



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 12-2190, Version: 1

Dept/ Agency: Finance

Action: () Ratifying (X) Authorizing () Amending

Purpose: Confirming Bond Sale

Amount to be Financed: \$68,000,000

Source of Appropriation:

Purchaser: TD Securities (USA) LLC

Additional Information:

Invitation: Finance Director, December 4, 2012

RESOLUTION DETERMINING THE FORM AND OTHER DETAILS OF GENERAL OBLIGATION REFUNDING BONDS OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, AND PROVIDING FOR THE SALE AND THE DELIVERY OF SUCH GENERAL OBLIGATION REFUNDING BONDS TO TD SECURITIES (USA) LLC.

BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. (a) Qualified General Obligation Refunding Bonds, in an amount not exceeding \$68,000,000 which shall be issued in three separate series of bonds, consisting of Qualified General Improvement Refunding Bonds, Series 2012A (the "Series A Refunding Bonds"), Qualified General Improvement Refunding Bonds, Series 2012B (Federally Taxable) (the "Series B Refunding Bonds") and Qualified Pension Refunding Bonds, Series 2012C (Federally Taxable) (the "Series C Refunding Bonds", and together with the Series B Refunding Bonds, the "Taxable Refunding Bonds"). The Series A Refunding Bonds and the Taxable Refunding Bonds of the City of Newark, in the County of Essex, New Jersey (the "City") are hereby authorized to be issued and sold as "Refunding Bonds" (or sometimes referred to herein as the "Bonds").

(b) In order to effectuate the Refunding Plan (defined herein), the Mayor or Director of Finance shall determine the actual aggregate principal amount of the Refunding Bonds to be issued (including the principal amount of each of the Series A Refunding Bonds, the Series B Refunding Bonds and the Series C Refunding Bonds); provided that such determination shall be consistent with the refunding bond ordinance No. 6PSF-A (S) (the "Ordinance") finally adopted by the Municipal Council on October 23, 2012 and entitled, "REFUNDING BOND ORDINANCE OF THE CITY

OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, PROVIDING FOR THE REFUNDING OF ALL OR A PORTION OF THE CITY'S GENERAL OBLIGATION REFUNDING BONDS (PENSION REFUNDING), SERIES 2003 (FEDERALLY TAXABLE) AND ALL OR A PORTION OF THE CITY'S GENERAL OBLIGATION BONDS, SERIES 2003, HERETOFORE ISSUED TO FUND CERTAIN PENSION LIABILITIES AND TO FINANCE AND/OR REFINANCE VARIOUS CAPITAL IMPROVEMENTS, APPROPRIATING AN AMOUNT NOT EXCEEDING \$68,000,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$68,000,000 GENERAL OBLIGATION REFUNDING BONDS OF THE CITY OF NEWARK FOR FINANCING THE COST THEREOF" and make such changes in the series designations as may be needed if the Refunding Bonds are not delivered in 2012 and be within the parameters set forth in Section 2 of this resolution. The signature of the Mayor or Director of Finance on the Purchase Contract (defined herein) authorized in Section 2 hereof shall constitute evidence of the approval of such actual principal amounts.

Section 2. The Refunding Bonds are hereby authorized to be sold to TD Securities (USA) LLC, on behalf of itself and Loop Capital Markets LLC (collectively, the "Underwriter") in accordance with a purchase contract to be entered into by and between the Underwriter and the City. The Mayor or the Director of Finance are hereby authorized to execute and, on behalf of the City, negotiate a purchase contract substantially in the form attached hereto as Exhibit A (the "Purchase Contract") with the Underwriter in the form satisfactory to Bond Counsel and upon terms satisfactory to the Mayor or the Director of Finance for the sale of the Refunding Bonds to the Underwriter in accordance with the provisions of this resolution, provided that (i) the underwriter's discount shall not exceed \$2.93 per bond, and (ii) the terms of the sale of the Refunding Bonds are otherwise in accordance with the terms provided in the approval of the Local Finance Board of the Department of Community Affairs of the State of New Jersey (the "Local Finance Board") granted on October 10, 2012 (the "Local Finance Board Approval"). The signature of the Mayor or the Director of Finance on the Purchase Contract shall be conclusively presumed to evidence any necessary approvals.

Section 3. (a) The Refunding Bonds of each series shall be issued in the par amounts, consistent with the Local Finance Board Approval, determined by the Mayor or the Director of Finance to be necessary to (collectively, the "Refunding Plan") pay costs of issuance and to provide a deposit to one or more escrow funds that, when invested, will be sufficient to (i) refund a portion of the City's \$40,747,035.25 aggregate principal amount of General Obligation Refunding Bonds (Pension Refunding), Series 2003 (Federally Taxable), dated April 1, 2003, namely those bonds in the aggregate principal amount of \$19,330,000 maturing on April 1, 2021 (the "2003 Pension Refunded Bonds") and to call for redemption the 2003 Pension Refunded Bonds on April 1, 2013 (the "2003 Pension Bonds Redemption Date") at the

option of the City at a redemption price of 100% of the principal amount of such 2003 Pension Refunded Bonds to be redeemed plus any unpaid accrued interest to the 2003 Pension Bonds Redemption Date; (ii) refund a portion of the City's \$82,552,000 aggregate principal amount of General Obligation Bonds, Series 2003, dated July 15, 2003, namely those bonds in the aggregate principal amount of \$40,036,500 maturing on July 15 in the years 2013 through 2018 (the "2003 Tax-Exempt Refunded Bonds"); and (iii) refund a portion of the City's \$82,552,000 aggregate principal amount of General Obligation Bonds, Series 2003, dated July 15, 2003, namely those bonds in the aggregate principal amount of \$4,448,500 maturing on July 15 in the years 2013 through 2018 (the "2003 Taxable Refunded Bonds" and together with the 2003 Tax-Exempt Refunded Bonds, the "2003 Refunded Bonds" and collectively, with the 2003 Pension Refunded Bonds, the "Refunded Bonds"), and to call for redemption the 2003 Refunded Bonds on December 31, 2012 (or such later date required under the redemption provisions of such bonds)(the "2003 Refunded Bonds Redemption Date") at the option of the City at a redemption price of 100% of the principal amount of such 2003 Refunded Bonds to be redeemed plus any unpaid accrued interest to the 2003 Refunded Bonds Redemption Date. The Bonds shall be issued in an aggregate principal amount not exceeding the limitation set forth in Section 1(a), and shall be allocated between the Series A Refunding Bonds (to the extent eligible to be issued on a tax-exempt basis) and the Series B Refunding Bonds and the Series C Refunding (to the extent not so eligible). The Mayor or Director of Finance shall make such allocation in a manner consistent with the Local Finance Board. Approval; provided, that the allocation to the Series A Refunding Bonds may be increased (with a corresponding reduction of the allocation to the Series B Refunding Bonds, or vice versa, to the extent bond counsel advises that federal tax law allows or requires a different allocation. The Bonds of each series shall mature, as provided in paragraph (f) below.

(b) The Refunding Bonds of each series shall bear interest at such rate or rates, consistent with the Local Finance Board approval, as shall be agreed to by the Mayor or Director of Finance and set forth in the Purchase Contract; provided, that no such rate shall exceed 4.00% per annum in the case of the Series A Refunding Bonds or 5.00% per annum in the case of the Taxable Refunding Bonds.

(c) The Refunding Bonds are not subject to redemption prior to their stated maturities.

(d) The Refunding Bonds shall be dated their date of delivery or such other later date consistent with the date of sale and shall bear interest at the rates per annum as the Mayor or Director of Finance shall determine, subject to the parameters set forth in paragraph (b) above.

(e) The Refunding Bonds shall be numbered and have such prefix or prefixes as determined necessary by

the Mayor or Director of Finance and be sold and issued in such series and with such serial maturities, consistent with the Local Finance Board Approval, as the Mayor or Director of Finance shall determine, subject to the parameters set forth in paragraph (a) above and paragraph (f) below.

(f) (1) The Series A and Series B Refunding Bonds shall mature on July 15 in the principal amounts as shall be determined by the Mayor or Director of Finance, consistent with the Local Finance Board Approval and paragraph (a) above, and shall bear interest payable semiannually on January 15 and July 15 in each year until maturity, commencing January 15, 2013 (or such other dates as shall be determined by the Mayor or Director of Finance and set forth in the Purchase Contract); provided, that the final maturity date of the Bonds shall not be later than July 15, 2018.

(2) The Series C Refunding Bonds shall mature on April 1 in the principal amounts as shall be determined by the Mayor or Director of Finance, consistent with the Local Finance Board Approval and paragraph (a) above, and shall bear interest payable semiannually on April 1 and October 1 in each year until maturity, commencing April 1, 2013 (or such other dates as shall be determined by the Mayor or Director of Finance and set forth in the Purchase Contract); provided, that the final maturity date of the Bonds shall not be later than April 1, 2021.

(g) The Refunding Bonds will be issued in fully registered form. One certificate shall be issued for the aggregate principal amount of each series of Refunding Bonds maturing in each year. Both principal of and interest on the Refunding Bonds will be payable in lawful money of the United States of America. Each certificate will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York, which will act as securities depository (the "Securities Depository"). The certificates will be on deposit with The Depository Trust Company. The Depository Trust Company will be responsible for maintaining a book-entry system for recording the interests of its participants or the transfers of the interests among its participants. The participants will be responsible for maintaining records recording the beneficial ownership interests in the Refunding Bonds on behalf of individual purchasers. Individual purchases may be made in denominations of \$5,000 or in multiples of \$1,000 thereof through book-entries made on the books and the records of The Depository Trust Company. The principal of and the interest on the Refunding Bonds will be paid to the Securities Depository by the City on the respective maturity dates and due dates and will be credited on the respective maturity dates and due dates to the participants of The Depository Trust Company as listed on the records of The Depository Trust Company as may be determined by the Mayor or Director of Finance (the "Record Dates" for the Refunding Bonds). The Refunding Bonds shall be executed by the manual or facsimile signatures of the Mayor and the Director of Finance under the official seal or facsimile thereof affixed, printed, engraved or reproduced thereon and

attested by the manual signature of the City Clerk.

(h) The following matters are hereby determined with respect to the Refunding Bonds:

Designations: **Qualified General Improvement Refunding Bonds, Series 2012A and Qualified General Improvement Refunding Bonds, Series 2012B (Federally Taxable)**

Principal Payment Date: July 15 of each year (not later than July 15, 2018), or as determined by the Mayor or the Director of Finance

Interest Payment Dates: Each January 15 and July 15, commencing January 15, 2013

Designation: **Qualified Pension Refunding Bonds, Series 2012C (Federally Taxable)**

Principal Payment Date: April 1 of each year (not later than April 1, 2021), or as determined by the Mayor or the Director of Finance

Interest Payment Dates: Each April 1 and October 1, commencing April 1, 2013

Date of Bonds: Date of Delivery

Redemption The Refunding Bonds are not subject to redemption prior to their stated maturities

Place of Payment: Cede & Company, New York, New York

Paying Agent TD Bank, National Association

Section 4. The Refunding Bonds shall be substantially in the following form with such additions, deletions and omissions as may be necessary for the City to market the Refunding Bonds:

REGISTERED NUMBER A- _____

REGISTERED \$ _____

UNITED STATES OF AMERICA
STATE OF NEW JERSEY
COUNTY OF ESSEX

CITY OF NEWARK

B. QUALIFIED [GENERAL IMPROVEMENT REFUNDING BOND] [PENSION REFUNDING BOND], SERIES 2012__ [FEDERALLY TAXABLE]

DATE OF ORIGINAL ISSUE:	MATURITY DATE:	RATE OF INTEREST PER ANNUM:	CUSIP:
_____, 2012	_____, 20__	_____%	_____

THE CITY OF NEWARK, in the County of Essex, New Jersey (the "City") hereby acknowledges itself indebted and for value received promises to pay to CEDE & CO., as nominee of The Depository Trust Company, which will act as Securities Depository, on the Maturity Date specified above, the principal sum of _____ DOLLARS (\$ _____), and to pay interest on such sum from the Date of Original Issue of this bond until it matures

at the Rate of Interest Per Annum specified above semiannually on the ___ days of ___ and ___ in each year until maturity, commencing on _____, 2013. Interest on this bond will be paid to the Securities Depository by the City's paying agent, _____, _____, New Jersey, or its successor (the "Paying Agent") and will be credited to the participants of The Depository Trust Company as listed on the records of The Depository Trust Company as of the ___ days of ___ and _____ next preceding the date of such payments (the "Record Dates" for such payments). Principal of this bond, upon presentation and surrender to the City will be paid to the Securities Depository by the Paying Agent and will be credited to the participants of The Depository Trust Company.

This bond is not transferable as to principal or interest except to an authorized nominee of The Depository Trust Company. The Depository Trust Company shall be responsible for maintaining the book-entry system for recording the interests of its participants or the transfers of the interests among its participants. The participants are responsible for maintaining records regarding the beneficial ownership interests in the bonds on behalf of individual purchasers.

This bond is one of an authorized issue of bonds issued pursuant to the Local Bond Law of the State of New Jersey, a bond ordinance of the City finally adopted on October 23__, 2012, entitled "REFUNDING BOND ORDINANCE OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, PROVIDING FOR THE REFUNDING OF ALL OR A PORTION OF THE CITY'S GENERAL OBLIGATION REFUNDING BONDS (PENSION REFUNDING), SERIES 2003 (FEDERALLY TAXABLE) AND ALL OR A PORTION OF THE CITY'S GENERAL OBLIGATION BONDS, SERIES 2003, HERETOFORE ISSUED TO FUND CERTAIN PENSION LIABILITIES AND TO FINANCE AND/OR REFINANCE VARIOUS CAPITAL IMPROVEMENTS, APPROPRIATING AN AMOUNT NOT EXCEEDING \$68,000,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$68,000,000 GENERAL OBLIGATION REFUNDING BONDS OF THE CITY OF NEWARK FOR FINANCING THE COST THEREOF", and a resolution of the City adopted on _____, 2012, entitled "RESOLUTION DETERMINING THE FORM AND OTHER DETAILS OF GENERAL OBLIGATION REFUNDING BONDS OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, AND PROVIDING FOR THE SALE AND DELIVERY OF SUCH GENERAL OBLIGATION REFUNDING BONDS TO _____", in all respects duly approved and published as required by law (the "Authorization Proceedings").

This bond is entitled to the benefits of the Municipal Qualified Bond Act, N.J.S.A. 40A:3-1 et seq.

This bond is not subject to redemption prior to maturity.

The full faith and credit of the City are hereby irrevocably pledged for the punctual payment of the principal of and the interest on this bond according to its terms.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of New Jersey to exist, to have happened or to have been performed precedent to or in the issuance of this bond exist, have happened and have been performed and that the issue of bonds of which this is one, together with all other indebtedness of the City, is within every debt and other limit prescribed by such Constitution or statutes.

IN WITNESS WHEREOF, the CITY OF NEWARK has caused this bond to be executed in its name by the manual or facsimile signatures of its Mayor and its Director of Finance, its corporate seal to be hereunto imprinted or affixed, this bond and the seal to be attested by the manual signature of the Clerk of the City, and this bond to be dated the Date of Original Issue as specified above.

CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY

By: _____ (Facsimile)
Mayor

ATTEST:

By: _____
Clerk

By: _____ (Facsimile)
Director of Finance

Section 5. In each of the Series A Refunding Bonds the following language should be inserted in the places indicated by the corresponding letter in the form of the Bonds:

- A. RA-__.
- B. General Improvement Refunding Bonds

Section 6. In each of the Series B Refunding Bonds the following language should be inserted in the places indicated by the corresponding letter in the form of the Bonds:

- A. RB-__.
- B. General Improvement Refunding (Federally Taxable)

Section 7. In each of the Series C Refunding Bonds the following language should be inserted in the places indicated by the corresponding letter in the form of the Bonds:

- A. RC-__.
- B. Pension Refunding (Federally Taxable)

Section 8. The law firm of GluckWalrath LLP is authorized to arrange for the printing of the Refunding Bonds. The proper officials of the City are hereby authorized and directed to execute the Refunding Bonds and to deliver them to or upon the order of the Underwriter upon receipt of payment therefor.

Section 9. By purchasing the Refunding Bonds pursuant to the Purchase Contract, the Underwriter shall agree to the following:

(a) Payment shall be in immediately available funds.

(b) The Underwriter shall inform the City in writing of the yield at which a substantial amount of the Bonds are sold to the public, such amount being sufficient to satisfy the requirements of Bond Counsel.

Section 10. The City hereby covenants that it will comply with any conditions subsequent imposed by the Internal Revenue Code of 1986, as amended (the "Code") in order to preserve the exemption from taxation of interest on the Series A Refunding Bonds, including the requirement to rebate all net investment earnings on the gross proceeds above the yield on the Series A Refunding Bonds, and that it will refrain from taking any action that would adversely affect the tax exemption of the Series A Refunding Bonds under the Code.

Section 11. The distribution by the City of a Preliminary Official Statement, in substantially the form attached hereto as Exhibit B (the "Preliminary Official Statement"), is hereby authorized and/or ratified, and the use of the

information contained therein concerning the City in connection with the sale of the Refunding Bonds is hereby approved and authorized. The Mayor or the Director of Finance of the City is hereby authorized and directed to execute and deliver to the Underwriter a final Official Statement with such changes from the Preliminary Official Statement as Counsel may advise and the officer executing the same may approve, such approval to be evidenced by such officer's execution thereof. The Mayor or the Director of Finance is hereby authorized to deem the Preliminary Official Statement final for purposes of Rule 15c2-12 of the Securities and Exchange Commission.

Section 12. The Mayor or Director of Finance is hereby authorized to make representations and warranties, to enter into agreements and to make all arrangements with The Depository Trust Company, New York, New York, as may be necessary in order to provide that the Refunding Bonds will be eligible for deposit with The Depository Trust Company and to satisfy any obligation undertaken in connection therewith.

Section 13. In the event that The Depository Trust Company may determine to discontinue providing its service with respect to the Refunding Bonds or is removed by the City and if no successor Securities Depository is appointed, the Refunding Bonds which were previously issued in book-entry form shall be converted to Registered Bonds (the "Registered Bonds") in denominations of \$5,000 or multiples of \$1,000 in excess thereof. The beneficial owner under the book-entry system, upon registration of the Refunding Bonds held in the beneficial owner's name, will become the registered owner of such Registered Bonds. The City shall be obligated to provide for the execution and delivery of the Registered Bonds in certificate form.

Section 14. A Continuing Disclosure Certificate in substantially the form attached hereto as Exhibit C is hereby approved, and the Mayor or Director of Finance is hereby authorized and directed to execute and deliver a Continuing Disclosure Certificate on behalf of the City in substantially such form, with such insertions and changes therein as the Mayor or Director of Finance may approve, such approval to be evidenced by his execution thereof.

Section 15. TD Bank, National Association, is hereby appointed to serve as paying agent for the Refunding Bonds (the "Paying Agent"). The City hereby approves the preparation and execution of one or more agency agreements by and between the City and the Paying Agent, said agency agreement(s) to be in substantially the form attached hereto as Exhibit D (collectively, the "Agency Agreement"), which is hereby approved, and the Mayor or Director of Finance is hereby authorized and directed to execute and deliver the Agency Agreement on behalf of the City in substantially such form, with such insertions and changes therein as the Mayor or Director of Finance may approve, such approval to be evidenced by his or her execution thereof.

Section 16. The Mayor or Director of Finance is hereby authorized to appoint one or more banks, trust companies or national banking associations (which may be the respective paying agents for the Refunded Bonds, the Paying Agent for the Bonds, or another entity) to serve as escrow agent (collectively, the "Escrow Agent") for the Refunded Bonds.

Section 17. To effectuate the Refunding Plan, the City hereby approves the preparation and the execution of one or more escrow agreements by and between the City and the Escrow Agent, said escrow agreement(s) to be in substantially the form attached hereto as Exhibit E (the "Escrow Agreement"), which is hereby approved, and the Mayor or Director of Finance is hereby authorized and directed to execute and deliver the Escrow Agreement on behalf of the City in substantially such form, with such insertions and changes therein as the Mayor or Director of Finance may approve, such approval to be evidenced by his execution thereof. The Escrow Agreement shall also provide for the payment of costs of issuance of the Refunding Bonds. The Mayor or Director of Finance is hereby authorized to direct the Escrow Agent to pay the costs incurred in connection with the sale and the issuance of the Refunding Bonds from the proceeds derived from the sale of the Refunding Bonds in accordance with the terms of a certificate of the Mayor or Director of Finance to be executed upon delivery of the Refunding Bonds. If necessary, the Escrow Agent is hereby authorized to purchase United States Treasury Securities - State and Local Government Series with the proceeds of the Refunding Bonds in accordance with the Escrow Deposit Agreement. The Underwriter, the City's Financial Advisor and the Escrow Agent are each authorized to submit applications for such investments. In addition, the City's Financial Advisor is hereby authorized to act as bidding agent for any other authorized investments that may be acquired for the escrow accounts and the City's Director of Finance is authorized to accept bids for securities.

Section 18. Samuel Klein & Company is hereby appointed Verification Agent who shall verify the mathematical computations performed initially by the Underwriter and related to the Refunding Bonds, the Refunded Bonds and the investment of certain funds in accordance with the terms of the Escrow Agreement.

Section 19. The Bonds shall be issued as "qualified bonds" under, and shall be entitled to the benefits of, the Municipal Qualified Bond Act, N.J.S.A. 40A:3-1 et seq., and the City shall comply in all respects with the resolution of the Local Finance Board adopted on October 10, 2012 in connection therewith. The City hereby acknowledges and recognizes that the provisos as contained in said Local Finance Board resolution shall constitute binding obligations upon all officials of the City. The Director of Finance of the City is hereby authorized and directed to certify to the State Treasurer the name and address of the Paying Agent, the maturity schedules, the interest rate(s) and the dates of

payment of debt service on the Bonds within 10 days after the issuance of the Bonds.

Section 20. The Mayor, the Director of Finance, the City Clerk and other appropriate representatives of the City are hereby authorized to take all steps necessary to provide for the issuance of the Refunding Bonds and the refunding of the Refunded Bonds, including preparing and executing such agreements and documents on behalf of the City and taking all steps necessary or desirable to implement the terms of this resolution, such agreements and documents as may be necessary and appropriate and the transactions contemplated thereby.

Section 21. The Director of Finance is hereby authorized and directed to take all actions necessary and appropriate to procure bond insurance in respect of the Refunding Bonds, provided that the cost of said bond insurance does not exceed .75% of total debt service on the Refunding Bonds. The Director of Finance is authorized and directed to execute all documents and certificates as may be necessary in connection with the purchase of such bond insurance.

Section 22. This resolution shall take effect on the date the Ordinance No. 6PSF-A (S) 102312 is effective.

Adopted: November __, 2012

STATEMENT

Resolution authorizing the sale and issuance of the City's Qualified General Improvement Refunding Bonds, Series 2012A, Qualified General Improvement Refunding Bonds, Series 2012B (Federally Taxable) and Qualified Pension Refunding Bonds, Series 2012C (Federally Taxable), in a combined aggregate principal amount not to exceed \$68,000,000, for the purpose of refunding certain outstanding bonds of the City.

CERTIFICATE

I, the City Clerk of the City of Newark, in the County of Essex, State of New Jersey, HEREBY CERTIFY that the foregoing annexed extract from the minutes of a meeting of the governing body of the City duly called and held on ____, 2012 has been compared by me with the original minutes as officially recorded in my office in the Minute Book of the governing body and is a true, complete and correct copy thereof and of the whole of the original minutes so far as they relate to the subject matters referred to in the extract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City this ____ day of _____, 2012.

[SEAL]

City Clerk

