

To: MSBA Board of Directors
From: Christine Nolan, General Counsel
Re: Updates to the Massachusetts School Building Authority Regulations and Recommendation to Promulgate the Revised Regulations
Date: April 12, 2024

As reported at the October 25, 2023, Board of Directors (“Board”) meeting, and as noted in updates at subsequent Board meetings and at the March 27, 2024, Facilities Assessment Subcommittee meeting, the Massachusetts School Building Authority (the “MSBA”) is proposing changes to our Regulations, 963 CMR 2.00 *et seq.* (“Regulations”).

The Regulations have been revised to:

- Accurately reflect how the MSBA’s grant process has evolved,
- Provide clarity and make the Regulations more user friendly,
- Make the Regulations easier to follow by arranging the sections in chronological order, corresponding to the MSBA modules, and
- Provide a starting point for future MSBA programmatic changes and updates as the landscape of school construction continues to change.

Background

The revised draft regulations and supporting documents were presented to the Board at the October 25, 2023, meeting, and the Board voted to approve the MSBA staff recommendation to issue a draft of the revised regulations for public comment. The draft regulations and supporting documents that were provided to the Board for the October 25, 2023, meeting are attached for reference.

Public Hearing and Public Comment Process

The MSBA held a public comment period from November 1, 2023 through January 31, 2024, during which time the MSBA received one letter with written public comments. The MSBA also held 13 public hearings during the comment period, four of which were held remotely via Zoom and the others in different geographic locations across the Commonwealth. MSBA staff traveled to: Lynn, Springfield, Worcester, Dalton, Lawrence, Yarmouth, Rockland, Gardner, and Fall River. Overall, there were three members of the public who provided oral testimony at the hearings, two of whom each attended two hearings. A hearing summary, the comment letter, and the hearing notes are attached for reference.

Pursuant to the Secretary of State’s requirements, the MSBA provided notice of the hearing and public comment period by: notifying the Massachusetts Municipal Association and the Department of Housing and Community Development (which recently became the Executive Office of Housing and Livable Communities), filing notices with the Secretary of State to publish the notices in the Massachusetts Register, and advertising in the Boston Globe. The MSBA also posted information regarding the comment period and hearings on its website,

and notified interested parties and stakeholders, including the Massachusetts Legislature, the Massachusetts School Superintendents Association, the Massachusetts Facilities Administrators Association, the Massachusetts Association School Business Officials, the Massachusetts Association of School Committees, and the Massachusetts Association of Vocational Administrators.

During the public comment period and at the hearings, comments were received about a variety of issues which are detailed in the attached comment summary chart. This document lists 17 items that were reviewed in the context of the changes the MSBA is proposing to our regulations. Comments of substantially the same nature were combined in the document, and the summary chart does not include comments that are opinions or requests for changes in our process but not requests for consideration on a regulation change.

Recommendations

Based on a review and consideration of the comments, the MSBA recommends the following:

- 80% Reimbursement Rate (one item representing one comment): The MSBA will take the comment under advisement but recommends no change to proposed regulations at this time, as this would require a statutory change.
- Gateway Cities and Environmental Justice Communities (one item representing one comment): The MSBA will take the comment under advisement but recommends no change to proposed regulations at this time, as this would require a statutory change.
- Open Meeting Law (one item representing two comments): The MSBA will restore the deleted text in 963 CMR 2.01: Authority, Applicability, Scope and Purpose section of the Regulations, which appears on page one, as illustrated below:
 - (1) 963 CMR 2.00 is promulgated by the Massachusetts School Building Authority (“Authority” or “MSBA”) established by M.G.L. c. 70B pursuant to rulemaking authority conferred by M.G.L. c. 70B and St. 2004, c. 208 for the implementation of that statute and the school building grant program it establishes, all is consistent with M.G.L. c. 30 and 30A.

Today, MSBA staff is asking the Board to approve the proposed revisions to the Authority’s Regulations and, noting that the MSBA has completed the public comment period for these proposed regulations and considered all comments received, to authorize the Executive Director to take all steps necessary to prepare the revised Regulations, which are attached for reference, to be promulgated with the Secretary of the Commonwealth in substantially the same form as described and presented to the Board.

The MSBA appreciates the public's interest in the proposed revisions to its Regulations and values the comments that we received. MSBA staff are confident that, if approved and promulgated, the revised Regulations will provide a starting point for future MSBA programmatic changes and updates as the landscape of school construction continues to change.

Attachments:

- Attachment A - Materials presented to the Board of Directors for the October 25, 2023 Board meeting
- Attachment B - Hearing summary
- Attachment C - Public comment letter and the hearings notes
- Attachment D – Public Comment Chart
- Attachment E - Revised Regulations to be promulgated