

9887. RESOLUTION 08-51 DECLARING THE OFFICIAL INTENT OF THE DELAWARE RIVER AND BAY AUTHORITY TO REIMBURSE ITSELF FROM THE PROCEEDS OF DEBT FOR CAPITAL 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 Capital Improvement Program], approved by the Board of Commissioners of the Authority ("Board") on December 18, 2007, 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 September 5, 2008 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 September 5, 2008 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"); and

WHEREAS, the Authority will reimburse itself only for capital expenditures 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 \$50,000,000;
- (b) that the Authority be reimbursed from the proceeds of the Bonds for the Expenditures with respect to the Project made on and after September 5, 2008 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 08-51 – EXHIBIT A

Five Year Capital Improvement Program PROJECTED PAY OUTS FOR YEARS (x \$1,000)

	2008	2009	2010	2011	2012	Total
DELAWARE MEMORIAL BRIDGE (DMB)	25,115	24,960	28,775	19,000	15,000	112,850
CAPE MAY-LEWES FERRY (CMLF)	7,735	9,800	9,140	12,000	21,375	60,050
THREE FORTS CROSSING (3 FORTS)	160	150	150	25	25	510
TOTALS	33,010	34,910	38,065	31,025	36,400	173,410

Delaware Memorial Bridge Projects

		PROJECTED PAY OUTS FOR YEARS (x \$1,000)					
		2008	2009	2010	2011	2012	Total
FY	ANNUAL PROJECTS						
A-1	Deck Resurfacing - DMB/Ove	1,000	1,000	1,100	1,100	1,200	5,400
A-2	Miscellaneous Steelwork Repa	50	500	1,000	1,000	1,000	3,550
A-3	Minor Capital Equipment - DM	600	600	600	600	600	3,000
A-4	Minor Capital Improvements/E	500	350	300	300	300	1,750
A-5	Miscellaneous GEC Services -	100	100	100	100	100	500
A-6	Toll Plaza Improvements/Elec	500	1,000	5,000	5,000	500	12,000
FY	PROJECTS						
02-1	Phase II - DE Appr., Wid., Rep	500					500
05-1	Expansion Joint Rehabilitation	700					700
05-2	Misc. Steelwork/Elevator Repl	2,500	5,000	2,400			9,900
05-3	Phase III - DE Appr., Widenin	6,000	11,000	9,500			26,500
05-4	Phase IV - DE Appr., Widenin	25	100	1,400	4,000	7,500	13,025
06-1	Steelwork Full Overcoat Rehal	2,600	2,000	2,500	2,500	1,600	11,200
07-1	I-295 Bridge Overpass Replac	6,200	1,000				7,200
08-1	Automation/Telecommunicatio	2,000	500	500	500	850	4,350
08-2	Security Enhancements - DMB	75	75	75	100	100	425
08-3	Environmental Improvements/	15	85	250	250		600
08-4	Equipment Storage Building/W	300	700				1,000
08-5	Server Room Renovation	600					600
08-6	East Toll/Admin Building Ren	50	150	900			1,100
08-7	Traffic Management System -	800	200				1,000
09-1	Police Operations Center Upgrade - DMB		50	250			300
09-2	Cable Inspection - DMB		250	2,500	3,000		5,750
09-3	1st Structure Improvement Program - DMB		300	400	500	1,000	2,200
11-1	River Pier Rehabilitation - DMB				50	250	300
	TOTALS	25,115	24,960	28,775	19,000	15,000	112,850

Cape May-Lewes Ferry Projects

		PROJECTED PAY OUTS FOR YEARS (x \$1,000)					
		2008	2009	2010	2011	2012	Total
FY	ANNUAL PROJECTS						
A-1	Minor Capital Equipment - CM	300	300	300	300	300	1,500
A-2	Minor Capital Improvements/E	500	500	300	300	300	1,900
A-3	Miscellaneous Vessel Improve	2,000	1,500	1,500	1,500	1,500	8,000
A-4	Miscellaneous GEC Services -	75	75	75	75	75	375
FY	PROJECTS						
05-1	Rehabilitation of Approach Rd	1,200	2,100	300	100	1,500	5,200
05-2	Telecommunications Upgrades	575					575
06-1	Marine Master Plan - CMLF	100					100
06-2	Pier/Bulkhead Rehabilitation -	100	1,200	900			2,200
07-1	Security Enhancements - CML	150	50	50	50	50	350
07-2	Dredge Disposal Site Upgrade	375					375
07-3	Dredging - CMLF	300	300	300	1,100	300	2,300
07-4	Dolphins/Misc. Fendering Imp	1,200	1,300				2,500
07-5	Toll Collection System (AFOS)	300					300
08-1	Police Operations Center Upg	50	250				300
08-2	Environmental Improvements/	10	25	115	200	200	550
08-3	Freeman Highway Bridge Reh	300	1,000	2,000			3,300
08-4	Passenger Loader Walkways -	50	350	1,700	1,700	1,700	5,500
08-5	Vehicle Storage/Maintenance	150	600	600	50	200	1,600
09-1	Food Service/Retail Point of Sale Systems C		250				250
10-1	Vessel Improvement Program (x2) - CMLF			400	600	9,000	10,000
10-2	New Vessels (x2) - CMLF			600	6,000	6,000	12,600
11-1	Transfer Bridges Rehabilitation and Repainting - CMLF				25	100	125
12-1	Parking and Staging Area Rehabilitation - Lewes					150	150
	TOTALS	7,735	9,800	9,140	12,000	21,375	60,050

Cape May-Lewes Ferry Projects

		PROJECTED PAY OUTS FOR YEARS (x \$1,000)					
		2008	2009	2010	2011	2012	Total
FY	ANNUAL PROJECTS						
A-1	Minor Capital Equipment - Cape May	300	300	300	300	300	1,500
A-2	Minor Capital Improvements/Lewes	500	500	300	300	300	1,900
A-3	Miscellaneous Vessel Improvements	2,000	1,500	1,500	1,500	1,500	8,000
A-4	Miscellaneous GEC Services - Lewes	75	75	75	75	75	375
FY	PROJECTS						
05-1	Rehabilitation of Approach Road - Lewes	1,200	2,100	300	100	1,500	5,200
05-2	Telecommunications Upgrades - Lewes	575					575
06-1	Marine Master Plan - CMLF	100					100
06-2	Pier/Bulkhead Rehabilitation - Lewes	100	1,200	900			2,200
07-1	Security Enhancements - CMLF	150	50	50	50	50	350
07-2	Dredge Disposal Site Upgrade - Lewes	375					375
07-3	Dredging - CMLF	300	300	300	1,100	300	2,300
07-4	Dolphins/Misc. Fendering Improvements - Lewes	1,200	1,300				2,500
07-5	Toll Collection System (AFOS) - Lewes	300					300
08-1	Police Operations Center Upgrade - Lewes	50	250				300
08-2	Environmental Improvements/Restoration - Lewes	10	25	115	200	200	550
08-3	Freeman Highway Bridge Rehabilitation - Lewes	300	1,000	2,000			3,300
08-4	Passenger Loader Walkways - Lewes	50	350	1,700	1,700	1,700	5,500
08-5	Vehicle Storage/Maintenance - Lewes	150	600	600	50	200	1,600
09-1	Food Service/Retail Point of Sale Systems - Lewes		250				250
10-1	Vessel Improvement Program (x2) - CMLF			400	600	9,000	10,000
10-2	New Vessels (x2) - CMLF			600	6,000	6,000	12,600
11-1	Transfer Bridges Rehabilitation and Repainting - CMLF				25	100	125
12-1	Parking and Staging Area Rehabilitation - Lewes					150	150
	TOTALS	7,735	9,800	9,140	12,000	21,375	60,050

Three Forts Crossing Projects

		PROJECTED PAY OUTS FOR YEARS (x \$1,000)					
		2008	2009	2010	2011	2012	Total
FY	ANNUAL PROJECTS						
A-1	Miscellaneous Capital Improvements - Delaware City	160	25	25	25	25	260
FY	PROJECTS						
09-1	Floating Dock Replacement - Delaware City		125	125			250
	TOTALS	160	150	150	25	25	510

A motion to approve Resolution 08-51 was made by Commissioner Patterson, seconded by Commissioner Simmerman, and approved by a roll call vote of 11-0.