



Massachusetts School Building Authority

Timothy P. Cahill
Chairman, State Treasurer

Katherine P. Craven
Executive Director

To: Board of Directors
From: Susan Flanagan-Cahill, General Counsel
Date: September 17, 2009
Re: MSBA Public Hearing and Public Comment Period Regarding Proposed Amendments to the MSBA's Regulations

As discussed at the last Board meeting, the MSBA is proposing amendments and revisions to the MSBA's Regulations, 963 CMR 2.00 et seq., to align these regulations with recently enacted legislative changes to the M.G.L. c.70B and to clearly define the categories of incentive reimbursement points that may be awarded to cities, towns and regional school districts through the MSBA's school building grant program.

The MSBA held a public hearing on the proposed regulations on September 9, 2009 and accepted public comments from August 3, 2009 to September 10, 2009. 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, filing a notice with the Secretary of State, publishing a notice in the Massachusetts Register, and advertising for two days in the Boston Globe. The MSBA also posted information about the comment period and the hearing on its website, notified the Massachusetts Association of Superintendents, and notified other interested parties.

The MSBA received two letters about the proposed revisions to the regulations, copies of which are attached. Two people testified at the public hearing.

The following is a brief summary of the written public comments and testimony received:

- Incentive Points for Newly Formed Regional School Districts. Proposed regulations would allow MSBA to award up to six incentive points to school projects in newly created regional school districts. Those who commented suggested that the MSBA consider providing incentive points for *existing* regional school districts.
- Elimination of Incentive Points for Innovative Community Use. The MSBA's current regulations allow the MSBA to award up to three incentive reimbursement points for projects that demonstrate a truly innovative use of the school facility. Under the former program as administered by the Department of Education, these incentive points were never awarded. To date, the MSBA has not awarded incentive points for Innovative Community Use, which is consistent with past Department of Education practice of not awarding these points. Those who commented stressed the benefits that could be derived by their respective communities through the distribution of Innovative Community Use incentive reimbursement points.

The MSBA is taking the written comments and testimony under advisement.

Summary of Proposed Incentive Reimbursement Regulation Changes

Based on changes to MGL C.70B, the MSBA will draft new regulations that clearly define the categories of Incentive Reimbursement Points.

The new regulations will clarify that:

- No individual category of incentive points shall exceed 6 additional points.
- No district shall receive more than 18 incentive percentage points in total.
- Incentive percentage points granted, if any, shall be in the sole discretion of the MSBA.
- The MSBA may choose to award incentive points in fractional values.

Incentive points may be awarded by the MSBA for the following:

Green School Program – up to 2%

Model School Program – up to 5%

Newly Formed Regional School Districts – up to 6%

Use of Construction Manager At risk (CM-at-Risk) – up to 1%

MGL 40R or 40S Overlay Zone – up to 1%

Maintenance Trust Fund - up to 1%

Best Practices Routine and Preventative Maintenance

 Excellent – up to 2%

 Good – up to 1%

 Poor – 0%

Renovation/Reuse of an Existing Facility

 Renovation/Reuse – up to 5%

 Renovation/Addition – up to 4%

 New Construction – 0%

2.18: Grant Percentage Formula

(1) General.

(a) The Total Facilities Grant for an Approved Project shall be determined by the Authority based on the grant percentage formula established pursuant to M.G.L. c. 70B, § 10, the Project Scope and Budget Agreement, and the cost of the Approved Project as agreed to by the Eligible Applicant and the Authority in the Project Funding Agreement.

(b) In addition to the base percentage, community income factor, community wealth factor and community poverty factor for the most recent available year applicable to the Eligible Applicant under the determinations made by the Authority, an Eligible Applicant may seek incentive percentage points at the sole discretion of the Authority. There is no entitlement to the allocation of any incentive percentage points and the Authority reserves the right in its sole discretion to determine the allocation of incentive percentage points for an Approved Project, if any. Any Eligible Applicant seeking incentive points must notify the Authority in writing 30 calendar days prior to the Project Scope and Budget Agreement Meeting of the specific incentive points which are being requested and provide the documentation to support such request. If at any time the Authority determines that the Eligible Applicant has not met the eligibility requirements necessary to receive the incentive percentage points, the Authority reserves the right to rescind incentive percentage points and any grant amounts related to the allocation of the incentive percentage points and recover any funds that may have been paid to the Eligible Applicant.

(c) No one category of incentive percentage points that may be awarded by the Authority shall exceed six (6) percentage points.

(d) In total, incentive percentage points shall not exceed eighteen (18) percentage points for an Approved Project.

(e) The Authority, in its sole discretion, may award incentive percentage points in fractional amounts.

(2) Incentive Points.

(a) Overlay Zoning District. The Authority, in its sole discretion, may allocate up to one incentive percentage point (1%) for an Approved Project in a community that has adopted an overlay zoning district pursuant to the provisions of M.G.L. c.40R or c.40S. The Authority may allocate up to an additional ½% for an Approved Project where the M.G.L. c. 40R overlay zoning district provides for either 100 units or more of housing in one, two or three family structures; or in which 50% or more of the total number of allowed housing units in M.G.L. c.40R overlay zoning district are designated for such structures. The Authority may establish guidelines for the distribution of Overlay Zoning District incentive percentage points.

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(b) In addition to the base percentage, community income factor, community wealth factor and community poverty factor for the most recent available year applicable to the Eligible Applicant under the determinations made by the Authority, an Eligible Applicant may seek incentive percentage points at the sole discretion of the Authority. There is no entitlement to the allocation of any incentive percentage points and the Authority reserves the right in its sole discretion to determine the allocation of incentive percentage points for an Approved Project, if any. Any Eligible Applicant seeking incentive points must notify the Authority in writing 30 calendar days prior to the Project Scope and Budget Agreement Meeting of the specific incentive points which are being requested and provide the documentation to support such request. If at any time the Authority determines that the Eligible Applicant has not met the eligibility requirements necessary to receive the incentive percentage points, the Authority reserves the right to rescind incentive percentage points and any grant amounts related to the allocation of the incentive percentage points and recover any funds that may have been paid to the Eligible Applicant.

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(b) Energy Efficiency / Green School Program. The Authority, in its sole discretion, may allocate up to two incentive percentage points (2%) for an Approved Project for Energy Efficiency /Green School where the Authority makes a determination that elements of an Approved Project meet thresholds established in the Green Schools Guidelines for the allocation of Energy Efficiency / Green School incentive points.

(c) Routine and Capital Maintenance Rating. The Authority, in its sole discretion, may allocate up to two incentive percentage points (2%) for an Approved Project for Routine and Capital Maintenance Ratings, based on the Authority's determination that the Eligible Applicant has exhibited best practices for routine and capital maintenance and upkeep of facilities, including the establishment of long term capital improvement plans, the establishment of segregated local funds dedicated for the capital maintenance of school facilities, the use of facility maintenance manuals, and practices that standardize preventative and routine maintenance procedures, or other practices as determined by the Authority. An Eligible Applicant's maintenance practices may be reviewed at any time and the information collected during any such review shall be used as part of the assessment of incentive percentage points for routine and capital maintenance ratings.

(d) School Facility Maintenance Trust. The Authority, in its sole discretion, may determine that an Eligible Applicant is eligible to receive a matching cash grant in excess of the Total Facilities Grant in an amount not to exceed one incentive percentage point (1%) of approved, eligible project costs for the establishment of a local "School Facility Maintenance Trust". Said trust shall be a segregated local fund used solely for the preventative maintenance and upkeep of an Eligible Applicant's school facilities and which shall supplement current maintenance expenditures by the Eligible Applicant. To be eligible to receive "School Facility Maintenance Trust" matching funds, the Eligible Applicant must provide a local one-for-one match for any funds deposited in the Trust by the Eligible Applicant, and must provide the Authority with detailed budget information on historical and projected maintenance expenditures. Proceeds from said Trust shall not be used for operating or recurring costs, salaries, purchase of routine maintenance supplies, other expenses which the Authority deems to violate the spirit of the Trust, or to supplant any maintenance funding already being expended by the Eligible Applicant.

(e) Model School Program. The Authority, in its sole discretion, may award up to five incentive percentage points (5%) for an Approved Project that is approved by the Board for participation in the Model School Program.

(b) Energy Efficiency / Green School Program. The Authority, in its sole discretion, may allocate up to two incentive percentage points (2%) for an Approved Project for Energy Efficiency /Green School where the Authority makes a determination that elements of an Approved Project meet thresholds established in the Green Schools Guidelines for the allocation of Energy Efficiency / Green School incentive points.

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(f) Construction Management at Risk. The Authority, in its sole discretion, may allocate up to one incentive percentage point (1%) for an Approved Project utilizing the Construction Management at Risk construction delivery method as certified by the Inspector General of the Commonwealth and pursuant to the

(g) Newly Formed Regional School District. The Authority, in its sole discretion, may allocate up to six incentive percentage points (6%) for an Approved Project if (1) the Approved Project is at the site of a school facility that is a member of a regional school district, which regional school district either (a) was newly created as a result of working with the Authority during the Application process or (b) whose membership changed as a result of working with the Authority during the Application process; and (2) the Authority determines that a school facility construction, renovation, or repair project was avoided directly as a result of either (a) a newly created regional school district or (b) a change in a regional school district's membership. Districts that are not members of a regional school district, or that have not formed a new regional school district or added new members, shall not be eligible for these incentive points.

(h) Renovation or Reuse of an Existing Facility. The Authority, in its sole discretion, may allocate up to five incentive percentage points (5%) for an Approved Project if the project is a renovation of an existing facility that requires no new construction. The Authority may award an amount less than said five percent for an Approved Project which has a combination of renovation of an existing facility and the building of some additional square footage for new educational space, based on a sliding scale that relates the percentage of renovated space to the percentage of newly constructed space. The Authority shall not award any incentive percentage points from this category for construction of a new school facility.