



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

SUBJECT: NJEDA/Cigarette Tax Revenue Refunding Bonds - Post Issuance Tax Compliance

DATE: July 30, 2012

SUMMARY OF PROPOSED RESOLUTION

The Authority is currently being asked to authorize the Chief Executive Officer to develop, in consultation with Bond Counsel, the State Attorney General, the Office of Public Finance and the State Treasurer's Office, post issuance tax compliance procedures as required by the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder with respect to the Authority's \$1,041,745,000 Cigarette Tax Revenue Refunding Bonds, Series 2012 (the "Bonds") or any future bonds that may be issued to refund the Bonds.

BACKGROUND

The Bonds were issued for the purposes: (i) refunding all of the Authority's then-Outstanding Cigarette Tax Revenue Bonds, Series 2004 (the "Prior Bonds") and (ii) paying costs associated with the issuance of the Bonds. The proceeds of the Prior Bonds were used by the State, in part, to pay certain working capital expenditures of the State. In connection with the issuances of the Prior Bonds and the Bonds, the State agreed to undertake an ongoing federal tax compliance requirement to monitor and apply any future State surpluses of Available Amounts (as such term is defined in each of the tax certificate for the Prior Bonds and the tax certificate for the Bonds (each a "Tax Certificate")), to the extent and as set forth in the respective Tax Certificate.

The Internal Revenue Service ("IRS") has recently instituted a requirement that the issuer indicate on the Form 8038 G that it submits to the IRS for each tax-exempt bond issue whether it has written post issuance compliance procedures in place to assure compliance with the provisions of the Code and the regulations promulgated thereunder. Post-issuance compliance procedures assist an issuer in preserving the tax-exempt status of its outstanding tax-exempt bonds by establishing procedures for: (1) identifying uses that may constitute private use; (2) managing and tracking changes in use, (3) accomplishing remedial action when necessary; and (4) assuring compliance with the arbitrage requirements of the Code.

The Authority will be required to submit a Form 8038 G to the IRS by August 15, 2012, for the Bonds, disclosing whether the Authority has written procedures for post issuance tax compliance.

The Attorney General's Office selected Wolff & Samson PC to serve as Bond Counsel ("Bond Counsel") in connection with the issuance of the Bonds through a competitive RFP/RFQ process in compliance with Executive Order No. 26. The Attorney General's Office has asked Bond Counsel to provide advice to and assist the EDA in preparing its post issuance tax compliance procedures for the Bonds. EDA staff has been working with Bond Counsel, the State Attorney General, the Office of Public Finance and the State Treasurer's Office in this regard. In addition to the purposes described above, the procedures will set forth the responsibilities of the Authority as issuer of the Bonds and the State which received the proceeds of the Prior Bonds and the Bonds from the Authority. In order to have procedures in place when the Form 8038 G is submitted to the IRS on or before August 15, 2012, the board is being asked to approve the resolution described below.

The State Treasurer, on behalf of the State, is expected to adopt the same written post issuance tax compliance procedures.

RECOMMENDATION

The Board is requested to approve the Resolution authorizing the Chief Executive Officer or her designee to develop, in consultation with Bond Counsel, the State Attorney General, the Office of Public Finance and the State Treasurer's Office, adopt on behalf of the Authority, and amend from time to time post issuance tax compliance procedures as required by the Code and the regulations promulgated thereunder with respect to the Bonds or any future bonds issued to refund the Bonds, authorizing the Chief Executive Officer of the Authority to appoint a Tax Compliance Officer for the Authority with respect to the Bonds, which may be the Chief Executive Officer, and authorizing any of the Chairman, Vice Chairman, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Director, or any other officer of the Authority with the power to execute contracts pursuant to delegated authority to take any additional actions which are necessary or desirable to achieve the purposes of the resolution, including without limitation the entry into a memorandum of understanding or other arrangement with the State, upon advice of Bond Counsel and the State Attorney General.



Prepared by: Teresa Wells



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

SUBJECT: NJEDA/School Facilities Construction Bonds

DATE: July 30, 2012

SUMMARY OF PROPOSED FINANCING

The Authority is currently being asked to approve the issuance of one or more series of the 2012 School Facilities Construction Bonds (the “2012 Series Bonds”), the 2012 School Facilities Construction Refunding Bonds (the “2012 Refunding Bonds”) and the 2012 School Facilities Construction Notes (the “2012 Series Notes”) (collectively, the “2012 Series Obligations”) and various related actions described below. The 2012 Series Obligations (not to exceed \$425,000,000) will be used to (i) provide financing for the costs of the School Facilities Projects; (ii) refund a portion of the prior School Facilities Construction Bonds (“Prior Bonds”) and (ii) pay a portion of the costs of issuance of the 2012 Series Obligations.

BACKGROUND

The Educational Facilities Construction and Financing Act, L. 2000, c. 72, as amended and supplemented by L. 2007, c. 137 and L. 2008, c. 39 (the “Act”), establishes a comprehensive program for the design, renovation, repair and new construction of primary and secondary schools throughout the State (“School Facilities Projects”) and the refinancing of the costs of the various School Facilities Projects. Initially, the Act authorized the Authority to issue up to \$8.6 billion of State contract bonds to finance the acquisition, construction and/or renovations of K-12 School Facilities Projects throughout the State. Thereafter, the Act was amended and supplemented in 2008 by L. 2008, c. 39 to authorize the Authority to issue up to an additional \$3.9 billion bonds for the funding of School Facilities Projects.

Since April 2001, the Authority has issued twenty seven (27) series of tax-exempt and taxable School Facilities Construction Bonds and Notes totaling \$8,648,954,000 under the Act. Additionally, the Authority has issued seventeen (17) series of refunding bonds in the par amount of \$6,684,505,000 that restructured and refunded a portion of several Series of tax-exempt and taxable bonds and a series of tax-exempt notes, previously issued under the Act.

In conjunction with the State’s overall management of the School Facilities Construction Bond Program the Authority is issuing the 2012 Series Obligations to (i) finance the costs of School Facilities Projects, including funding the grants to be made pursuant to Section 15 of the Act and (ii) refund one or more outstanding Series of the School Construction Bonds to provide debt service

savings in Fiscal Year 2013. The proposed plan of finance includes the current refunding of certain fixed rate maturities of the School Facilities Construction Bonds, Series 2011 FF (taxable) and 2011 HH (taxable) ranging in interest of 2.143% and 2.382%.

APPROVAL REQUEST

The Members are requested to approve the adoption of the Twenty-Ninth Supplemental School Facilities Construction Bond Resolution (the "Twenty-Ninth Supplemental Resolution") authorizing the issuance of one or more series of the 2012 Series Bonds in the amount not to exceed \$161,880,000, 2012 Series Notes in the amount not to exceed \$238,120,000 and 2012 Refunding Bonds in the amount not to exceed \$25,000,000 (for total aggregate amount not to exceed \$425,000,000). The 2012 Series Obligations will be secured by the State Contract with the State Treasurer dated March 21, 2001 (as amended by Amendment No.1 to the State Contract dated April 22, 2010, to implement the funding provisions of the 2008 Amendment to the Educational Facilities Act). Pursuant to the State Contract, payments will be directly remitted by the State Treasurer to pay the debt service on the School Facilities Construction Bonds and Notes subject to appropriation by the State Legislature for this purpose.

The 2012 Series Obligations may be issued as fixed rate and/or variable interest rate, tax-exempt or taxable bonds or notes, and subject to the following parameters, all as determined by an Authorized Officer of the Authority, in consultation with the State Treasurer, Office of Public Finance, Attorney General's Office and Bond Counsel: (i) the final maturity of any of the 2012 Series Bonds will not exceed 30 years and the final maturity of any of the 2012 Series Notes will not exceed 85 months; (ii) the final maturity of any 2012 Refunding Bonds will not exceed 10 years; (iii) the true interest cost for fixed rate bonds or notes will not exceed 6%, if tax-exempt, and 8%, if taxable; (iv) the maximum interest rate on any variable interest rate bond or notes will not exceed 12%.

The Board is being asked to approve certain actions and delegation of actions to an Authorized Officer with information provided by the State Treasurer, Bond Counsel, the State Attorney General and in consultation with, the Office of Public Finance, Bond Counsel and the Attorney General's Office, as applicable and as approved by the State Treasurer, which actions are more fully set forth in the Twenty-Ninth Supplemental Resolution, which is incorporated here by reference, and will be memorialized in one or more Series Certificates, and may include, without limitation:

- To determine the date of issuance, sale and delivery, the maturity date, the principal amount, the variable rate interest provisions and the redemption provisions of each Series of 2012 Series Obligations in accordance with the parameters set forth above;
- To determine whether each Series of the 2012 Series Obligations shall bear interest at fixed or variable interest rates in accordance with the parameters set forth above;
- To determine whether each Series of the 2012 Series Obligations shall be issued as tax-exempt or taxable obligations;

- To select and appoint any additional co-managers and/or underwriters for the 2012 Series Obligations upon recommendation of the State Treasurer, utilizing Treasury's RFQ/RFP process in accordance with Executive Order No. 26 and Executive Order No. 37;
- To purchase one or more municipal bond insurance policies with respect to any or all of the maturities of the 2012 Series Obligations if determined that municipal bond insurance is necessary, available or desired in order to achieve the economic objectives of the financing;

In exercising the Authority's discretion to approve specific transactions authorized under the Twenty-Ninth Supplemental Resolution, it is anticipated that the Authorized Officers of the Authority will make decisions on behalf of the Authority in consultation with the Treasurer and will select the option(s) that are in the best interests of the State and meet the objectives of the plan of finance (i) to finance the costs of the School Facilities Projects and (ii) to provide debt service savings in Fiscal Year 2013.

Pursuant to Subchapter 6.7 (Fee Waiver) of the Authority's rules, the Chief Executive Officer, with the approval of the Members, may waive, postpone or decrease the Authority's closing fees for State projects in accordance with the directive of the State Treasurer. Under existing regulations, the Authority bond closing fee for the 2012 Refunding Bonds would be \$300,000. In consultation with the State Treasurer, the Members are requested to approve the reduction of the bond closing fee for the 2012 Series Obligations to no less than half the regulatory bond closing fee.

Professionals for the 2012 Series Obligations were selected in compliance with Executive Order No. 26. Saul Ewing LLP was selected as Bond Counsel through a competitive RFP/RFQ process performed by the Attorney General's Office on behalf of Treasury for State appropriation backed transactions. Through Treasury's competitive RFP/RFQ process, RBC Capital Markets, LLC was selected as senior manager. U.S. Bank National Association will serve as Trustee, Paying Agent, Registrar, Dissemination Agent, Calculation Agent and Escrow Agent. The Twenty-Ninth Supplemental Resolution will also authorize Authority staff to take all necessary actions incidental to the issuance of the 2012 Series Obligations subject to the State Treasurer's approval, including without limitation, the selection of additional underwriters and bond insurers, if any, as described above.

RECOMMENDATION

Based upon the above description, and subject to the criteria set forth above, the Members are requested to: (i) approve the adoption of the Twenty-Ninth Supplemental Resolution authorizing the issuance of the 2012 Series Bonds, 2012 Series Notes and 2012 Refunding Bonds in the total aggregate principal amount not to exceed \$425,000,000, as well as other matters in connection with the issuance and sale thereof and otherwise described above; (ii) approve several actions and delegation of actions to an Authorized Officer as may be necessary or advisable in order to issue the 2012 Series Obligations and to undertake the other transactions described in (i) above on terms which are in the best interest of the State; (iii) authorize the use of the aforementioned professionals; (iv) reduce the Authority's closing fee to no less than half the regulatory bond closing fee on the

2012 Series Obligations; and (v) authorize Authority staff to take all necessary actions incidental to the issuance of the 2012 Series Obligations; subject to final review and approval of all terms and documentation by Bond Counsel and the Attorney General's Office.



Prepared by: Teresa Wells

MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

SUBJECT: NJEDA/School Facilities Construction Qualified Zone Academy Bonds, 2001 Series B and 2003 Series E, Collateralization of Escrow Fund Forward Delivery Agreements

DATE: July 30, 2012

SUMMARY OF PROPOSED RESOLUTION

The Authority is currently being asked to authorize the Chairman, the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, the Director, or any officer of the Authority with the power to execute contracts pursuant to delegated authority (each being an "Authorized Officer") to consent to the collateralization by Bank of America, N.A. (the "Bank") of separate Escrow Fund Forward Delivery Agreements (the "Forward Delivery Agreements") entered into in connection with the Authority's School Facilities Construction Qualified Zone Academy Bonds, 2001 Series B and 2003 Series E (the "Bonds"). The proposed resolution (1) provides the Authority's consent to the delivery of collateral by the Bank to secure its obligations under the Forward Delivery Agreements, (2) approves the Custody Agreements for the delivery, custody and valuation of collateral and authorizes any Authorized Officer to execute the Custody Agreements in substantially the form presented to the Board with such changes as the Authorized Officer may deem advisable on advice of Bond Counsel and the Attorney General, and (3) authorizes such other action as may be necessary or desirable to achieve the purposes of the resolution.

BACKGROUND

For each Series of the Bonds, the Authority entered into an Escrow Deposit Agreement pursuant to which the Authority deposits in an Escrow Fund held by the Escrow Agent annual deposits for investment under the Forward Delivery Agreements. The Escrow Agent uses the amounts received from the investments under the Forward Delivery Agreement, together with any moneys in the Escrow Fund, to pay the principal of the Bonds at maturity.

Pursuant to the Forward Delivery Agreements, the Escrow Agent agreed to purchase from time to time with funds available under the Escrow Deposit Agreements, securities delivered by or on behalf of the Bank and to pay the Bank a purchase price equal to the price that will produce a rate of return on such security from the date of delivery to maturity equal to a guaranteed rate.

Under the Forward Delivery Agreements, if the long-term senior unsecured debt rating of the Bank falls below “A” by S&P or “A1” by Moody’s (and for the 2003 Forward Delivery Agreement, “A” by Fitch) (a “Downgrade Event”), then the Bank, at its option, (i) with the consent of the Authority, shall deliver collateral to the Escrow Agent or a third party custodian, as security for the Bank’s obligations under the Forward Delivery Agreements, (ii) assign its right, title and interest in the Forward Delivery Agreements to a provider reasonably acceptable to the Authority, or (iii) provide a written guaranty of its obligations under the Forward Delivery Agreements from a financial institution reasonably acceptable to the Authority.

On June 29, 2012, July 2, 2012 and July 23, 2012, the Bank notified the Authority that a Downgrade Event occurred and that it has elected, subject to the Authority’s consent, to deliver collateral to U.S. Bank National Association, as custodian (in such capacity, the “Custodian”) to secure the Bank’s obligations under the Forward Delivery Agreements. Upon consent by the Authority, the Custody Agreements will be executed and delivered to meet the requirements of the Forward Delivery Agreements for the delivery, custody and valuation of collateral to secure the Bank’s obligations under the Forward Delivery Agreements.

APPROVAL REQUEST

The Board is requested to approve the Resolution (1) to provide the Authority’s consent to the delivery of collateral by the Bank to secure its obligations under the Forward Delivery Agreements, (2) to approve the Custody Agreements and to authorize any Authorized Officer to execute the Custody Agreements in substantially the form presented to the Board with such changes as the Authorized Officer may deem advisable on advice of Bond Counsel and the Attorney General, and (3) to authorize such other action as may be necessary or desirable to achieve the purposes of the resolution.

Saul Ewing LLP was selected as Bond Counsel through a competitive RFP/RFQ process performed by the Attorney General’s Office on behalf of Treasury for State appropriation backed transactions.

RECOMMENDATION

Based upon the above description, and subject to the criteria set forth above, the Members are requested to approve the adoption of the resolution consenting to the collateralization, authorizing the execution of the Custody Agreements, and authorizing Authority staff to take such other actions as may be necessary or desirable to achieve the purposes of the resolution, subject to final review and approval of all terms and documentation by Bond Counsel and the Attorney General's Office.



Prepared by: Teresa Wells