



The Commonwealth of Massachusetts
Office of the Inspector General

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John Cogliano, Chairman
Massachusetts Turnpike Authority
10 Park Plaza, Suite 4160
Boston, MA 02116

November 14, 2006

Dear Mr. Chairman,

I am writing to recommend that you delay your vote to eliminate toll facilities on the Western Turnpike.

I am making this recommendation based on my review of the legal, financial, and engineering opinions solicited by the Turnpike Authority board on October 18, 2006, when the board voted to adopt in principle the elimination of said tolls.

I received those opinions from the Authority this week, and am now calling on you to make those documents public. I am doing so because the opinions stated in those documents raise serious concerns about the proposed plan, the impacts of which would reach well beyond the Authority's jurisdiction.

The answers coming back to the board to the various legal and financial questions surrounding the proposed action cast serious doubt on the legality and wisdom of eliminating the tolls. Such an action would, at a minimum, lead to large toll increases on the Metropolitan Highway System roadways and tunnels, traffic congestion, the potential for an unfair labor practice claim to be filed against the Authority, and even safety risks for motorists.

As you may recall, this Office has in the past intervened in questionable financial decisions made by the MTA, specifically in our October 1991 report, "The Massachusetts Turnpike Authority: Self-Preservation at the Expense of Taxpayer Interests." That report called into question an indirect bond sale/loan deal executed by the MTA after the Legislature declined to authorize the Authority to issue further debt. In that instance, the MTA entered into contracts without legal authority, contracts that were subsequently irreversible.

I can only hope that history is not repeated in this instance.

Following is a selection of the most important findings and analyses that would strongly point to a moratorium on any Board decision to take down the Western Turnpike tolls:

Toll Impacts

The MTA's engineering consultant has concluded that legal and financial obligations under the Official Statement of the MHS bonds would necessitate substantial toll increases on the harbor tunnels, the Boston Extension, or both, to make up for the lack of Western Turnpike toll revenues. That is because the Turnpike would have to raise roughly \$30 million more in tolls, the consultant determined.

If the board chose to raise tolls on all facilities to meet the new cost burden, passenger cars traveling from Logan Airport to Weston would see the average toll increase to \$7.31 from today's \$5, a rise of \$2.31. For commercial vehicles, the new average toll would be \$9.74, an increase of \$3.02.

If the board chose to raise tolls on the Boston Extension only, the cost for that same trip for a passenger car would rise roughly \$2.04, while for commercial vehicles, the increase would equal \$2.48.

If the increase only affects the tunnels, the same trip would cost roughly \$2.86 more than it does today for a passenger car. For commercial vehicles, the increase would equal \$4.08.

And if the board chose to increase tolls only on commercial vehicle traffic to meet the new \$30 million burden, trucks would have to pay a whopping \$11.94 to use the harbor tunnels, a spike of more than 167 percent from the current toll.

Given that the Official Statement already contemplated a toll increase in 2008 to meet current obligations, the elimination of the Western Turnpike tolls would create an inordinate and painful financial burden for the vast majority of the motoring public.

Financial Impacts to Taxpayers

Estimates generated by the Executive Office of Transportation and the Massachusetts Highway Department have determined that the proposed toll elimination and transfer of facilities would have an annual cost of \$72 million, a cost borne by every taxpayer in the state regardless of whether they use the Western Turnpike or not.

What's more, the one-time cost of razing the toll booths would be \$37 million, excluding additional unquantified expenditures that the MTA's engineering consultant calls for to re-engineer the on- and off-ramps, as discussed below. These after-the-transfer costs raise serious legal questions, which are also discussed below.

Traffic Impacts

The engineering consultant estimates that traffic on the Western Turnpike would increase 9 percent if tolls were eliminated. This is a problem because the roadway already “operates at or near capacity during the AM, PM peak periods,” particularly in the so-called Metro West area. Thus, eliminating the tolls would only exacerbate commuter headaches on an already congested roadway.

More important, however, is that the engineering consultant sees the elimination of tolls as adverse to the safety of the motoring public. “Removing toll plazas without modifying the ramp geometry will likely exacerbate safety concerns,” the consultant stated.

Legal Concerns

A Lack of Statutory Authority

The MTA’s outside legal counsel has made it abundantly clear that the contemplated plan to utilize cash reserves and service area revenues has no apparent basis in statute. Counsel states: “As described herein, we are unable to opine that Chapter 81A of Massachusetts General Laws permits the use of Western Turnpike reserves and amounts derived from deployment of Western Turnpike service area revenues to provide debt service coverage for or to repay MHS Bonds.” In other words, this deal cannot be done using reserves or service area revenues.

Another outside legal counsel has thus declared that the only option currently available to the MTA for the elimination of the Western Turnpike tolls would involve the sale of the service plazas. But a close reading of counsel’s memo to the MTA states that even that option is nonexistent.

Indeed, counsel states that the service areas would first have to be deemed “surplus property,” meaning they are no longer needed for their original purpose. But because the MTA would insist that the new owners of the plazas maintain them as service areas, clearly they would still be meeting their original purpose.

If the MTA board intends to pursue such a course, it will surely run afoul of the courts. The Authority’s outside legal counsel rightly calls your attention to a 1960 Supreme Judicial Court ruling that called such a scheme “subterfuge to evade the provisions” of state law, and an action that “exalts artifice over reality.”

Given legal counsel’s inability to sign off on this deal, it is obvious to this Office that any contemplated elimination of Western Turnpike tolls and subsequent transfer of the facility should be abandoned forthwith.

Another statutory question arises relative to Section 26 of the MTA’s enabling legislation. That section states that the transfer of the Western Turnpike from the Authority to the Mass. Highway Department can only take place if that section of

roadway is “deemed to be in good condition and repair to the satisfaction of the highway department.” By the Highway Department’s own estimates, it will cost \$37 million just to demolish the toll booths and make the Western Turnpike usable to the general motoring public, and another to-be-determined amount of money to make the ramps and structurally deficient bridges safe. By virtue of the fact that the Western Turnpike will require an immediate expenditure by the state of at least \$37 million in capital work, the proposed transfer would clearly violate Section 26.

Questions of Environmental Law

Another legal counsel states in no uncertain terms that “the proposed removal of the tolls and related construction on the turnpike is a project subject to MEPA [Massachusetts Environmental Policy Act] jurisdiction,” and that “the project could exceed certain MEPA review thresholds.”

Counsel continues: “Given the uncertainty with respect to the application of the review thresholds to the project, the Authority should seek an advisory opinion from the Secretary of Environmental Affairs.”

To the knowledge of this Office, no such advisory opinion was sought prior to the scheduled vote.

Questions of Labor Law

Yet another legal counsel for the MTA has stated that the proposed vote should not take place until after the Authority has bargained over the effects of the decision to eliminate tolls with the various labor unions impacted. “[F]ailure to bargain over the effects of the decision to eliminate the tolls could expose the MTA to a potential unfair labor practice” lawsuit, counsel states. “Thus, we believe that the best approach is for the MTA to bargain over the effects on its employees of the decision to close the tolls on the Western Turnpike.”

What’s more, the various contracts in place, which include severance and “bumping” rights provisions, “make the contemplated layoffs a lengthy and costly process.”

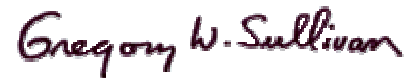
Conclusion

Given the multitudinous and serious questions raised by the various legal, financial, and engineering experts hired by the MTA to opine on the proposed plan, it is plain that the elimination of the Western Turnpike tolls is a questionable project at best.

Without taking a series of important steps outlined above, including full disclosure of these issues and questions to the general public, moving forward at this time would be, simply put, precipitous.

This Office believes that the Legislature and the public at large deserve to know and understand the fundamental and important questions underlying the toll elimination plan before any further steps are taken. The breadth of undisclosed information about this project is alarming.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive, slightly slanted style.

Gregory W. Sullivan
Inspector General

CC: Senate President Robert Travaglini
House Speaker Salvatore DiMasi
Senate Transportation Chair Steven Baddour
House Transportation Chair Joseph Wagner
Attorney General Thomas Reilly
Auditor A. Joseph DeNucci
Treasurer Timothy Cahill
Board of Directors, MTA