

10557. RESOLUTION 12-24 DECLARING THE OFFICIAL INTENT OF THE DELAWARE RIVER AND BAY AUTHORITY TO REIMBURSE ITSELF FROM THE PROCEEDS OF DEBT FOR CAPITAL EXPENDITURES, CERTAIN PRELIMINARY EXPENDITURES AND COSTS OF ISSUANCE TEMPORARILY FUNDED FROM REVENUES OR OTHER SOURCES

BACKGROUND

WHEREAS, The Delaware River and Bay Authority (the “Authority”) was created as a body politic and an agency of government of the State of Delaware and the State of New Jersey, by virtue of Chapters 145 and 146, Volume 53, Laws of Delaware, approved by the Governor of the State of Delaware July 21, 1961, and Chapter 66 of the Pamphlet Laws of 1961 of the State of New Jersey, approved by the Governor of the State of New Jersey June 3, 1961 (said Chapters 145 and 146 and said Chapter 66 being hereinafter sometimes collectively called the “Original Enabling Legislation”), pursuant to which the State of Delaware and the State of New Jersey entered, subject to the consent of the Congress of the United States of America, into a compact (hereinafter sometimes called the “Original Compact”) creating the Authority; and

WHEREAS, the consent of the Congress of the United States of America was given to the States of Delaware and New Jersey to enter into the Original Compact by a Joint Resolution of the Congress, approved September 20, 1962 (Public Law 87-678, 87th Congress); and

WHEREAS, by virtue of Chapter 252, Volume 67, Laws of Delaware, approved by the Governor of the State of Delaware June 28, 1990, and Chapter 192 of the Pamphlet Laws of 1989 of the State of New Jersey, approved by the Governor of the State of New Jersey October 18, 1989 (said Chapter 252 and said Chapter 192, together with the Original Enabling Legislation being hereinafter sometimes collectively called the “Enabling Legislation”), the State of Delaware and the State of New Jersey entered, subject to the consent of the Congress of the United States of America, into certain amendments to the Original Compact (as so amended and as may be further amended from time to time hereinafter sometimes called the “Compact”); and

WHEREAS, the consent of the Congress of the United States of America was given to the State of Delaware and New Jersey to enter into the Compact by a Joint Resolution of the Congress, approved November 15, 1990 (Public Law 101-565, 101st Congress); and

WHEREAS, by virtue of the Compact and the Enabling Legislation, the Authority’s powers include authorization to plan, finance, develop, construct, purchase, lease, maintain, improve and operate crossings, including bridges, tunnels and ferries and all approaches thereto and connecting and service routes, between the State of Delaware and the State of New Jersey across the Delaware River or Bay at any location south of the boundary line between the State of Delaware and the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said River; and

WHEREAS, the Authority owns, operates and maintains twin bridges spanning the Delaware River from a point between Pigeon Point near the City of Wilmington in the State of Delaware and New Castle in said State to a point near the Salem Canal in the State of New Jersey, together with their approaches, appurtenances and property; and

WHEREAS, the Authority also owns, operates and maintains a public ferry system across Delaware Bay between Cape May in the State of New Jersey and the Town of Lewes in the State of Delaware, including vessels, marine facilities, approaches and connecting and service routes and appurtenances and equipment incidental thereto; and

WHEREAS, the Authority desires to finance with the proceeds of debt the acquisition, construction, improvement, renovation, equipping and design of a portion of the projects (collectively, the "Project") planned to be carried out as part of the [Five (5) Year Strategic Plan], prepared and reviewed in conjuncture with the 2012 Capital Improvement Plan approved by the Board of Commissioners of the Authority ("Board") on April 14, 2012, a copy of which is attached hereto as Exhibit "A" and made a part hereof; and

WHEREAS, the Authority has paid, beginning no earlier than May 19, 2012 and will pay, on and after the date hereof, certain expenditures (the "Expenditures") in connection with the Project; and

WHEREAS, the Authority has determined that those moneys previously advanced no earlier than May 19, 2012 and to be advanced on and after the date of the adoption of this Resolution to pay the Expenditures are available only for a temporary period, and it is necessary to reimburse the Authority for the Expenditures from the proceeds of one or more issues of tax-exempt bonds (the "Bonds"); and

WHEREAS, the Authority intends that this Resolution be determined to be a declaration of official intent under Treasury Regulations §1.150-2 promulgated under the Internal Revenue Code of 1986, as amended ("Code") to reimburse itself with a portion of the proceeds of such Bonds for certain Expenditures in accordance with the code; and

WHEREAS, the Authority will reimburse itself only for capital expenditures, certain preliminary expenditures and certain cost of issuance incurred in connections with the issuance of the Bonds, in each case determined in accordance with the Code; and

WHEREAS, the Authority is not making this declaration of intent to reimburse as a matter of course or in amounts substantially in excess of the amounts expected to be necessary for the Project, and does not have a pattern of failure to reimburse actual original expenditures covered by prior declarations of intent to reimburse, if any;

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE DELAWARE RIVER AND BAY AUTHORITY HEREBY RESOLVE, AS FOLLOWS:

Section 1. Declaration of Official Intent. The Authority hereby declares its intent:

- (a) that the issuance of the Bonds for the Project by the Authority be in an aggregate principal amount reasonably expected not to exceed \$100,000,000;
- (b) that the Authority be reimbursed from the proceeds of the Bonds for the Expenditures with respect to the Project made on and after May 19, 2012 and the Authority reasonably expects on the date of the adoption of this Resolution that it will reimburse the Expenditures with the proceeds of the Bonds;
- (c) that this Resolution be determined to be a declaration of official intent under Treasury Regulations §1.150-2 promulgated under the Code; and
- (d) that the Authority will make a written allocation that evidences the Authority's use of proceeds of the Bonds to reimburse an Expenditure no later than 18 months after the later of the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid.

Section 2. Effective Date. This Resolution shall take effect immediately upon its passage, subject to cancellation by the Governor of the State of Delaware or the Governor of the State of New Jersey within ten (10) business days of the receipt by the respective offices of the Governors of the minutes of the meeting at which this Resolution was adopted.

RESOLUTION 12-24 – EXHIBIT A

<i>Five Year Strategic Plan (x1000) - CROSSINGS</i>									
			2012	2013	2014	2015	2016	Total	
DELAWARE MEMORIAL BRIDGE (DMB)			22,463	22,995	22,770	15,265	13,000	96,493	
CAPE MAY-LEWES FERRY (CMLF)			11,390	12,170	6,250	6,050	7,880	43,740	
THREE FORTS CROSSING (3 FORTS)			10	210	195	10	10	435	
TOTALS			33,863	35,375	29,215	21,325	20,890	140,668	
COMMITTED									
DMB			11,683	1,350	300	0	0	13,333	
CMLF			1,200	40	30	20	20	1,310	
UNCOMMITTED									
DMB			10,780	21,645	22,470	15,265	13,000	83,160	
CMLF			10,200	12,340	6,415	6,040	7,870	42,865	

<i>Delaware Memorial Bridge</i>		Current Working						2012-2016 CIP Total
Annual Projects		Estimate	2012	2013	2014	2015	2016	Total
Deck Resurfacing	Committed							
	Uncommitted	1,000	200	200	200	200	200	1,000
Miscellaneous Steelwork Repairs	Committed							
	Uncommitted	7,000	2,000	2,000	1,000	1,000	1,000	7,000
Miscellaneous Capital Equipment	Committed							
	Uncommitted	3,750	750	750	750	750	750	3,750
Minor Capital Maintenance	Committed							
	Uncommitted	1,165	545	320	100	100	100	1,165
Automation/Telecom Upgrades	Committed							
	Uncommitted	4,100	1,705	990	680	575	150	4,100
Totals			5,200	4,260	2,730	2,625	2,200	17,015

<i>Cape May-Lewes Ferry</i>		Current Working						2012-2016 CIP Total
Annual Projects		Estimate	2012	2013	2014	2015	2016	Total
Minor Capital Equipment	Committed							
	Uncommitted	1,000	200	200	200	200	200	1,000
Minor Capital Maintenance - Landside	Committed							
	Uncommitted	1,290	865	125	100	100	100	1,290
Maintenance & Dry Docking	Committed							
	Uncommitted	12,865	2,295	2,930	2,230	2,510	2,900	12,865
Dredging	Committed	660	660					660
	Uncommitted	2,000	400	400	400	400	400	2,000
Automation/Telecom Upgrades	Committed							
	Uncommitted	1,390	415	275	250	250	200	1,390
Totals			4,835	3,930	3,180	3,460	3,800	19,205

<i>Three Forts Crossings</i>		Current Working						2012-2016 CIP Total
Annual Projects		Estimate	2012	2013	2014	2015	2016	Total
Minor Capital Maintenance	Committed							
	Uncommitted	135	10	10	95	10	10	135
Three Forts Crossings Projects								
Floating Dock Replacement - Delaware City		275						300
	Pre-Construction U	50		50				
	Construction U	250		150	100			

<i>Cape May-Lewes Ferry</i>		Current Working						2012-2016 CIP Total
Cape May-Lewes Ferry Projects		Estimate	2012	2013	2014	2015	2016	
Dolphins/Misc. Fendering Impr./Lighthouse		7,900						7,500
	Pre-Construction C	650	100					
	CMLF-06-03R Construction C	3,650	400					
	Construction U	7,000	1,000	1,000	1,000	2,000	2,000	
Passenger Loader Walkways		6,750						6,500
	Pre-Construction C	250						
	Construction U	6,500	2,500	4,000				
Rehabilitation of CM Approach Roads (Phase I)		6,300						2,500
	Pre-Construction C	800						
	Construction U	2,500	2,000	500				
Pier/Bulkhead Rehabilitation		2,200						2,200
	Pre-Construction U	100	100					
	Construction U	2,100		1,100	1,000			
Police Operations Center Upgrade - Cape May		175						175
	Construction U	175	175					
Motor Vessel Program		84,100						2,000
	Pre-Construction U	2,000		1,350	650			
	Construction U	82,100						
Energy Conservation Measures		910						910
	Various HVAC/Electrical Projects Pre-Construction C/U	150	40	40	30	20	20	
	Construction U	760	240	250	140	70	60	
Approach Roads Rehab (Lewes)(CM Phase II)		9,750						2,750
	Pre-Construction U	750			250	500		
	Construction U	9,000					2,000	
TOTALS			6,555	8,240	3,070	2,590	4,080	24,535

A motion to approve Resolution 12-24 was made by Commissioner Smith, seconded by Commissioner Van Sant, and approved by a roll call vote of 12-0.

Resolution 12-24 Executive Summary Sheet

Resolution: 12-24

Committee: Budget & Finance

Committee Date: July 17, 2012

Board Date: July 17, 2012

Purpose of Resolution: Adoption of Resolution 12-24 provides the Authority the ability to reimburse itself from tax-exempt bond proceeds for expenditures made during the period beginning on May 19, 2012 and ending on a date occurring not later than 18 months after the date of the original expenditure, subject to specific exceptions.

Background for Resolution: Pursuant to Treasury Regulation Section 1.150-2(d) of the Internal Revenue Code of 1986, issuers must timely adopt an official intent that an original expenditure will be reimbursed with the proceeds of a subsequent reimbursement bond resolution. Adoption of the reimbursement resolution allows the Authority to evaluate its financial and capital needs with future market conditions to best optimize a future bond issuance.