To: Katherine P. Craven
From: Susan M. Flanagan-Cahill
RE: Chapter 68 of the Acts of 2011
Date: July 27, 2011

Section 41 of Chapter 68 of the Acts of 2011, which amends M.G.L. Chapter 29, was included in the budget approved by Governor Deval Patrick on July 11, 2011 and contains provisions that apply to state authorities such as the Massachusetts School Building Authority. The Section requires each authority to establish an audit committee and a compensation committee, and to prepare an annual financial report. In addition, Section 41 establishes provisions governing executive compensation and severance pay, as well as stipulating that each authority is responsible for the health insurance, pension, and other post-employment benefits of state authority employees and retirees.

Many of the provisions required by Section 41 are already in practice at the MSBA. We will implement additional policies as needed to meet the statutory and regulatory requirements once the Secretary of Administration and Finance adopts regulations to carry out this Section. Below is a summary of provisions of Section 41 and some of the relevant practices the MSBA currently has in place.

Provision (a)
State authorities that receive annual appropriations of $500,000 or more shall conduct an annual audit on those funds.
MSBA Relevant Practices:
Although provision (a) does not apply to the MSBA because we do not receive an annual appropriation, the MSBA already conducts an annual, independent audit of the Authority.

Provision (b) (1)
Each public authority must establish an audit committee that meets independently of management at least annually, retains an independent auditor, and hears the results of the annual audit.
MSBA Relevant Practices:
The Administration, Operations, and Finance Subcommittee of the Board serves as the MSBA's audit committee and meets annually with the independent auditor. In the future, we will ensure that this committee meets independently from MSBA management and staff.

Provision (b) (2)
Each public authority must establish a compensation committee that meets independently of management at least annually to evaluate and establish executive compensation and employment benefits and to analyze the compensation for positions with similar functions and responsibilities at other state agencies and authorities as well as private for-profit and nonprofit employers.
MSBA Relevant Practices:
The MSBA Board voted at its November 18, 2009 Board meeting that the Administration, Operations, and Finance Subcommittee of the Board serves as the MSBA's compensation committee. In the future, we will ensure that this committee meets independently from MSBA management and staff.

Provision (b) (3)
Each state authority must prepare an annual financial report disclosing operating revenues and expenses, including the salaries and other forms of compensation for its Executive Director, Officers, Board Members, senior management, and other highly-compensated employees.
MSBA Relevant Practices:
Chapter 70B, the MSBA enabling statute, contains a similar provision, and thus the MSBA already prepares an annual report with summary financial information in addition to our annual audited financial statements. We will work to ensure that these documents meet the requirements of this provision, and any associated regulations, in the future.

Provisions (c) and (d)
These provisions restrict executive compensation for sick, vacation, and other leave time to levels no greater than those granted to a state employee and prohibits severance pay for executives who have been removed for cause. Executives who are removed other than for cause are prohibited from receiving severance pay in excess of three months' salary.
MSBA Relevant Practices:
MSBA policies for vacation and sick time are consistent with these provisions. Other benefits are outlined in our Employee Handbook and subject to review by the Board.

Provision (e)
Each state authority must fully fund the health insurance, pension, and other post-employment benefits of their employees and retirees and will be charged the full actuarial value of their liability by the public employee retirement administration commission (PERAC) and the group insurance commission (GIC).
MSBA Relevant Practices:
The MSBA and its employees cover the cost of employee health insurance in a manner consistent with GIC policies, and employees pay directly into the state pension system pursuant to the provisions of M.G.L. Chapter 32. The MSBA is in the process of establishing an OPEB Trust agreement that will fund the other post-employment benefits of our retirees. Our independent auditor has raised questions about the appropriate level at which to fund this Trust, given the uncertainty surrounding liability for creditable years of service.

Provision (f)
The Secretary of Administration and Finance has been charged with adopting regulations to carry out this Section. Audits and financial reports must be based on generally accepted accounting or government auditing standards and shall be considered a public record.
MSBA Relevant Practices:
The MSBA financial statements are already consistent with generally accepted accounting and government auditing standards.

Provision (g)
Nothing in this Section limits the authority of the Attorney General, Inspector General, State Auditor, or any other state agency.
MSBA Relevant Practices:
N/A