



Office of the Inspector General Commonwealth of Massachusetts

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Inspector General

2013 Annual Report

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Introduction

The 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. Created in 1981, it was the first state inspector general’s office in the country. The Legislature created the Office at 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.

In keeping with its broad statutory mandate, the Office investigates allegations of fraud, waste, and abuse at all levels of government; conducts programmatic reviews to identify systemic vulnerabilities and opportunities for improvement; and provides assistance to both the public and private sectors to help prevent fraud, waste, and abuse in government spending. In addition, the Office provides guidance to local government officials on issues that arise under the Uniform Procurement Act, M.G.L. c. 30B, which governs the purchase and disposition of supplies, services, equipment, and real property by municipalities and other public entities. The Office also educates public and private employees through the Massachusetts Certified Public Purchasing Official training program.

Each year, the Office receives numerous complaints alleging fraud, waste, or abuse in the use of local, state, and federal funds and property. The Office evaluates each complaint to determine whether it falls within the Office’s 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.

When conducting an investigation or review, the Office has the authority to subpoena records, interview witnesses, and take testimony under oath. At the completion of an investigation, review or other project, the Office may issue a letter or report detailing findings and outlining recommendations to prevent future problems. The Office also reports suspected criminal activity to the appropriate authorities, including the Massachusetts Attorney General’s Office and the U.S. Attorney’s Office. In addition, the Inspector General meets regularly with the Inspector General Council to discuss the Office’s activities.

In 2013, the Office responded to over 600 complaints and conducted investigations and reviews in such areas as education, health care, public benefits, criminal justice, energy, public construction, affordable housing, conservation and recreation, social services, public works, and transportation. The Office’s work led to state and federal indictments, legislative initiatives, and reforms and policy changes at the state and local levels.

The Office’s efforts also resulted in settlements and the imposition of fines totaling \$4 million. In addition, the Office identified \$42.5 million in potential cost savings per year for the Commonwealth. The Office’s direct appropriation in the 2013 fiscal year was \$2.3 million. This means that for every dollar that the Legislature appropriated to the Office, the Office identified or helped recoup twenty dollars in savings and recoveries for the Commonwealth and other public entities.

The Office's largest investigation in 2013 involved the Forensic Drug Laboratory at the Hinton State Laboratory Institute ("Drug Lab"). The Office conducted a top-to-bottom review of the Drug Lab after one of the chemists admitted to tampering with drug evidence results, raising serious questions about the integrity of the testing performed at the Drug Lab. The Office's comprehensive review found that chronic managerial negligence, inadequate training, and a lack of professional standards created the environment that allowed the chemist to commit her crimes.

In addition, in response to a legislative mandate for the newly-formed Bureau of Program Integrity, the Office performed an extensive review of the Department of Transitional Assistance. As required by the Legislature, the Office studied eligibility and program integrity processes, and analyzed the management and operational structure supporting these processes. The Office offered numerous recommendations for change.

Similarly, the Office initiated health care reviews regarding the Massachusetts Medicaid program and the Health Safety Net. The Office determined that the Massachusetts Medicaid program pays for health care that should be covered under noncustodial parents' commercial health insurance. The Office also found that a small percentage of Health Safety Net users were receiving health care while simultaneously claiming the religious exemption from the health insurance mandate, which contravenes the state mandate. Further, the Office's Internal Special Audit Unit analyzed parking benefits at the Massachusetts Department of Transportation and the Massachusetts Bay Transportation Authority. The Unit found opportunities to save transportation funds, including eliminating rarely-used complimentary parking passes, and the potential under-reporting of state taxable fringe benefits.

Also during 2013, the Office provided technical assistance to state and local government officials regarding Massachusetts' public procurement laws, trained over 1,500 participants in procurement law and related issues, and responded to approximately 1,700 inquiries about public bidding laws. The Office also continued to participate in the development of policies and procedures related to the Commonwealth's public design and construction laws, reviewed public land transactions, and provided input on over 100 pieces of legislation.

Further details about the activities summarized above, as well as the results of additional investigations, reviews, and other projects are set forth in the rest of this report.

Structure of the Office

The Office is organized into seven divisions: Audit, Oversight, and Investigations; Policy and Government; Regulatory and Compliance; Legal; Administration and Finance; the Bureau of Program Integrity; and the Internal Special Audit Unit.

The **Audit, Oversight, and Investigations Division** (“AOI Division”) investigates allegations of criminal and civil misconduct in the use of public funds. In this role, the AOI Division receives, reviews, and processes all complaints addressed to the Office. The Division also investigates potential criminal and civil violations of law that arise from a variety of sources, including anonymous tips, information developed during the course of other reviews and activities, and requests for assistance from other investigative agencies, including local authorities, federal agencies, the state police, and the Attorney General’s Office. Overall, the Office receives approximately 600 complaints from the public annually. In some instances, these complaints lead the Office to conduct comprehensive investigations, while in other instances the Office may forward the complaint to the appropriate oversight, regulatory, or prosecutorial agency. The Office forwards complaints to other agencies if, for instance, a preliminary investigation reveals that the complaints are outside of the Office’s jurisdiction.

When investigations reveal potential criminal conduct, the AOI Division often works closely with other law enforcement agencies – such as the FBI, the state police, federal inspectors general, and local police departments – as well as with prosecutorial agencies – including the Attorney General’s Office, the U.S. Attorney’s Office, and local district attorneys’ offices. The AOI Division works on matters involving potential civil actions either directly through the affected municipality or in conjunction with the Attorney General’s Office. The AOI Division also alerts the State Ethics Commission to potential ethics violations, such as self-dealing and conflicts of interest. At any given time, the Division may be investigating allegations of public corruption or other wrongdoing in a wide array of public sectors, such as energy, affordable housing, social services, public works, construction, public advertising, transportation, and education.

Additionally, the AOI Division focuses on opportunities to prevent and detect fraud, waste, and abuse by recommending improvements to internal and financial controls for the expenditure of public funds through legislative and regulatory changes. The Division also provides information through the release of public advisories and letters to assist in the prevention and detection of risks of and vulnerabilities to fraud, waste, and abuse.

The **Policy and Government Division** oversees the Office’s policy, health care, and legislative initiatives. Since 2004, the Legislature has mandated that the Office oversee and examine practices in Massachusetts hospitals, including those practices related to the care of the uninsured. And since 2011, the Legislature has also directed the Office to study and review the Massachusetts Medicaid program. The Division also undertakes programmatic reviews, especially at the state level, to identify system-wide vulnerabilities and opportunities for improvement.

In addition, the Division participates in the development of policies and procedures related to the Commonwealth’s public design and construction laws. The Division works with state agencies

and authorities throughout the Commonwealth to establish best practices in public construction. Each year, the Division reviews certain public design and construction projects, methods, and practices, as well as a variety of public real property transactions, to ensure that the public's interests are adequately protected. Finally, during each legislative session, the Division participates in the legislative process by reviewing and commenting on numerous pieces of legislation, meeting with and providing guidance to legislators and municipalities, and responding to requests from the Governor's Office to review proposed legislation before it is signed into law.

The **Regulatory and Compliance Division** manages the Office's educational initiatives, including the Massachusetts Certified Public Purchasing Official ("MCPPO") program, and provides guidance on public procurement matters to state and local officials. In Massachusetts, public purchasing officials are responsible for procuring the supplies, services, and facilities required to provide public services and materials to their communities. These procurements involve considerable expenditures of public funds. As a result, it is vital that state and local officials understand the procurement processes and comply with all applicable legal requirements.

To meet this vital need, the Regulatory and Compliance Division provides training and professional development through the MCPPO program, publishes manuals and a quarterly *Procurement Bulletin*, and offers a hotline to respond to inquiries and complaints concerning the public procurement of supplies, equipment, services, and real estate. The Division also provides extensive technical assistance to state and local government officials regarding the Commonwealth's public procurement laws. The Division interprets and formulates policies on the Uniform Procurement Act, M.G.L. c. 30B ("Chapter 30B"), which governs public purchasing by municipalities and other public entities. The Office also provides speakers to address public procurement principles and fraud prevention for a variety of public and private entities. Finally, the Division provides important feedback to the Attorney General's Office as it reviews municipal bylaws and charter amendments to ensure compliance with Chapter 30B.

The **Legal Division** provides essential legal support and advice to the Office. Members of the Division represent the Office in state and federal court on issues that include enforcing the Office's subpoena powers and defending against attempts to obtain the Office's confidential and statutorily-protected information. The Division also both leads and assists with investigations; most recently, the Legal Division spearheaded the Office's review of the Forensic Drug Laboratory at the Hinton State Laboratory Institute.

The **Administration and Finance Division** provides vital support to the entire Office by managing the Office's information technology, human resources, procurement, finances, and case management system.

The Office's two newest divisions are the **Bureau of Program Integrity** and the **Internal Special Audit Unit**. In 2013, the Legislature created the Bureau of Program Integrity ("Bureau") within the Office to monitor the quality, efficiency, and integrity of public benefits programs administered by the Executive Office of Health and Human Services ("EOHHS"). Its responsibilities include preventing, detecting, and correcting fraud, waste, and abuse; reviewing

eligibility intake procedures; assisting EOHHS agencies to develop new intake procedures and regulations; and coordinating data sharing with other state agencies.

The **Internal Special Audit Unit** (“ISAU”) is responsible for monitoring the quality, efficiency, and integrity of the Massachusetts Department of Transportation’s (“MassDOT”) operating and capital programs. As part of its statutory mandate, the ISAU seeks to prevent, detect, and correct fraud, waste, and abuse in the expenditure of public and private transportation funds. The ISAU is also responsible for examining and evaluating the adequacy and effectiveness of MassDOT’s operations, including its governance, risk-management practices, and internal processes.

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The Recovery of Funds, Imposition of Fines, and Identification of Potential Savings

One of the Office’s great strengths is its ability to evaluate the propriety of public expenditures by conducting detailed analyses of financial transactions, reviewing the related accounting and financial reporting, and assessing the programmatic structure for which the expenditures were incurred. Often, the Office’s efforts result in agencies or municipalities recovering funds that properly belong to them. These recoveries may be in the form of settlements, negotiated agreements, or court action. The Office also conducts reviews to identify potential cost savings for public entities. Moreover, the Office’s referrals, reviews, and investigations may lead to the imposition of fines and civil penalties against individuals or organizations.

In 2013 the Office’s investigations and reviews resulted in \$4 million in settlements and fines, as well as the identification of \$42.5 million in potential cost savings. The Office’s direct appropriation in the 2013 fiscal year was \$2.3 million. This means that for every dollar that the Legislature appropriated to the Office, the Office identified or helped bring in twenty dollars in savings and recoveries for the Commonwealth and other public entities. The tables below summarize these recoveries, fines, and potential cost savings. Further details of the cases represented in these tables appear throughout the rest of this report.

<u>Recoveries and Fines</u>	
<u>Investigation or Review</u>	<u>Recovery or Fine</u>
Settlement: Quincy Energy Management Contract	\$4,000,000
Civil Fines: Abuse of Disabled Persons Parking Placards	\$6,500
Criminal Fine: Conviction of former Executive Director of the Chelsea Housing Authority	\$4,000
Total	\$4,010,500

<u>Potential Cost Savings Identified</u>	
<u>Investigation or Review</u>	<u>Annual Savings</u>
TAFDC: Processes and Controls for Eligibility	\$25,000,000
MassHealth: Health Insurance Coverage Through Noncustodial Parents' Commercial Health Insurance	\$17,500,000
Total	\$42,500,000

Investigation of the Forensic Drug Laboratory at the William A. Hinton State Laboratory Institute

The Office's largest investigation in 2013 involved the Forensic Drug Laboratory at the Hinton State Laboratory Institute ("Drug Lab"). In November 2012, Governor Patrick asked the Office to carry out an investigation of the Drug Lab following the arrest of Drug Lab chemist Annie Dookhan on charges of tampering with drug evidence results. Over the course of 15 months, the Office conducted a comprehensive investigation of the operation and management of the Drug Lab from 2002 to 2012, a period during which the Drug Lab was primarily overseen by the Department of Public Health ("DPH"), to determine whether any other chemists, supervisors, or managers at the Drug Lab committed any misfeasance or malfeasance that may have affected the reliability of drug testing at the Drug Lab, and to make findings and recommendations following its review. The Office carefully studied the Drug Lab's policies and procedures, identifying a number of deficiencies in its practices and protocols. With the support of experts in the field of forensic drug testing, the Office reviewed more than 200,000 documents, including policies, procedures, lab records, testing data and results, emails, and internal memoranda. The Office also interviewed more than 40 individuals associated with the Drug Lab, most of them under oath.

The Office's review found that Ms. Dookhan was the only individual who engaged in intentional malfeasance at the Drug Lab. However, the review also found that there were systemic management failures that allowed Ms. Dookhan to commit her acts of malfeasance. The Drug Lab's managers were ill-suited to oversee a forensic drug lab, provided almost no supervision, were habitually unresponsive to chemists' complaints and suspicions, and severely downplayed Ms. Dookhan's breach in chain-of-custody protocols once they discovered it.

The Office also found that former DPH Commissioner John Auerbach and his staff failed to respond appropriately to the report of Ms. Dookhan's breach of protocols; the investigation DPH conducted was far too narrow; and Commissioner Auerbach and his staff failed to disclose another known act of malfeasance to prosecutors, defendants, and other interested parties.

Further, the Office discovered that the Drug Lab lacked formal and uniform protocols with respect to many of its basic operations, including training, chain of custody, and testing methods. This lack of direction, caused in part by the Drug Lab's lack of accreditation, allowed chemists to create their own insufficient, discordant practices. The training of the chemists at the Drug Lab was wholly inadequate. New chemists' training was limited and lacked uniformity, and DPH offered virtually no continuing education to the chemists.

With regard to its interaction with the criminal justice system, the Office found that the Drug Lab failed to provide potentially exculpatory evidence to the parties in criminal cases by not disclosing information about additional, inconsistent testing results. The Office, with the assistance of an independent, out-of-state laboratory, is in the process of retesting a large number of these drug samples to determine whether the results provided to prosecutors and defendants were accurate. The Office will detail the results of the retesting in a supplemental report.

The Office found that the Drug Lab also failed to uniformly and consistently use a valid statistical approach to estimate the weight of drugs in certain drug trafficking cases. Moreover, the quality control system in place at the Drug Lab, which focused primarily on the functionality of the laboratory equipment rather than the quality of the chemists' work, was ineffective in detecting malfeasance, incompetence, and inaccurate results. The security at the Drug Lab was insufficient in that management failed to appreciate the vulnerability of the drug safe, and did not do enough to protect its contents. There were no mechanisms in place to document discrepancies in chain-of-custody protocols or inconsistent testing results.

Based on its findings, the Office made a number of recommendations to ensure that all parties in the criminal justice system, as well as the general public, can once again have the utmost confidence in the integrity of forensic drug testing performed in the state.

Specifically, the Office recommended:

1. All state agencies must employ management practices that hold supervisors accountable for their employees. Managers must conduct comprehensive background checks and complete performance evaluations at least on an annual basis. In forensic drug laboratories, there must be a system to report deviations from policy and results, and all managers of forensic laboratories should be experts in their respective fields.
2. The Massachusetts State Police's infrastructure and financial resources, including the highest level of accreditation of its drug lab, make it the agency best equipped to handle the forensic drug testing formerly conducted at the Drug Lab.
3. The Legislature should mandate that all forensic laboratories in Massachusetts be accredited and sufficient funding should be appropriated for that purpose.
4. Forensic drug chemists should receive extensive, theory-based training prior to analyzing any drug samples. Additionally, all chemists should take part in expert witness training and a mock trial program prior to testifying in court, and should be provided ethics training to ensure they remain unbiased in their forensic science responsibilities.
5. All forensic drug laboratories in Massachusetts must make it a practice to provide the results from all analytical tests run on each sample when providing discovery information to interested parties.
6. Quality controls at all forensic drug laboratories in Massachusetts should focus on both the functionality of equipment and the integrity and accuracy of the chemists' work product.
7. Every employee of a forensic drug laboratory with access to controlled substances should submit to periodic random drug testing and annual criminal record checks. Further, forensic drug laboratories should employ and appropriately manage advanced security measures such as biometric devices and closed-circuit televisions.
8. The Office declined to provide an opinion on how the courts should resolve Drug Lab-related cases; however, based on its thorough review, the Office commented as follows:

- a. all samples for which Ms. Dookhan was the primary chemist should be treated as suspect and be subject to careful review;
- b. the Office found no evidence to support treating cases in which Ms. Dookhan confirmed another chemist's results with any increased suspicion because of Ms. Dookhan's involvement;
- c. the Office found no evidence to support treating cases in which Ms. Dookhan had no known interaction with the drug sample in question with any increased level of suspicion because of Ms. Dookhan;
- d. for cases in which multiple tests were run, and the corresponding test results were not provided to the defendant in a criminal case, the Office respectfully deferred to the courts to determine whether such test results were exculpatory and material to the defendant's conviction;
- e. for trafficking cases in which the estimated weight of samples was determined without using a valid statistical approach and the weight finding is close to the statutory threshold for a trafficking charge, the Office suggested that the cases be carefully reviewed; and
- f. with respect to cases with samples that the Office wanted to retest, but which no longer exist, the Office suggested that the cases be evaluated with increased concern.

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Audit, Oversight, and Investigations Division

As previously discussed, the Audit, Oversight, and Investigations Division is responsible for investigating possible criminal and civil misconduct in the use of public funds and property, as well as for recommending improvements to internal and financial controls to prevent fraud, waste, and abuse in the use of government assets. During the past year, the Division responded to over 600 complaints from public employees, private citizens, municipalities, and other public entities. The Division also investigated and reviewed a wide range of alleged wrongdoing, including public corruption, fraud, waste, bid-rigging, self-dealing, embezzlement, and theft. The Division's work crossed all areas of government, including energy, affordable housing, social services, transportation, public works, and education.

Although the Office's enabling statute, M.G.L. c. 12A, restricts disclosure of ongoing investigations – cases in which the Office has not made an official disposition – the Office is able to describe below a number of the investigations that it concluded in 2013.

Housing Authorities

Falsifying Records: Former Executive Director, Chelsea Housing Authority

The Office participated in a combined probe that led to the conviction on federal charges of Michael McLaughlin, the former Executive Director of the Chelsea Housing Authority. In February 2013, Mr. McLaughlin pled guilty to four counts of falsifying a record in a federal agency matter with the intent to impede and obstruct that matter. Specifically, Mr. McLaughlin was convicted of falsely reporting his salary in annual budget certifications he submitted to the United States Department of Housing and Urban Development (“HUD”). In July 2013, Mr. McLaughlin was sentenced to 36 months in federal prison followed by two years of supervised release. Mr. McLaughlin was also assessed a fine of \$4,000. The Office investigated this case with the Massachusetts State Police, the FBI, the HUD Office of the Inspector General, and the Attorney General's Office.

Unlawful Solicitation of Campaign Contributions: Former Executive Director, Chelsea Housing Authority

A joint investigation by the Office, the Attorney General's Office, the Massachusetts State Police, HUD, the FBI, and the Massachusetts Office of Campaign and Political Finance led to the arraignment in Suffolk Superior Court of Michael McLaughlin, the former Executive Director of the Chelsea Housing Authority (“CHA”), on charges of unlawful solicitation by a public employee (four counts), solicitation in a public building (four counts), and conspiracy to solicit in a public building (four counts).

From approximately 2008 through 2010, Mr. McLaughlin allegedly directed a CHA employee to seek political contributions from fellow CHA employees and others associated with the CHA to benefit the Murray Committee (the political campaign committee for former Lieutenant Governor Timothy Murray). Mr. McLaughlin also allegedly asked CHA employees and others associated with the CHA to routinely perform political campaign work for the Murray Committee and Israel Reyes, a 2009 City of Lawrence mayoral candidate. This work included

holding signs, working at the polls, and other activities. Mr. McLaughlin pled not guilty to all charges.

Education

Mail and Wire Fraud: Former Chief Financial Officer, Merrimack Education Center

The Office led a combined probe with the FBI, the Internal Revenue Service, the U.S. Attorney's Office, and the Attorney General's Office that resulted in the indictment of Carl A. Nystrom on federal mail and wire fraud charges. Mr. Nystrom is the former Chief Financial Officer for the Merrimack Education Center ("MEC"), a non-profit corporation headquartered in Chelmsford, Massachusetts. The indictment alleges that Mr. Nystrom engaged in a scheme to defraud the Commonwealth by allowing ineligible MEC employees to enroll in the state pension plan, making these employees falsely appear to work for a state entity. The indictment alleges that the ineligible MEC employees who enrolled in the state pension plan included Mr. Nystrom.

Westfield State University: Allegations of Improper Activities by the President

In the summer of 2013, the Office began investigating alleged improper activities by Evan Dobbelle, the then-President of Westfield State University ("WSU"). In September 2013, the Office provided an interim report to the WSU Board of Trustees ("WSU Trustees"). The Office confirmed the findings of an independent audit that the WSU Trustees had commissioned in 2012, and also presented concerns about broader misconduct in connection with spending at both WSU and the Westfield State Foundation, Inc. ("Foundation"), which raises money to support the university. The Office's review found that then-President Dobbelle and others used credit cards for personal expenditures. Further, the Office found that Foundation funds were spent indiscriminately and various expenses appeared to have been incurred in violation of WSU's policies. The Office also determined that in 2010, the Foundation ran an operating deficit caused, in part, by then-President Dobbelle's expenditures and by spending undertaken at his direction. As a result, WSU transferred more than \$400,000 to help the Foundation remain financially sound, which is directly contrary to the Foundation's mission to support WSU. Following the Office's investigation and inquiries by the Board of Higher Education, Evan Dobbelle resigned in November 2013.

Brockton Public Schools: Contracting Violations at the Facilities Department

In April 2013, the Office completed its investigation into allegations that the Director of the Brockton Public Schools' Facilities Department, George M. Bezreh, had violated state procurement laws. The Office reviewed the school department's records and interviewed both department officials and three vendors hired by the Brockton School Department. The Office found that Mr. Bezreh, had awarded two roof-repair contracts worth nearly \$1 million without following state bidding laws. He had also allowed the electrical maintenance contractor to exceed authorized spending limits. The Office further found that Mr. Bezreh had instructed a third vendor to split work invoices into amounts of less than \$5,000 to avoid triggering a statutory requirement to advertise for bids. Moreover, the investigation found that Mr. Bezreh had private business dealings with each of the three contractors. Mr. Bezreh resigned following publication of the Office's report.

Transportation

Investigation into the Abuse of Disabled Persons Parking Placards

In 2013, the Office completed its third major investigation into the misuse of disabled persons parking placards. The investigation, which the Office conducted in cooperation with the Massachusetts State Police and the Massachusetts Registry of Motor Vehicles (“RMV”), focused on parking around North Station, Government Center, and the Financial District in downtown Boston. The Office uncovered many types of placard abuse, including using placards belonging to friends, relatives who live out of state, and deceased individuals. In one instance, the director of compliance for a wealth management company used a deceased priest’s placard to regularly park in the Financial District. In another case, a restaurant owner used his father-in-law’s placard to hold a space in front of his restaurant for a delivery vehicle. In the final stage of the investigation, the Massachusetts State Police confiscated placards from 13 people who were using placards that did not belong to them. In addition, the RMV suspended the licenses of 12 of the 13 drivers for 30 days and each will have to pay an additional \$500 reinstatement fee to the RMV in order to restore their driving privileges. The thirteenth driver cited for abusing a disabled persons parking placard did not have a valid driver’s license and is awaiting trial on a criminal charge of operating without a license.

Based on its investigation, the Office recommended an increase in placard enforcement, greater penalties for offenders, and criminal sanctions for using a deceased person’s placard. Additionally, the Office recommended that the RMV develop tighter administrative controls for the issuance of placards to help prevent future misuse.

State Operations

State Agencies’ Use of Temporary Staffing Agencies

In December 2013, the Office issued a report on its review of how state agencies use the Operational Services Division’s statewide contract for temporary help services. Under the contract, state agencies pay temporary staffing companies to provide temporary employees, who are supposed to fill short-term needs, such as temporary administrative support. The Office’s review focused on the 10 state agencies that had the highest utilization of temporary staffing based on the amount paid to staffing agencies over a five-year period. The Office’s review also included two other agencies that had used one or more temporary employees for several years, some dating back to the mid-1990s.

The Office found that some agencies used the temporary help services contract to fill long-term operational roles, rather than to satisfy short-term staffing needs created by illnesses, family leaves, or personnel moves. The Office’s review identified 10 individuals who had been temporary employees at a state agency for more than 10 years and another 20 individuals who had been temporary employees for a state agency for between five and 10 years. The Office also determined that agencies used the contract to bypass limits imposed by the Executive Office of Administration and Finance (“ANF”) on the number of permanent employees the agencies could hire; this limit is one of ANF’s budgetary control measures. In addition, the Office found that

some state agencies had arranged to pay certain temporary employees for holidays, sick days, or other leave in violation of the state contract for temporary help services.

As a result of the Office's review, ANF and the state's Human Resources Division ("HRD") implemented new policies, including prohibiting the use of temporary employees through a staffing agency for more than one year. ANF and HRD also restricted the use of temporary employees to situations in which a regular employee was on leave, to provide continuity of service during an emergency, or to work on a specific project or task that would not exceed 52 weeks. These restrictions were put in place so that state agencies could no longer use the temporary staffing contract to bypass ANF's cap on permanent employees. ANF and HRD also prohibited state agencies from providing holiday pay or other benefits to temporary employees.

Energy

Energy Management Contract: \$4 Million Civil Settlement

The Office investigated jointly with the Attorney General's Office allegations that a contract the City of Quincy ("City") entered into with Honeywell International, Inc. and Honeywell Building Solutions SES Corporation (together, "Honeywell") failed to comply with state laws governing energy management services. The City and Honeywell entered into a "Guaranteed Energy Savings Contract" using Chapter 25A of the Massachusetts General Laws, the public bidding law for programs intended to reduce government energy consumption. In 2013, Honeywell agreed to pay \$4 million to settle allegations that the contract was not an energy-savings contract under Chapter 25A and that Honeywell had failed to comply with statutory and contractual requirements.

Social Services

Legislative Mandate: Review of Eligibility for the Transitional Aid to Families with Dependent Children Program

Pursuant to Chapter 161 of the Acts of 2012, the Office studied eligibility information that recipients of Transitional Aid to Families with Dependent Children ("TAFDC") benefits provided to the Department of Transitional Assistance ("DTA"). In carrying out this legislative mandate, the Office examined a statistically valid sample of Massachusetts' active TAFDC cases as of June 1, 2012, to evaluate documentation confirming that TAFDC recipients met the applicable eligibility requirements. The Office found potential eligibility concerns that could result in the termination of benefits in approximately 8.9% of the households receiving benefits. These eligibility concerns could potentially cost taxpayers approximately \$25,000,000 a year. In its 2013 report, the Office recommended that the DTA improve and standardize its documentation procedures, re-evaluate its presumption that certain applicants do not have income or assets, re-examine its policy not to consider the assets or income of certain caretakers, improve systems to ensure that recipients comply with the financial and non-financial requirements of the program, increase staff training, and enhance both its enforcement and program integrity initiatives. The DTA adopted many of the recommendations in the Office's report and made progress in several areas in 2013. For example, the DTA increased its data

matching to verify eligibility and started implementing Electronic Document Management to improve and standardize file management.

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Bureau of Program Integrity

In July 2013, the Legislature created the Bureau of Program Integrity (“Bureau”) within the Office to broadly monitor the quality, efficiency, and integrity of public benefits programs administered by the Executive Office of Health and Human Services. Pursuant to its enabling legislation, the Bureau’s first project was a review of the Department of Transitional Assistance (“DTA”), with a focus on management and operations (“M & O”) and program integrity. The Bureau completed its initial review of the DTA in 2013, and intends to continue working with the DTA in 2014 to ensure that its policies and procedures continue to improve.

Review of the Department of Transitional Assistance

As a starting point for its review, the Bureau studied eligibility processing initiatives for the Transitional Aid to Families with Dependent Children (“TAFDC”) program that the DTA has implemented since the Office’s 2013 report entitled, “Review of Eligibility for the Transitional Aid to Families with Dependent Children Program.” The Bureau focused on three specific eligibility factors emphasized in the Office’s 2013 report: (1) Social Security numbers (“SSNs”); (2) address verification; and (3) motor vehicle asset verification. These factors are integral to establishing eligibility for benefits. The Bureau did not identify any major flaws in the DTA’s eligibility processing, but determined that the quality of the processing should be improved with clear policies and procedures and some basic adjustments to the DTA’s database.

In 2013, in response to longstanding concerns about SSNs, the DTA implemented a regular, monthly data match with the Social Security Administration to validate SSNs for all recipients. These data matches are generally effective and minimize the previously identified concern that recipients are intentionally withholding or otherwise failing to provide valid SSNs during intake and eligibility redeterminations. There is a small group of TAFDC recipients with nine-digit temporary identification numbers that remain in place after data matching occurs. These identifiers are for recipients who qualify for an exemption to the SSN requirement (such as infant dependents and eligible non-citizens). The Bureau recommended that the DTA update obsolete and unclear policies and procedures for both monitoring temporary identifiers and verifying SSN exemptions.

The Bureau found overall DTA compliance with eligibility regulations related to the verification of Massachusetts addresses for TAFDC recipients. Based on a recommendation in the Office’s 2013 report, the DTA made changes to address verification forms. The Bureau recommended further revisions to the forms and a regulatory change to promote recipient accountability.

The Bureau’s examination of the verification process for motor vehicle assets focused on the implementation of a new data match with the Registry of Motor Vehicles (“RMV”). This data match displays a list of potential motor vehicle assets for a recipient in the DTA’s database. However, the list on the database does not include sufficient information about each vehicle, and the directives for using the list to verify vehicle assets were unclear. To resolve these issues, the Bureau recommended changes to the DTA’s database and more detailed, documented procedures.

The Bureau next reviewed program integrity processes. Program integrity referrals include all overpayments, whether the result of a DTA error, unintentional recipient violation, or intentional program violation. The Bureau found that there was a significant increase in the total number of program integrity referrals in 2013 (including referrals for TAFDC, SNAP, and other programs). The DTA relies on data matches, which identify sources of income or employment for recipients, as critical and objective sources of information for program integrity referrals. Program integrity processing includes both automated and manual workflows, and some of the manual workflows create an ongoing risk of backlog. The ultimate goal of program integrity processing is to accurately identify and penalize recipients who have committed intentional program violations. The Bureau reviewed a representative sample of TAFDC cases with intentional program violation findings, and discovered that some ineligible recipients collected benefits for extended periods of time because staff failed to review data matches that showed unreported income for the recipients. To improve the processing of program integrity referrals, the Bureau recommended that the DTA foster collaboration between field and program integrity staff, develop a new training curriculum on program integrity processes, and pursue systems enhancements to automate manual workflows. The Bureau also recommended that the DTA establish rigorous standards for case monitoring and quality control.

Finally, the Bureau reviewed the DTA's overall management and operations, focusing on the DTA's organizational structure, business process modernization efforts and internal controls. In response to longstanding concerns, the DTA revised its organizational structure and began implementing Electronic Document Management. These initiatives bring potential for improving the DTA's operations and management systems, but the DTA must integrate internal controls into all of its structures, operations and policies to effect lasting change. The DTA must continually improve eligibility and program integrity processes in a timely and strategic manner, rather than allow longstanding issues to lapse into major flaws.

For overall improvement in eligibility processes, program integrity processes and program management, the Bureau recommended that the DTA focus on: communicating clear, effective and accessible policies and procedures; integrating eligibility and program integrity workflows into a comprehensive system of internal controls; performing relevant and effective data analysis; establishing minimum standards for management and oversight; engaging in ongoing risk-assessment and problem-solving efforts; and implementing systems enhancements that correspond to business priorities and automate essential processes.

Internal Special Audit Unit

As discussed earlier, the Internal Special Audit Unit (“ISAU”) monitors the quality, efficiency, and integrity of the Massachusetts Department of Transportation’s (“MassDOT”) operating and capital programs. In this role, the ISAU seeks to promote governance, accountability, and compliance that will both improve MassDOT’s operations and protect transportation funds.

The ISAU formally commenced operations in April 2013. Since that time, the ISAU has undertaken several transportation reviews and has identified opportunities for cost savings.

Identification of Potential Savings

A primary focus of the ISAU is to identify potential cost savings and vulnerabilities in MassDOT’s operations. In 2013, the ISAU identified approximately \$4 million in potential cost savings and \$1 million in potentially under-reported state taxable benefits. The tables below detail these findings, along with the associated resource:

<u>Potential Cost Savings</u>	
<u>Transportation Review</u>	<u>Cost Savings</u>
MassDOT Parking Review: Cost of complimentary employee parking	\$293,280 per year
MassDOT Parking Review: Estimated 5-year interest expense on borrowed funds used to pay for rent and parking	\$3,800,000
Total	\$4,093,280

<u>Potential Under-Reported Taxable Benefit</u>	
<u>Transportation Review</u>	<u>Cost Savings</u>
MassDOT Parking Review: Under-reported taxable fringe benefits (2008-2013)	\$1,003,000

Audits, Investigations, and Reviews

RMV’s Vehicle Safety Inspection and Compliance Department

Following a federal indictment of an employee, MassDOT requested that the ISAU review the RMV’s Vehicle Safety Inspection and Compliance Services. The employee was charged with

conspiracy to extort money in exchange for an official license to perform Massachusetts motor vehicle safety inspections. The ISAU identified several opportunities for the department to automate and enhance its internal controls. The ISAU also found the misuse of inspector licenses, an ineffective station license cap, inadequate inventory controls on inspection stickers, and lapses in management oversight. The ISAU made the following recommendations to the RMV:

1. Restrict the number of Class D inspection licenses issued.
2. Revise Field Inspection standards to include closer inspection of Inspector ID card usage.
3. Separate inventory, sales, and tracking of motorcycle inspection stickers from processing payments for stickers and inspections.
4. Improve documentation standards for station waiting lists.
5. Reinforce the current Class M inspection license restrictions.
6. Reconcile Field Investigations with active inspection stations periodically to identify any stations that have not been inspected.
7. Ensure that only those employees who need ALARS access to perform their jobs have such access.
8. Formalize the process by which users are added to or deleted from Management Console, and revisit the need for multiple system administrators.
9. Implement a dual-signature requirement on station inspection applications, and track application status changes.
10. Automate station inspection files.

In January 2014, the RMV underwent a leadership change when MassDOT's Secretary appointed a new Registrar. The Registrar has taken steps to address the issues identified in the report. Specifically:

1. All new Class D license applications have been suspended and are reviewed on a case-by-case basis. By policy, unless otherwise directed, the RMV only allows businesses whose intent it is to do commercial inspections to apply for Class D inspection licenses.
2. The RMV implemented dual sign-off on station applications; this new procedure requires approval from the Director of Vehicle Safety and Compliance Services and the Deputy Registrar for Operations. Management of station application processing also was reorganized.
3. The inspection station license application was modified to capture more information from the applicant and a tracking process was implemented for each application.
4. Motorcycle cash and sticker processing were separated from sticker inventory and receiving.

5. All station application files are now scanned electronically and maintained in a central repository.
6. The RMV increased supervision for Field Inspection visits to comply with its goal of three visits per year for each inspection station. The RMV measures this goal with MassDOT's Office of Performance Management & Innovation each month.

MassDOT and MBTA Parking Benefits

The ISAU evaluated MassDOT's and the Massachusetts Bay Transportation Authority's ("MBTA") use of funding to provide employees with complimentary parking. In addition to spending over \$293,000 annually on employee parking, the review identified over \$1 million in under-reported taxable fringe benefits provided to employees, which resulted in lost tax revenue to the state. The ISAU found that MassDOT spent over \$29,000 annually on rarely-used parking passes and was using borrowed capital funds (instead of operating funds) to pay for this parking expense. Following the issuance of this report, it was determined that using borrowed funds to pay for rent and parking could cost taxpayers an estimated extra \$3.8 million over the 5-year lease term. The ISAU made the following recommendations to MassDOT regarding parking benefits:

1. Calculate and report fringe benefit taxes for employees who have complimentary parking at 185 Kneeland Street in Boston.
2. Update fringe benefit calculations to use current exclusion rates and formally inform the affected employees of the change.
3. Consider funding rent expenses and complimentary employee parking through the operating budget, instead of the capital budget.
4. Replace underutilized passes with single-use vouchers.
5. Eliminate parking privileges for individuals who are not MassDOT employees, including temporary, contract personnel, and consultants.
6. Eliminate parking passes for MassDOT state vehicles that are not used daily for official state business.
7. Consider eliminating individual pass assignments for facilities employees, and replacing them with single-use vouchers.
8. Formalize a policy that defines the specific circumstances under which parking privileges are assigned and approved. Consider establishing specific criteria for receiving complimentary parking (*e.g.*, job assignment, job duties, and/or seniority).
9. Revisit the list of employees with parking privileges annually to verify all assignments are justified and authorized.

Following issuance of the report, MassDOT and the MBTA corrected their fringe benefit calculations and updated the tax basis to align with current federal and state exemption limits. In addition, non-employees were required to reimburse MassDOT for the cost of their parking.

The ISAU Hotline

In 2013, the ISAU created a dedicated hotline for MassDOT employees to anonymously report fraud, waste or abuse in the expenditure of MassDOT funds. The ISAU, in conjunction with MassDOT's information technology department, designed and created an internal website on the MassDOT *TransNET* site to allow employees to anonymously report potential issues. This tool is critical to the success of the ISAU's mission in preventing and detecting fraud, waste, and abuse of transportation funds. The ISAU intends to expand the hotline to MassDOT's public website, as well as to the MBTA's intranet and public website.

Policy and Government Division

The Policy and Government Division oversees the Office’s policy, health care, and legislative initiatives. The Division also undertakes programmatic reviews, especially at the state level, to identify system-wide vulnerabilities and opportunities for improvement.

Health Care Reviews

In 2004, the Legislature created the Office’s Health Safety Net Audit Unit. In that legislation and in each subsequent year, the Legislature has mandated that the Office oversee and examine practices in Massachusetts hospitals, including care paid for through the Health Safety Net. The Health Safety Net is a health care program that provides access to essential health care services for low-income uninsured and underinsured Massachusetts residents by reimbursing acute care hospitals and community health centers for certain services provided to this population. Since 2011, the Legislature has also directed the Office to study and review the Massachusetts Medicaid program.

Health Safety Net Review

Pursuant to its mandate under Section 160 of Chapter 38 of the Acts of 2013, the Office examined claims for reimbursement submitted to the Health Safety Net (“HSN”) for health care services provided to individuals who claimed the religious exemption to the requirement that all adult Massachusetts residents have health insurance. From the inception of its review, the Office recognized that there are individuals who hold sincere religious beliefs that would cause them to decline substantially all forms of health care treatment; those individuals were not the subject of the Office’s review.

The Office identified 401 individuals who both filed for the religious exemption for calendar year 2012 and for whom health care providers submitted claims to the HSN for services provided in 2012. The HSN paid providers \$427,541.92 for these health care services. The Office’s review also found that many of these individuals had a substantial history of participating in the health care system over many years. Receiving health care treatment while claiming the religious exemption to the health care mandate is contrary to both the intent and letter of the law. It is also unfair to the Massachusetts residents who have obtained and maintained health insurance coverage, as well as to those who have paid the penalty for not having such coverage. The Office recommended tighter controls and regular audits to ensure that the HSN is not paying for health care for individuals who should be purchasing health insurance.

Medicaid Noncustodial Parent Review

MassHealth is the state agency responsible for administering the Massachusetts Medicaid program. In 2012 and 2013, the Office reviewed how MassHealth gathers and verifies information about the availability of noncustodial parents’ commercial health insurance, and to what extent MassHealth uses that information to obtain health insurance coverage for a Medicaid member. This year, the Office reviewed a sample of 500 households in which a custodial parent indicated that a court had issued an order requiring a noncustodial parent to provide health insurance for the custodial parent and/or dependent children.

The Office found that in hospital fiscal year 2011, MassHealth paid \$1,518,703.72 in claims for 208 households in the sample who had health insurance orders requiring the noncustodial parent to provide health insurance for the child(ren) or custodial parent. The Office then extrapolated from the claims for the households in the sample to all cases in which a Medicaid recipient reported that a health insurance order exists. Based on that extrapolation, the Office estimated that MassHealth could potentially be spending as much as \$17.5 million annually for health care that a noncustodial parent's health insurance plan should cover. The Office also found that MassHealth has access to commercial health insurance information that it could use to identify noncustodial parents who have, or who have access to, employer-sponsored health insurance.

MassHealth Claims Review

The Office is continuing to work on a claims review of the Massachusetts Medicaid program to evaluate how MassHealth is paying and denying Medicaid claims. The Office is in the process of reviewing a random sample of Medicaid claims, including inpatient, outpatient, and professional claims, to determine whether MassHealth accurately paid or denied the claims.

In 2014, the Office expects to initiate additional projects designed to identify ways to improve the Massachusetts Medicaid and HSN programs and to produce savings for the Commonwealth.

Public Design and Construction

Since its inception, the Office has helped develop policies and procedures related to the Commonwealth's public design and construction laws. In 2013, the Office worked with the Department of Capital Asset Management and Maintenance ("DCAMM"), the Massachusetts Department of Transportation ("MassDOT"), the Massachusetts Bay Transportation Authority ("MBTA"), the Massachusetts School Building Authority ("MSBA"), the Department of Energy Resources, the Attorney General's Office, and other state and local entities to establish best practices in public construction.

Pursuant to Chapter 149A of the Massachusetts General Laws, the Office reviews applications to use alternative construction delivery methods, including the construction manager at-risk ("CM at-risk") and design-build methods. The Legislature has also charged the Office with reviewing and approving the procedures for alternative construction delivery methods that state agencies and authorities seek to use on certain building projects. Consequently, the Office reviews and approves certain public construction procedures for DCAMM, MassDOT, the Massachusetts Port Authority ("Massport"), the Massachusetts Water Resource Authority ("MWRA"), the Massachusetts State College Building Authority, and the University of Massachusetts Building Authority.

Construction Management at-Risk

Since 2005, public entities have increasingly used the CM at-risk delivery method for public building construction projects that cost \$5 million or more. Under this delivery method, the awarding authority (*e.g.*, a town or school district) typically selects the CM at-risk firm early in the design stage. After conducting a selection process that focuses on qualifications and fees, the awarding authority executes an initial CM at-risk contract with the selected CM at-risk firm. During the design stage, the awarding authority and the CM at-risk firm negotiate a guaranteed

maximum price for the project and the CM at-risk firm assumes responsibility for the performance of the work, including subcontractors' work.

In 2013, the Office received 16 applications to use the CM at-risk delivery method, totaling over \$875 million in project costs. The projects included 12 public schools, one transportation facility project, one housing authority project, and two public library projects. Applicants included the Brookline Housing Authority, Boston, Lynn, Milford, Lunenburg and Winchester.

Design-Build

In 2004, legislation authorized the design-build delivery method as an option for public works construction, reconstruction, alteration, remodeling, or repair projects estimated to cost at least \$5 million. Certain entities, including MassDOT, Massport, and the MWRA, are exempt from the project-by-project approval process, but must submit their procedures for the procurement and use of design-build to the Office for review. In 2013, the Office approved a change to MassDOT's design-build procurement guide. Both MassDOT and Massport regularly use design-build for their projects.

Non-exempt entities must apply to the Office to use the design-build method for each individual project. In 2013, the Office received one application from the MBTA to use the design-build method on a \$45 million bridge project. The Office approved the application.

Incentive/Disincentive Specifications

The passage of Chapter 233 of the Acts of 2008, "An Act Financing An Accelerated Structurally-Deficient Bridge Improvement Program," allows state agencies to build or remodel bridges using alternative methods, including incentive and disincentive specifications, subject to the Office's approval. In 2013, MassDOT submitted proposed procedures for incentive and disincentive specifications for four bridge projects, totaling over \$300 million in project costs. These projects included the Route 79/Braga Bridge project in Fall River, one of the largest accelerated bridge improvement programs since the Act was passed in 2008. The Office approved MassDOT's proposed procedures for each bridge project.

Real Estate Transactions

Each year, the Office reviews a variety of public real property transactions, including dispositions, acquisitions, and long-term leases, to ensure that the public's interests are adequately protected.

In addition, the Legislature frequently mandates that the Office review and approve independent appraisals of real property that the state, counties, and municipalities propose to convey or acquire. The Office provides a report on each appraisal to the Commissioner of DCAMM for submission to the House and Senate Committees on Ways and Means and the Joint Committee on State Administration and Regulatory Oversight. The Office generally recommends that all real property appraisal reviews conducted at the direction of the Legislature follow the Uniform Standards of Professional Appraisal Practice. The Office's appraisal reviewers evaluate whether the analyses, opinions, and conclusions in the appraisal are appropriate and reasonable.

Below are several transactions that the Office reviewed in 2013.

Boat and Yacht Clubs

Pursuant to Chapter 65 of the Acts of 2010, the Office reviewed DCAMM and the Department of Conservation and Recreation's proposed methodology for calculating the rental rates for leasing certain parcels of Commonwealth-owned land to various boat and yacht clubs. The Office indicated an intention to approve the methodology when DCAMM formally submits the methodology with the leases. The Office will review each individual lease and the final methodology when DCAMM formally submits them to the Office.

Halifax Conveyance

Based on a legislative mandate, the Office reviewed a 2001 appraisal, a 2002 supplement to the appraisal, and additional information related to land in Halifax that the Commonwealth planned to convey to the Town of Halifax as part of a settlement. The Office approved the methodology and opinion of value presented in the appraisal.

Salem State University Assistance Corporation

The Salem State University Assistance Corporation ("Corporation") worked with Salem State University ("University") and the Salem State University Foundation to finance the purchase of land and a diner. The Corporation indicated that the acquisition was in accordance with the University's master plan and that the property was unique because it abutted other property the Corporation owned and that the University used. The Office reviewed the transaction and noted that for the above reasons, the Corporation acquired the property for more than the appraised value.

Tewksbury State Hospital Land

The Office reviewed a reappraisal of land to be conveyed to an individual whose residence encroached on state land. For various reasons, at the time of the first appraisal, the owner of the house did not purchase the state land. After a thorough review, the Office approved the opinion of value presented in the reappraisal.

Reviews of State Programs

The Office also reviewed specific programs at the Massachusetts Board of Registration in Medicine ("BORIM") and the Department of Public Health ("DPH"). With regard to BORIM, the Office reviewed how the agency was utilizing funding it received from the Legislature to maintain an online registry of physicians, referred to as the Physician Profiles website. The Office concluded that although the content was not entirely consistent with the statutory mandate, BORIM was aware of the inconsistencies and planned to either correct the problems in the next phase of its website upgrades or ask the Legislature to amend its statutory mandate.

With regard to DPH, the Office evaluated funding for the Pharmaceutical and Medical Device Manufacturer Conduct program ("PCOC program"), which requires manufacturers of pharmaceuticals and medical devices to disclose certain transactions with professionals who

prescribe, dispense, or purchase prescription drugs or medical devices in the Commonwealth. Specifically, the Office reviewed how the agency was spending the approximately \$400,000 that the Legislature had appropriated to DPH each year to administer the PCOC program. The Office concluded that the majority of the funds in the PCOC account were being spent on employees who had little or nothing to do with the PCOC program. As a result of the Office's review, DPH stopped charging several employees' salaries to the PCOC account. Additionally, staff who work on the program must complete bi-weekly personnel activity reports to validate the time they spent on the PCOC program.

Legislative Initiatives

Since it was established in 1981, the Office has reviewed and commented on proposed legislation during each legislative session. In addition, the Office regularly assists individual legislators to develop both legislation specific to the districts they represent and legislation that affects the general operations of state and local government. The Office also responds to requests from the Governor's Office to review legislation that the Legislature has passed and is awaiting the Governor's signature.

The Office continued to provide these important services throughout 2013. For instance, the Office has reviewed and commented on more than 100 pieces of legislation for the 2013-2014 legislative session. In 2013, the Inspector General and his staff also provided testimony and guidance to legislative committees on issues related to housing authorities, real estate transactions, fraud controls, and procurement. In all cases, the Office stressed the importance of transparency in government and the need for safeguards to ensure the appropriate oversight of taxpayer dollars.

In addition to commenting on specific legislation, the Office sent to legislative committees a general set of guidelines for all special legislation that exempts public property transactions from Chapter 7C or Chapter 30B of the Massachusetts General Laws.¹ In letters sent to the House and Senate Committees on Bonding, Capital Expenditures, and State Assets; the Joint Committee on State Administration and Regulatory Oversight; and the Joint Committee on Municipalities and Regional Government, the Office called for all such bills to require: (1) a statement of the purpose of the disposition and any use restrictions; (2) identification of the property to be conveyed, including the precise location and total acreage; (3) an independent appraisal establishing the property's fair market value; (4) the private party acquiring the property to pay no less than the established fair market value; (5) the private party to pay all direct transaction costs; (6) the property to revert to the state in the event the property is not used for the purpose intended in the legislation; and (7) that the disposition be subject to public disclosure requirements.

¹ Chapter 7C and Chapter 30B contain bidding procedures, advertising requirements and other provisions designed to protect the public interest.

Proposed Legislation: 2013-2014 Session

Chapter 30 of the Massachusetts General Laws permits the Office to file legislation in November of even years for the upcoming legislative session. In November 2012, the Office filed the following bills for the 2013-2014 legislative session:

House 9, An Act Relative to the Office of the Inspector General

This bill would amend Chapter 12A of the Massachusetts General Laws to allow the Inspector General to make certain referrals and to issue witness summonses without the approval of the Inspector General Council (“Council”). The current process, which requires the Council’s prior approval, does not align well with the confidentiality needed for the work that the Office performs. The process can also delay investigations and is an anomaly among Massachusetts investigative agencies. The bill was referred to the Judiciary Committee.

House 10, An Act Relative to Fraud

This bill would make it a crime to defraud the Commonwealth or any of its political subdivisions. Currently, no such general fraud statute exists, making it difficult or impossible to prosecute fraudulent schemes that do not clearly constitute a specific fraud – such as mail or wire fraud – that specific legislation has criminalized. The bill was referred to the Judiciary Committee.

House 11, An Act Relative to Chapter 30B

This bill would increase the fine for causing or conspiring to cause a public body to award a contract in violation of Chapter 30B from \$2,000 to \$10,000. It also would make technical corrections to update Chapter 30B based on recently enacted amendments to other statutes. There is also an amendment to correct a section of Chapter 30B that a previous legislative session inadvertently changed. The bill was referred to the State Administration and Regulatory Oversight Committee and is currently pending before the House Ways and Means Committee.

House 12, An Act Relative to Operating Agencies

The bill would permit housing authorities and redevelopment authorities to require certain employees to participate in the Office’s MCPPO program. In light of recent events regarding housing authorities, it is vital that purchasing officials understand the public procurement laws. The bill was referred to the State Administration and Regulatory Oversight Committee and is currently pending before the House Committee on Bills in the Third Reading.

House 3937, An Act Allowing for the Appointment of Designees to the Inspector General Council

At the request of the Inspector General, Representative James Cantwell filed House 3937, which would allow the heads of public agencies who sit on the Inspector General Council (“Council”) to appoint designees to represent them on the Council. This proposed amendment is consistent with other legislation creating boards and councils; such legislation typically permits the heads of public agencies to appoint designees to participate on their behalf. The bill was referred to the State Administration and Regulatory Oversight Committee.

Regulatory and Compliance Division

As discussed above, the Office's Regulatory and Compliance Division provides extensive educational and technical assistance to state and local government officials regarding Massachusetts' public procurement laws. Among other activities, the Division operates the Office's training programs, publishes educational materials, and offers a hotline to respond to inquiries and complaints concerning public procurement. The Division also interprets and formulates policies on the Uniform Procurement Act, M.G.L. c. 30B ("Chapter 30B"), which governs the purchase by local public officials of supplies, services, equipment, and real property, as well as the disposition of real property and other tangible surplus supplies.

Training and Professional Development

The Office established the Massachusetts Certified Public Purchasing Official ("MCPPO") program 17 years ago. The Office created the training program to promote excellence in public procurement by ensuring that public purchasing officials have the tools necessary to operate effectively and in accordance with state procurement laws, and by helping private sector employees understand state and local bidding requirements. Since 1997, over 13,000 participants, including town, city, and state employees, as well as members of the private sector, have attended the MCPPO program's courses and presentations.

In 2013, the Office held 43 different classes, providing training to over 1,500 participants. Specifically, the MCPPO program offered three three-day seminars throughout the year: (1) "Public Contracting Overview," which includes segments on Massachusetts procurement and construction bidding laws, purchasing principles, prevailing wage law, public records law, and ethics; (2) "Supplies & Services Contracting," which instructs participants on how to interpret Chapter 30B, how to conduct invitations for bids and requests for proposals, how to write effective specifications, and how to recognize and solve common bidding problems; and (3) "Design & Construction Contracting," which provides in-depth instruction in the procurement laws governing public design and construction in Massachusetts, effective contract administration, the prequalification process, alternative delivery methods, and the identification of special issues in construction bidding. During 2013, the Office also offered courses in advanced topics, real property, construction management at-risk under M.G.L. c. 149A, special procurement issues for schools, real property, and public procurement for charter schools.

In addition, the Office presented a special training, "Bidding Basics and Contract Administration for Commonwealth of Massachusetts Housing Authorities" five times during 2013, training 147 housing authority employees. The Office created this class in response to an identified need for housing authority officials to receive procurement training.

The Office also offered a four-day course, "Certification for School Project Designers and Owner's Project Managers," in response to the Massachusetts School Building Authority's regulations, which require public school designers and owner's project managers to receive MCPPO certification. The Office presented this course three times in 2013. The Office also offered a one-day class, "Recertification for School Project Designers & Owner's Project Managers," for private sector designers and owner's project managers who previously received their MCPPO certification. The Office also presented this course three times in 2013.

The Office debuted a one-day class, “Story of a Building,” in March 2013. This new class engaged the attendees in the story of a new building from the planning stages, through construction, and ending with the building “coming to life.” Beverly High School hosted the first class. Based on the positive feedback from attendees, the Office presented the course in May at the new Norwood High School and again in September at the new Hanover High School.

In addition, the Office presented a new two-day class in July and December of 2013, “Creating a Procurement Office.” Drawing from experts in the field of public procurement, the Office created this class to provide concrete and practical approaches to starting a municipal procurement office. Attendees not only learned the fundamentals of running a public procurement office, they also learned how to deal with complex issues and challenges that can arise in a municipal procurement office.

The Office has successfully incorporated video conferencing into the MCPPO program, making it possible for those with travel, budget, or personnel constraints to attend MCPPO classes. In 2013, the Office held 14 video conferences hosted by the Gateway Regional School District in Huntington and the Massachusetts Maritime Academy in Bourne.

Finally, the Office continues to offer “Bidding Basics, M.G.L. c. 30B,” a free, online course that provides an overview of the legal requirements for procuring supplies, services and real property under Chapter 30B. This online class serves as a refresher for staff who do not interpret the procurement laws every day, a foundation in procurement law for new employees, and a quick review for experienced purchasing officials. More than 550 people have participated in this free training.

Speaking Engagements

Throughout 2013, the Office also provided speakers on various topics in public procurement principles and fraud prevention. Office staff made presentations to numerous agencies, authorities, and associations, including the Commonwealth of Massachusetts Department of Housing and Community Development, the Massachusetts Housing Partnership, the Massachusetts Water Resources Authority, the Massachusetts Emergency Management Agency, the Massachusetts Municipal Association, the Massachusetts Association of Public Purchasing Officials, the Massachusetts Association of School Business Officials, the Massachusetts Treasurers and Collectors Association, the Massachusetts City Solicitor and Town Counsel Association, the Massachusetts Association of Public Transportation Officials, the Massachusetts Facilities Administrators Association, the Cape Cod Association of Public Purchasing Officials, the University of New Hampshire, the Town of Stoughton, the Town of Dennis Department of Public Works, and the Town of Stockbridge and Berkshire County Program.

Inquiries and Complaints

The Office regularly advises purchasing officials on how to comply with state bidding laws, obtain best value, and increase competition for public contracts. As part of this service, the Office offers a hotline to respond to questions and complaints concerning public procurement. In 2013, the Office responded to approximately 1,700 inquiries and questions about Chapter 30B and other public bidding laws.

Publications

The Office publishes a wide range of materials designed to educate and inform local procurement officials, private vendors, and the public. Since 1994, the Office has published the Procurement Bulletin, a quarterly newsletter containing articles about public procurement, new legislation, the Office's investigations, and other topics of importance to purchasing officials. During 2013, over 2,700 individuals subscribed to the Procurement Bulletin. Representative topics covered in the 2013 editions include soil procurement, proprietary specifications, emergency procurements, cooperative purchasing, lessons learned from the Office's investigations, and best practices for vehicle trade-ins. Current and past issues of the Procurement Bulletin, as well as a topical index of past issues, are located on the Office's website.

Bylaw and Charter Amendment Reviews

Each year, the Office assists the Attorney General's Office by reviewing municipal bylaws and charter amendments to ensure compliance with state law. Specifically, the Office offers input on whether the proposed amendments comply with Chapter 30B. In 2013, the Office reviewed procurement bylaws for Natick in cooperation with the Municipal Law Unit of the Attorney General's Office.

Owner's Project Manager Review Panel for School Projects with the Massachusetts School Building Authority

Each month, counsel from the Regulatory and Compliance Division represents the Office at the Owner's Project Manager Review Panel. The panel, which is led by the Massachusetts School Building Authority ("MSBA"), is tasked with reviewing the awarding authority's evaluation process and its selection of the proposed owner's project manager ("OPM") for the school building project at hand.

Counsel reviews each OPM's submission to a school district and the school district's evaluation of each OPM-applicant. The review process entails evaluating a number of issues, including the OPM's project experience, managerial experience, backlog of other ongoing work, and financial viability, as well as the school district's needs. Counsel then participates in the review panel's meeting, listening to the presentations of the school district and the proposed OPM. After listening to presentations, reviewing the materials, and soliciting questions, the panel may either agree with the school district's selection of an OPM or recommend further review and consideration.

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Reports, Letters, and Publications

The following reports, letters and other documents are available on the Inspector General's website, www.mass.gov/ig:

Reports and Letters:

- Investigation of the Drug Laboratory at the William A. Hinton State Laboratory Institute
- Bureau of Program Integrity's Review of the Department of Transitional Assistance
- Ongoing Analysis of the Health Safety Net Trust Fund: The Religious Exemption from Mandated Health Insurance Coverage
- Ongoing Review of MassHealth and Noncustodial Parents' Health Insurance
- Temporary Staffing Usage by State Agencies
- The Abuse of Disabled Persons Parking Placards: A Multi-Agency Investigation
- MassDOT and MBTA Parking Benefits: Internal Special Audit Unit Report
- The Fifteenth Anniversary of the Massachusetts Certified Public Purchasing Official Program
- Contracting Violations at the Brockton Public School District's Facilities Department
- Report Pursuant to Section 182 of Chapter 139 of the Acts of 2012: Assessing MassHealth's Identification and Recovery of Noncustodial Parents' Health Insurance
- Ongoing Analysis of the Health Safety Net Trust Fund: MassHealth's New Prepayment Obligations
- Review of Eligibility for the Transitional Aid to Families with Dependent Children Program
- MassHealth Preliminary Report to Senate and House Ways and Means Committees and Secretary Polanowicz
- Letter to the Winchendon Board of Selectmen Regarding Procurement of Site for New Winchendon Police Station
- Letter to the Boston Redevelopment Authority Regarding Property Transfers to the Boston Red Sox
- Letter to the Board of Trustees of Westfield State University ("WSU") Regarding Concerns About WSU President Evan Dobbelle's Expenditures
- Letter to the Winchendon Board of Selectmen Regarding Potential Violation of the Open Meeting Law
- Letter to the Winchendon Board of Selectmen Regarding a Police Station Site

Legislative Testimony and Announcements:

- Inspector General’s Testimony to the Committee on State Administration on Chapter 30B
- Inspector General’s Testimony to the Committee on State Administration on Operating Agencies Relative to Housing Authorities and Redevelopment Authorities Obtaining Training on the State’s Procurement laws
- Inspector General’s Comments on Housing Authority Oversight Legislation
- Inspector General’s Probe Leads to Indictment of the former CFO of the Merrimack Education Center
- Inspector General Part of Combined Probe Leading to State Arraignment of Former Chelsea Housing Authority Director, Michael McLaughlin, for Unlawfully Soliciting Campaign Contributions from State Employees
- Inspector General Part of Combined Probe Leading to Federal Charges Against the Former Executive Director of Chelsea Housing Authority
- Inspector General’s Joint Investigation of a City of Quincy Energy Management Contract Leads to Settlement

Publications:

- *Procurement Bulletin*, Vol. 19, Issue #4
- *Procurement Bulletin*, Vol. 19, Issue #3
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