

Memorandum

To: John K. McCarthy, Executive Director
From: Susan M. Flanagan-Cahill
Date: March 28, 2012
Re: Proposed Amendments to the Second Amended and Restated Bylaws of the MSBA

I. Proposed Amendment to Reflect the Adoption of Remote Participation, 940 CMR 29.10

At the January 25, 2012 Board of Directors (the "Board") Meeting, MSBA staff presented the Office of the Attorney General's recently promulgated regulation, 940 CMR 29.10, which permits remote participation of board members at public meetings, subject to certain procedures and restrictions. MSBA staff also explained that if the Board elects to make remote participation available for its members, a majority of the Board must vote to adopt remote participation and must act in accordance with the requirements of the regulations. The Board expressed interest in adopting remote participation and the Chair requested that the Board take a vote at the subsequent Board meeting to formally adopt the procedure in accordance with the regulation.

The adoption of remote participation requires a change to the MSBA's Bylaws. The existing Section 3.8 of the Bylaws allows for Board members to participate remotely, but they cannot vote. With the adoption of the new regulations, Board members will be able to participate remotely and vote, subject to certain restrictions. The proposed edit to the Bylaws, as is shown in the attached red-lined version, incorporates the remote participation procedures and restrictions of 940 CMR 29.10.

II. Updated References to the Open Meeting Law Pursuant to Chapter 28 of the Acts of 2009

As you know, Chapter 28 of the Acts of 2009 repealed sections 11A and 11A1/2 of M.G.L. c. 30A and created sections 18-25 to govern the Commonwealth's Open Meeting Law. The additional edits proposed in the attached red-lined Bylaws update all references to the Open Meeting Law statute.

SECOND AMENDED AND RESTATED BYLAWS

of the

MASSACHUSETTS SCHOOL BUILDING AUTHORITY

ENABLING LEGISLATION

The Massachusetts School Building Authority (the “Authority”) is created by and exercises the powers and responsibilities in accordance with the provisions of Chapter 208 and Chapter 210 of the Acts of 2004, Section 35BB of Chapter 10 of the Massachusetts General Laws, and Chapter 70B of the Massachusetts General Laws, as any of said laws may be amended from time to time (collectively, the “Enabling Act”). These Bylaws (“Bylaws”), **as most recently amended on March 28, 2012**, have been adopted pursuant to M.G.L. c. 70B, § 3(p), as amended by Section 14 of Chapter 208 of the Acts of 2004, for the purpose of regulating the affairs of the Authority and the conduct of the business of the School Modernization and Reconstruction Trust Fund, pursuant to M.G.L. c. 10, § 35BB.

ARTICLE I

1.1 Office

The principal office of the Authority shall be in Boston, Massachusetts. The Authority may from time to time establish and maintain an additional office or offices at such place or places within the Commonwealth of Massachusetts as it may determine to be necessary or convenient.

1.2 Official Seal

a. The official seal of the Authority shall consist of a flat-faced, circular die with the words “Massachusetts School Building Authority” cut, embossed or engraved on its outer rim, and in the circle within said words, such other words and figures or such design as may be determined by resolution of the Board of Directors, and upon the adoption of such resolution, the Executive Director, as Secretary of the Board of Directors, shall obtain such seal and shall cause an impression thereof to be made on the margin of the page of the records containing this Article of the Bylaws.

b. In the execution on behalf of the Authority of any instrument, document, writing, notice or paper, it shall not be necessary to affix the official seal of the Authority thereon, and any such instrument, document, writing, notice or paper when executed without such seal affixed thereon shall be of the same force and effect and as binding on the Authority as if said official seal had been affixed thereon in each instance.

1.3 Books and Records

Except as may be otherwise required or permitted by resolution of the Board, or as the business of the Authority may from time to time require, and in accordance with the requirements of M.G.L. c. 70B, § 1A (d), as amended by Section 2 of Chapter 208 of the Acts of 2004, all of the books, documents, papers, minute book or journal and the official seal of the Authority shall be kept at its principal office. Such documents shall be available at all reasonable times for

inspection by any member of the Board and by any officer or duly appointed agent of the Commonwealth.

1.4 Fiscal Year

The fiscal year of the Authority shall commence with the first day of July and end with the ensuing thirtieth day of June, except as the same may be otherwise determined by resolution of the Board.

ARTICLE II

2.1 Board of Directors

The powers of the Authority shall be exercised by or under the supervision of a Board of Directors (the "Board") consisting of seven members whose appointments, terms and qualifications shall be governed by the provisions of M.G.L. c. 70B, § 1A(b), as amended by Section 2 of Chapter 208 of the Acts of 2004. The Board shall perform the duties imposed on the Authority by the Enabling Act, these Bylaws and by resolution of the Board. Any appointed member may be removed by the Chairperson for cause. Any appointed member may resign by sending a written letter of resignation to the Chairperson. Each member of the Board serving *ex officio* may appoint a designee pursuant to M.G.L. c. 30, § 6A. All members of the Board shall be expected to perform their duties diligently, including attending meetings, and to keep themselves informed about matters relating to the Board.

2.2 Chairperson

The State Treasurer shall serve as Chairperson of the Board, *ex officio*. The Chairperson shall have such duties and powers as are commonly incident to his or her office and such duties and powers as may be imposed upon him or her by law or as the Board may from time to time delegate by resolution. The Chairperson, in conjunction with the Executive Director, shall establish the agenda for all meetings of the Board, shall preside over all meetings of the Board and shall have such other powers as the members of the Board shall determine. The Chairperson shall report to the Governor and the General Court at least annually as provided in M.G.L. c. 70B, § 1A (c), as amended by Section 2 of Chapter 208 of the Acts of 2004.

2.3 Vice Chairperson

The members of the Board shall annually elect one of its members to serve as Vice Chairperson. The Vice Chairperson shall perform the duties of Chairperson in the absence or incapacity of the Chairperson. In the absence or incapacity of the Vice Chairperson, or in the case of his resignation or death, the members shall elect from their number a new Vice Chairperson. The new Vice Chairperson shall serve until his/her successor is elected. The member serving as Vice Chairperson may be removed from his/her capacity as Vice Chairperson by the members of the Board, with or without cause. The Vice Chairperson may resign by sending a written letter of resignation to the Chairperson.

2.4 Secretary

The Executive Director shall serve as Secretary of the Board, *ex officio*. The Secretary shall have such duties and powers as are commonly incident to his or her office and such duties and powers as may be imposed upon him or her by law or as the Board may from time to time

delegate by resolution. The Secretary shall keep a true and accurate record of the proceedings of the Board and shall be custodian of all books, documents and papers filed by the Board and of its minutes book and official seal. The Secretary and the assistant secretary, if any, shall each have authority to cause copies to be made of all Board minutes and other records and documents of the Authority and to give certification under the official seal of the Authority to the effect that such copies are true copies, and all persons dealing with the Authority may rely upon such certification. The Secretary shall cause notice to be given of all meetings of the Board as required by law or by these Bylaws. In the absence of the Secretary from any meeting of the Board, the assistant Secretary, if any, shall keep a true and accurate record of the proceedings. In the absence of the Secretary or an assistant Secretary, a temporary Secretary, who shall be a member of the Board or employee of the Authority, may be chosen and shall keep a true and accurate record of the proceedings. The Secretary may appoint an assistant secretary or secretaries as he or she shall deem appropriate, none of whom need be members of the Board. Any officer who is not a member of the Board shall be sworn to the faithful performance of his or her duties.

2.5 Other Officers and Duties

The Executive Director may appoint other officers necessary to the functioning of the Authority. In addition to the duties and powers herein set forth, any officer who may be appointed by the Executive Director shall each have such duties and powers as are commonly incident to his or her office and such duties and powers as may be imposed upon him or her by law or as the Executive Director or Board may from time to time delegate. Any officer appointed by the Executive Director shall serve at the pleasure of the Executive Director. Any officer appointed by the Executive Director may resign by sending a written letter of resignation to the Executive Director. Any officer who is not a member of the Board shall be sworn to the faithful performance of his or her duties.

2.6 Executive Director

The Chairperson of the Board shall appoint an Executive Director. The Executive Director shall direct and supervise the administrative affairs, general management and operations of the Authority. The Executive Director shall have all of the duties and powers set forth in M.G.L. c. 70B, § 3, as amended, and such other duties and powers as are commonly incident to his or her office and such duties and powers as may be imposed on him or her by law or by these Bylaws, or as the Board may from time to time specify by resolution or delegate. The Board shall review the salary of the Executive Director at least annually and ensure that the Executive Director's salary is commensurate with the duties of the office.

2.7 Other Employees and Agents

The Executive Director shall employ such personnel as may be necessary, and shall engage such providers of accounting, management, legal, financial, consulting and other professional services as may be necessary or convenient in the judgment of the Executive Director.

2.8 Advisory Board

There shall be a School Building Advisory Board ("Advisory Board"), created by M.G.L. c. 70B, § 3A, that assists the Authority in the development of general policy regarding school building construction, renovation, and maintenance, and other issues as may be requested by the

Authority. The Advisory Board may provide technical advice to the Authority, and any findings or recommendations of the Advisory Board shall be submitted to the Authority for informational purposes and shall not be binding on the Authority or the Board. The Advisory Board shall meet quarterly.

ARTICLE III

3.1 Regular Meetings

Regular meetings of the Board for the transaction of any lawful business of the Authority shall be held monthly, or upon the call of the Chairperson. In the absence of the Chairperson, or upon the failure of the Chairperson to act, a majority of Board members may call a meeting. Meetings of the Board shall be held at the principal office of the Authority or such other place as may be designated in the notice of the meeting. Any regularly scheduled meeting of the Board may be dispensed with or rescheduled by the members at any prior meeting of the Board.

3.2 Annual Meeting

An Annual Meeting of the Board shall be held in the month of September in each year for all purposes, including the election of officers.

3.3 Special Meeting

Special meetings of the Board may be held at any time and at any place within the Commonwealth when called by the Chairperson for the purpose of transacting any business. In the event that the Chairperson fails or refuses to call a special meeting within three business days after written request for such meeting by any three members of the Board, a meeting may be called by said three members. Reasonable notice of any special meeting shall be given to each member of the Board by the Executive Director, as Secretary. Notice shall be deemed sufficient if sent by mail at least 72 hours before the time fixed for the meeting, or if sent by facsimile, electronic mail, telephone or hand delivery at least 24 hours prior to the time fixed for such special meeting. Notice of a special meeting shall include a general summary of the business expected to come before the meeting. At such special meeting, no business shall be considered other than as designated in the notice, but, if all members either are present at a special meeting or have signed a Waiver of Notice and Consent to such special meeting, any and all business may be transacted at such special meeting.

3.4 Notice

Except as otherwise provided in these Bylaws, no notice of a meeting need specify the purpose of the meeting. Notice of the time and place of each meeting shall be given to each member of the Board by the Executive Director, as Secretary of the Board, or the Executive Director's designee, at least forty-eight hours (including Saturdays but not Sundays or legal holidays) prior to the time of such meeting. Notice of all meetings shall be given by mail, facsimile, or other delivery in writing to each member at their last known business or residential address, or in person by telephone or by handing the member a written notice. Whenever any notice is required, a waiver thereof in writing, signed by the person entitled to such notice, whether before or after the time of event noticed, shall be deemed equivalent to timely and effective notice and shall be retained with the records of the meeting. Public notice of meetings shall be given by the

Executive Director, as Secretary of the Board, in accordance with the provisions of M.G.L. c. 30A, §§ ~~18-25~~~~11A-1~~^{1/2} (the “Open Meeting Law”).

3.5 Transaction of Business

Except as otherwise provided in these Bylaws, at any meeting the Board may consider and act upon any business described in the notice of the meeting and any additional business if no member present objects to such consideration or action prior to adjournment.

3.6 Conduct of Meetings

Meetings of the Board shall be conducted in accordance with the M.G.L. c. 30A, §§ ~~11A-1~~^{1/2}~~18-25~~, as amended from time to time. Meetings shall be open to the public, except as otherwise provided in said statute.

3.7 Quorum

Four members of the Board shall constitute a quorum, and the affirmative vote of four members shall be necessary and sufficient for any action taken by the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all the rights and duties of the Authority. In the absence of a quorum, the Chairperson may recess a meeting to some other time or until a quorum is obtained.

3.8 ~~Participation by Telephone or Telecommunications Device~~ Remote Participation

If a quorum of the members of the Board is physically present at a meeting of the Board, one or more other members may participate by means of a conference telephone or ~~similar~~ other communications equipment whereby all persons participating in or attending the meeting can speak to and hear each other. ~~The use of remote participation by a Board member shall comply with the requirements of 940 CMR 29.10. A board member must be physically present at a meeting of the Board, however, to be eligible to vote on any matter considered by the Board.~~

3.9 Action by Consent

Any action required or permitted to be taken in any meeting of the Board may be taken without a meeting if all of the Board’s members consent to the action in writing and the written consents are filed with the records of the minutes of the meetings of the Board. Such consents shall be treated for all purposes as a vote at a meeting and shall be ratified by the Board at the next meeting of the Board.

3.10 Delegation to Authorized Individuals or Committees

The Board may delegate any and all things necessary or convenient to carry out or perform actions authorized or taken by the Board in the exercise of its powers to any one or more members, officers, the Executive Director, or employees of the Authority.

ARTICLE IV

4.1 Committees

The Board may create and define the duties of standing and temporary committees for any purpose. The Chairperson of the Board shall appoint the chairpersons and members of any such committees. Committees shall report regularly on their activities to the members of the Board.

Deliberations of a committee shall not diminish the requirement that four members shall constitute a quorum necessary for actions of the Board as provided herein.

4.2 Standing Committees

The Board shall create standing committees. Members of the standing committees shall be members or officers of the Board. Committee chairs must be members of the Board. These standing committees shall have all of the powers and duties as determined by the Board.

ARTICLE V

5.1 Indemnification by the Authority

To the extent permitted by law, the Authority shall and hereby does indemnify and hold harmless each person who has served, serves or shall serve at any time as a member, officer or employee of the Authority, or member of (a) the Authority's Owner's Project Manager Review Panel, (b) the Authority's Designer Selection Panel, excluding the three members of the Designer Selection Panel representing the Eligible Applicant, or (c) any other panel or person appointed for an official purpose by the directors or officers of the Authority, at the discretion of the Executive Director, (all collectively referred to herein as "Panel member"), against any liability, loss, damage cost or expense, including, but not limited to, all amounts paid in satisfaction of judgments or as fines and penalties, and counsel fees and disbursements, reasonably incurred by him or her in connection with the defense or disposition of, or otherwise in connection with or resulting from, any claim, action, suit, or other proceeding, whether civil or criminal, administrative or investigative, before any court or administrative or legislative or investigative body, threatened or brought against such person, or in which he or she may be involved as a party or otherwise, by reason of any action alleged to have been taken or omitted by him or her as a member, officer or employee, or Panel member, whether or not he or she continues to be a member, officer or employee, or Panel member at the time of incurring such costs and expenses, including amounts paid or incurred by him or her in connection with the reasonable settlement of any claim, action, suit or proceeding, provided that no person shall be so indemnified in relation to any matter which has been disposed of through a settlement or compromise payment by such person, except with the approval of a court of competent jurisdiction or of four disinterested members of the Board. Any rights to reimbursement and indemnification granted under this Article to any member, officer or employee, or Panel member shall not be exclusive of other indemnification rights arising under any by-law, agreement, vote of members or otherwise and shall extend to the heirs and legal representatives of such member, officer, or employee, or Panel member. No such reimbursement or indemnification shall be provided for any person with respect to any action, suit or proceeding as to which the person shall have been finally adjudicated in any such proceeding to have been guilty of, or liable for, willful dishonesty or intentional violations of law in connection with the matter with respect to which indemnification is to be made. Reimbursement or indemnification under this Article may in the discretion of the Board include payment by the Authority of costs and expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition upon receipt of an undertaking by the person indemnified to repay such payment if he or she shall be adjudicated not to be entitled to indemnification under this Article. Nothing in this Article is intended to, or shall prevent a settlement by the Authority prior to final adjudication of any claim, including claims for reimbursement or indemnification under this Article, against the Authority when such

settlement appears to be in the best interest of the Authority. The provisions of this Article shall be binding on the Authority to the same extent as if they were agreed to in a written contract between the Authority and each person for whom indemnification is provided under this Article. No member, officer, or employee of the Authority, or Panel member shall be liable to anyone for making any determination as to the existence or absence of liability of the Authority under this Article or for making or refusing to make any payment under this Article in reliance upon the advice of counsel. The indemnification herein provided shall apply only so long as the defense of any proceeding as to which indemnification is claimed is made by an attorney approved by the Authority or by an attorney obligated under the terms of an insurance policy to defend against such proceeding.

5.2 Insurance

The Authority shall have power to purchase and maintain insurance on behalf of any present or past member, officer, employee or other agent of the Authority or any person or entity who is or was serving at the request of the Authority as a director, officer, employee, or agent of another organization in which the Authority has an interest, against any liability incurred by him, her or it in any such capacity or arising out of his, her or its status as such, whether or not the Authority would have the power to indemnify him her or it against such liability.

5.3 Personal Liability

The members, officers and employees of the Authority shall not be personally liable as such on the Authority's contracts, or for torts not committed or directly authorized by them, or for any other debt, liability or other obligation of the Authority. All persons, corporations, or other entities extending credit to, contracting with, or having any claim against, the Authority may look only to the funds and property of the Authority for the payment of any such contract or claim or for the payment of any debt, damages, judgment or decree or for any money that may otherwise become due or payable to them from the Authority.

ARTICLE VI

6.1 Amendment

These Bylaws may be amended, added to, altered or repealed in whole or in part by resolution of the Board adopted by the affirmative vote of at least four members at any meeting of the Board, provided that the notice to the members shall specify the subject matter of the proposed amendment or the Article or Articles of the Bylaws to be affected.

6.2 Execution of Instruments, Contracts

Except as otherwise provided by law or by resolution of the Board, any contracts or other written instruments or documents may be signed, acknowledged and delivered, in the name of and on behalf of the Authority, by the Chairperson or Executive Director. For contracts valued at more than \$250,000.00, however, the Board must approve said contracts by resolution and specifically authorize the Chairperson or Executive Director to sign any such contracts.

Register of Amendments to the Bylaws¹

Date	Section(s) Affected	Change(s)
5/25/2005	2.1 Board of Directors; 2.6 Executive Director; 2.8 Advisory Board; 3.8 Participation by Telephone or Telecommunications Device; 3.9 Action by Consent; 3.10 Delegation to Authorized Individuals or Committees; 5.1 Indemnification by the Authority; 6.2 Execution of Instruments, Contracts	Creation of a Board of Directors; Requirement for Board to review salary of Executive Director at least annually and ensure that salary is commensurate with duties of the office; Addition of provision regarding Advisory Board to help avoid State Ethics Commission conflicts; Board members may participate in meetings by telephone or telecommunications device if a quorum of the Board is physically present; Board may take action in between Board meetings by unanimous written consent, with approval at subsequent meeting; Authorization for Board to delegate duties to Board members, Executive Director, officers of the Authority, employees of the Authority; Strengthens individual director and employee liability protection; Authorization for Chairperson and Executive Director to execute written instruments and contracts on behalf of the Authority, with Board authorization where contract amount will exceed \$250, 000.
3/25/2009	5.1 Indemnification by the Authority	Indemnification provided in the Bylaws extended to “Panel members,” i.e., Designer Selection Panel and OPM Review Panel.
3/28/2012	3.4 Notice; 3.6 Conduct of Meetings; 3.8 Participation by Telephone or Telecommunications Device (Hereafter referred to as “3.8 Remote Participation”	Updated references to open Meeting Law to reflect changes made by c. 28 of the Acts of 2009; Adoption of Remote Participation pursuant to 940 CMR 29.10.

¹ Originally adopted on September 23, 2004.