

**ROAD FLAGGERS & POLICE DETAILS  
701 CMR 7.00**

**Submitted Written Testimony for Comment Period September 17, 2008 Public Hearing**

| <b>Individual</b>                                     | <b>Organization</b>                           |
|-------------------------------------------------------|-----------------------------------------------|
| Thomas Collins,<br>President                          | Norfolk Bristol Middlesex Highway Association |
| Steven R. Sullivan,<br>Director of Government Affairs | Teamsters Local 25                            |
| Joseph M. Welch,<br>President                         | Massachusetts Highway Association             |
| Joe Zukowski,<br>Vice President Government Affairs    | Verizon                                       |
| John F. Boyle,<br>Chairman                            | Town of Dalton                                |
| Michael J. Widmer,<br>President                       | Massachusetts Taxpayers Foundation            |
| Mark McDonald,<br>Chairman                            | New England Gas Workers Association           |

September 16, 2008

Executive Office of Transportation and Public Works  
Police Detail Comments  
10 Park Plaza, Suite 3170  
Boston, MA

Re: POLICE DETAIL COMMENTS  
SUPPORT of Draft Rules Governing the use of Civilian  
"Flaggers" at road construction sites.

Dear Mr. Sir/Madam,

This correspondence has been prepared to provide support of the above referenced draft regulation. The Norfolk Bristol Middlesex Highway Association (NBM) is an umbrella organization which encompasses 102 cities and towns and their highway associations,

Also, this organization has over 200 independent Vendors, who these cities and towns do business with for machinery, materials, and all other facets concerning highway construction and road repair.

The recently issued State Transportation Finance Commission has recommended a significant reduction in the use of paid police details at road work sites. The commission report indicated that the cost of police details on MassHighway projects alone increased by 48 percent of 3 years, from \$15.5 million in 2003 to \$22.6 million in 2006. The commission reports that 4.5 percent of the total cost of MassHighway's construction projects goes to paying for police details.

NBM strongly supports the draft rules regarding the use of civilian "flaggers" at roadway construction sites and the ability to not use details at all, if deemed appropriate. In these times of fiscal constraints, this regulation is a positive step in the right direction. We support promulgating the regulations as written.

Thank you in advance of our position. If you have any questions, please call.

Sincerely,

THOMAS COLLINS  
PRESIDENT  
Norfolk Bristol Middlesex Highway Association

## TEAMSTERS LOCAL 25

Good Evening!

Secretary Cohen  
Madam Secretary Bump

For the record, my name is Steven R. Sullivan, Director of Government Affairs for Teamsters Local 25.

I feel like I am attending the Casino Hearings all over again. Hours of testimony in a hot congested room, where the policy makers sit and listen, but have already made up their minds about a very important issue.

I am here on behalf of Teamsters Local 25, representing 11,500 hard working members in Greater Boston.

I work under the tireless direction of President Sean O'Brien, who could not be here today.

Teamsters Local 25 is here today to stand vehemently opposed to the incorporation of Flagmen in the Commonwealth of Massachusetts. We believe that the replacement of Police Officers with Flagmen is a bad idea and an unsafe idea. Teamsters Local 25 is worried about the safety of the general public and the safety of the over 2000 members of our Construction Division who work on many of these construction projects in question. Our members want to return home safe from the workplace just like you do.

### Police Officers

- Police Officers are highly trained professionals who have had first aid training and fire arm training
- Police officers are an "extra set of eyes" who will promote safety and deter crime
- Police officers are educated on the traffic laws and regulations in the Commonwealth and have the power to pull people over who do not comply with the laws and regulations

During his election campaign, Governor Patrick vowed to put 1,000 new police officers on the street. This measure will surely diminish the amount of police presence in the Commonwealth. In fact we believe

that there will be a massive resignation of good police officers in the Commonwealth as a result of the implementation of Flagmen.

## Flagmen

- Flagmen would have to be trained in order to do this job. There is currently no set guidelines or training program in place for these workers in the State of Massachusetts
- Flagmen do not have any police powers and have no training to deter crime
- Flagmen are in a position to merely direct traffic
- Flagmen would be employed by a private employer and the administrative costs and company overhead would take away most of the alleged savings.
- Health insurance and retirement costs would have to be added to the prevailing wage. It is critical to remember that there is mandatory health care in the Commonwealth of Massachusetts

Teamsters Local 25 feels that the incorporation Flagmen in the Commonwealth of Massachusetts is a bad idea. We would ask the Governor to reconsider.

Thank You!

X \_\_\_\_\_  
**STEVEN R. SULLIVAN**  
Director of Government Affairs

**STEVEN R. SULLIVAN**  
**Director of Organizing & Government Affairs**  
**Teamsters Local 25**  
**544 Main Street**  
**Boston, MA 02129**  
**617-242-6113**  
**[www.teamsterslocal25.com](http://www.teamsterslocal25.com)**

# Massachusetts Highway Association

P.O. Box 41, Groveland, MA 01834 ([www.masshwy.org](http://www.masshwy.org))



Organized August 3, 1893

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September 17, 2008

Executive Office of Transportation and Public Works

Police Detail Comments

10 Park Plaza, Suite 3170

Boston, Massachusetts

Re: Police Detail Comments

**Support** of draft rules governing the use of civilian "flaggers" at road construction sites

Dear Mr. Sir/Madam,

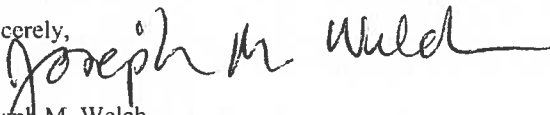
This correspondence has been prepared to provide support of the above referenced draft regulation. The Massachusetts Highway Association (MHA) is an umbrella organization which encompasses seven county highway associations, which represent the entire state: Barnstable, Plymouth, Norfolk/Bristol/Middlesex, Worcester, Berkshire, Essex and Tri-County. Founded in 1893, with a membership of 51, MHA boasts a current membership of more than 750. MHA membership comprises of highway officials, including directors, engineers, and superintendents involved in all phases of highway related activities.

The recently issued State Transportation Finance Commission has recommended a significant reduction in the use of paid police details at road work sites. The commission report indicated that the cost of police details on MassHighway projects alone increased by 48 percent over 3 years, from \$15.5 million in 2003 to \$22.6 million in 2006. The commission reports that 4.5 percent of the total cost of MassHighway's construction projects goes to paying for police details.

MHA, along with the Massachusetts Municipal Association, Norfolk/Bristol/Middlesex and Essex County Highway Associations **strongly support** the draft rules regarding the use of civilian "flaggers" at roadway construction sites and the ability to not use details at all, if deemed appropriate. In these times of fiscal constraints, this regulation is a positive step in the right direction. We support promulgating the regulations as written.

Thank you in advance of our position. If you have any questions, please call.

Sincerely,

  
Joseph M. Welch  
President, Massachusetts Highway Association

Verizon supports the Patrick administration's efforts to improve the cost and efficiency of road improvement projects, including the use of trained flaggers instead of police details. We operate our communications networks across the country, including many states, counties and communities that use flaggers instead of uniformed officers, and agree that flaggers can be used safely and effectively around highway construction projects.

The draft regulations are a good first step to demonstrate and leverage the effectiveness of flaggers in Massachusetts.

We suggest you clarify that utility work within a construction zone subject to the new regulations also qualifies for the use of flaggers. Making this clarification would create consistent work rules for everyone within a construction zone, and extend any cost savings to all parties working on the same project. I think anyone would agree that having a utility hired police detail next to a state-hired flagger would only serve to inflame any negative public perception about utility or transportation projects.

I have attached a markup of the draft regulations with suggested edits. Please do not hesitate to contact me if I can provide further information.

Joe Zukowski  
Vice President – Government Affairs  
Verizon  
617-743-1278  
joseph.h.zukowski@verizon.com

9/17/2008

701 CMR: EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS  
701 CMR 7.00: USE OF ROAD FLAGGERS AND POLICE DETAILS ON PUBLIC WORKS  
PROJECTS

Section

7.01: Purpose, Scope, and Authority

7.02: Definitions

7.03: Tiers of Public Works Projects

7.04: Construction Zone Safety Plan

7.05: Use of Road Flaggers and Police Details

7.06: Authority of the Authorized Representative

7.07: Responsibility of Road Flaggers and Police Details

7.08: Administration

7.09: Miscellaneous

7.01: Purposes, Scope, and Authority

(1) Purposes. The purposes of these Regulations are to ensure the safety of pedestrians, the traveling public, and workers on a Public Works Projects and to reduce overall costs through the effective use of Traffic Control Devices, Road Flaggers, and Police Details and through the efficient expenditure of public funds.

(2) Scope. These Regulations apply to any Public Works Project that is performed within the limits of, or that impacts traffic on, any Public Road.

(a) Municipal Limitation. When a Municipality is the Awarding Authority, the use of Road Flaggers, Police Details, and other Traffic Control Devices at the Construction Zone shall comply with these Regulations and any Road Flagger and Police Detail Guideline in all respects except to the extent that any provision is inconsistent with: (a) the ordinances or by-laws of the Municipality in which the Public Works Project is being undertaken; or (b) any applicable provisions of a collective bargaining agreement under chapter 150E of the General Laws, in which case the provisions of such ordinance, by-law, or collective bargaining agreement shall control.

(b) Commonwealth Entity Limitation. When a Commonwealth Entity is the Awarding Authority, the use of Road Flaggers, Police Details, and other Traffic Control Devices at the Construction Zone shall comply with these Regulations and any Road Flagger and Police Detail Guideline in all respects except to the extent that any provision is inconsistent with any applicable provisions of a collective bargaining agreement under chapter 150E of the General Laws as of the effective date of this Regulation, in which case the provisions of such collective bargaining agreement shall control.

(3) Authority. The Secretary of the Executive Office of Transportation and Public Works, in consultation with the Secretary of the Executive Office of Public Safety and Security, adopts these Regulations under the authority of St. 2008, c. 86, § 10. The Massachusetts Department of Highways may issue Road Flagging and Police Detail Guidelines to implement these Regulations, provided that any such guidelines shall not be inconsistent with these Regulations or with any provision of the Act.

#### 7.02: Definitions

Act. Section 10 of Chapter 86 of the Acts of 2008.

Authorized Representative(s). The person or persons designated by the Awarding Authority to implement and enforce these Regulations and guidelines on behalf of the Awarding Authority and vested with authority over the safety and management of the Construction Zone.

Average Daily Traffic ("ADT"). The average of 24-hour counts collected over a number of days, greater than one day but less than one year, used for, among other purposes, planning of highway activities, measurement of current demand, and evaluation of existing traffic flow.

Awarding Authority. Any Commonwealth or municipal entity, authority, commission or other public entity or governmental body that awards a contract to work, when such work is within the limits of, or impacts traffic on, any Public Road.

Commonwealth Entity. Any state agency, executive office, department, board, commission, bureau, division, or authority of the Commonwealth established to serve a public purpose.

Construction Zone. An area of a Public Road where construction, maintenance, or other work activities are identified as the limits of work on the approved construction plans or by Traffic Control Devices, including those on transport devices that mark the beginning and end of construction, maintenance, or other work activity. Construction Zones also include sections of a Public Road where there is ongoing, moving work activity such as lane line painting or roadside mowing or utility construction, maintenance or relocation.

Construction Zone Safety Plan or the Plan. A plan prepared for the Public Works Project by or on behalf of the Awarding Authority to address traffic safety and control through the Construction Zone, including road detour plans, road closure plans, and plans to mitigate the impact on vehicular and pedestrian traffic outside of the Construction Zone subject to compliance with the requirements of the Act, these Regulations, and the applicable Road Flagging and Police Detail Guidelines.

Design Plan. A plan requiring detailed work zone impact management strategies and guidance on how they will be executed. 3

**EOPSS.** The Executive Office of Public Safety and Security, established pursuant to M.G.L. c. 6A, §§ 2 and 18.

**EOTPW.** The Executive Office of Transportation and Public Works, established pursuant to M.G.L. c. 6A, §§ 2 and 19.

**MassHighway.** The Massachusetts Department of Highways, established pursuant to M.G.L. c. 16 and M.G.L. c. 6A, § 19(b).

**Municipality.** Any city or town in the Commonwealth.

**MUTCD.** The Manual on Uniform Traffic Control Devices adopted by the United States Department of Transportation, including the MassHighway amendments, enforced by MassHighway in accordance with Title 23 of the United States Code.

**Police Detail.** Any uniformed sworn law enforcement officer and any official marked police vehicle on a Public Works Project.

**Public Road.** Any state highway, turnpike, limited access highway, divided highway, access road, parkway, bridge, path, public way or private way that is open to or is otherwise used for public vehicular travel in the Commonwealth of Massachusetts.

**Public Works Project.** Any construction, maintenance or other work activity performed by or on behalf of an Awarding Authority or utility within the limits of or impacting traffic on a Public Road.

**Regulations.** The regulations entitled "USE OF ROAD FLAGGERS AND POLICE DETAILS ON PUBLIC WORKS PROJECTS", 701 CMR 7.00 – 7.09.

**Road Flagger.** An individual certified by MassHighway, or a MassHighway approved organization, to perform traffic control services on Public Roads.

**Road Flagger and Police Detail Guidelines or Guidelines.** Rules, guides, instructions, procedures and other information adopted and published by MassHighway as a means of implementing and providing guidance to Awarding Authorities, Road Flaggers, and Police Details in the implementation of these Regulations.

**Setup.** The arrangement of Traffic Control Devices used within and adjacent to a Construction Zone on a Public Works Project.

**Traffic Control Devices.** Any barrier, message board, warning sign, light, indicator, warning signal, direction sign, curb, street or other traffic markings, mechanical traffic signal systems, including those items located on vehicles, Road Flagger or Police Detail, and any other item or device used to control traffic on a Public Road as a part of the Setup. 4

### 7.03: Tiers of Public Works Projects

Public Works Projects are classified into three tiers according to the type of Setup for the Construction Zone and the nature of the Public Road. Evaluation criteria used to categorize projects include public safety, time of day, legal speed limits (as may be revised on account of the Public Works Project), ADT, roadway design, MUTCD standards, length and duration of the Setup, and limited or full access road designations on the Public Road.

(1) High Speed Roads. High Speed Roads are divided and undivided Public Roads with a legal speed limit greater than or equal to 45 miles per hour.

(2) Low Traffic High Speed Roads. Low Traffic High Speed Roads are High Speed Roads with volumes of traffic less than a maximum of 4000 vehicles per day.

(3) Low Speed Roads. Low Speed Roads are divided and undivided Public Roads with a legal speed limit less than 45 miles per hour.

### 7.04: Construction Zone Safety Plan

(1) Need for Construction Zone Safety Plan. Awarding Authorities shall complete a Construction Zone Safety Plan for all work in the Public Road requiring the preparation of Design Plans. The Awarding Authority may use or modify standard Construction Zone Safety Plans to accommodate projects that do not require the preparation of design plans.

(2) Consultation with Law Enforcement Personnel. All Construction Zone Safety Plans shall be prepared in consultation with the law enforcement agency or agencies having primary responsibility for the patrol and enforcement of vehicular and criminal law on the Public Road within which the Construction Zone is located. Such consultation shall take place as early as practicable.

(3) Compliance with Regulations. All Construction Zone Safety Plans shall recognize the purposes of, and shall otherwise comply with the requirements of, this Regulation.

(4) Elements of the Plan. The Plan shall be comprised of the standard traffic control plans, work zone safety guidelines and shall include any traffic management plan or temporary traffic control plan including road detour plans, road closure plans, and plans to mitigate the impact of vehicular and pedestrian traffic outside of the Construction Zone. It also shall detail Construction Zone impact management strategies and how they will be implemented. When required by 701 CMR 7.05 or when the Awarding Authority has determined it is necessary and appropriate, the Plan shall require the use of personnel to ensure the safety of workers in the Construction Zone and the safety of the public, and, where Road Flaggers, Police Details or both are called for in the Plan, it shall include the number of Road Flaggers and Police Details required to be on site daily and the procedures to be followed if the designated personnel fail to arrive at the Construction Zone as agreed.

(5) **Safety and Other Considerations.** The Plan shall take into account particular aspects of the Public Road and the surrounding environments such as ADT, traffic patterns, roadway design, proximity to security sensitive areas such as airports and seaports, proximity to schools, hospitals, playgrounds, and other youth activity locations, and areas with a history of traffic accidents, or a history of criminal and civil offenses committed in close proximity to the Construction Zone. The Plan shall also take into account the impact the Public Works Project will have on vehicular and pedestrian traffic and safety outside of the Construction Zone.

**7.05: Use of Road Flaggers and Police Details.**

(1) **High Speed Roads.** Except as otherwise provided herein, the Construction Zone Safety Plan shall require that Police Details be used in all Construction Zones located on High Speed Roads. When the Awarding Authority, acting in accordance with 701 CMR 7.00, determines that it is appropriate under the Construction Zone Safety Plan and consistent with public safety to do so, the Construction Zone Safety Plan may call for the use of Road Flaggers on High Speed Roads where traffic flow has been separated from the Construction Zone through the use of continuous, connected barriers such as temporary concrete traffic barriers, crash walls, or other traffic dividers.

(2) **Low Speed Roads and Low Traffic High Speed Roads.** Except as otherwise provided herein, the Construction Zone Safety Plan shall require that Road Flaggers be used in all Construction Zones located on all Low Speed Roads and on all Low Traffic High Speed Roads. When the Awarding Authority, acting in accordance with 701 CMR 7.00, determines that it is appropriate under the Construction Zone Safety Plan and consistent with public safety to do so, the Construction Zone Safety Plan may call for the use of Police Details on Low Speed Roads and Low Traffic High Speed Roads.

(3) **Use of Neither Police Details nor Road Flaggers.** Notwithstanding 701 CMR 7.05(1) and 7.05(2), in instances when it is appropriate under the Construction Zone Safety Plan, and possible to protect the Construction Zone from vehicular traffic and to ensure the public safety, the Authorized Representative shall have the authority to determine that neither Road Flaggers nor Police Details are needed on all or a portion of a Public Works Project.

**7.06: Authority of the Authorized Representative**

(1) **Determination by the Authorized Representative.** The Authorized Representative shall determine the number and placement of Road Flaggers and Police Details, if any, within the Construction Zone according to the Construction Zone Safety Plan, these Regulations, and any Road Flagger and Police Detail Guideline.

(2) **Pre-Construction Conference.** The Authorized Representative shall organize a conference with the law enforcement agency or agencies having primary responsibility for patrol of and enforcement of vehicular and criminal law on the Public Road within which the Construction Zone is located prior to the start of any Public Works Project. The purpose 6

of the conference shall be to consult with the law enforcement organization to review the project, the Construction Zone Safety Plan, and the planned use or non-use of Road Flaggers and Police Details on the project. In instances where the Public Works Project is minor, involves routine maintenance, or does not involve a Construction Zone Safety Plan, the conference need not be in person.

(3) Daily and Regular Contact with Law Enforcement. Whenever an Awarding Authority is conducting work on a Public Road that does not involve the use of Police Details, it shall call the law enforcement agency or agencies having primary responsibility for the patrol and enforcement of vehicular and criminal law on the Public Road within which the Construction Zone is located prior to the start of each work day, and shall provide such agency with contact information sufficient for the agency to be in contact with the Awarding Authority at all times.

(4) Final Authority. As authorized by the Act, the Authorized Representative shall have the authority to make the final determination on the Setup and the use of Traffic Control Devices in the Construction Zone and the contents of the Construction Zone Safety Plan developed in accordance with these Regulations, and shall have control and responsibility over the safety, security, and closure of the Construction Zone.

(5) Report of Non-Compliance. The Authorized Representative shall report to the Awarding Authority the facts and circumstances of any non-compliance with these Regulations, with any Road Flagger and Police Detail Guideline, or with any final determination of the Authorized Representative.

(6) Alternative Plans. The Authorized Representative may implement an alternative to the Construction Zone Safety Plan or may use Road Flaggers in place of Police Details or Police Details in place of Road Flaggers when a scheduled Road Flagger or Police Detail is unavailable, fails to report to the Construction Zone, fails to comply with instructions, or otherwise fails to perform required duties outlined in these Regulations or in the Road Flagger and Police Detail Guidelines.

#### 7.07: Responsibility of Road Flaggers and Police Details

(1) Instruction. It is the responsibility of the Authorized Representative to fully brief Road Flaggers and Police Details with respect to the Construction Zone Safety Plan and their duties and responsibilities.

(2) Training. Road Flaggers shall be at least eighteen years of age and shall receive training in construction zone safety, traffic control, first aid, and such other necessary safety programs as identified by the Awarding Authority. Road Flaggers must successfully complete the MassHighway approved certification program and carry a valid certification card at all times.

(3) Duration of Work and Compensation. Road Flaggers and Police Details shall remain at the Construction Zone for the hours scheduled by the Authorized Representative or the

Awarding Authority, and shall perform required duties in accordance with the Guidelines. Except to the extent it conflicts with a: (a) collectively bargained agreement with respect to a Commonwealth Entity Awarding Authority; or (b) collectively bargained agreement or local ordinance or by-law then in effect when a Municipality is the Awarding Authority, Road Flaggers and Police Details shall be compensated only for the time spent performing their traffic control function at the Construction Zone. Road Flaggers or Police Details who arrive late, depart early, or are terminated from the Construction Zone by the Authorized Representative for noncompliance with these Regulations shall be compensated only for the time spent performing their traffic control function at the Construction Zone.

#### 7.08: Administration

(1) Administration of These Regulations and Road Flagger and Police Detail Guidelines. The EOTPW, in consultation with EOPSS, shall administer these Regulations and, in cooperation with MassHighway, shall administer the Road Flagger and Police Detail Guidelines as necessary to implement these Regulations.

(2) Additional Police Details Requested By Municipalities. Police Details provided by a Municipality to any Commonwealth Entity shall be provided for the period of time requested by the Awarding Authority consistent with the Construction Zone Safety Plan and at the rate of compensation then approved by such entity. A Municipality may request in writing the placement of additional Police Details on a project awarded by a Commonwealth entity or may request the payment of additional compensation above such approved rate; provided however, that in the event the use of such additional Police Details is deemed unnecessary by the Awarding Authority or is inconsistent with the Construction Zone Safety Plan, the Municipality shall supply the additional Police Details and shall be responsible for any additional compensation.

#### 7.09: Miscellaneous

(1) Effective Date. These Regulations shall take effect upon publication in the Massachusetts Register.

(2) Police Power and Commonwealth Jurisdiction. Nothing in this Regulation shall be interpreted to alter or otherwise limit the authority of any law enforcement agency with respect to police matters within the Construction Zone or the Public Way, or with respect to the extent of the Commonwealth's jurisdiction over certain Public Ways.

(3) Severability. The provisions of these Regulations shall be deemed severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

#### REGULATORY AUTHORITY

701 CMR 7.00: St. 2008, c. 86, § 10, M.G.L. c. 6A, § 19, M.G.L. c. 85, § 2, and M.G.L. c. 30A, §§ 2 and 3.





# TOWN OF DALTON

Town Hall  
462 Main Street  
Dalton, MA 01226-1601

Telephone (413) 684-6111

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ANIMAL CONTROL/HEALTH AGENT, Ext. 28  
BOARD OF ASSESSORS, Ext. 21  
BOARD OF APPEALS, Ext. 29  
INSPECTION SERVICES, Ext. 27 or 29  
PLANNING BOARD, Ext. 29  
TREASURER, Ext. 18

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September 16, 2008

Office of the General Counsel  
Executive Office of Transportation & Public Works  
10 Park Plaza, Room 3170  
Boston, MA 02116

RE: Proposed Regulations Promulgated pursuant to Section 10 of Chapter 86 of the Acts  
of 2008

RECEIVED  
08 SEP 17 PM 4:19  
MASS. DEPT. OF TRANSPORTATION & CONSTRUCTION  
CHIEF COUNSEL'S OFFICE

Gentleman:

We are writing to express our concern with the hasty implementation of the above referenced regulations entitled Use of Road Flaggers and Police Details on Public Works Projects, 701CMR 7.00. We recommend that final regulations not be issued for at least six months. Local authorities have not had an adequate opportunity to review and understand the impact of these regulations. Nor does it give local authorities adequate time to bargain with local police unions over this issue should they choose to do so.

The language found at 7.01 (2) (b) appears to require that provisions of collective bargaining agreements be existing prior to the effective date of the Regulation and requires clarification. This has disrupted heretofore harmonious relations with our local police union as they view the Regulation as merely an attempt to deny all outside work to them whether justified or not.

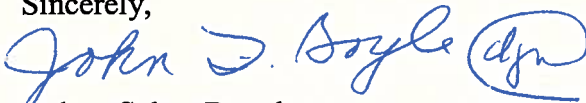
In the case of local roads and bridges when the Commonwealth is the Awarding Authority, this provision, 7.01(2) (b), also undermines local authority as being able to determine what is in the best interest of public safety.

Similarly, the Municipal Limitation provision found at 7.01(2)(a) should be clarified to ensure that a municipal by-law or collective bargaining agreement provision enacted or agreed to subsequent to the effective date of the Regulation are valid.

Section 7.08(2) needs to be clarified in that it may be used to penalize localities should they enact or agree to the so called "limitation" provisions if additional local details are required by local law or agreement.

It is our understanding that neither law nor regulation now precludes the use of Flaggers or traffic control devices for public works projects. Moreover, it is usually the contractor that requests details as needed. The Police Chief now only orders a detail when he reasonably believes public safety is at stake.

Sincerely,



Dalton Select Board

John F. Boyle

Chairman



**Testimony of Michael J. Widmer  
President, Massachusetts Taxpayers Foundation**

September 15, 2008  
Draft Regulations on use of Civilian Flaggers

With these draft regulations, the administration has made an important and meaningful step in reforming the use of police details on public construction sites in the Commonwealth. Massachusetts will finally join the 49 other states that use civilian flaggers. The Foundation supports the administration's efforts to tackle this politically charged matter through an open process leading to savings for the state and municipalities.

The regulations' three-tiered system provides clear delineations with sufficient flexibility for policy makers constructing a careful balance between public safety and public expenditures. The regulations also transfer authority to determine the number and combination of needed personnel to the organization awarding the contract, placing important cost and safety controls in the hands of public officials.

EOT's recently released *Road Flagger & Police Detail Cost Report and Analysis* projects that savings at the state level would be between \$5.7 and \$7.2 million annually with substantially higher savings for municipalities. These savings are critical as cities and towns face enormous fiscal pressures.

The Transportation Finance Commission documented the declining state of our transportation infrastructure and highlighted the large shortfall in funding for essential projects. The use of civilian flaggers can free up precious dollars to repair roads and bridges across the state.

Secretary Cohen expressed a commitment to have road flaggers in place in October. Since the regulations require that all road flaggers complete a MassHighway approved certification program covering construction zone safety, traffic control, and first aid, training courses must be developed and launched quickly to avoid staffing delays.

In earlier testimony the Foundation recommended that the state provide an ombudsman to work with communities during implementation. The need may go further as it's clear from the draft regulations that the authorized representative for each construction site may need substantial support to develop, manage and enforce each site's safety plan.

Finally, the Foundation strongly encourages public reporting of wage rates, safety plans that include the number of personnel, and cost savings for each site so that communities can collaborate and adopt these changes more quickly. The Foundation applauds the administration and urges that these regulations be adopted.

Dear Secretary Cohen and members of the committee:

The New England Gas Workers Association (NEGWA) would like to thank you for the opportunity to offer the following testimony with regard to the issue of professional police officers conducting traffic control and the proposal to replace them with "flaggers" to provide traffic direction.

As you may have noticed in our opening paragraph, we distinguish between the services a police officer provides on a construction site, which is "traffic control", versus the services a "flagger" provides, which is "traffic direction". The important distinction is the police officers have been assigned the important responsibility of maintaining order by their cities, towns or the Commonwealth to ensure safety and decorum on our public ways. Whether they are on the job chasing a suspect or stopping by the supermarket on the way home from a shift, these men and women while in uniform maintain that same persona of order. This is the same function he/she brings to the "police detail" on the construction site.

Anyone can direct traffic, which consists of pointing which direction you would prefer the traffic to follow. For that matter, why should anyone be required to hire a flagger? Each private company could use their own workers to be certified and provide that same function. However, it is not a traffic "director" we need on our potentially dangerous construction sites, it is a professional police person who will "control" the traffic and maintain a sense of order on what is often a confusing and congested street, road or highway.

There is no question the average citizen observes and understands the difference between a "civilian" traffic director and a police officer who has the authority to detain you and take control of your vehicle should you ignore an order and place a worker in jeopardy or break the law. We assure you, there will be many incidents of disregard or even belligerent arguing with these proposed flaggers. We also believe there will be an increase in traffic congestion as a non-police officer will be ignored from time to time. NEGWA worries that without order maintained on public ways and on construction sites, workers face serious injury or even a fatality. The last thing you want to see when you are bent over on the ground, or standing in a 5 foot ditch as a worker is a 3,000 lb vehicle coming at you without a trained and experienced public safety officer standing there guarding your well being.

What is truly alarming and disturbing to us is this issue is being driven for fiduciary reasons. The last place cutbacks should ever take place is when personal safety is involved, and the primary reason we have hired police details on jobs is for safety of the working crew and the public. Secondary is the convenience of providing traffic control. It is a sad day if we collectively agree it's worth the risk of someone getting seriously hurt and take police officers off the street in an attempt to balance a budget when there are many other expenditures less critical to public safety and public health that can and should be reigned in. I can personally and honestly say I would feel alarmingly unsafe with a flag-person as a replacement for a police detail!

There are many other reasons a police presence on the job is important as well, for example:

1. **More of a police presence on our streets** prevents crime and provides a safe community presence for all citizens. If you examine the average amount of detail hours provided by city, town and state police officers it would suggest close to one half times in addition to the regular hours an officer usually works in a year. So, instead of say 100 police in a given town, the town would have 150 police, with 50 police man hours being subsidized mainly by private industry (utilities, contractors etc.) on town streets providing a presence of order and visibility. While we have some dumb and reckless criminals out there, few would choose to rob, steal or violate another human being in close proximity to a construction site with a police detail. With flaggers? We doubt an equal deterrent exists.
2. **Direct access in case of emergency.** Unfortunately in the natural gas business and quite possibly the regular construction industry, injury on the job is not an un-common event. For example- if a "flash" happens where natural gas ignites in a hole while connecting live gas, several people are at risk and a rapid response by emergency personnel is of the utmost importance. Each second is critical due to the nature of potential burns from the flash. Firefighters are needed immediately because medical treatment for burns is extremely time sensitive for proper treatment. Access to a police officer's radio by far outweighs calling 911 to secure the several different emergency responses that may be needed. While the public may not realize it, many men and women everyday take risks working under and on our streets to provide the comforts we know and expect un-interrupted every day. We would ask that the safety nets we use to not be removed out from under us to save a few dollars- find a better place to cut costs!
3. **Salary assistance for the police departments.** Many police officers and veterans have become reliant on these subsidized salary "details" which are not paid for solely with taxpayer monies. They are paid largely by the private businesses who hire the details. Serious cuts in salary will have a negative effect on not only the officers but also on the expectations from their cities and towns. Are the taxpaying citizens ready to pay more taxes for higher police salaries? In addition to a labor dispute over lost income and/or the right to use flaggers the city/town could be facing unwanted competition from other police forces luring away some of their best officers. . I'm sure there will be plenty of flaggers to train as officers.
4. **Oversight of businesses work on city/town streets.** Quite often while work is being performed on services to a home, the resident will allow access to the residence knowing a police person is on location and feels secure under these circumstances. At present, in the unfortunate event of an accident, the city, town or state already has an experienced and credible witness on site to give his/her version of the events. Furthermore, cities and towns also rely on their officers who are municipal employees to ensure streets are left as well or better than found at the beginning of the project when it is complete. I would suggest the alternative would change things.

One solution I would offer to budget strained municipalities would be to consider a premium cost be paid to the city or town where a detail is hired to assist in offsetting other costs. To our knowledge, a private company pays the officer an overtime rate for his/her hours on the job. The police officer is trained and maintained by the city, town or state and use of the officer by a private company should cost more than the mere payment to the officer. If the officer is hired at \$45 per hour for 4 hours, then perhaps the company should pay the city/town a \$100 cost of service for their use. This way the municipalities themselves could continue to enjoy the use of police details for the same reasons mentioned above.

In this day where "road rage" is a regular and rising problem, the last thing we need on the street is someone without a badge and a gun and without law enforcement authority attempting to control individuals who are often un-controllable. There are even rare moments when an officer has a hard time controlling unruly and disruptive persons. We can only imagine what it will be like for a person whose only authority and weapon is a flag!

Thank you for your time and attention to this matter of significant importance.

Sincerely,

Mark McDonald

*Chairman*

New England Gas Workers Association (NEGWA)