



Office of the
Inspector General
Commonwealth of Massachusetts

Gregory W. Sullivan
Inspector General

2008 Annual Report

October 2009

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The Commonwealth of Massachusetts
Office of the Inspector General

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His Excellency the Governor

The Honorable President of the Senate

The Honorable Speaker of the House of Representatives

The Honorable Chair of the Senate Ways and Means Committee

The Honorable Chair of the House Ways and Means Committee

The Directors of the Legislative Post Audit and Oversight Bureaus

The Office of the Inspector General is dedicated to preventing and detecting fraud, waste, and abuse in the expenditure of public funds. To that end, we responded to scores of complaints, initiated dozens of investigations and trained hundreds of government employees last year.

Much of our work is confidential, but this report details completed projects that we can make public. Among the highlights for 2008:

- A case that resulted in the indictment of three MBTA construction division inspectors;
- The continued monitoring of Chapter 40B;
- A case that led to the conviction of two men who defrauded the state out of more than \$155,000 on the Central Artery/Tunnel project;
- A review of a faulty procurement of software for which the state was repaid \$13 million;
- And a case that led to the indictment of two Boston Housing Authority employees.

Additional copies are available on our website www.mass.gov/ig or from our Office.

Sincerely,

A handwritten signature in cursive script that reads "Gregory W. Sullivan".

Gregory W. Sullivan
Inspector General

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Introduction

The Massachusetts Office of the Inspector General is the oldest state-level inspector general's office in the nation.

It was established in 1981 on the recommendation of the Special Commission on State and County Buildings, a legislative commission that spent two years probing corruption in the construction of public buildings in Massachusetts.

The commission, commonly referred to as the Ward Commission in honor of its chairman John William Ward, produced a 12-volume report documenting massive fraud and waste and detailing reform recommendations.

"Corruption is a way of life in the Commonwealth of Massachusetts," Ward, who resigned his post as president of Amherst College to devote all his energies to investigating public corruption, wrote in his fiery introduction to the commission's final report. "It was not a matter of a few crooks, some bad apples which spoiled the lot. The pattern is too broad and pervasive for that easy excuse."

Part of the Ward Commission's solution was to recommend creation of an independent Office of the Inspector General.

"The basic concept behind the Office of the Inspector General is that any institution, a corporation, a university, let alone the institution of government, must build into itself a mechanism for self-criticism and self-correction," Ward continued. "To prevent and detect (and the emphasis falls as much upon prevention as detection) fraud and waste in the procurement of many millions of dollars of goods and services by the Commonwealth, the Commission designed the Office of the Inspector General to be a neutral, impartial and independent office to fulfill that critical function."

The Massachusetts Inspector General has a broad mandate under Massachusetts General Laws (M.G.L.) Chapter 12A to prevent and detect fraud, waste and abuse in government. M.G.L. c.12A gives the Inspector General the power to subpoena records and people for investigations and management reviews, and to investigate both criminal and non-criminal violations of law.

The Inspector General employs a staff of experienced specialists, including investigators, lawyers, a certified public accountant, an architect,

computer experts and analysts to investigate fraud, waste, and abuse of public resources. In addition, the Inspector General's office also has attorneys specializing in procurement to assist local governments with best value contracting under the Uniform Procurement Act, M.G.L. c. 30B. The Inspector General also certifies public procurement officials through the Massachusetts Certified Public Purchasing Official training program.

Inspector General Gregory W. Sullivan meets quarterly with the Inspector General Council to consult with them about the duties and responsibilities of the Office of the Inspector General. In 2008, the seven members on the council were: Auditor A. Joseph DeNucci, chairman, Attorney General Martha Coakley, Comptroller Martin Benison, Secretary of Public Safety Kevin Burke, James Morris, Alan MacDonald, and Christopher Scott.

The Inspector General receives numerous complaints alleging fraud, waste or abuse in government. The staff evaluates each complaint to determine whether it falls within our jurisdiction and merits action. Some complaints lead to extensive investigations. The Inspector General closes others almost immediately – after a preliminary inquiry fails to substantiate the allegations.

When the staff completes a project, the Inspector General generally issues a letter or report detailing findings and recommending reforms to prevent future problems. The Inspector General reports information concerning criminal or civil violations of law to the appropriate authorities, including the Massachusetts Attorney General and the U.S. Attorney for the District of Massachusetts.

Investigations

The Inspector General's investigations of criminal and civil violations of law arise from a variety of sources including complaints, information developed during the course of other reviews and activities, and requests for review and assistance by other investigative agencies such as local and state police and the attorney general. The Inspector General forwards complaints to other agencies if a preliminary investigation reveals that the complaints are outside the Inspector General's jurisdiction or would be more appropriately handled by another agency.

In 2008, the Inspector General reported complaints to and worked with a host of agencies, including: the Federal Bureau of Investigation; the Massachusetts Office of the Attorney General; the Massachusetts State Police; the United States Attorney for the District of Massachusetts; the State Ethics Commission; the Operational Services Division; the Division of Energy Resources; the Division of Capital Asset Management; the Boston Housing Authority; and several local police departments.

M.G.L. c.12A restricts disclosure of ongoing investigations – cases in which no official disposition has been made – and on-going joint investigations that are governed by nondisclosure agreements. Therefore, this report details only a portion of the investigations the Inspector General pursued last year.

State Recoups \$13 Million from Software Firm and Four Men Indicted Following Probe of Flawed Procurement

In the fall of 2007, the Inspector General launched an investigation of the state's \$13 million purchase of software from Cognos Corporation in August 2007. Over the next year, the Inspector General revealed that the procurement was deeply flawed and that lobbyists received large, undisclosed payments simultaneously with the award of the \$13 million purchase.

On March 6, 2008, the Inspector General wrote to Administration and Finance Secretary Leslie A. Kirwan stating that a \$13 million purchase of software from Cognos Corporation several months earlier did not conform to state procurement laws and regulations. The Inspector General recommended that the purchase agreement be voided, the software returned, and the state obtain reimbursement. State officials subsequently negotiated repayment of the \$13 million from IBM, which had acquired Cognos Corporation in the intervening months.

In the letter to Secretary Kirwan, the Inspector General detailed several problems with the procurement process. For example, the Request for Quotes issued by the state's Information Technology Department for "performance management" software limited the bidders to just four identified companies and gave them just five business days to respond. In addition, the scoring spreadsheet used by ITD's evaluators had a typographical error in a formula. As a result, the spreadsheet failed to tally points earned by each bidder in about half the categories on which the companies were evaluated. Also, in the pricing category, points were awarded based on maintenance cost as a percent of the initial licensing fee, thereby rewarding the firm with the most expensive upfront cost. ITD personnel began evaluating the bidders in May 2007 but a final evaluation and recommendation was never completed. Instead, the \$13 million award in August 2007 was apparently based on an informal verbal recommendation to Administration and Finance officials.

In October 2008, the Inspector General wrote to Secretary of the Commonwealth William F. Galvin about payments to lobbyists either by Cognos directly or by a software reseller affiliated with Cognos. Secretary Galvin's Public Records office administers the Lobbyist Section, which enforces rules on disclosure of lobbying activities. The Inspector General informed the Lobbyist Section that internal Cognos records reported paying two entities as lobbyists that were not disclosed to that office. The letter also stated that Cognos paid significantly more to two other lobbyists than was reported to the Public Records office. Also, the Inspector General told the Lobbyist Section that a software reseller, Montvale Solutions LLC, earned a \$2.8 million commission on the \$13 million sale. The same day it received its commission, the firm paid \$500,000 to one lobbying firm and \$200,000 to a second lobbyist. A year earlier, Montvale Solutions LLC received a \$891,000 commission on Cognos' \$4.5 million contract with the state Department of Education. Shortly after receiving the commission, the firm paid two lobbying entities \$100,000 each.

On June 2, 2009, Montvale Solutions LLC owner Joseph P. Lally Jr., lobbyists Richard McDonough and Richard Vitale, and former House Speaker Salvatore F. DiMasi were indicted by a federal grand jury on charges related to the Cognos contracts. The Inspector General's staff assisted in the investigation that led to the indictment.

Three No-Show MBTA Construction Inspectors Indicted

On September 11, 2008, a Suffolk County Grand Jury indicted three MBTA Design and Construction Department inspectors for submitting time sheets claiming to work full days when in fact they did not show up or put in abbreviated appearances at job sites.

The investigation began in April 2005 with an anonymous tip to the Inspector General's office alleging there were certain no-show employees in the department. Christopher Peatridge and Francis Flaherty, construction inspectors, and Michael O'Toole, a resident engineer, had positions requiring them to be on-site daily to oversee work by private general contractors to ensure compliance with contracts and protect the public interest. Surveillance, business records, and other corroborative records showed that in fact the men often put in considerably less than a full day's work and in some instances never showed up at all, while submitting time sheets claiming to have worked full eight-hour shifts.

For example, on repeated dates in the spring of 2005, Peatridge typically showed up for work after lunch when he was supposed to be at work at 7 a.m. Further investigation found that Peatridge operated his own security business on the side and, between July and November 2004, was working for this business, frequently outside of Massachusetts, on days for which he was paid by the MBTA.

Surveillance conducted on O'Toole showed that he rarely worked more than a few hours and in some instances never showed up at all between April 2004 and June 2005. Similarly, Flaherty was paid for full eight-hour shifts on multiple occasions in the summer of 2006 when he worked considerably less than he claimed on his time sheets. Trials for each of the men are currently scheduled to begin in October 2009.

Assabet Valley Regional Technical School Officials Manipulating and Abusing Surplus Funds

In February 2008, the Inspector General issued a report detailing Assabet Valley Regional Technical School officials' possible violations of state law, excessive and abusive spending, and deviations from accepted practices. The Inspector General's review found that, as of June 30, 2006, Assabet administrators had control of nearly \$6 million in surplus funds held in investment accounts. A large percentage of the surplus funds was being held for what appeared to be questionable reasons. The report stated Assabet officials created the surplus funds without proper justification and called them "reserve" funds. Applying the surplus funds would trigger a reduction in assessments to communities that make up the district. Assabet officials got around the cap on surplus funds by improperly classifying the investment accounts as "reserve" funds.

The review added that Assabet administrators engaged in excessive spending using these accounts. For example, Assabet routinely sent more than 20 people to annual conventions in Las Vegas and other destinations, far more than attendees from other vocational school districts. Assabet also subsidized attendance by spouses and others who are not Assabet staff members. The report documented the

superintendent's double-dipping on transportation expenses, the use of public funds on alcoholic beverages at conferences, trainings and other events, the lack of internal financial controls, and the failure to competitively procure gasoline. The results of the review were referred to the Assabet school committee and, in the case of the excessive surplus, the state Department of Revenue.

In response to the report, the Inspector General's office, with the concurrence of the Department of Elementary and Secondary Education and the Department of Revenue, hired an auditing firm to review the surplus funds accounts and the trip expenses. All three agencies are monitoring the progress of the audit. Also, in April 2009, Assabet officials informed communities that the district would be returning a portion of the surplus funds, based on the Department of Revenue's disapproval of two reserve funds originally investigated by the Inspector General's office. Marlborough, for example, will receive \$381,696 in surplus funds.

Disabled Person's Parking Placard Abuse

In August 2008, Governor Deval Patrick signed into law an act making it a felony to alter or forge a disabled person's parking placard. The measure followed a report by the Inspector General in 2007 that detailed significant abuse of the placards, which allow the driver of the vehicle to park in designated disability zones and at spaces with parking meters free of charge.

Working with the Registry of Motor Vehicles, the Massachusetts State Police, and the Boston Transportation Department, the Inspector General's office in 2006 began an investigation into whether able-bodied individuals avoided paying hundreds of thousands of dollars annually in parking meter and other fees to the city of Boston, avoided parking citations by using these placards, and deprived genuine placard holders the use of these spaces.

Of the 965 disabled person's parking placards observed to be in use in three downtown sections of Boston, the Inspector General's office found 49 placards registered to deceased individuals and more than 300 placards being used by someone other than the applicant.

In 2008 following enactment of the law making abuse of disabled person's placards a felony, the Inspector General's office uncovered additional violations. In one case, a prominent local attorney was using his deceased mother's placard. In another case, a man used the internet website Craigslist to sell a handicapped parking placard that had been stolen from a disabled person's vehicle.

In the first case, the attorney had his driver's license suspended for 30 days and he paid a substantial civil penalty for illegally using the placard to park at a metered spot in Boston near his law office. In the second case, an investigator from the Inspector General's office arranged a meeting with the seller of the placard. When the seller arrived, he was met by a state trooper, who seized the placard and issued a summons to the seller for receiving stolen property and misuse of a handicapped placard. The seller pleaded guilty in Boston Municipal Court and was sentenced to 90 days in the Suffolk County House of Correction.

In addition to the law making abuse of the disabled person's parking placards a felony, the Registry of Motor Vehicles has redesigned the format of the placards and taken other steps to prevent and detect abuse of the placards.

Two Boston Housing Authority Employees Indicted on Fake Bid Scheme

In October 2008, after a year-long investigation by the Office of the Inspector General and the Attorney General's office, a Suffolk County grand jury indicted two former Boston Housing Authority employees and an Avon businessman for submitting fraudulent bids for BHA projects.

Former BHA employee Mark Collins was charged with 10 counts of procurement fraud and conflict of interest. Investigators found that between July 2007 and October 2007, a company owned by Collins, Citypoint Construction Inc., won 15 flooring jobs at the BHA worth more than \$47,000. At the time, Collins was involved as a BHA employee in soliciting bids from vendors for the work and used inside information to win flooring contracts. Investigators also discovered that Collins created and submitted fake bids for several jobs.

Collins' wife, Gisela Collins, a former BHA property manager, allegedly used her position as manager to help her husband's company win a contract. She is charged with conflict of interest by a municipal employee. Jayson Tracey, the owner of Flooring Designs Inc. of West Bridgewater, is charged with seven counts of procurement fraud for submitting fake bids in the name of a friend's business.

Two Haverhill Highway Department Employees Convicted

Two employees of the city of Haverhill's Highway Department were convicted in June 2009 of larceny and other charges in connection with a scheme to use city personnel, material, and equipment on private contracting jobs on city time over a period of several years.

The Inspector General launched an investigation upon receiving an anonymous letter that noted James Flaherty, Superintendent, Haverhill Highway Department (DPW) and his son Kevin Flaherty, DPW Foreman, used DPW employees, supplies and equipment to complete paving work for their private business. Sources alleged that both James and Kevin Flaherty also worked on these private paving jobs when they should have been working for the city.

Surveillance and interviews conducted by investigators from this office and the Massachusetts State Police substantially corroborated the allegations contained in the initial complaint. Information developed during the investigation led to search warrants for the DPW, James Flaherty's home, and a storage facility that housed his equipment.

James Flaherty retired and Kevin Flaherty was fired by the City of Haverhill prior to the June 2007 indictment, charging both men with larceny by continuous scheme. Kevin Flaherty was also charged with presentation of false claims while James Flaherty was also charged with filing false tax returns.

Following a nine-day trial, James Flaherty was sentenced to two years in the House of Correction with six months to serve and the balance suspended. He was also ordered to file accurate tax returns and pay the state what he owes in unpaid taxes. Kevin Flaherty was sentenced to two years in the House of Correction with four months to serve and the balance suspended. He was also ordered to pay \$857 in restitution to the city of Haverhill and perform 200 hours of community service.

Durod Ltd. and Y2Krush Corp

On June 13, 2008, two Marshfield men, James Roderick Sr. and his son James Roderick Jr., pleaded guilty to larceny, fraud, presentation of false claims and conspiracy for defrauding the state on the Central Artery/Tunnel (CA/T) project. The pair had been indicted in Suffolk Superior Court in September 2007 on charges of inflating the weight of construction debris hauled away from the Big Dig between 2004 and 2007 while their firms, Durod Ltd. and Y2Krush Corp. worked as project subcontractors.

The Inspector General began the investigation in February 2006 when a staff investigator learned of the alleged tampering with truck load weights. After reviewing documentation for more than 4,000 trips taken by Durod Ltd. and Y2Krush Corp. vehicles, investigators determined that the companies had routinely and repeatedly inflated the weight of the material hauled away from the CA/T project. The office notified the state attorney general's office, which subpoenaed additional records from the firms and brought the truck drivers before a grand jury. The grand jury's indictments

alleged that the Rodericks had used inaccurate truck weights and manipulated the scale at their Marshfield headquarters to generate falsely high cargo weights.

Following his guilty plea on June 13, 2008, James Roderick Sr. was sentenced to two and a half years in the House of Correction, with six months of the sentence to be served under house arrest. The balance of Roderick's sentence is to be suspended following the successful completion of house arrest. In addition, Roderick Sr. was sentenced to five years probation on one of the counts of larceny over \$250. The same day, James Roderick Jr. pleaded guilty and was sentenced to five years probation for his role in the scheme. In January 2009, a judge ordered the pair to pay \$155,600 in restitution to the state.

Middlesex Retirement System

In April 2008, the State Ethics Commission fined Lawrence P. Driscoll, a former board member of the Middlesex Retirement System, \$13,000 after he admitted violating the state's conflict of interest law by hiring his friend and submitting false expenses to the board for reimbursement. The sanctions were the most recent actions to result from a series of disclosures by the Inspector General of fraud, bid-rigging and lax oversight at the Middlesex Retirement System.

In October 2006, the Inspector General wrote to the state's Public Employee Retirement Administration Commission (PERAC) to inform commission officials that Driscoll, one of five board members, had submitted more than \$10,000 in fraudulent expense receipts between 2000 and 2004. Furthermore, Mr. Driscoll had double-billed more than \$60,000 to both the Middlesex Retirement System and his private employer, a stock brokerage firm. Earlier in 2006, the Inspector General informed PERAC that numerous documents had been created to cover up bid-rigging relating to the Middlesex Retirement System's 2002 renovation of its Billerica headquarters, a project awarded to a close friend of Driscoll and another Middlesex board member.

The State Ethics Commission launched an investigation into the Middlesex Retirement System in response to the Inspector General's October 2006 letter to PERAC officials. In April 2008, Lawrence P. Driscoll admitting violating state ethics laws by awarding a \$557,000 renovation contract to a close friend and by submitting thousands of dollars in fraudulent expense receipts. Driscoll signed a disposition agreement with the State Ethics Commission to resolve the case, agreeing to pay a \$10,000 civil penalty and a civil forfeiture of \$2,683.

In August 2008, Driscoll failed to disclose the sanctions by the State Ethics Commission and PERAC when he registered as a stock broker in the

state of Virginia. The Inspector General's office worked with the Massachusetts Secretary of State and Virginia officials to prove that the former Middlesex Retirement System board member had lied on his securities application. In January 2009, the state of Virginia barred Driscoll for five years from registering as a securities dealer.

Everett Officials Fined by State Ethics Commission

In March 2008, the State Ethics Commission filed an Order to Show Cause against Everett Public Schools Superintendent Frederick Foresteire and Everett Public Schools Maintenance Manager Lona DeFeo for violating the state's conflict of interest law. The allegations grew out of an investigation by the Office of the Inspector General that resulted in indictments against 11 individuals and five companies in 2004.

The State Ethics Commission alleged that DeFeo ordered school department employees to work on Foresteire's house and, in some cases, purchase supplies with city funds that were delivered to Foresteire's home. For example, DeFeo directed a plumber to work in Foresteire's private home during regular working hours on about 20 occasions in 2002. Foresteire also unilaterally decided the price he would pay the plumber for the work, which was less than the man would have charged ordinarily. DeFeo also had a school carpenter buy \$234 worth of plywood with city funds, bring it to Everett High School, and cut it during school hours. Another maintenance employee then picked up the cut plywood and delivered to Foresteire's home using a school department vehicle.

On February 12, 2009, the Ethics Commission levied a \$6,000 fine on Foresteire and a \$4,500 fine on DeFeo for violating the state's conflict of interest law.

State Recovers \$200,000 from Medical Supply Vendor

A review by the Office of the Inspector General uncovered more than \$200,000 in possible overcharges by a medical supply vendor formerly on a statewide contract. The same vendor had three years earlier repaid \$86,000 to the Commonwealth on a similar issue.

The Inspector General reviewed nearly three years worth of vendor invoices paid by state agencies and other public entities that had used the contract. With the assistance of the Office of the Attorney General, the Operational Services Division (OSD) and the Lemuel Shattuck State Hospital, the Inspector General's Office determined that the vendor appeared to be in violation of the pricing structure allowed by the statewide contract. According to the form of the contract, only a standard mark-up from the price paid by the vendor for a particular commodity being sold to

public entities was allowed. The Inspector General found that the vendor repeatedly exceeded the allowable mark-up.

The Office of the Inspector General presented its findings to OSD officials, who then initiated a cost recovery action against the vendor. This action resulted in a settlement agreement between OSD and the vendor whereby the vendor will reimburse the Commonwealth \$200,000 in installments over the next 12 months. The Inspector General will monitor the vendor's compliance with this agreement.

Efforts by the OIG Help State Recover \$458 Million from Big Dig Contractors

On January 23, 2008, the U.S. Department of Justice and the Massachusetts Office of the Attorney General announced a \$458.2 million global settlement with Bechtel/Parsons Brinckerhoff and other contractors, resolving all outstanding Central Artery/Tunnel Project claims as well as pending criminal actions.

Since 1990, the Office of the Inspector General has issued more than 50 letters and reports, and questioned more than \$1 billion in Big Dig costs. The OIG issued a report in December 2000 criticizing the Big Dig for failure to pursue cost recovery against contractors for errors and omissions. Up until that point, Big Dig management had only recovered \$30,000 from a total of \$83 million in potential cost recoveries and had relied too heavily on Bechtel/Parsons Brinckerhoff to direct cost recovery activity. In 2002, the Massachusetts Turnpike Authority and the Office of the Attorney General began vigorously pursuing cost recovery against Big Dig contractors and recouped millions of dollars for the Commonwealth.

Between 2003 and 2005, the Inspector General's office also redirected its oversight to focus on cost recovery issues. The office issued eight reports containing specific cost recovery recommendations totaling \$146 million. Many of the issues identified by the OIG in its oversight efforts between 1991 and 2005 were included in the January 2008 global settlement.

Rockland Conservation Official Soliciting Business from Permit Applicants

In response to complaints from Rockland town officials, the Inspector General's office investigated allegations that Kenneth Karlson, a former chairman of the Rockland Conservation Commission, had solicited business from people with projects under review by commission. In 2008, the Office of the Inspector General reported the results of its investigation to the Rockland Board of Selectmen.

The OIG's staff interviewed several developers from whom Karlson sought private business while their projects were under review or subject to oversight by the Rockland Conservation Commission. In several cases, Karlson did succeed in getting hired to work on these parcels. In one instance, a partner in a company developing a skating rink reported hiring Karlson for site work and paying him \$22,000 before he was fired several weeks into the job. This particular matter was investigated by the State Ethics Commission and resulted in Karlson and the partner in the skating rink project being fined \$2,000 each. Details on the other possible conflicts of interest uncovered in the OIG's investigation are in the process of being reported to the State Ethics Commission.

Carver's Sale of Parcel for \$1 Violated State Laws

In June 2008, the Inspector General wrote to the Carver Board of Selectmen informing the board that its actions selling a town lot in 2002 to Habitat for Humanity for \$1 violated state laws on disposition of public property, public bidding rules, and the express will of the Legislature. The town had foreclosed on the lot in 2000 for non-payment of more than \$11,000 in back taxes. In March 2002, the town sold the parcel – assessed at \$42,000 – to Habitat for Humanity for \$1. Three months later, Habitat for Humanity sold the lot to a private party for \$36,000.

The letter to the board stated that the board acted without a vote of town meeting, as is required for real property dispositions. Furthermore, because the parcel was valued at more than \$25,000, state law requires the town to solicit proposals and advertise the parcel's availability. In cases of a property disposition for less than its value, the town must also publish a notice stating the reason for the property's disposition, the difference between its value and the price received and a list of all beneficial owners of the party acquiring the land. The letter also noted that a member of the Carver Board of Selectmen who participated in the disposition was simultaneously a member of Habitat for Humanity's board of directors.

Financial Investigations

The primary mission of the Financial Investigations Division is to investigate potential fraud, waste, and abuse in the expenditure of public funds. The division is focused on determining the propriety of public fund expenditures through detailed analyses and understanding of the underlying financial transactions and the related accounting and financial reporting. In instances where fraud rises to a criminal level, the division works closely with the Investigations Division as well as law enforcement and prosecutorial agencies. The division also focuses on opportunities to improve financial controls over the expenditure of public funds through legislative and regulatory changes.

Chapter 40B

During 2008, the Inspector General's office continued its ongoing investigation into the M.G.L. c.40B (Chapter 40B) cost monitoring process for affordable home ownership. Under Chapter 40B, a developer may construct a housing project that does not comply with local zoning and land use controls. Developers typically will obtain a density bonus from a municipality in return for providing a percentage (usually 20% - 25%) of "affordable" homes in the project and for agreeing to limit their profits from the project to an agreed upon percentage (usually 20%) of allowable development costs. At the completion of the project, the developer is required to submit a cost certification which details the related income and expenses. Profit in excess of the agreed upon limit is required to be paid to the municipality by the developer.

Beginning in 2006, the Inspector General began issuing reports documenting widespread and pervasive abuses of the cost certification process, practices that have cheated municipal governments out of millions of dollars in excess profits rightfully owed to them by developers of Chapter 40B projects selected for review. Abuses include the sale of market rate housing units at below market prices to related parties, in order to report lower profits through the 40B cost certification process. Expenses are also routinely inflated by developers, either through related party transactions or by attributing costs of non-40B work to the 40B development. The net effect of the underreported revenues and the excess expenses is to reduce the reported profits due to the municipalities.

In 2008, the town of Wakefield received \$500,000 to settle a civil complaint against the developers of Millbrook Estates, a Chapter 40B project. The Inspector General had previously issued a report identifying approximately \$1.3 million in excess profit owed to the town.

In 2008, the OIG wrote a letter to the attorney for Crossroads Development, LLC, the developer of a Chapter 40B project in Acton. The letter detailed numerous ways in which the developer's claim to having spent \$396,334 in labor, equipment, materials and overhead is not supported by adequate back-up or source documents. Instead, the Inspector General concluded that the developer's site development costs – much of it paid to a related firm – were "grossly overstated." This letter followed a 2006 report identifying other excess profits owed to the town of Acton, which subsequently filed a civil complaint against the developer.

In 2008, the Inspector General also wrote separate letters in May and July to MassHousing notifying the agency that Chapter 40B developments in Harwich and Arlington were using dramatically inflated land valuations. The developer of the Summer Woods project in Harwich had professed a \$12,000,000 land value for the site. An independent appraisal of the site resulted in an as-is land value estimate of \$2,725,000 or less than one-quarter of the original \$12,000,000 value submitted by the developer with the application for site approval. The May letter to MassHousing stated that the inflated valuation would result in a \$6 million windfall to the developer at the expense of the town, which is entitled to all profits above 20 percent. Based on these significant land valuation differences, the Inspector General requested and MassHousing agreed to rescind the determination of project eligibility.

In July, the Inspector General urged MassHousing to issue a land value determination for the nearly complete Minuteman Village project and to do so using the as-is appraisal of the property. The letter noted that the other two appraisals assumed the property would be granted a change in zoning from industrial to residential, which more than doubles the value of the land and is inconsistent with Chapter 40B cost guidelines. In effect, this assumption would effectively allow the developer to add more than \$800,000 to the project's purported cost, raising the figure at which the developer would have to turn over excess profits to the town. MassHousing agreed to promptly publish their determination of land value but settled on a higher appraisal reflective of the zoning change assumption.

In addition, in the fall of 2008, the Inspector General wrote to the Department of Housing and Community Development and the Senate Committee on Post Audit and Oversight regarding DHCD's changes to the regulations and guidelines for Chapter 40B developments. The letters expressed sharp criticism of the changes, stating that they would increase the opportunities for fraud and abuse in the development of affordable housing. The Inspector General wrote that the changes effectively "supersized" the scope and density of future Chapter 40B developments, along with the profits developers may realize from these projects. The changes significantly diminish the role of municipalities and expose the

municipalities to financial loss. Most of the changes were made without the benefit of an open and transparent process.

Tourism Massachusetts

In February 2008, the Inspector General published the results of a review of the use of tourism funds between 2005 and 2007 by the Massachusetts International Marketing Partnership, Inc. (Tourism Massachusetts). Tourism Massachusetts is a non-profit organization that received contracts to provide international marketing and tourism promotion services.

The review focused on the propriety of both the expenditures made on behalf of the commonwealth by Tourism Massachusetts and the selection process that resulted in selecting Tourism Massachusetts as the vendor for these services. The review included determining whether Tourism Massachusetts made any payments to or on behalf of state employees, including legislators; understanding the competitive procurement process; and determining how the contract came to be awarded to Tourism Massachusetts. The financial examination included a validation of the expenditures reflected in the vendor's financial records.

This office conducted a comprehensive review of all the expenditures (\$8.8 million) made by Tourism Massachusetts from April 2005 through May 2007 and included a detailed examination and verification of more than 99 percent of the total dollars expended. The review found that Tourism Massachusetts properly accounted for its expended funds. Funds did not pay for trips or other inappropriate benefits to state employees, including state legislators.

The review also found there was no impropriety in the awarding of the contract. Because of unresolved legal issues that forced all three members of the board of the awarding agency to resign, the agency lacked the authority to award a tourism promotion contract. This situation prompted the legislature to earmark the funds to Tourism Massachusetts, which at the time represented a reconstituted organization of the two leading bidders for the contract.

Judge Rotenberg Center

In 2008, the state's Operational Services Division and the Department of Mental Retardation received more than \$213,000 from the Judge Rotenberg Center (JRC) in Canton to settle claims that the not-for-profit overcharged the state. The cost recovery efforts were initiated following a 2007 letter from the Inspector General to the two agencies, notifying them that the Judge Rotenberg Center had used unlicensed psychologists to provide services under its state and local contracts but had billed at the rate for licensed psychologists. The Center's use of unlicensed

psychologists had been uncovered by the Division of Professional Licensure.

Effective and Ethical Contracting

Springfield Data Center Site Analysis

In December 2008, the Inspector General's office completed a review of the methods used to choose the Springfield Technical High School as the site for the Information Technology Division's (ITD) second state data center.

In a letter to Division of Capital Asset Management (DCAM) Commissioner David Perini and ITD Chief Information Officer Anne Margulies, the Inspector General concluded "that the comparative site analysis was conducted in an objective and fair manner based upon sound principles of competitive procurement and that the methodology was sound and reasonable."

The review found that one of the alternatives to the Springfield Technical High School did not comply with one of the baseline performance criteria established for the data center. The review also found that the costs of building a facility meeting ITD's needs was less than or comparable to those of the alternative sites.

Nahant Beach Parking Contract Improved by DCR

In September 2008, the Inspector General wrote to Department of Conservation and Recreation Commissioner Richard K. Sullivan to take note of improvements in the agency's procurement of a contract to run parking operations at the Nahant Beach State Reservation.

The letter stated that, working with staff from the Inspector General's office, DCR conducted a "vastly superior procurement process for the 2008 season that achieved greater fairness, openness, and efficiency." The new contract will also increase revenue for DCR. The Inspector General said that the improved procedures will be useful not just at Nahant Beach State Reservation but department-wide. The changes came two years after the Inspector General had issued a letter critical of the agency's Nahant Beach parking contract and recommended that it be re-procured.

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Health Safety Net Audit Unit

The Health Safety Net Audit Unit (formerly the Uncompensated Care Pool Audit Unit), created by Section 1 of Chapter 240 of the Acts of 2004, and most recently extended by Section 98 of Chapter 182 of the Acts of 2008, oversees and examines practices in Massachusetts' hospitals that include – but are not limited to – the care of the uninsured and the resulting free care charges.

Since the enactment of Chapter 58 of the Acts of 2006, “An Act Providing Access to Affordable, Quality, Accountable Health Care,” the Health Safety Net Audit Unit (the “Audit Unit”) has been tracking the transition from the Uncompensated Care Pool’s block grant payment system to the Health Safety Net’s Medicare-like payment system. In 2008, the Audit Unit reported on the transitional period that was implemented to help ease the transition to a Medicare-like system. It also reported on the beginning of the Medicare-like payments system, both where it is successful and where more work could be done to make the payment system more like Medicare. (As the transition nears completion, the Audit Unit has started shifting its focus away from the transition and toward coding techniques, fraud prevention, and payments for inpatient and outpatient care.) The Audit Unit also examined how the providers use emergency room bad debt and will continue to examine this area to protect against provider abuses of bad debt.

Finally, as designated in Chapter 58, the Inspector General’s Office participates in the activities of the Health Care Quality and Cost Council. The Audit Unit provides assistance to the Inspector General on all issues related to hospital practices and costs, including those practices and costs affecting the Commonwealth’s ability to provide and subsidize health insurance benefits to the uninsured.

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Public Design and Construction

Since its inception, the office has participated in the development of policies and procedures related to the state's public design and construction laws. In 2008, the office prepared a number of informational publications and conducted trainings to assist public officials in contracting for design and construction services. Major reform legislation enacted in 2004 as well as legislation enacted since then, including several bond bills approved in 2008, has resulted in a greater need than ever to provide guidance and information relative to numerous technical and substantive changes in the law. The office worked with the Division of Capital Asset Management (DCAM), the Massachusetts Highway Department (MassHighway), the Massachusetts School Building Authority (MSBA), the Attorney General's Office and many other entities to establish best practices to ensure compliance when implementing the changes.

In addition, the office's role as an independent oversight agency has been recognized and expanded through legislative mandates contained in the various acts.

Alternative Construction Delivery Methods

The 2004 construction reform law gave the office the authority to determine whether a municipality is eligible to use alternative construction delivery methods, including construction manager (CM) at risk and design build. The office also was charged with approving the alternative construction delivery method procedures to be used on certain building projects conducted by the following exempt entities: DCAM, the Massachusetts Port Authority (Massport), the Massachusetts Water Resources Authority (MWRA), the Massachusetts State College Building Authority, and the University of Massachusetts Building Authority, or public works projects conducted by the following entities: MassHighway, Massport, and the MWRA.

Construction Management at Risk

The Construction Management at Risk (CM at risk) delivery method was authorized as an option to be used for public building construction, reconstruction, installation, demolition, maintenance, or repair projects estimated to cost \$5 million or more. Since 2005, the Office has approved 16 CM at risk projects worth more than \$940 million. The projects approved in 2008 included:

- The town of Wellesley's new high school;
- A new public safety complex by the town of Granby;

- Abby Kelley Foster Charter Public School's new high school project in Worcester;
- A new police station and parking deck in Northampton;
- Springfield's Roger L. Putnam Vocational High School project; and
- The renovation of and addition to Malden High School.

In 2008, the Massachusetts State College Building Authority submitted for review its proposed procedures for its single selection delivery method, an option that is similar to CM at risk. Also, Massport submitted its CM at risk procedures for review.

Construction Management at Risk Training

To provide guidance to public officials and others interested in learning more about the CM at risk delivery method, the Office of the Inspector General developed a one-day course entitled "Construction Management at Risk Under M.G.L. c. 149A: Legal Requirements and Practical Issues." The course discusses the differences between design-bid-build and CM at risk; a description of the role of the construction manager on a CM at risk project; an overview of the procurement process, including the owner's project manager procurement requirements, the two-phase selection process, and contracting requirements; and a segment on planning the CM at risk project, project organization and monitoring the CM at risk contract.

Design Build

In 2004, the Design Build delivery method was authorized as an option to be used for public works construction, reconstruction, alteration, remodeling, or repair projects estimated to cost \$5 million or more. Certain state entities must submit procedures to be reviewed. All others must submit an application to use the method to the Office of the Inspector General. The office has prepared an application form to be completed, pursuant to Chapter 149A. In 2008, no local entities submitted an application to use design build; however, in accordance with Chapter 149A, the office reviewed and approved the release of the MassHighway Design Build Procurement Guide.

The passage of Chapter 233 of the Acts of 2008, "An Act Financing An Accelerated Structurally-Deficient Bridge Improvement Program," allows bridge projects of less than \$5 million to be constructed using design build, with inspector general approval. In 2008, MassHighway submitted its design build procedures for projects of greater than \$5 million to be used for the \$4 million historic Pleasant Street Bridge project in Grafton. The Inspector General approved the procedures.

Massachusetts School Building Projects

In 2008, the office continued to work with the MSBA to develop model documents and procedures for use by entities seeking state financial assistance to build public schools. The office reviewed model contracts for the owner's project manager and designer services. In addition, the office participated as a member on the owner's project manager review board. Pursuant to MSBA regulations, the Massachusetts Certified Public Purchasing Official Program (MCPPO) also certified 64 owner's project managers and designers, and designated 63 public officials as meeting the mandatory requirement for participation on an MSBA-funded project.

Model Schools

In 2003, this office recommended to then Governor Romney that the commonwealth consider establishing a program to create prototype designs for state-financed public school buildings. It was this office's opinion that having such designs available for municipalities would not only reduce the cost of design services related to state-financed public school buildings, but would also lead to reduced opportunity for inadequately or overly-designed schools, lead to a quicker review and approval by governmental bodies and state agencies, as well as allow opportunities to benefit from the application of value engineering and careful considerations of total life-cycle costs, energy efficiency, and environmental suitability.

In 2008, the MSBA advanced this worthy program and selected two successfully designed and constructed high schools as models to be replicated with limited changes. The MSBA also authorized additional state funding as an incentive to districts. The town of Norwood was the first district to take advantage of the program. Based on estimates of costs and time for the Norwood project, the model school program is expected to result in savings of approximately \$20 million to town and state taxpayers and speed up completion by one year.

Energy Services and Management Contracts

With state and local energy initiatives rapidly developing and becoming increasingly complex, the Inspector General wrote to Philip Giudice, Commissioner Division of Energy Resources (DOER), that the commonwealth does not currently have an efficient system in place to provide municipalities with sound energy advice and new energy solutions. The Inspector General noted that municipalities lack the resources to fully evaluate the services being offered by private sector entities that specialize in these areas. It is important that promises of savings made to cities and towns by private "for profit" energy efficiency entities are verifiable. The Inspector General proposed working in conjunction with DOER and other agencies to help Massachusetts lead the way in providing innovative governmental solutions to clean energy. Those efforts are ongoing.

Based on a request, the Inspector General conducted a review of the city of Fitchburg's procurement of energy management services for the school department after two failed attempts to get sufficient competitive responses from vendors. Depending on the specific energy services or energy conservation measures desired, cities and towns have the option of using a number of different laws to procure such services, including M.G.L. c.30B, M.G.L. c.149, M.G.L. c.25A, §11C, or M.G.L. c.25A, §11I. Each law contains different provisions and safeguards. In October, the Inspector General advised the city to review and revise the scope of services to open up the procurement to a wider range of competition while retaining safeguards and to seek assistance from the Department of Energy Resources.

In December, the Inspector General testified to the Special Commission on Municipal Relief on a number of proposals to give municipalities the tools they need to help cope with economic challenges they face while making sure to maintain the proper safeguards to protect the taxpayers' interest. One proposal called for the state to develop an energy education program, noting that currently numerous cities and towns hire consultants to educate them on the best ways to cut energy costs. The Inspector General stated that he believes the commonwealth could perform a similar function at a much lower cost.

Also, the office cautioned cities and towns to seek the advice of DOER before entering into any contracts to install solar panels on the roofs of public buildings. Since the solar panels will be paid for by a third party financier who will take advantage of available tax credits and will offer electricity to the governmental body at a discounted rate certain requirements must be met.

IG Issues Advisory on Energy Management/Conservation Services

In January 2009, the Inspector General issued an advisory to help school districts in procuring energy efficiency and conservation consultants. The document was based on a review of 19 contracts with the consulting firm Energy Education Inc. (EEI) as well as working with the city of Fitchburg and the state's Division of Energy Resources on how to procure services to achieve energy cost savings.

The advisory recommended that school districts should perform due diligence in researching the various options for energy conservation and management service options before signing a contract with EEI or any other vendor. For example, by law, public utilities offer energy conservation services for no cost. In addition, the advisory stated that districts must procure energy management services in accordance with either M.G.L. c.25A or M.G.L. c.30B. The advisory also recommended against using vendor-supplied contract specifications, RFP language, and contract provisions.

The advisory also alerted school district officials to several features of EEI's fees, software and contract language that officials should fully understand

before entering a business relationship with the firm. In addition, the advisory stated promises of savings should be verifiable.

American Recovery and Reinvestment Act (ARRA)

In November, the Governor formed a construction procurement efficiency task force and other task forces to examine current statutes and regulations to prepare a submission to the federal government upon enactment of a forthcoming federal economic stimulus bill. The Inspector General participated on that task force and several others, which developed a number of proposals to refine certain procedures related to the procurement of design and construction services for building and public works projects. The focus was on creating effective and efficient methods without compromising the integrity of an accountable, fair, and transparent process. Working closely with the Division of Capital Asset Management and other members of the task force, all recommendations were accumulated into a package of suggested legislative initiatives and submitted to the governor to be filed with the legislature. The proposals resulted in the state's timely application to the federal government for federal economic stimulus funds.

Owner's Representative Requirement

Chapter 303 of the Acts of 2008, "An Act Financing Improvements to the Commonwealth's Transportation System," created a requirement for an owner's representative to be hired or assigned to a project for the construction of a highway, railway, bridge, tunnel or aviation facility or any component thereof and for which the certified estimate of cost exceeds \$50 million. This legislation, which the office co-sponsored, addresses several inadequacies and loopholes in the state's horizontal construction laws that were brought to light by the Big Dig. It also creates a parallel structure to the changes made in the vertical construction laws, M.G.L. c.149 and 149A, which require an owner's project manager on building projects.

The office met with MassHighway relative to the new requirement. Since then, MassHighway named an owner's representative for the Boston/Chelsea Drawbridge project, which is estimated to cost over \$100 million. The office is developing regulations in accordance with the statute.

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Real Estate Dealings

The Inspector General reviews a variety of real property transactions each year to ensure that the public interest is adequately protected.

In addition, the legislature frequently mandates that the office review and approve independent appraisals of real property interests being conveyed or acquired by the state, counties, and municipalities. The Inspector General provides a report on such appraisals to the Commissioner of the Division of Capital Asset Management (DCAM) for submission to the House and Senate Committees on Ways and Means and the Joint Committee on State Administration and Regulatory Oversight.

The office also reviews and comments on the disposition agreements controlling certain conveyances.

The Inspector General generally requires that all real property appraisal reviews conducted at the direction of the legislature follow the Uniform Standards of Professional Appraisal Practice published by the Appraisal Standards Board for the Appraisal Foundation.

The Inspector General's appraisal reviewers form an opinion as to whether the analyses, opinions, and conclusions in the work under review are appropriate and reasonable. If the reviewer disagrees with an appraisal, the reasons for any disagreement are set forth in the Inspector General's response.

Below are a few real property deals reviewed by the office:

John F. Kennedy Library Addition: The office reviewed several aspects of the proposed conveyance by the University of Massachusetts to the federal government of land in Boston to be used in connection with an addition of the John F. Kennedy Library. The sale was authorized by the legislature pursuant to Chapter 210 of the Acts of 2006. In March 2008, the office reviewed two appraisals of a 1.53-acre parcel of filled tidal land and found that both had adequately supported valuations. In September, the office reviewed the purchase and sale agreement to ensure it was consistent with the authorizing legislation. The office suggested incorporating language restricting the use of the property into the property transfer documents. In December, following a review of the draft transfer documents, which describe the intended purpose of the sale, the office said the conveyance appears to be consistent with the legislature's intent.

Springfield Technical Community College Assistance Corporation: The office reviewed a proposed loan agreement and other documents related to a \$400,000 loan to be used for tenant improvements related to

the Liberty Mutual lease and other capital projects. The review found that the terms and conditions of the loan are consistent with the purposes of the Springfield Technical Community College Assistance Corporation's authorizing legislation and provide safeguards to all parties. The office also reviewed Springfield Technical Community College Assistance Corporation's proposed extension of its contract with its property manager. The office recommended that the STCCAC conduct a competitive procurement process for a new contract rather than extend the expired agreement.

Leases to Yacht Clubs: This office reviewed a bill authorizing the state, through the Department of Conservation and Recreation, to lease yacht clubs or boating facilities on public park land to non-profits currently holding the permits. The office recommended several changes to the legislation as well as other measures to ensure fairness and accountability. For example, the office recommended that the bill include a provision requiring that Department of Conservation and Recreation and the Division of Capital Asset Management have approval over any significant changes or capital improvements to the yachts clubs. The office also recommended that each of the parcels be professionally surveyed to establish the metes and bounds.

Worcester CitySquare Development: The Inspector General's office reviewed amendments to the Worcester CitySquare Development Agreement, which governs the disbursement of up to \$89 million in public funds to the project. The revisions were sought after the private developer of the project failed to meet certain requirements in the original agreement due to adverse market conditions. The office's review found that the proposed changes to the development agreement restructures the phasing, size and investment sequence of the project to accommodate the city's current expectations while retaining important safeguards and updating conditions under which the developer can receive public funds.

Salem State College Assistance Corporation acquisition: The Inspector General's office reviewed a draft lease agreement between North Shore Realty Development LLC and Salem State College Assistance Corporation. The office also reviewed a memorandum of understanding between these two parties and Salem State College relative to a plan by SSCAC to acquire the so-called "Weir Valves" property from North Shore Realty Development LLC for college uses and possible future development. The review found the proposed transaction is in accord with SSCAC's authorizing legislation.

Below are a few examples of legislatively mandated disposition agreements the Inspector General reviewed in 2008.

Land-for-easements swap in Princeton: The office reviewed property transaction documents to effect an exchange of property rights between

the state and the town of Princeton. Chapter 156 of the Acts of 2006 authorized the state to grant two easements to the town of Princeton to be used in connection with a wind farm. In exchange, the state is to receive from Princeton a five-acre parcel of greater value plus the abandonment of another easement held by the town. The office's review found that the proposed agreements appear to be consistent with the authorizing legislation.

Boston State Hospital parcel disposition: The Inspector General's office reviewed documents related to the proposed transfer of a five-acre portion of the former Boston State Hospital to the Worcester City Campus Corporation. The documents, including a draft deed, a land disposition agreement, and a report by the Division of Capital Asset Management and Maintenance, call for the Worcester City Campus Corporation to use the parcel to expand the UMass Medical School's biologics laboratory and to renovate an existing building on the site. The agreements also specify certain community benefits to be provided by the Worcester City Campus Corporation. The review found that the disposition agreements are consistent with all relevant legislation.

The following are some examples of appraisal reviews conducted by this office:

Appraisal of easements in Sandwich and Bourne: The office reviewed and approved the appraisals of temporary and permanent easements in Massachusetts Military Reservation land and Shawme-Crowell State Forest land. The easements were sought to enable Algonquin Gas Transmission, LLC and Colonial Gas Company to construct and utilize a natural gas pipeline in the state-owned tracts. The review detected an error in the computation of the square-footage of one tract, which resulted in minor valuation discrepancies, but found the value opinions were supported.

Appraisal of land in Waltham: This office reviewed and approved the appraisal of a 6.54-acre parcel of land and improvements in Waltham, about half of which was wetlands. The property, located at 775 Rear Trapelo Road, is to be conveyed to the city for recreation, conservation and flood control purposes. The office's review found that the opinion of value in the appraisal report was adequately supported.

Appraisal of land in Holden: The office reviewed and approved the appraisals of two parcels of land in Holden. As authorized by Chapter 264 of the Acts of 2004, a 15,704-square-foot parcel of land may be conveyed to a private abutter in exchange for a watershed preservation restriction and conservation easement on 81,715 square feet of vacant land owned by same abutter.

Updated appraisal of property at former Rutland Heights State Hospital: The office reviewed and approved an updated appraisal of land

and improvements at the former Rutland Heights State Hospital that are to be conveyed to the Rutland Development and Industrial Commission. The entire parcel contains about 88 acres of land. The appraisal was revised to reflect a zoning change limiting the number of elderly housing units and a determination that commercial development is no longer being considered.

Local Government Procurement Assistance and Enforcement

The Office of the Inspector General provides extensive technical assistance to local government officials regarding Massachusetts public procurement laws. The Inspector General encourages effective and ethical public purchasing by local governments by providing training and professional development, publishing manuals and a quarterly "Procurement Bulletin," and by responding to inquiries, complaints and protests. The Inspector General also interprets and formulates policy on M.G.L. c.30B, the procurement law that local governmental bodies follow when they buy supplies, services, equipment and real property or dispose of real property and other tangible surplus supplies.

Training and Professional Development

The Inspector General's office administers the Massachusetts Certified Public Purchasing Official Program (MCPPO), which the office created 12 years ago. The training program is designed to develop the capacity of public purchasing officials to operate effectively and promote excellence in public procurement and, more recently, to assist the members of the private sector in meeting requirements for certification as designers and owner's project managers for the Massachusetts School Building Authority.

About 800 people, consisting of municipal, state and private sector employees, participated in MCPPO courses in 2008, bringing the total number of participants since 1997 to approximately 8,000.

Public purchasing officials are responsible for procuring the supplies, services and facilities required to provide public services. These procurements involve significant expenditures of public funds, making it important that state and local officials understand proper procurement processes.

In 2008, through the MCPPO program, the Inspector General offered three, three-day seminars: 1) "Public Contracting Overview," a prerequisite for other courses that includes segments on Massachusetts purchasing and construction laws, purchasing principles, prevailing wage law, public records law, and ethics; 2) "Supplies and Services Contracting", which assists participants on how to interpret M.G.L. c.30B, how to use invitations for bids (IFBs) and requests for proposals (RFPs), writing effective specifications, soliciting price quotations, common bidding problems and best practices advice about using statewide contracts and making collective purchases; and 3) "Design and Construction Contracting," which provides in-depth instruction in the procurement laws governing public design and construction in

Massachusetts, effective design and construction contract administration, prequalification and alternative delivery methods, and special issues in construction bidding.

In 2008, the MCPPO program also offered the two-day “Charter School Procurement” seminars, which assist charter schools in satisfying the statutory requirements (Section 11 of Chapter 46 of the Acts of 1997) that certain charter school administrators earn a MCPPO certificate. In addition, the program offered the two-day “Advanced Topics Update” seminar and the one-day “Construction Management at Risk Under M.G.L. c.149A” seminar.

The Inspector General’s four-day course, “Certification for School Project Designers and Owner’s Project Managers,” was presented in June and December of 2008. The course, introduced in 2007 and held exclusively for members of the private sector, was created in response to regulations recently promulgated by the Massachusetts School Building Authority that require designers and owner’s project managers to be certified in the MCPPO program.

Each participant who successfully completes a core-curriculum seminar receives a certificate of completion. Participants who complete the requisite seminars and who meet education and experience requirements may apply for any one of six MCPPO designations, which includes three associate levels.

Outreach

In 2008, the Inspector General’s office provided speakers on various topics in public procurement law for the spring and fall conferences of the Massachusetts Association of Public Purchasing Officials (MAPPO), the Fire Chiefs Association of Massachusetts (FCAM), the Massachusetts Collectors and Treasurers Association (MCTA), Framingham State College, Statewide Training and Resources (STAR) Exposition 2008, Massachusetts Continuing Legal Education, Inc. (MCLE), the Solid Waste Association of North America (SWANA), and presentations in Fall River, Needham, and Westminister.

Inquiries, Complaints and Protests

In 2008, the office responded to 3,217 inquiries about M.G.L. c.30B and other public bidding laws. The Inspector General regularly advises purchasing officials on how to obtain best value and increase competition for public contracts. The staff also responds to requests from local officials, aggrieved bidders and concerned citizens by reviewing bid and proposal documents for compliance with M.G.L. c.30B.

Publications

The office publishes a wide range of materials designed to educate and inform local procurement officials, to provide guidance on best value contracting and to disseminate lessons learned. All publications listed in this section are available from the Inspector General's website: www.mass.gov/ig.

In 2008, the Inspector General published "Procuring Outside Consultants With Fees From Applicants." This advisory provides guidance to local officials on how to apply the Uniform Procurement Act, M.G.L. c.30B, to the statute on the hiring of outside consultants, M.G.L. c.44, §53G.

The Inspector General also continued to publish the "Procurement Bulletin," a newsletter distributed to about 1,850 procurement officials and other interested parties across the state. Launched in 1994, the "Procurement Bulletin" summarizes current procurement-related news and issues, addresses frequently asked questions about M.G.L. c.30B, provides legislative updates and highlights special topics in procurement.

Current and past issues of the "Procurement Bulletin" and an index of past issues can be downloaded from the Inspector General's website.

Bylaw and Charter Amendment Reviews

Each year, the Inspector General's office provides critical input to the Attorney General's office as it conducts reviews of municipal by-laws and charter amendments to ensure compliance with state law. Specifically, the Inspector General's office offers input on whether such by-laws and charter changes comply with the Uniform Procurement Act, M.G.L. c.30B of the General Laws. In 2008, the office reviewed four of these by-law and charter amendments.

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Legislative Reviews

The Office of the Inspector General reviewed and commented on numerous pieces of legislation during the 2007-2008 legislative session. In addition, the Office regularly assisted individual legislators in both the development of legislation specific to the districts they represent, as well as legislation that affected the operation of state and local government. The Office is often called on by legislators to meet with and provide guidance to municipalities on matters not related to legislation. The Office also responds to requests from the governor's office to review legislation that has been passed by the legislature and is awaiting the governor's signature.

The Inspector General testified before legislative committees on issues related to affordable housing, public construction oversight, municipal relief, ethics, and public cost-savings initiatives. In all cases, the main theme involved transparency and safeguards ensuring appropriate oversight of taxpayer dollars, while allowing for innovation. The office has also been asked by legislative committees to gather information on a variety of topics, including health care and public construction.

In addition to commenting on specific legislation, the office sent to the legislature a general set of guidelines for lawmakers as they look to craft legislation dealing specifically with land disposition bills that seek to exempt certain property transactions from M.G.L. c.7 or M.G.L. c.30B. In letters sent to the Joint Committee on Bonding, Capital Expenditures and State Assets, and to the Joint Committee on Municipalities and Regional Government, this office called for all such bills to: state the purpose of the disposition and any use restrictions; identify the property to be conveyed, including the precise location and total acreage; require an independent appraisal establishing fair market value of the property; require the private party to pay no less than the established value; require the private party to pay all direct transaction costs; require the property to revert in the event the property is not used for the intended purpose; and require that the disposition be subject to disclosure requirements.

This office also sent letters to lawmakers strongly opposing bills that sought to weaken the Uniform Procurement Law, M.G.L. c.30B.

The Inspector General reviewed and provided comment on the following in the 2007-2008 legislative session:

2007

- Chapter 113, "An Act Relative to Authorizing the Town of Natick to Enter into a Certain Lease Agreement;"

- Chapter 121, “An Act Authorizing the Town of Orleans to Lease Certain Town Land;”
- Chapter 209, “An Act Authorizing the Board of Selectmen of Easton to Lease a Certain Parcel of Land;”
- H1975, “An Act Authorizing the Town of Weymouth to Make Conveyance and Sale of Certain Water Supply Land;”
- H3179, “An Act to Exempt Fire and Ambulance Apparatus From Bidding Laws;”
- H3201, “An Act Relative to Chapter 30B,” allows for a preference in M.G.L. c. 30B for Massachusetts vendors;
- H4122, “An Act Relative to the Change From Conservation Use to General Municipal Use of a Portion of the Property Known as Ridge Hill Reservation in the Town of Needham;”
- H4190, “An Act Relative to An Easement on a Certain Parcel of Land in Marlborough;”
- S1847, “An Act Providing for Reform in Public Construction” which calls for the establishment of an independent owner’s engineer on public works projects over \$50 million.

2008

- Chapter 39, “An Act Authorizing the Town of Harwich to Acquire Certain Cemetery Property;”
- Chapter 51, “An Act Authorizing the Town of Westford to Convey Certain Land;”
- Chapter 52, “An Act Relative to an Exchange of Land in the Town of Swansea;”
- Chapter 59, “An Act Authorizing the Town of Templeton to Exchange a Parcel of Conservation Land to Be Held for Conservation Purposes;”
- Chapter 123, “An Act Authorizing the City of Methuen to Lease a Portion of a Certain Building to the Methuen Municipal Employees Federal Credit Union;”
- Chapter 138, “An Act Relative to the Conveyance of Property by the County of Nantucket;”
- Chapter 143, “An Act Authorizing the Town of Shirley to Establish the Longley Acres Maintenance Fund;”

- Chapter 163, “An Act Authorizing the Department of Fish and Game to Acquire a Conservation Restriction on Lands of the City of Westfield;”
- Chapter 174, “An Act Authorizing the City of Brockton to Convey Certain Park Land to the Brockton Housing Authority;”
- Chapter 218, “An Act Authorizing the City of Quincy to Convey Certain Land;”
- Chapter 236, “An Act Authorizing the Town of Harwich to Acquire Certain Real Property;”
- Chapter 457, “An Act Authorizing the City of Lowell to Lease Certain City Owned Land;”
- H4474, “An Act Conveying Land from the Town of Plainfield to the Plainfield Congregational Church;”
- H4493, “An Act Authorizing the Town of Brookline to Lease Town Owned Property for an Additional Thirty Years.”
- S2734, “An Act Authorizing the Town of Weymouth to Transfer Certain Water Supply Land;”

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Legislative Recommendations: 2009-2010 Session

In the fall of 2008, Gov. Deval Patrick issued an executive order creating the Governor's Task Force on Public Integrity. Its mandate was to recommend changes to state laws on ethics and lobbying, and to draft legislation to carry out those reforms. Inspector General Gregory Sullivan testified before this task force, at which he proposed several changes to state law aimed at enhancing the authority of agencies with enforcement power over lobbying activities, ethics matters and public corruption. The Inspector General's recommendations were also communicated to the task force in a Dec. 4, 2008 letter, which included legislative language to address weaknesses in the ethics and lobbying laws.

Specifically, the Inspector General recommended:

- Creating a general fraud statute that parallels the federal mail fraud statute and includes deprivation of honest and faithful services;
- Broadening the state's false statement statute to include the submittal of documents and false statements to investigators, bringing state law in line with federal false statement law;
- Allowing the State Ethics Commission to share information with the Inspector General's office;
- Expanding the Inspector General's statute to include penalties for destroying, altering or withholding documents.

A number of changes proposed by the Inspector General were adopted as recommendations by the Task Force on Public Integrity in its final report, issued in January 2009, and incorporated into legislation proposed by the governor.

Bills Filed for the 2009-2010 Session

In November 2008 the Inspector General filed the following bills for the 2009-2010 legislative session:

House 9, An Act Relative to Chapter 30B

The bill comprises a thoughtful and practical approach to streamline and fine tune Chapter 30B. The proposal contains a cost-savings alternative to

advertising in newspapers, a definition of sound business practices and authority to purchase from the Government Services Administration supply schedule. Certain other technical clarifications are also included.

House 10, An Act Relative to Interagency Collaboration

The bill authorizes the Office of the Inspector General to make staff and other assistance available to the State Ethics Commission. Currently the Ethics Commission statute, M.G.L. c. 268B, §2(m), allows the State Police, the Auditor, the Attorney General, and the Office of Campaign and Political Finance to assist the Ethics Commission if requested. This change will allow for greater collaboration between this Office and the Ethics Commission.

House 11, An Act Relative to Retirement Board Members

The bill prohibits a person from serving as a member of a retirement board while receiving compensation or other remuneration from any retirement board.

House 12, An Act Relative to Public Procurement

The bill amends the false statements in public procurement statute, M.G.L. c. 266, §67A, to require that when a violation of criminal law occurs relating to procurement of supplies, services or construction, a vendor must notify the awarding authority within 30 days of its discovery of such occurrence. Also, a vendor would have to notify the awarding authority within 30 days if it discovers it received an overpayment.

House 13, An Act Authorizing Employees of the Inspector General's Office to Participate in Representative Town Meeting

The bill would allow officers and employees of the Inspector General's Office to run for the position of representative town meeting member.

House 14, An Act Establishing the Inspector General Recovery Fund

The bill would establish a trust fund for the Inspector General's Office to allow the Office to accept reimbursement for investigative costs when funds are recovered as part of a civil or criminal proceeding. There have been occasions when the Office could have recouped funds for investigations, but has not had a mechanism to do so.

House 15, An Act Relative to Public Construction Thresholds

The bill would amend the Public Construction statute, M.G.L. c. 149, §44A(2), by allowing a public agency to use sound business practices for public construction contracts under \$5,000.

Listing of 2008 Reports and Publications

The Office of the Inspector General published dozens of reports and letters in 2008. The following documents are available on the Inspector General's Internet site www.mass.gov/ig:

- Letter to David Perini, Commissioner, Division of Capital Asset Management, and Anne Margulies, Assistant Secretary and CIO, Information Technology Division, Regarding Costs of Alternative Sites for a Second Data Center, December 2008.
- Letter to Ben Clements, Chairman, Governor's Task Force on Public Integrity, Regarding Recommendations for Strengthening Public Integrity in the Commonwealth, December 2008.
- Letter to Senator Stanley C. Rosenberg and Representative Paul J. Donato, Chairs, Special Commission on Municipal Relief, Regarding Recommendations for Municipal Relief, December 2008.
- Letter to Senator Marc R. Pacheco, Chair, Senate Committee on Post Audit and Oversight, Regarding Chapter 40B, December 2008.
- Letter to Department of Housing and Community Development Undersecretary Tina Brooks Regarding Chapter 40B Guidelines, November 2008.
- Letter to Secretary of State William Francis Galvin Regarding Payments to Certain Lobbyists, October 2008.
- Review of a Former Member of the Town of Rockland's Conservation Commission and Corruption, letter to the Town of Rockland Board of Selectmen, August 2008.
- Procuring Outside Consultants With Fees From Applicants, July 2008.
- Arlington Minuteman Village Chapter 40B Land Valuation, July 2008.
- Municipalities and Energy Efficiency Programs, letter to Commissioner Philip Giudice, Division of Energy Resources, June 2008.
- Review of Actual Site Development Costs as Reported by Crossroads, LLC on a Chapter 40B Project in Acton, Massachusetts, June 2008.
- Request to Rescind a M.G.L. Chapter 40B Project Eligibility Approval for the Summer Woods Project in Harwich, Massachusetts, letter to Thomas R. Gleason, Executive Director, MassHousing, May 2008.
- Review of a Procurement Performance Management Software, letter to Leslie A. Kirwan, Secretary of Administration and Finance, March 2008.

- Ongoing Analysis of the Uncompensated Care Trust Fund/Health Safety Net Trust Fund: Medicare Based Claims Payment System Implementation, February 2008.
- A Review of International Tourism Fund Contract Awards 2005-2007, February 2008.
- A Review of Certain Assabet Valley Regional Technical School District Matters, February 2008.
- Referral of Information on Certain Abington and Rockland Officials and a Public Works Contractor, letter to Commissioner Navjeet K. Bal, Department of Revenue and Commissioner David B. Perini, Division of Capital Asset Management, January 2008.