

# Massachusetts School Building Authority Policy on the Sale, Lease, or Closure of Public-School Facilities

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## Purpose and Scope

This Policy explains how the sale, lease, or closure of a public-school facility, or portion thereof, may affect a school district's eligibility for future Massachusetts School Building Authority ("MSBA") funding. It also establishes the requirements and necessary procedures applicable to the sale, lease, or closure of an MSBA Assisted Facility (i.e., a school facility that is currently receiving or has received an MSBA grant for construction, renovation, or repair within the last 20 years) and the financial obligations that may arise if the facility being sold, leased, or closed ever received MSBA assistance.

The goal of this Policy is to ensure that decisions to sell, lease, or close a school facility are made thoughtfully and in compliance with Massachusetts General Laws (*M.G.L.*) *ch. 70B*, *963 CMR 2.00 et seq.*, and other applicable legal and regulatory standards.

**Section II of this policy applies to all public-school districts, including those that have never participated in an MSBA-funded project. Additional requirements (Section I and III) apply if the facility being sold, leased, or closed is an MSBA Assisted Facility.**

## Definitions

For the purposes of this Policy, the following words shall have the following meanings:

- **"Closure" (includes "Removal from Service")**: the discontinuation of a facility's use as a public-school building. This definition includes what is described as "removal from service" in M.G.L. c.70B, §15 and 963 CMR 2.03(7), and applies whether the facility is formally closed by vote of the School Committee or otherwise taken out of active use. This includes, but is not limited to:
  - o (a) a facility that has been left vacant or has not been used as a K-12 schoolhouse for at least half of the preceding fiscal year; or
  - o (b) the conversion of the facility to non-K-12 uses, such as municipal offices, storage, or community/recreational purposes.
- **"Fair Market Value"**: the estimated value of an MSBA Assisted Facility as determined by an independent appraisal approved by the MSBA.
- **"MSBA Assisted Facility"**: a school facility that is currently receiving or has received an MSBA grant for construction, renovation, or repair within the last 20 years.

# I. Notice and Procedural Requirements for Districts Anticipating Selling, Leasing, or Closing an MSBA Assisted Facility

## A. Notice Requirements for Selling, Leasing, or Closing an MSBA Assisted Facility

**This Section applies to all districts who are selling, leasing, or closing an MSBA Assisted Facility.** *M.G.L. ch. 70B, §15 and 963 CMR 2.03 (7)* establishes rules for notice and process when a school district anticipates that they will sell, lease, or close an MSBA Assisted Facility. **Districts who do not comply with these requirements may be ineligible for future MSBA grants.**

**In order to properly provide notice to the MSBA, districts must comply with the following:**

- At least 6 months before the intended closure date, the district must notify the MSBA, ***in writing via email***, of its intent to sell, lease, or remove from service an MSBA Assisted Facility. This correspondence should come in the form of a letter on district or municipal letterhead. The correspondence should be delivered to the MSBA's Executive Director.
- **This notice must be signed by:** (1) the local Chief Executive Officer (CEO); (2) the Superintendent; and (3) the Chairperson of the School Committee.
- This notice ***must*** include the following information:
  - (1) A plan for accommodating any displaced school programs and services as a result of the sale, lease, or closure of said school facility;
  - (2) A district wide facility use plan listing all school facilities under the control of the school district;
  - (3) A plan for accommodating district students within the remaining school buildings, as a result of the sale, lease, or closure of said school facility;
  - (4) A detailed description of both the current use and proposed use of each school facility;
  - (5) The most recent enrollment data of each school facility;

- (6) A detailed floor plan of each school facility that shows and labels each space in the facility and whether it is used as a classroom or has some other use
- (7) Any future plans for the sale or lease of property under control of the school district; and
- (8) Any future plans for the construction, renovation, addition, or lease of school facilities in the school district.

## B. Guidance on Late Notice

Pursuant to this Policy and 963 CMR 2.03 (7), districts must provide written notice to the MSBA at least six (6) months prior to the intended closure date of the MSBA Assisted Facility. However, the MSBA recognizes that circumstances may arise where a district is unable to provide the full six months' notice. In such cases, the MSBA will work with the district to review the proposed closure, lease, or sale, provided that notice is given as early as possible. Districts should be aware that providing less than six months' notice may limit the MSBA's ability to review the submission in a timely manner and may affect the district's eligibility for future MSBA grants.

## II. Selling, Leasing, or Closing a School: The Impact on Districts

**This Section applies to ALL public schools being sold, leased, or closed, regardless of whether the facility ever received MSBA funding or not.**

### A. The Impact on a District's Eligibility for Future MSBA Grants

Pursuant to *M.G.L. ch. 70B, §15* and 963 CMR 2.03 (7), districts that sell, lease, or close **any** school facility (including both MSBA-Assisted and Non-MSBA Assisted Facilities) may be ineligible for MSBA funding for ten (10) years, if the proposed project is deemed to be replacing the facility that was sold, leased, or removed from service.

For a school district that is interested in submitting a Statement of Interest ("SOI") and has sold, leased, or closed a school in the past 10 years, exceptions apply where:

- (a) the MSBA, in its sole discretion, determines that the grant is *not* for the purpose of replacing the school facility that was sold, leased, or removed from service in the past 10 years; **or**

- (b) the MSBA, in its sole discretion, determines that the need for the grant could not have been *reasonably anticipated* at the time of the sale, lease, or removal from service.

In making these determinations, the MSBA considers enrollment data, geographic shifts in student population, facility conditions, long-range planning information provided by the district, and other factors the MSBA may find relevant.

**Regardless of whether a school district has sold, leased, or closed a school facility within the last ten (10) years, districts are still encouraged to submit an SOI.** The MSBA will review each SOI in accordance with *M.G.L. ch. 70B* and *963 CMR 2.00 et seq.* and make determinations of eligibility on a case-by-case basis.

## B. The Impact on the District's SOI Competitiveness

Even if a school district is deemed eligible for funding pursuant to Section II. A (above), the sale, lease, or closure of a school *may* adversely affect the competitiveness of the district's SOI. Pursuant to *M.G.L. ch. 70B, §8*, the MSBA is required to approve projects in accordance with the statutory priorities established by the Legislature.

While a district may have legitimate operational or financial reasons for reconfiguring its schools, those reasons may not necessarily align with the statutory priorities set forth in *M.G.L. ch. 70B, §8*. Although certain priorities expressly recognize specific cost-reduction objectives – such as energy conservation achieved through heating system upgrades – reconfiguration projects undertaken primarily to achieve general operational or budgetary savings, do not, standing alone, constitute a high-priority rationale under the statute.<sup>1</sup> Accordingly, districts should be aware that such projects may not compete favorably for MSBA funding.

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<sup>1</sup> *M.G.L. ch. 70B, §8* includes certain priorities that expressly recognize limited cost-reduction objectives, such as Priority 5, which applies to projects for the replacement, renovation, or modernization of heating systems to increase energy conservation and decrease energy-related costs. This priority is narrowly focused and does not extend to broader school reconfiguration, consolidation, or facility-planning initiatives undertaken primarily to achieve general operational or budgetary savings.

Example: A district seeking MSBA funding to replace an inefficient heating system to reduce energy consumption and utility costs may be eligible for consideration under Priority 5. However, a district that has closed or is proposing to close or consolidate schools primarily to reduce operating or personnel costs, without a demonstrated need tied to one of the statutory priorities, should not expect to compete as favorably for funding.

### III. Calculating the Amount Owed to the MSBA as a Result of Selling, Leasing, or Closing an MSBA Assisted Facility

**Please note: This Section applies only to *MSBA Assisted Facilities* that are being sold, leased, or closed *and* received at least 1 grant payment in the preceding 20 years.**

#### A. Calculation for a School being **Sold** or **Leased** that Received MSBA Funding

*M.G.L. ch. 70B, §15(a)* and *963 CMR 2.03 (7)* provide that:

- “The **net proceeds** from the sale or lease [of an MSBA Assisted Facility] shall be divided between the Commonwealth and the general funds of the applicable eligible applicant in proportion to the Commonwealth’s prior investment in the assisted structure or facility.”
- The sale or lease of an MSBA Assisted Facility may be for no less than Fair Market Value, as determined by independent appraisal as agreed to by the MSBA. If a district intends to sell or lease an MSBA Assisted Facility for *less than* the Fair Market Value, they must obtain prior written approval from the MSBA before doing so.

#### B. Calculation for a School being **Closed** or **Removed from Service** that Received MSBA Funding.

If an MSBA Assisted Facility is being permanently closed or removed from service for which the district is still receiving grant payments **or** has received at least one grant payment within the last 20 years, the MSBA will determine the amount subject to recoupment from the district by applying the following formula, which is based on:

(i) the number of years the MSBA Assisted Facility has been in service since the project completion date; and

(ii) the total grant amount the district received for the MSBA Assisted Facility:

1. **Prior Project Total Grant:** the total grant amount the MSBA Assisted Facility received from the MSBA for its prior project(s).
2. **Prior Project Substantial Completion:** the substantial completion date of the prior project(s).
3. **Identified School Closed:** the date the MSBA Assisted Facility is anticipated to be closed or removed from service.

4. **Unused Building as a Percentage (%):** the percentage of the MSBA Assisted Facility that will go unused due to the closure or removal.
  - a. Please note: if the entire MSBA Assisted Facility is closed, this percentage will be 100%.
5. **Beneficial Use:** the number of years the MSBA Assisted Facility has operated since receiving its grant.
6. **Unused Years:** the number of years the MSBA Assisted Facility was supposed to remain in service minus the Beneficial Use.
7. **Unused Years as a Percentage (%):** the number of Unused Years divided by the minimum service requirement, multiplied by 100.

The MSBA will then determine the **Prior Project Cost Recovery** amount, which represents the amount of funds subject to recoupment. This is calculated as:

- (Unused Years as %) x (Prior Project Total Grant) = Prior Project Cost Recovery

<b>Cost Recovery associated with Prior Projects</b>	
<b>Prior Project ID Number:</b>	<b>Example Project 2025</b>
Prior Project Total Grant:	\$1,000,000
Prior Project Substantial Completion:	9/15/2020
Identified School Closed:	7/15/2025
Unused Building as %:	100.00%
Beneficial use (years):	4.80
Unused Years	15.20
Unused Years as %:	76.00%
Prior Project Cost Recovery:	\$760,000

This amount represents the financial obligation the district owes back to the MSBA due to the closure of an MSBA Assisted Facility. The MSBA and the district will work together to establish a repayment plan for the Prior Project Cost Recovery amount, which may include offsetting or withholding current or future MSBA grants otherwise payable to the district. See Section III, C, below for more information.

**Please Note:** The MSBA will rely on its own records and data to determine the official Prior Project Cost Recovery amount. While this Policy provides the formula to assist districts in estimating the potential financial obligations related to the sale, lease, or closure of an MSBA Assisted Facility, **the MSBA retains sole authority to determine the official Prior Project Cost Recovery amount**. Districts are strongly encouraged to consult with the MSBA before making any final decisions based on their own estimates.

## C. Methods and Timeline of Repayment

The method of repayment will vary depending on whether the district currently has an active project in the MSBA pipeline.

If the district has an active project in the MSBA pipeline, the MSBA will evaluate whether future grant payment(s) or a project funding authorization associated with that active project can satisfy the Prior Project Cost Recovery amount owed as a result of the closure of the MSBA Assisted Facility. If such future grant payment(s) is sufficient to cover the full Prior Project Cost Recovery amount, the MSBA will withhold payment(s) to the district in an amount equal to the Prior Project Cost Recovery.

If the future grant payment(s) is insufficient to satisfy the Prior Project Cost Recovery in full, the MSBA will withhold as much as possible from the available future payment(s) and will require the district to repay the remaining balance pursuant to a repayment schedule mutually agreed upon by the MSBA and the district.

When the district does not have an active project in the MSBA pipeline, the MSBA and district will mutually agree to a repayment plan. However, if the Prior Project Cost Recovery amount is equal to \$1 million or less, the district shall not have more than 60 months to repay the Prior Project Cost Recovery amount in full. This 60-month period allows the district to budget the repayment over the course of five fiscal years. Additionally, for recovery amounts that are equal to \$1 million or less, the district shall complete repayment in no more than 5 lump-sum payments to the MSBA. For a Prior Project Cost Recovery amount that exceeds \$1 million, the district and MSBA will mutually agree to a repayment plan based on the amount owed.

## D. Outstanding Grant Recovery, Cherry Sheet Reductions, and Re-Use Exception

If the MSBA and the district do not reach an agreement on a repayment plan pursuant to Section III, C above, and if a district sells or leases an MSBA Assisted Facility, or if the MSBA Assisted Facility was not used as a schoolhouse for at least half of the preceding fiscal year, the amount of outstanding grant payments remaining after the necessary reductions may be deducted from the district's cherry sheets pursuant to *M.G.L. ch. 70B, s. 15*.

Cherry sheet deductions may be waived, but only at the MSBA's discretion, for an MSBA Assisted Facility removed from use as a schoolhouse pursuant to a plan approved by the district and the MSBA to reuse said structure or facility as a schoolhouse within (a) two (2) years of the plan's adoption; or (b) until the term of any bonds, including refunding bonds,

or notes issued by the district to finance the project for which the grant was originally approved mature or are defeased, **whichever occurs earliest**.

## E. Sale or Lease of Excess Capacity to a Charter School Exception

Pursuant to the Notice requirements in Section I of this Policy, should the district's plan include the closure, sale, or lease of an MSBA Assisted Facility (or any portion thereof), the MSBA may conduct, with the full cooperation of the district, an analysis of district-wide enrollment capacity and future enrollment trends for the district.

If the capacity analysis and enrollment projections indicate an extended period of significant excess capacity within a district's educational facilities, the district may make a good faith offer to sell or lease at Fair Market Value the excess capacity to a Commonwealth Charter School (or an applicant for a Commonwealth Charter School) that serves or is seeking to serve students who live in the applicable school district.

The MSBA will not recapture MSBA assistance for such excess capacity that is sold or leased to a Commonwealth Charter School or applicant for a Commonwealth Charter School.

Please note that pursuant to M.G.L. ch. 70B, s. 15, this exception only applies to the sale or lease of an MSBA Assisted Facility to a Commonwealth Charter School as defined in *M.G.L. ch. 71, s. 89*, and *does not* apply to the sale or lease of an MSBA Assisted Facility to a Horace Mann Charter School.

For this exception to apply, the district must notify the MSBA of the sale or lease of an MSBA Assisted Facility to a Commonwealth Charter School or applicant for a Commonwealth Charter School within 24 months of a local vote to remove an MSBA Assisted Facility from service. Please note that the district is also required to follow the notice requirements in Section I of this Policy.

## F. Standalone Pre-Kindergarten Exception

If a district decides to repurpose an MSBA Assisted Facility as a standalone public pre-kindergarten school facility, which will serve pre-kindergarten aged students within the district, the MSBA will not recapture MSBA assistance for such re-purposed use.

For this exception to apply, the district must notify the MSBA of its plan to repurpose an MSBA Assisted Facility to a standalone public pre-kindergarten school facility within 24 months of a local vote to remove an MSBA Assisted Facility from service. Please note that the district is also required to follow the notice requirements in Section I of this Policy.

## G. Change in K-12 Grade Structure Exception

If a district continues K-12 enrollment at the MSBA Assisted Facility and is simply changing the grade structure, the recoupment provisions outlined in Section III of this Policy would not apply.

For this exception to apply, the district must notify the MSBA of its plan to repurpose an MSBA Assisted Facility to accommodate a change in K-12 grade structure within 24 months of a local vote to temporarily remove an MSBA Assisted Facility from service. Please note that the district is also required to follow the notice requirements in Section I of this Policy.

## H. Financial Hardship

A district required to repay funds to the MSBA under this Policy may request financial hardship relief if it can demonstrate that adhering to standard MSBA repayment requirements would cause a significant negative impact on its finances. To do this, the district must submit a written request to the MSBA explaining the financial hardship, along with supporting financial documentation and a proposed repayment plan. Approval of financial hardship relief will be conditioned upon execution of a repayment agreement between the MSBA and the district. All determinations are made within the sole discretion of the MSBA and shall not establish precedent.

## IV. Waiver

The MSBA may, at its sole discretion and upon written application in a format prescribed by the MSBA, grant a prospective or retroactive waiver of any of the requirements of this Policy, subject to any conditions the MSBA may see fit to impose. The grant of any such waiver shall not entitle the same or any other district to the same or similar waiver relief.

## V. Questions and Additional Information

Districts are encouraged to contact the MSBA with any questions about this Policy. For more information, please visit: [MSBA Contact Us](#) .