

# What Ever Happened to Flagger Reform?

By Michael Chieppo and Greg Sullivan

## Background

In 2008, the Massachusetts Legislature passed a law proposed by Governor Deval Patrick that directed the Executive Office of Transportation and Executive Office of Public Safety to create new regulations replacing the requirement that police be present at road construction sites with ones that allowed civilian flaggers, where appropriate.<sup>1</sup> This prompted immense backlash from law enforcement unions and some municipal leaders. Before the legislation passed, Massachusetts had been the only state to require the use of police details to direct traffic at the sites.<sup>2</sup> The legislation's resulting regulations specify how civilian flaggers are to be used in different types of construction zones, as follows:

*“High Speed Roads. Except as otherwise provided in 701 CMR 7.05(1), 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, it 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... Low Speed Roads and Low Traffic High Speed Roads. Except as otherwise provided in 701 CMR 7.05(2), 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, it may call for the use of Police Details on Low Speed Roads and Low Traffic High Speed Roads.”*

Under Governor Patrick's reform bill, civilian flaggers would usually be used in construction zones on low- and high-speed roads with little traffic, although police could still perform the work under certain circumstances. Police details, on the other hand, would generally remain on high-speed roads with heavy traffic. This was a significant change for the one state that had long prohibited the use of civilian flaggers.

Before the law was passed, only police were allowed to direct and control traffic at a road construction site in Massachusetts, paid for by a system of “tiered rates” and fringe benefits that made so-called police details very expensive.



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Figure 1. Federal Davis-Bacon hourly rates for flaggers working on federally funded projects

STATE	RATE	FRINGE	TOTAL	State Prevailing Wage Law
Alabama	\$10.70	\$0.00	\$10.70	N
Arizona	\$12.31	\$3.96	\$16.27	N
Arkansas	\$10.50	\$0.00	\$10.50	N
Colorado	\$9.73	\$3.05	\$12.78	N
Florida	\$9.41	\$0.00	\$9.41	N
Georgia	\$11.59	\$0.00	\$11.59	N
Idaho	\$14.02	\$4.66	\$18.68	N
Indiana	\$30.97	\$17.23	\$48.20	N
Iowa	\$17.65	\$8.85	\$26.50	N
Kansas	\$10.25	\$0.00	\$10.25	N
Kentucky	\$21.80	\$12.36	\$34.16	N
Louisiana	\$17.22	\$3.40	\$20.62	N
Mississippi	\$9.83	\$0.00	\$9.83	N
New Hampshire	\$13.33	\$2.21	\$15.54	N
North Carolina	\$10.40	\$0.01	\$10.41	N
Oklahoma	\$11.15	\$0.00	\$11.15	N
South Carolina	\$10.15	\$0.00	\$10.15	N
South Dakota	\$18.86	\$0.00	\$18.86	N
Utah	\$8.77	\$2.53	\$11.30	N
Virginia	\$10.22	\$0.00	\$10.22	N
West Virginia	\$24.86	\$16.30	\$41.16	N
North Dakota	\$20.70	\$2.50	\$23.20	N
<b>AVERAGE - States with no state prevailing wage law</b>	<b>\$14.29</b>	<b>\$3.50</b>	<b>\$17.79</b>	

  

STATE	RATE	FRINGE	TOTAL	State Prevailing Wage Law
Alaska	\$37.51	\$23.62	\$61.13	Y
California	\$33.19	\$18.24	\$51.43	Y
Connecticut	\$16.00	\$19.84	\$35.84	Y
Delaware	\$39.35	\$0.00	\$39.35	Y
Hawaii	\$33.80	\$19.26	\$53.06	Y
Illinois	\$29.38	\$24.06	\$53.44	Y
Maine	\$9.38	\$0.00	\$9.38	Y
Maryland	\$17.20	\$6.96	\$24.16	Y
Massachusetts	\$23.00	\$20.44	\$43.44	Y
Michigan	\$25.74	\$12.85	\$38.59	Y
Minnesota	\$36.68	\$17.67	\$54.35	Y
Missouri	\$32.32	\$15.32	\$47.64	Y
Montana	\$20.90	\$9.60	\$30.50	Y
Nebraska	\$9.66	\$0.00	\$9.66	Y
Nevada	\$41.44	\$0.00	\$41.44	Y
New Jersey	\$38.75	\$28.60	\$67.35	Y
New Mexico	\$13.55	\$0.35	\$13.90	Y
New York	\$40.15	\$28.34	\$68.49	Y
Ohio	\$30.62	\$10.95	\$41.57	Y
Oregon	\$25.00	\$13.85	\$38.85	Y
Pennsylvania	\$24.95	\$22.95	\$47.90	Y
Rhode Island	\$22.70	\$21.80	\$44.50	Y
Tennessee	\$13.11	\$0.00	\$13.11	Y
Texas	\$10.33	\$0.00	\$10.33	Y
Vermont	\$9.86	\$2.77	\$12.63	Y
Washington	\$28.68	\$10.89	\$39.57	Y
Wisconsin	\$23.14	\$21.34	\$44.48	Y
Wyoming	\$16.79	\$0.00	\$16.79	Y
<b>AVERAGE - States with a state prevailing wage law</b>	<b>\$25.11</b>	<b>\$12.49</b>	<b>\$37.60</b>	

## Results of the 2008 Reform

Since the legislation passed in 2008, Massachusetts has seen very limited use of civilian flaggers. Joshua Elgart, the owner of a Framingham flagger contracting company, *MA Traffic Control*, was quoted in October 2011 as saying his company “has yet to sign its first flagging contract.”<sup>3</sup> Two other companies, *American Flagging and Traffic Control* in Salem, NH, and *New England Flagger Services* in Willimantic, CT, have simply given up trying to contract for civilian flaggers in the Bay State.<sup>4</sup>

Flaggers earn significantly more on federally funded projects in Massachusetts than in 36 other states, but less than flaggers in 12 states. Flagger pay in Massachusetts ranks 13<sup>th</sup> in the country, at \$43.44 per hour, 50.8 percent higher than the national average of \$28.89. The average of the other New England states (Maine \$9.93, Vermont \$12.63, New Hampshire \$15.54,

Rhode Island \$44.50, and Connecticut \$35.84) is \$23.28. Massachusetts hourly rates are 84.2 percent above the average of other New England states.

Figure 1 presents the wages for civilian flaggers in all 50 states:<sup>5</sup> It also indicates which states have state prevailing wage laws. The results show that the average hourly wage for flaggers in states that do not have state prevailing wages laws is \$17.79 per hour; in states that do have prevailing wages have the average hourly wage is \$37.60, more than twice as high.

Figure 2 shows wage and fringe rates compiled for flaggers in 10 representative municipalities across the Commonwealth set by the Massachusetts Executive Office of Labor and Workforce Development (EOLWD) as of June 2018:<sup>6</sup>

**Figure 2: Flagger Wage and Fringe Rates in 10 Municipalities**

Town	Base Wage	Fringes	Total
Needham	\$21.50	\$21.72	\$43.22
Boston	\$21.50	\$22.90	\$44.40
Cambridge	\$21.50	\$22.90	\$44.40
Worcester	\$21.50	\$21.72	\$43.22
Lowell	\$21.50	\$21.72	\$43.22
Newton	\$21.50	\$22.90	\$44.40
Springfield	\$21.50	\$18.98	\$40.48
Rutland	\$21.50	\$21.72	\$43.22
Harvard	\$21.50	\$21.72	\$43.22
Sandwich	\$21.50	\$21.72	\$43.22

## Why the Promise of Savings Went Unkept

One reason civilian flaggers are so expensive in Massachusetts is that they are subject to the Commonwealth's prevailing wage law, which establishes pay rates for public construction projects. Massachusetts is one of only five states to stipulate that prevailing wages be set at a level at least equal to those established by existing collective bargaining agreements with organized labor in the area. In contrast, the federal government and the 23 other states with prevailing wage laws use both market labor rates and collective bargaining rates to set prevailing wages, which lowers the wage considerably.<sup>7</sup> Since the Massachusetts prevailing wage law establishes pay at the highest collectively bargained union rate in respective geographical areas, the rate for civilian flaggers is in effect established at the rate paid to police performing flagger duties. This represents the Catch-22 of using civilian flaggers in Massachusetts: Because the prevailing wage law sets flaggers' pay effectively at police rates, little savings can be gained by their use.

How much Massachusetts police officers are paid for traffic control details is not based simply on collectively bargained hourly police wages for regular duty. Hourly detail rates are negotiated separately between government employers (state, county and municipal) and police unions. An example of such a negotiated rate is the 2015–18 collective bargaining agreement between the Town of Upton and the Upton police union, Local 162, Massachusetts Coalition of Police, I.U.P.A., AFL-CIO. The agreement provides for a \$48.00 per hour payment for outside details and \$47.00 per hour for town details with time and a half for nights, weekends and holidays. In addition, officers

are paid for a minimum of four hours if they work four hours or less, and eight hours pay if they work between four and eight hours, except that the eight-hour minimum does not apply to schools, churches, nonprofit organizations or elections.<sup>8,9</sup> Conversely, civilian flaggers are paid for the time they work at the rate established by EOLWD.

What is notable in this example of separately negotiated police detail rates is that the \$47-to-\$48 dollar per hour rate is in most cases more than regular time ordinarily paid to police officers, and translates to an annualized rate of \$97,760 to \$99,840 for straight time. The four-hour minimum, eight-hour minimum, and time- and-a-half provisions increase the annualized rate to the \$100,000 to \$120,000 range, depending on the timing of hourly work, which is substantially higher than regular police hourly wages.

In addition to the fact that separately negotiated police detail rates are much higher than regular police hourly pay, public employers also provide fringe benefits to police officers working traffic details. For this reason, total police detail remuneration, as measured by standards of the federal Davis-Bacon Act, includes a built-in "double-dip" payment; that is, it includes a rate substantially higher than ordinary hourly pay that effectively reimburses for fringe benefits and includes the government entity separately paying for fringe benefits.<sup>10</sup>

Under Davis-Bacon, contractors on federally funded construction projects must provide wages and fringe benefits in an amount determined by the United States Department of Labor<sup>11</sup> If the employer is already providing fringe benefits to the worker, then the worker is entitled to receive wages only. For example, if a construction company is hired to work on a federally funded project, and if it pays sufficient health insurance and retirement benefits to satisfy federal requirements, the worker receives the wages only. In Massachusetts, however, police working on flagger details receive time and a half of their police pay as a flat rate. Since police officers receive fringe benefits from their public employers as a condition of employment and since they also receive a rate of pay that is substantially higher than ordinary police pay for traffic details, police officers effectively receive a "double-dip" rate.

The 2008 flagger reform was expected to save considerable money, but because the prevailing wage law effectively requires civilian flaggers to be paid about the same as police details, and because cities and towns were not mandated to hire civilian flaggers at low-speed sites, the reform was weakened to the point of becoming an historical footnote. The Massachusetts Department of Transportation (MassDOT) claimed that after three years the Commonwealth had saved \$23 million. Most of this savings was attributable to civilian flaggers being paid for actual hours worked while police working details are paid for a minimum of four or eight hours, depending on how many

hours they actually worked. In the five years prior to passage of the legislation, MassDOT spent more than \$107 million on police flagger details, about 4.4 percent of the total amount spent on road construction during that time. Between October 2008 and April 2010, MassDOT spent \$39.9 million on a combination of civilian and police flaggers, or 3.4 percent of total costs. That's a decrease in the portion of spending devoted to flaggers, but only a small one.

The reluctance of municipalities to employ civilian flaggers has resulted in large part from an outcry by law enforcement unions in response to the possibility of losing lucrative detail pay. Municipalities can decide to use police details for "public safety" reasons, and police unions are vigilant about maintaining relationships with municipalities to promote the hiring of officers.

## Conclusions and Recommendations

Massachusetts pays civilian flaggers 84 percent more per hour than the average of the five other New England states (\$43.44 versus \$23.28), and 50.8 percent more per hour more per hour than the average of the fifty states (\$43.44 versus \$28.89). Governor Patrick's 2008 flagger reform law has made little difference in large part because Massachusetts' prevailing wage law stipulates that prevailing wages for public construction projects be at least equal to those established by existing collective bargaining agreements with organized labor in the area, which in effect means police rates.

The Massachusetts prevailing wage law effectively requires that civilian flaggers be paid a rate nearly equal to that paid for police details, since such rates represent existing collective bargaining agreements with organized labor in the area. This is the Catch-22 that explains why Governor Patrick's reforms were effectively negated in practical application.

The solution to this Catch-22 would be for the Executive Office of Labor and Workforce Development (EOLWD) to determine a prevailing wage for flaggers that is de-linked from police union contracts.

The intent of prevailing wage laws is to prevent companies engaged in public construction from paying construction workers less than the market wage for similar work performed in the area. This is a worthy goal. But in Massachusetts, the intent and effect of the prevailing wage law is to require state and municipal taxpayers to pay the highest wage rather than the prevailing wage. The net effect is to artificially and substantially inflate the cost of public construction projects, including transportation projects.<sup>12</sup>

Massachusetts is one of only five states to stipulate that

prevailing wages be set at a level at least equal to those established by existing collective bargaining agreements with organized labor in the area. In contrast, the federal government and the 27 other states with prevailing wage laws use both market labor rates and collective bargaining rates to set prevailing wages for public construction projects.<sup>13</sup>

States like Alabama, Florida, and Utah, which do not have prevailing wage laws, have a combined average flagger rate of \$10.47 per hour. The national average for flaggers is \$28.89 an hour. That said, however, states that don't have prevailing wage laws are all states with either very small or struggling economies.

If EOLWD were allowed to determine a true prevailing wage for flaggers, free of dependence on collectively bargained police rates, the state and municipalities would have a far greater incentive to use civilian flaggers. Governor Patrick's reforms were weakened to the point that they did not mandate that cities and towns use civilian flaggers as intended. Because cities and towns have readily observed that little savings can be had by use of civilian flaggers (together with the urging of law enforcement unions), they have acted accordingly and made little use of them.

If EOLWD were allowed to set a flagger rate that was de-linked from police union contracts, and the legislation were sufficiently strengthened, the state and its cities and towns would have a financial incentive to use lower-cost flaggers more.

## Appendix

STATE	DATE	CLASSIFICATION	COUNTY	RATE	FRINGE	TOTAL
Alabama	1/5/2018	Traffic Control Specialist	Clay County	\$10.70	\$0.00	\$10.70
Alaska	6/1/2018	Traffic Control Technician	Statewide	\$37.51	\$23.62	\$61.13
Arizona	1/5/2018	LABORER: Flagger	Navajo County	\$12.31	\$3.96	\$16.27
Arkansas	1/5/2018	TRAFFIC CONTROL: Flagger	Logan County	\$10.50	\$0.00	\$10.50
California	6/29/2018	Traffic control	Los Angeles County	\$33.19	\$18.24	\$51.43
Colorado	01/05/2018	Traffic Control (Flagger)	Jefferson County	\$9.73	\$3.05	\$12.78
Connecticut	6/29/2018	Traffic Control Signalman	New Haven County	\$16.00	\$19.84	\$35.84
Florida	03/16/2018	LABORER: Flagger	Columbia County	\$9.41	\$0.00	\$9.41
Delaware	1/5/2018	LABORER: Flagger	Kent County	\$39.35	\$0.00	\$39.35
Georgia	1/5/2018	TRAFFIC CONTROL: Flagger	Bacon County	\$11.59	\$0.00	\$11.59
Hawaii	4/27/2018	Traffic Control Signalman	Statewide	\$33.80	\$19.26	\$53.06
Idaho	6/15/2018	TRAFFIC CONTROL: Flagger	Canyon County	\$14.02	\$4.66	\$18.68
Illinois	6/8/2018	LABORER: Flagger	Cass County	\$29.38	\$24.06	\$53.44
Indiana	6/29/2018	Flagger	Clinton County	\$30.97	\$17.23	\$48.20
Iowa	6/8/2018	Flagger	Emmet County	\$17.65	\$8.85	\$26.50
Kansas	1/5/2018	Flagger	Ellsworth County	\$10.25	\$0.00	\$10.25
Kentucky	1/5/2018	Signalman	Laurel County	\$21.80	\$12.36	\$34.16
Louisiana	5/11/2018	LABORER: Flagger	Orleans County	\$17.22	\$3.40	\$20.62
Maine	4/6/2018	TRAFFIC CONTROL: Flagger	Waldo County	\$9.38	\$0.00	\$9.38
Maryland	1/5/2018	Flagger	Baltimore County	\$17.20	\$6.96	\$24.16
Massachusetts	5/25/2018	Flagger	Suffolk County	\$23.00	\$20.44	\$43.44
Michigan	6/22/2018	LABORER: Flagger	Delta County	\$25.74	\$12.85	\$38.59
Minnesota	5/11/2018	LABORER: Flag Person	Blue Earth County	\$36.68	\$17.67	\$54.35
Mississippi	1/5/2018	LABORER: Flagger	Adams County	\$9.83	\$0.00	\$9.83
Missouri	6/15/2018	LABORER: Flagger	Statewide	\$32.32	\$15.32	\$47.64
Montana	3/16/2018	Flag Person	Statewide	\$20.90	\$9.60	\$30.50
Nebraska	1/5/2018	Flagger	Banner County	\$9.66	\$0.00	\$9.66
Nevada	1/5/2018	Flagperson	Nye County	\$41.44	\$0.00	\$41.44
New Hampshire	1/5/2018	LABORER: Flagger	Grafton County	\$13.33	\$2.21	\$15.54
New Jersey	6/15/2018	Flagperson	Atlantic County	\$38.75	\$28.60	\$67.35
New Mexico	1/5/2018	Flagger	Santa Fe County	\$13.55	\$0.35	\$13.90
New York	6/29/2018	Flagger	Bronx County	\$40.15	\$28.34	\$68.49
North Carolina	1/5/2018	Flagger	Union County	\$10.40	\$0.01	\$10.41
North Dakota	3/2/2018	Flagger	Statewide	\$20.70	\$2.50	\$23.20
Ohio	6/29/2018	Traffic Flagger	Statewide	\$30.62	\$10.95	\$41.57
Oklahoma	1/5/2018	Flagger	Atoka County	\$11.15	\$0.00	\$11.15
Oregon	5/4/2018	Flagger	Statewide	\$25.00	\$13.85	\$38.85
Pennsylvania	6/15/2018	Traffic Control	Armstrong County	\$24.95	\$22.95	\$47.90
Rhode Island	6/22/2018	Flagger	Statewide	\$22.70	\$21.80	\$44.50
South Carolina	1/5/2018	Flagger	Lee County	\$10.15	\$0.00	\$10.15

South Dakota	4/6/2018	Flagger	Statewide	\$18.86	\$0.00	\$18.86
Tennessee	1/5/2018	Flagger	Statewide	\$13.11	\$0.00	\$13.11
Texas	1/5/2018	Flagger	Austin County	\$10.33	\$0.00	\$10.33
Utah	4/6/2018	LABORER: Flagger	Iron County	\$8.77	\$2.53	\$11.30
Vermont	1/5/2018	LABORER: Flagger	Essex County	\$9.86	\$2.77	\$12.63
Virginia	1/5/2018	Flagger	Lancaster County	\$10.22	\$0.00	\$10.22
Washington	6/29/2018	Traffic Flagger	Statewide	\$28.68	\$10.89	\$39.57
West Virginia	1/5/2018	Flag Person	Statewide	\$24.86	\$16.30	\$41.16
Wisconsin	6/22/2018	Flagperson	Statewide	\$23.14	\$21.34	\$44.48
Wyoming	6/1/2018	Flag Person	Sweetwater County	\$16.79	\$0.00	\$16.79

## 701 CMR 7 (Full)

*“(1) High Speed Roads. Except as otherwise provided in 701 CMR 7.05(1), 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, it 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 similar median barriers.”*

*“(2) Low Speed Roads and Low Traffic High Speed Roads. Except as otherwise provided in 701 CMR 7.05(2), 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, it 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.”*

## Endnotes

- 1 <http://www.telegram.com/news/20180811/10-years-after-state-oks-civilian-flaggers-police-still-prevail-at-construction-sites>
- 2 <https://www.necir.org/2011/10/03/flagmen-vs-police-details/>
- 3 <https://www.necir.org/2011/10/03/flagmen-vs-police-details/>
- 4 Ibid.
- 5 <https://www.wdol.gov/dba.aspx>
- 6 [http://prevailingwage.detma.org/\(X\(1\)S\(sk52arffixh1b550phrkgap\)\)/ExampleWageRequest.aspx?wr=123&AspxAutoDetectCookieSupport=1](http://prevailingwage.detma.org/(X(1)S(sk52arffixh1b550phrkgap))/ExampleWageRequest.aspx?wr=123&AspxAutoDetectCookieSupport=1)
- 7 <http://pioneerinstitute.org/download/massachusetts-technology-tax-an-unnecessary-detour/>
- 8 [https://www.uptonma.gov/sites/uptonma/files/mai/files/4.2\\_police\\_union\\_contract\\_2015-2018\\_final\\_formatted.pdf](https://www.uptonma.gov/sites/uptonma/files/mai/files/4.2_police_union_contract_2015-2018_final_formatted.pdf)
- 9 <https://www.massdot.state.ma.us/portals/8/docs/flaggers/CostReport090908.pdf>  
(III.B)
- 10 [https://www.uptonma.gov/sites/uptonma/files/mai/files/4.2\\_police\\_union\\_contract\\_2015-2018\\_final\\_formatted.pdf](https://www.uptonma.gov/sites/uptonma/files/mai/files/4.2_police_union_contract_2015-2018_final_formatted.pdf)
- 11 <https://www.dol.gov/whd/govcontracts/dbra.htm>
- 12 [https://pioneerinstitute.org/better\\_government/new-report-massachusetts-technology-tax-an-unnecessary-detour/](https://pioneerinstitute.org/better_government/new-report-massachusetts-technology-tax-an-unnecessary-detour/)
- 13 Ibid.

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