

MSBA's MMA Presentation

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Massachusetts School Building Authority

Deborah B. Goldberg

State Treasurer and Receiver-General

Chairperson

James A. McDonald

Chief Executive Officer

Jack McCarthy

Executive Director



Our Mission

Partner with Massachusetts communities to support the design and construction of educationally-appropriate, flexible, sustainable, and cost-effective public school facilities.

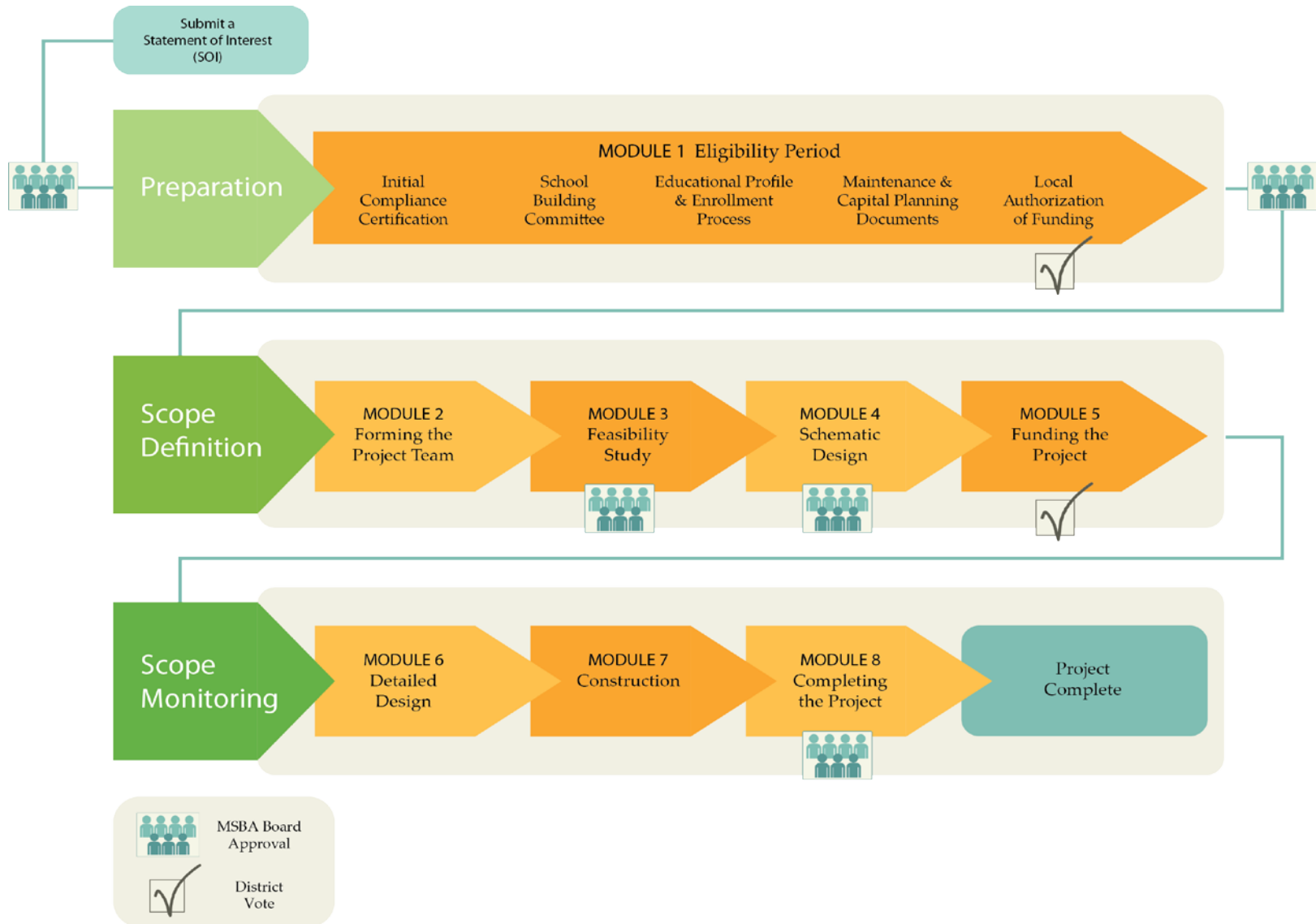


MSBA

- We were created by statute in 2004 and given 2 jobs.
- Clean up the existing liability and create a new, more efficient system.
- Progress Payments
- Enrollment
- After paying the Q1 payments, there is about \$185 million total left to pay in PG and WL payments, from the original \$10.1 billion.



Core Program Process Overview



Community Approval Requires Transparency-Public Records Law and Open Meeting Law

- School Building Committee (“SBC”)- District must establish an SBC for the purpose of generally monitoring an MSBA-funded project. See: MSBA Regulations 963 CMR 2.10(3).
- The SBC will meet on a regular basis to update the community on the status of the project and make decisions related to the project.
- Advise SBC members and local officials on Public Records Law and Open Meeting Law requirements.
- SBC Meetings
 - Advise SBC members on the requirements for posting SBC meeting notices/agendas, SBC meeting minutes, and other OML requirements.
- SBC’s Website
 - SBC will publish project documents and updates on SBC’s website.
 - Advise SBC on what records should be published and whether information should be redacted in accordance with the Public Records Law.
 - Advise SBC members and local officials on responding to requests for public records.

Workforce Participation Goals and Affirmative Marketing Program

- **Workforce Participation Goals for Women and Minorities on Design and Construction Contracts for MSBA-Funded Projects**
 - The MSBA advises districts to consult with local legal counsel to develop local processes and procedures to ensure compliance with the workforce participation goals for minorities and women, including reporting and enforcement procedures. See: MSBA's Project Advisory 66 https://www.massschoolbuildings.org/building/advisories/Project_Advisory_66
- **Affirmative Marketing Program ("AMP")**
 - DCAMM and SDO announced a series of AMP changes that were implemented on July 1, 2020. Please advise local officials on the AMP requirements. See: MSBA's Project Advisory 62 https://www.massschoolbuildings.org/building/advisories/Project_Advisory_62
- **Language from the Project Scope & Budget Agreement and Project Funding Agreement:**
 - The District shall work with its local counsel to ensure that any contracts related to the Project, to which the District is a party, meet the applicable requirements of M.G.L. c. 149, § 44A (2)(g), and contain workforce participation goals for minorities and women, and include the processes and procedures to ensure compliance with the workforce participation goals, including reporting and enforcement provisions.
 - The District shall work with its local counsel to ensure that any contracts related to the Project, to which the District is a party, meet the applicable requirements of M.G.L. c 7c, §6 and M.G.L. c. 7, §61(l), and contain Annual Program Goals for Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE") Participation, and include the processes and procedures to ensure compliance with the Minority and Women Business Goals, including reporting and enforcement provisions.

Local Funding Votes

- MSBA Vote Bulletins issued to inform districts of the requirements for warrant articles, motions, orders, and votes related to the local funding of projects. See: <https://www.massschoolbuildings.org/guidelines/votes>
- Local legal counsel should ensure that all warrant articles, motions, orders, and votes comply with municipal finance law, the regional school agreement (if applicable), and all other applicable laws, regulations, local bylaws, and ordinances.
 - **Please make sure regional school districts are voting in accordance with its regional school agreement and M.G.L. ch. 71, section 16(d) or M.G.L. ch. 71, section 16(n). (Dennis-Yarmouth RSD Case- voted pursuant to 16(n) and it was challenged)**
- If the district is borrowing funds to meet their share of the project costs then bond counsel should review in addition to local legal counsel.
 - **Please make sure districts are following the requirements of M.G.L. ch. 59, section 21C (Proposition 2 1/2), if applicable.**

Common Land Issues With Project Sites

- Districts must have full ownership, control, and exclusive use of the proposed project site before the MSBA will enter into a Project Funding Agreement to reimburse districts for project costs. (See: MSBA's Project Advisory 45 https://www.massschoolbuildings.org/building/advisories/Project_Advisory_45)
 - Eminent Domain- All the terms of the relocation plan and other associated agreements must be met; taking order must be recorded; previous owners/tenants can not have any remaining property interest (Newton project); and previous owners must be compensated for the taking.
 - Article 97 – Advise local officials when the project site includes land protected by Article 97. Projects have been stalled for Article 97 issues (Westfield project).
 - See: Smith v. City of Westfield, 478 Mass. 49, 82 N.E.3d 390 (2017) – The SJC distinguished its 2013 *Mahajan v. Department of Environmental Protection* Opinion and acknowledged that there are circumstances where property may be protected by Article 97 without recorded restrictions.
 - Wetland and/or Conservation Commission Approvals
 - Easements
 - Local Zoning Approvals

Procurement Requirements

- Please work with the district to ensure it is meeting all of the applicable procurement requirements in connection with its project, which may include M.G.L. c. 30 §§ 39F, 39J, 39K, 39N, 39O, 39P and 39R; c. 70B; c. 149; chapter 193 of the Acts of 2004; and all other applicable provisions of federal, state, and local law.
- The Department of Labor Standards ("DLS") is responsible for determining if and when payment of prevailing wages is required. For contracts requiring payment of prevailing wages, the awarding authority (the school district) must request a prevailing wage schedule from DLS at www.mass.gov/dols.
 - In addition, bidders and proposers must agree to comply with the Prevailing Wage Law, as administered by the DLS.

Required State Approvals for MSBA-funded Projects

- Please work with local officials and the project team to make sure the following required state/federal approvals are filed in a timely manner with the appropriate state/federal agency. There may be other state/federal agency approvals that are required depending on the project's scope.
 - Department of Elementary and Secondary Education
 - The special education spaces and program must be approved by DESE.
 - Massachusetts Historic Commission
 - Office of Inspector General
 - OIG must approve the use of a Construction Manager at Risk on a project.
 - Executive Office of Energy and Environmental Affairs
 - MEPA- MA Environmental Policy Act by Energy and Environmental Affairs
 - ENF- Environmental Notification Form
 - EIR- Environmental Impact Report
 - Article 97 Land Disposition Policy

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 - Massachusetts Department of Environmental Protection
 - Massachusetts Department of Transportation
 - Massachusetts Department of Public Health
 - NPDES National Pollutant Discharge Elimination System Notice of Intent approval by the US Environmental Protection Agency
 - Accessibility variances by MA Architectural Access Board

Conclusion

- If you have any questions, please contact Brian Kelley, the MSBA's Senior Associate General Counsel, at brian.Kelley@MassSchoolBuildings.org or (617) 720-4466.