several bridges (including the Veterans Memorial Bridge), yet had lower operation and maintenance costs. See Table 2 below. Therefore, MassDOT likely would have saved money if it had originally conducted a public procurement instead of using extra work orders.

Table 2. Bridge Maintenance and Operation Contracts

Bridge Operator	Dates	Contract Length	Bridges Included in the Contract	Cost
Bridge Contractor (via Extra Work Order)	10/2/12 - 10/1/13	1 year	1 (Veterans Memorial Bridge)	\$2,475,789
Bridge Contractor (via Extra Work Order)	10/2/13 - 10/1/14	1.25 years	1 (Veterans Memorial Bridge)	\$2,623,737
SPS New England	7/10/14 - 7/10/15	1 year	8*	\$2,515,086
N.E.L. Corp.	6/2/15 - 6/1/17	2 years	8*	\$3,999,209
N.E.L. Corp.	3/22/17 - 3/22/19	2 years	7*	\$3,478,630

*Includes the Veterans Memorial Bridge.

Finally, during the last phase of construction, MassDOT engineers identified almost \$16 million in potential cost recoveries related to design errors and omissions. However, MassDOT did not pursue any cost recoveries from the design firm. After inquiries by the ISAU about MassDOT’s cost-recovery efforts, the agency reinstated its cost-recovery process for design errors, and appointed a full-time cost-recovery administrator. As of the date of this report, the committee had determined that 56 extra work orders warranted further pursuit and it had successfully recovered \$2.28 million from design firms on seven different projects. However, MassDOT indicated it would not pursue recoveries on closed contracts, such as its contracts with the bridge designer for the Veterans Memorial Bridge.

As part of its commitment to better contract administration, MassDOT also created a construction management certificate program with the Wentworth Institute of Technology. Successful candidates receive the newly created Construction Management Certificate after completing seven courses over a three-month period. The program’s curriculum is customized for MassDOT and provides in-classroom activities, case study practices and team exercises to grow employees’ knowledge, skills and abilities in construction management.

II. Abuse of Disability Parking Placards: Recent Development

During its 2016 investigation of the misuse of disability parking placards (“placards”), the ISAU received a hotline tip that a chiropractor had received several parking placards even though he did not meet the qualifications. The ISAU learned that over ten years, the chiropractor had received five temporary placards and one permanent placard, all based on applications signed by his own employees.

An individual qualifies for a parking placard if he (1) cannot walk more than 200 feet without resting, assistance or an ambulatory aid; (2) is legally blind; (3) has lost a limb or the permanent use of a

limb; or (4) has specific cardiac or respiratory conditions listed in the placard regulations. See 540 CMR 17.03(2). Nevertheless, a witness observed the chiropractor walking around his apartment building without using any ambulatory aids or other assistance; neighbors saw him carrying several grocery bags at the same time. Further, this individual often posted to social media photographs of himself at a New England ski area.

The Office referred the chiropractor's case to the Board of Registration of Chiropractors ("Board"). The chiropractor subsequently relinquished his parking placard and, in May 2018, entered into a consent agreement with the Board. In the agreement, the chiropractor admitted that over a nine-year period, using applications completed by him and signed by one or more of his employees, he was able to park for free at any meter in Massachusetts for an unlimited amount of time. The chiropractor further admitted that chiropractic treatment allegedly provided by his staff was not documented in any clinical records and that his conduct violated the Board's statutes and regulations. The agreement also included a two-year term of probation, a \$2,500 civil administrative penalty and mandatory ethics training.

III. Investigations Referred to the Office of the Inspector General and Attorney General's Office

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 2018, the ISAU continued to work collaboratively with the Office's other divisions on a number of matters, referring cases to those divisions as appropriate.

OTHER ACTIVITIES

I. Legislation

As previously discussed, the Registry of Motor Vehicles (“RMV”) issues disability parking placards (“placards”) to individuals with qualifying medical conditions. Placards allow persons with disabilities to park in designated handicapped spaces and at parking meters for free. The meter-fee exemption and the convenience of parking close to work can act as incentives to misuse placards by, for example, using a relative’s placard to park for free at a parking meter all day. This incentive is particularly strong in urban areas, where parking is both expensive and hard to find. As a result of this abuse, disability advocates report that it is difficult to find accessible parking in Boston and other cities and towns throughout the state. Placard abuse is also illegal and, as the Office’s investigations have found, costs cities and towns parking revenue.

Given the importance of this issue, the Office proposed House Bill 14, An Act Relative to Disability Placards. The Legislature passed legislation modeled after the Office’s bill; the new law, which went into effect in 2018:

- Makes it a crime to obtain, or assist another in obtaining, a placard under false pretenses.
- Imposes criminal penalties for forging, counterfeiting or stealing a placard.
- Prohibits using a deceased person’s placard, imposing a \$500 fine for first-time violators and a \$1,000 fine for a second or subsequent violation.
- Increases the driver’s license suspension period for a person wrongfully displaying a placard to 60 days for a first offense and 120 days for a second offense.
- Imposes a \$50 fine for obstructing the number or expiration date of a placard.
- Allows the RMV to request additional documentation or information from an applicant to verify the medical necessity for a placard. The RMV may refuse to process the application until such documentation or information is provided by the applicant.

II. Massachusetts Disability Placard Abuse Task Force

The ISAU participates in the RMV’s Disability Placard Abuse Task Force, which is dedicated to addressing and resolving issues surrounding the misuse of disability parking placards (“placards”). The task force includes 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 improving enforcement of the current laws and tightening administrative controls to prevent and detect abuse more effectively. The ISAU provides input to the

task force, makes recommendations, assists with outreach efforts and helps plan enforcement initiatives.

One of the task force's initiatives this year was educating cities, towns, law enforcement and the public about the 2018 changes to the placard laws. See Section II above. The task force developed a detailed flyer outlining the new disability placard provisions and penalties, as well as highlighting the ISAU's hotline for reporting placard abuse. Members of the task force widely distributed the flyer, including posting it on social media; announcing it on the Criminal Justice Information System to be visible across law enforcement entities; publishing it in the Office's quarterly *Procurement Bulletin*; distributing the flyer to police departments; and providing free copies of the flyer to cities, towns and municipalities across the Commonwealth. The flyer is also available on the Office's website.

In October 2018, the Inspector General and members of the task force made a presentation to the Massachusetts Major City Chiefs of Police concerning the new law. The Inspector General and RMV staff discussed local law enforcement's role in identifying the misuse of disability parking placards. Additionally, an officer from the Burlington Police Department detailed how local police departments can establish and self-fund disability parking enforcement units.

III. Hotlines

The ISAU maintains two hotlines for members of the public to confidentially report suspected fraud, waste or abuse in the expenditure of MassDOT funds; the hotlines are available on the Office's, MassDOT's and the MBTA's websites. The ISAU also maintains employee hotlines on MassDOT's and the MBTA's intranets. The ISAU evaluates each complaint received 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. During 2018, the ISAU received 226 complaints from the public and employees.

The ISAU also monitors the RMV's disability parking placard abuse hotline and receives reports of suspected placard abuse from the public. The RMV's Medical Affairs Bureau processes this information for further investigation. In 2018, the ISAU received 72 reports of alleged placard abuse.

REPORTS, LETTERS AND PUBLICATIONS

The ISAU's reports and publications are available on the Office's website at <https://www.mass.gov/service-details/oig-2018-reports-and-recommendations>.