



# CIM NEWSLETTER

September 26, 2008



## Police Detail/Flagger Regulations Finalized

The Patrick Administration has finalized the regulations governing the use of police details and flaggers. The regulations, which go into effect October 3, can be found on the EOT web site at:

[http://www.eot.state.ma.us/default.asp?pgid=content/police\\_detail&sid=about](http://www.eot.state.ma.us/default.asp?pgid=content/police_detail&sid=about)

If you would like us to email you a copy of the regulations, please contact Shannon Reilly at [sreilly@cimass.org](mailto:sreilly@cimass.org).

## Editorial on Gas Tax

The following editorial appeared in the *Eagle Tribune* on September 24<sup>th</sup>:



### **Our view: Forget gas tax hike without reform**

September 24, 2008

"There are reports of growing support within the Legislature for an increase in the gasoline tax to fund much-needed infrastructure improvements and avoid future increases in bridge and highway tolls.

The State House News Service has reported on a private meeting held last Thursday during which a number of legislators reportedly pressed Patrick administration officials to join the effort to increase the state gas tax above the current 23.5 cents per gallon.

According to the SHNS story, Shrewsbury Rep. Karyn Polito "said the sharp majority of lawmakers who spoke about the gas tax indicated support for raising it."

Asked for comment afterwards, the governor's press secretary, Kyle Sullivan, told the news agency, "As the governor has said repeatedly, an increase in the gas tax is not his first choice, particularly in light of increased fuel costs for consumers."

Indeed, by his recent actions, Gov. Deval Patrick has shown he is cognizant that there will be no selling Massachusetts voters on an increase in the gas tax without there first being an effort to reduce the cost of transportation services. That's why he's so determined to get a handle on road details, and why the new management at the Massachusetts Turnpike Authority is talking about reducing the number of toll-takers it employs.

We'd like to think legislators are on the same page. But with the exception of a few like state Sen. Steven Baddour, D-Methuen, who chairs the Transportation Committee, most lawmakers have preferred to stay silent on issues like allowing the use of flagmen at some construction sites, the fact that those manning the toll booths make more than teachers or police officers, or the outrageous MBTA contract provisions that allow workers to retire with a full pension and medical benefits after just 23 years of service, regardless of age.

Many taxpayers are no longer willing to tolerate the wasteful practices and bloated contracts that continue to squeeze state and municipal budgets. Sadly, however, many of their elected representatives show no inclination to change the status quo.

Voters should ask their own state representatives and state senators how they would vote on a gas-tax increase; and why they have not joined the governor in first demanding an end to the overly generous labor contracts and lax personnel practices that have brought our highway and public transportation systems to the brink of meltdown."

## Massachusetts Appeals Court Issues Decision Impacting Liability of General Contractors

The Massachusetts Appeals Court issued a decision on September 9<sup>th</sup> which impacts the construction industry and the duty of general contractors to provide a discrimination free workplace. An article on this case appears on pages **5 & 6**.

## Transportation Agencies Announce Cost Sharing Plan



Transportation **Secretary Bernard Cohen** has announced an "innovative cost sharing plan" to be implemented by MassHighway, the MBTA, Massport and the Turnpike Authority, with the goal of achieving financial relief for the MBTA and the Turnpike and achieving overall reform.

The announcement and plan appears on pages **7 - 9**.

## Draft I-Cubed Regulations Available for Review and Comment

The Patrick Administration has released the draft regulations governing the I-Cube initiative. This initiative - Infrastructure Investment Incentive Program - allows private developments to undertake public infrastructure improvements needed for the development by accessing \$250 million in state funding. The improvements will be funded by the new revenue generated from the private development. While the work is on-going, the developer is responsible for paying the debt service on the financing. When complete, the Commonwealth assumes the debt responsibility for the public improvements. If there is not enough new state revenue to meet those debt payments, the municipality is responsible for making up the shortfall.

I-Cubed was originally enacted as a limited program in 2006 and has since been expanded. It now is available for economic development projects in all municipalities.

In announcing the regulations, **Lt. Governor Tim Murray** stated, "This innovative financing program is another tool we will use to promote and support smart economic development in the Commonwealth." He continued, "The projects I-cubed will help are those

that will produce jobs and new local and state revenues. They are projects that are smart investments and those that otherwise would not be possible."

**Senate President Therese Murray** offered, "If we were looking for an economic boost, we just got one." She further stated, "The Senate has been a big supporter of I-Cubed legislation, and I'm happy to hear the announcement today of regulations that will get this program working for the Commonwealth. The I-Cubed program will allow us to make significant improvements to our infrastructure that will support and encourage private development projects around the state, with an emphasis on economically distressed areas. It will create jobs and spur economic development at a time when we need it most."

The regulations and additional information are available at: <http://www.mass.gov/eoaf/icubed/>

Comments are due by October 15<sup>th</sup>.

## Jack Curtin, Longtime Industry Activist, Passes Away

**John "Jack" Curtin**, of Curtin International Insurance & Bonding Agency, Inc., passed away suddenly on Saturday, September 20<sup>th</sup> at the age of 67. Jack was the loving husband of Pamela (Hopkins) Curtin and was the devoted father of Jeremy Curtin and his wife Fiona of Ireland and Joel Curtin and his wife Talene of Nashua, N.H. He was the cherished grandfather of Andrew, Michael, Mark and Paul Curtin, and brother of Jane Curtin of Connecticut and Larry Curtin of Florida.

Jack took on many leadership roles in the industry and was truly passionate about his work. CIM worked very closely with Jack as a member of MassCIC - a group of industry associations working toward common goals. He took great pride in leading this group and bringing us all together in promoting legislation, analyzing regulations and simply having discussions about industry issues.

Our industry lost a true leader and CIM lost a good friend. We offer our sincerest condolences to Jack's family. Donations may be made in Jack's memory to the charity of one's choice.

### Member News: SPS New England Featured on National Geographic Channel



CIM Member **SPS New England, Inc.** of Salisbury, MA was featured in a recent show on the **National Geographic Channel** entitled Night Shift: Road Crew.

The show follows “a tight-knit group of construction workers who repair damaged urban roadways and bridges all over Massachusetts.”

“From weathering intense physical challenges to watching for speeding vehicles to dealing with the strain that working at night has on their families, the stories of these men exemplify the effort and dedication of this often invisible occupation.”

The next airing of the show on the *National Geographic Channel* is October 7<sup>th</sup> at 8:00 p.m.



### Senate Committee Moves Bridge Infrastructure Bills

Legislation to authorize \$1 billion more than SAFETEA-LU called for in FY 2009 for bridge repair passed the Senate Environment and Public Works (EPW) Committee by voice vote September 17. The bill, H.R. 3999, which the House approved 367-55 July 24, would also strengthen the inspection process for bridges. House Transportation and Infrastructure Committee **Chairman Jim Oberstar** (D-Minn.)

authored the bill and **Senator Amy Klobuchar** (D-Minn.) introduced a similar measure in the Senate. The committee also approved S. 3500, the Water Infrastructure Financing Act, which would authorize \$20 billion over five years for the Clean Water State Revolving Fund—a program that makes loans to local governments to improve sewer and waste water treatment. The next steps for these bills this year is unclear, but ARTBA – our national affiliate – is working to push for their timely enactment.

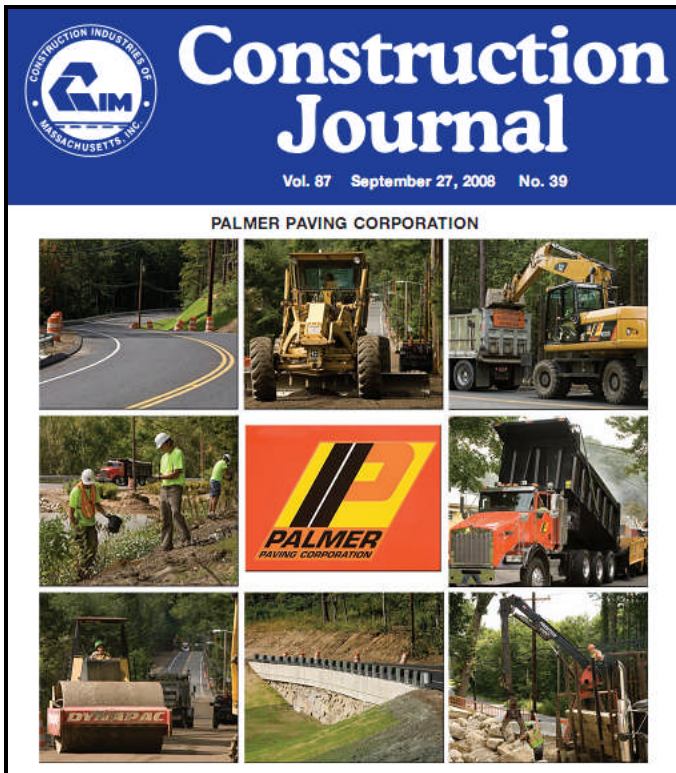
### ARTBA Hosts 20th Anniversary of PPV Conference

Over 350 transportation design and construction executives, financial services and consulting professionals, and government officials recently participated in the ARTBA Public-Private Ventures in Transportation Conference held September 15<sup>th</sup> – 16<sup>th</sup>. The event included substantive discussions about the role of public private partnerships (P3s) in helping to meet the nation’s transportation demands, the latest P3 best practices information and financing models for private participation in transportation improvements.

House Highways and Transit Subcommittee **Chairman Peter DeFazio** (D-Ore.) told conference participants the 2009 highway/transit bill must dramatically increase federal surface transportation investment and that P3s should be additive to these core initiatives. He added P3 projects should focus on new capacity projects, as opposed to existing assets. DeFazio criticized some recent projects, such as the Chicago Skyway and Indiana Toll Road concession agreements, saying in his opinion they failed to adequately look after the public interest.

**Alison Black**, ARTBA vice president of policy, outlined the potential \$20-30 billion in new P3 market opportunities that could come with the association’s “Critical Commerce Corridors” (3C) proposal—a 25-year construction program aimed at adding new intermodal capacity to safely and efficiently move goods. ARTBA is calling on Congress to include 3C in the next multi-year surface transportation investment bill.

## Cover Story



**CLEAN FILL WANTED**  
**Free disposal area available for clean fill – up to 100,000 CY.**

**Will receive immediately, through 2009. Quincy/Braintree line, 1 mile from Route 128, Exit 6 (Route 37).**

**Please contact Bill at 617-908-5516 or Chris at 617-908-5524.**

CIM Member **PALMER PAVING CORPORATION** of Palmer, MA is shown on this week's *CIM Construction Journal* cover working on the \$11.2 million MHD road reconstruction project located on Route 66 in Northampton, MA. The work being done consists of reconstructing Route 66 for a total distance of 3.826 miles. This project also includes reconstructing the bridge over Bassett Brook.

The roadway work includes excavation, borrow and grading, HMA paving and berm installation, furnishing and installing guardrail, granite curbing, traffic signs and controls, removal of individual trees, drainage system and new water main installation, sidewalks, constructing masonry retaining walls, constructing a wetland replacement area, and erosion controls. Additionally, the bridge replacement work consists of demolition of the existing bridge structure and constructing a new bridge structure over Bassett Brook.

The project was started in April of 2008 and is scheduled to run through 2009. Palmer's project management team includes **Tom Via**, Project Manager/Superintendent & **Sandra Thouin**, Foreman.

MHD District 2 Resident Engineer on the project is **Bill Whiteman**.

**Photos © Martha Stewart 2008**

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**GENERAL CONTRACTORS BEWARE: MASSACHUSETTS COURT EXPANDS GENERAL CONTRACTOR LIABILITY FOR JOB SITE DISCRIMINATION**

Gina A. Fonte, Esq.  
Matthew L. Mitchell, Esq.  
Holland & Knight LLP

In a recent decision with broad implications for the construction industry, the Massachusetts Appeals Court has held that general contractors owe a duty to their subcontractors' employees to provide a discrimination-free work environment.

A subcontractor employee sued the project's general contractor for harassment and racial discrimination. The worker claimed that the general contractor's superintendent had subjected him to racially offensive remarks. He also claimed that the general contractor was informed of the misconduct, but failed to take any steps to prevent or remedy the harassment. In its defense, the general contractor argued that it owed no duty to the worker to prevent the discrimination because he was not the general contractor's direct employee. The worker prevailed in his case filed with the Massachusetts Commission Against Discrimination (MCAD), and the general contractor was ordered to pay \$50,000 in emotional distress damages and \$10,000 in civil penalties, and was also directed to conduct annual training sessions for its employees. The MCAD award was affirmed in the Superior Court. On appeal by the general contractor, the Massachusetts Appeals Court sided with the worker, concluding that a general contractor has an affirmative obligation to provide a discrimination-free work environment to its subcontractors' employees working at its job site.

As a result of this decision, general contractors may now face discrimination lawsuits not only from their own employees, but also from employees of other companies at the job site.

***Are you covered?***

Discrimination lawsuits brought by non-employees are often outside the protections of commercial insurance policies. Most Commercial General Liability policies specifically exclude discrimination claims from coverage. While Employment Practices Liability Insurance policies generally provide coverage for discrimination claims brought by employees, claims from independent contractors, subcontractors, and other non-employees are commonly excluded.

In light of *this recent* decision, general contractors with Employment Practices Liability Insurance should confirm with their insurance carriers whether they are covered for discrimination claims brought by persons at the job site who are not direct employees of the general contractor.

***The best defense is a good offense.***

In this case, the Appeals Court penalized the general contractor for failing to remedy the hostile work environment at its job site. It implicitly found that the general contractor's investigation, and the step of returning the superintendent to the project, did not address the discriminatory actions. Thus, it is critical that general contractors take affirmative steps to deal with discrimination and harassment at their job sites, not just for the protection of their own employees, but also for others working at the job site. These steps may include:

- Maintaining a clear, written non-discrimination policy, and requiring subcontractors to maintain similar policies;
- Providing on-site discrimination and harassment training to supervisors, employees, and third parties who operate at the job site, such as subcontractors and independent contractors;

- Promptly investigating claims of discrimination and/or harassment made by individuals working at the job site, including non-employees, and remedying discrimination if it exists. It is important to document and create a detailed record of the investigation.

These affirmative strategies may, in the long run, be the best insurance against the type of non-employee discrimination claims discussed in *the court's recent decision*.

*Gina Fonte practices with Holland & Knight LLP's Construction Industry Practice Group in Boston. Matthew Mitchell practices with the Holland & Knight Labor and Employment team in Boston. For more information, please contact Gina at [gina.fonte@hklaw.com](mailto:gina.fonte@hklaw.com), or Matthew at [matthew.mitchell@hklaw.com](mailto:matthew.mitchell@hklaw.com), or call either toll free at 1.888.688.8500.*

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## Transportation Agencies – Cost Sharing Plan

### *Plan Will Benefit MBTA, Turnpike, Advance Reform Agenda*

Transportation Secretary Bernard Cohen has announced an innovative cost sharing plan among four Massachusetts transportation agencies and authorities that will provide financial relief to the Massachusetts Bay Transportation Authority (MBTA) and the Massachusetts Turnpike Authority. The plan includes eight specific initiatives and is a first step following last month's transportation summit convened by Secretary Cohen and including leaders from MBTA, Turnpike Authority, the Massachusetts Highway Department, and the Massachusetts Port Authority (Massport).

"The transportation partners took very seriously this collaborative effort to review programs, reallocate costs, and consolidate services," said Secretary Cohen. "The plan announced today is an important first step following the summit in advancing the transportation reform agenda put forward by Governor Patrick's 2007 Mobility Compact. We will continue to pursue other cost sharing initiatives in the days ahead."

The cost-sharing initiatives the Secretary has proposed will provide annual assistance totaling \$6.38 million for the Turnpike Authority and \$7.09 million for MBTA. Additionally, several of the initiatives will require Federal Aviation Administration (FAA) approval. Proposed cost sharing reforms include:

1. **Bridge Inspections**- All inspections of MassHighway, MBTA, and Turnpike Authority bridges would be centralized with MassHighway. Agencies and authorities will work closely with impacted parties, impact bargaining with unions will be involved, and all bargaining obligations will be met. Potential savings: \$3.5 million for MBTA and \$2.5 million for the Turnpike Authority.
2. **CANA Tunnel**- Massport will fund ongoing and long term maintenance of the tunnel which feeds traffic to and from Massport's Tobin Bridge. Turnpike savings: \$3.7 million.
3. **Silver Line**- Massport will increase its contribution to Silver Line service to Logan Airport. Savings for MBTA: \$1.4 million.
4. **Flagging**- MassHighway will cover the cost of railroad flaggers at bridge construction projects over MBTA tracks. MBTA savings: \$1.2 million.
5. **Blue Line**- Massport will share with MBTA certain maintenance costs of the Blue Line Airport station. MBTA savings: \$175,000.
6. **Anderson Station**- Massport, MBTA and MassHighway are the three agencies that share in parking revenue at the transportation hub in Woburn. Massport and MassHighway will transfer their shares of the parking revenue to the T, while Massport would maintain its Logan Express operations at the facility. Revenue transfer to MBTA would yield \$206,000 in FY09.
7. **Intake/Ventilation Fans**- Massport will fund electricity costs for exhaust fans for the Logan Ramp from the Ted Williams Tunnel. Turnpike savings: \$180,000.
8. **Wood Island**- A proposed Massport purchase of MBTA land currently leased by Massport. Annual revenue payment to MBTA: \$610,000 per year for 10 years.

Several of the initiatives require approval by authority boards of directors. All Massport initiatives require FAA approval.

Implementation of the plan will begin this fall and some of these measures should be completed by spring 2009.

"We worked with the Secretary and his team to identify areas where it was appropriate for Massport to fund some services that benefit the Authority and its customers but are provided by other agencies," says Thomas J. Kinton Jr. CEO & Executive Director of Massport. "These proposed initiatives must still be approved by the Massport Board and federal regulatory agencies."

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"MassHighway has a long and proud history of providing assistance to communities and citizens when they need it most. We are pleased to help our sister agencies in making state government more efficient and effective," said MassHighway Commissioner Luisa Paiewonsky.

"Given the Massachusetts Turnpike Authority's financial situation, we are pleased to be part of this historic agreement," said Alan LeBovidge, Turnpike Executive Director.

"I want to thank MassPort, MassHighway, and the Executive Office of Transportation for their amazing cooperation," said MBTA General Manager Daniel Grabauskas. "I look forward to continuing to work in a collaborative fashion to address the larger issues facing the T."

"These measures are the latest among dozens of reform steps taken across all transportation agencies with the goal of providing the most efficient use of taxpayer dollars for the maximum benefit of citizens of the Commonwealth," says Cohen.

Reforms instituted in 2007 and 2008 include:

### **Turnpike Reforms**

The Turnpike Authority this year reduced administrative staff by 25%, annual savings \$1 million.

- 28 additional positions were eliminated, annual savings \$1 million.
- Turnpike now works with the state on bulk purchase of electrical power, saving more than \$1.4 million and is collaborating on other joint purchases.
- Overtime costs reduced by more than \$800,000 over a four month period compared to the same period last year.
- One health care provider eliminated, one-time saving of \$1.7 million without impacting benefits to employees and retirees
- Reduced outside consultants and attorneys, including ALL Central Artery/Tunnel consultants, savings of \$8 million in a six-month period compared to last year.
- Expanded FAST LANE electronic toll collection, converting four cash lanes at the 128 interchange and the Allston-Brighton tolls to FAST LANE, savings of \$500,000 in payroll costs from reduced staffing.
- Total Turnpike Reform savings to date exceed \$15 million.

### **MassHighway Reforms**

- The Patrick Administration's Police Detail- Flagger proposal will be finalized and flaggers in place on projects this fall, providing substantial savings that can be redirected to road and bridge construction.
- MassHighway has launched an agency-wide streamlining initiative designed to make design and construction more efficient. Some early improvements include a reduction in construction contract processing time by nearly 50% and a reduction in Extra Work Orders by 35%.
- Transportation Bond Bill Two (Chapter 303 of the Acts of 2008) requires "prequalification" of contractors on municipal work performed with state funds, to streamline design, ensure greater oversight and provide higher project quality.
- Bond Bill Two includes utility relocation reform to provide incentives for timely utility relocation, eliminating costly project delays.
- A MassHighway Scorecard online since April offers quarterly reports on progress in delivering quality projects and safe, convenient roads, providing accountability and transparency. The Scorecard can be found online.



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**MBTA Reforms**

- The MBTA has instituted a hiring freeze, replacing only essential positions. Despite expansions in service, the T has reduced the number of employees by more than 300 over the past decade.
- The T hiring freeze and leaving non-essential positions unfilled in 2008 saved \$5.6 million in reduced salary costs as compared to 2007.
- The T has also reduced overtime each year for the past three years. Overtime costs in 2008 were 34.5% lower than in 2005, for a savings of \$12.7 million.
- The arbitrator's award with the T's largest union changes health benefits, requiring new retirees to contribute 10% to the cost of health insurance premiums. Total projected savings of benefit changes: \$17.5 million.
- Transportation Bond Bill One directs MBTA to align its under age 65 retiree health insurance benefits with those of the Commonwealth.
- Bond Bill One requires MBTA to compare costs of current retirement plan to a plan requiring 25 years of service and a minimum age of 55 to retire and to assess costs of switching to the Commonwealth pension system model.

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## COMING EVENTS

### **DESIGN BUILD SEMINAR**

**Thursday, October 2, 2008**

7:30 a.m. – 12:00 p.m., Holiday Inn – Mansfield

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### **BOARD OF DIRECTORS MEETING**

**October 8, 2008 - 7:30 a.m., CIM Office, Norwood, MA**

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### **JOINT CIM- ACEC/MA JOINT DINNER PROGRAM**

**Wednesday, October 29, 2008 - 5:30 p.m., Sheraton Needham**

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### **BOARD OF DIRECTORS MEETING**

**November 13, 2008 (Thursday) - 7:30 a.m., CIM Office, Norwood, MA**

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### **BOARD OF DIRECTORS MEETING**

**December 1, 2008 (Monday) – 3:30 p.m. – Boston Marriott Copley**

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### **86<sup>th</sup> Annual Roadbuilders Dinner**

**December 1, 2008 (Monday) – Boston Marriott Copley**