

# RULE ADOPTIONS

## COMMUNITY AFFAIRS

(a)

### DIVISION OF LOCAL GOVERNMENT SERVICES

#### LOCAL FINANCE BOARD

#### Bond Refundings Meeting Certain Conditions

#### Adopted New Rule: N.J.A.C. 5:30-2.5

Proposed: February 21, 2012 at 44 N.J.R. 333(a).

Adopted: May 9, 2012 by the Local Finance Board, Thomas H. Neff, Chair.

Filed: May 9, 2012 as R.2012 d.110, **with technical changes** not requiring additional public notice and opportunity for comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 40A:2-51(c) and 18A:24-61.5.

Effective Date: June 4, 2012.

Expiration Date: March 23, 2016.

#### Summary of Public Comments and Agency Responses:

Public comments were submitted from David B. Thompson, Anthony P. Inverso, and Sherry L. Tracey of Phoenix Advisors, LLC; Edward McManimon and Matthew Jessup, Esquires, of McManimon and Scotland, LLC, on behalf of the greater bond counsel community; and William G. Dressel, Jr. on behalf of the New Jersey League of Municipalities, which are summarized below.

1. COMMENT: N.J.A.C. 5:30-2.5(b). Phoenix Advisors, LLC, suggests that a "final report" of the completed refunding bond transaction be required to be submitted to the Local Finance Board, said report certifying that the results of the refunding were "in the best interest of the issuer in light of the market and circumstances existing at time of sale." Only a financial advisor with a fiduciary obligation to the borrower should be allowed to execute this certification.

RESPONSE: The Board is satisfied that the filing requirement within 10 days of the refunding bond sale as specified in N.J.A.C. 5:30-2.5(b) provides sufficient evidence of due diligence on the part of the local unit or school district. Requiring the additional certification that commenter proposes would add unnecessary cost and administrative burden to the refunding process.

2. COMMENT: Phoenix Advisors, LLC, argues that the issuer of the refunding bonds, from the transaction's inception, retain the services of an appropriately qualified municipal advisor (either an individual or a firm) who is registered with the Securities and Exchange Commission as well as the Municipal Securities Rulemaking Board.

RESPONSE: Commenter's proposed revision would impose additional costs on local units, and is unnecessary to protect the interests of the borrowing entity.

3. COMMENT: N.J.A.C. 5:30-2.5(a). McManimon and Scotland, LLC, on behalf of the greater bond counsel community, suggested technical changes that would clarify how the rule would be applied. The changes clarify that municipalities, counties, or school districts may authorize and issue refunding bonds without prior Local Finance Board approval, provided certain conditions are met, notwithstanding the Local Finance Board approvals and consents required under N.J.S.A. 40A:2-51 et seq. or 18A:24-61 et seq.

RESPONSE: The Board concurs with the commenter's suggested revisions in that they provide clarification as to the intent and purpose of the adopted rule. These revisions are technical in nature and do not alter the intent and purpose of the adopted rule.

4. COMMENT: N.J.A.C. 5:30-2.5(b). McManimon and Scotland, LLC, on behalf of the greater bond counsel community, suggested that "Local Finance" be inserted before the word "Board" on line two of subsection (b).

RESPONSE: The Board finds the proposed revision a reasonable technical clarification, and agrees to include same in the adopted rule.

5. COMMENT: The League of Municipalities supports the new rule, stating that it will save municipalities time and money concerning the issuance of refunding bonds.

RESPONSE: The Board appreciates the commenter's favorable input concerning the new rule. The new rule will allow local units to move forward with bond refundings in a more timely manner, in the process allowing taxpayers to realize savings.

#### Federal Standards Statement

No Federal standards analysis is required because the new rule is not being adopted in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards or requirements.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

5:30-2.5 Refunding of bonds meeting certain conditions

(a) **\*[Any]\* \*Notwithstanding the approvals and consents required of the Local Finance Board in connection with the authorization, sale, and issuance of refunding bonds pursuant to N.J.S.A. 40A:2-51 et seq. or 18A:24-61 et seq., any\*** municipality, county, or school district meeting all of the conditions set forth below, may **\*authorize and\*** issue **\*refunding\*** bonds<sup>\*</sup>, **including by adoption of any refunding bond ordinance or resolution in connection therewith,\*** to refund long term debt without prior approval of the Local Finance Board, where the issuance of those **\*refunding\*** bonds realizes debt service savings on the outstanding obligations, provided all of the following conditions are present:

1. The present value savings is at least three percent;
2. The new debt service shall be structured such that no annual **\*debt service\*** payment is more than it was under the original debt service schedule;
3. The final maturity of the refunding bond does not extend **\*past\*** the maturity date of the refunded debt; and
4. The debt savings are substantially level across the life of the refunding.

(b) The municipality, county, or school district shall, within 10 days of the closing on the refunding bond sale, file with the **\*Local Finance\*** Board a comparison of the initial and refunding debt service schedule showing annual present value savings; a summary of the refunding; an itemized accounting of all costs of issuance; a certification from the chief financial officer for a municipality or county, or the school business administrator or board secretary for a school district, that all of the conditions of this section have been met; and that a resolution, pursuant to N.J.S.A. 40A:2-51(c) or 18A:24-61.5(b), as appropriate, passed by two-thirds of the full membership of the governing body or board of education allowing for the refunding.