

Legislation Text

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Amending Section 17-104 of The Philadelphia Code entitled "Prerequisites to the Execution of City Contracts" to add a new subsection requiring businesses receiving Financial Assistance from the City and City-related agencies to contribute to a Fund for Philadelphia's Children the proceeds from which shall be made available to pay for new and expanded program initiatives for Philadelphia children; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 17-104 of The Philadelphia Code, relating to Prerequisites to the Execution of City Contracts, is hereby amended to read as follows:

§17-104. Prerequisites to the Execution of City Contracts.

(1) *Contracts for the Provision of Financial Assistance.*

(a) *Definitions. For the purpose of this subsection, the following definitions shall apply:*

(.1) *Business Entity. Any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture, or unincorporated association, including any parent company, subsidiary, exclusive distributor or company affiliated therewith, engaged in a business or commercial enterprise.*

(.2) *City. The City of Philadelphia.*

(.3) *City Agency. The City of Philadelphia, its departments, boards and commissions.*

(.4) *City-related Agency. All authorities and quasi-public corporations which do any of the following:*

(i) *receive funds from the City Treasury through appropriations from any capital or operating fund of the City, by contract, grant, or otherwise; or*

(ii) *enter into continuing contractual or cooperative relationships with the City; or*

(iii) *operate under legal authority granted to them by City ordinance.*

(.5) *Corporation. Except for purposes of subsections 17-104(1)(a)(1) and (a)(4) wherein the term shall have its ordinary meaning, the Corporation designated to hold and manage the Fund under Section 17-104(c).*

(.6) *Department. The Department of Human Services.*

(.7) *Director.* The Director of Social Services, or in the event of a vacancy in such position, or its abolition, such City officer as may be designated by the Mayor, subject to confirmation by City Council.

(.8) *Financial Assistance.* Any assistance provided to a for-profit Business Entity which is either provided in monetary form, or is capable of monetary valuation, including, but not necessarily limited to, the following kinds of aid:

(i) below market interest loans for the construction, improvement, purchase or leasing of land, structures, fixtures or equipment;

(ii) tax-exempt or tax-increment financing of any kind;

(iii) guarantees of loans for purposes listed in subsection 17-104 (1)(a)(.8) (i);

(iv) sale or leasing of land, structures or equipment at less than the fair market value thereof;

(v) assembly of land, by condemnation, purchase, or otherwise;

(vi) use of governmental status or authority in obtaining monetary assistance from other governments or from private financing entities;

(vii) abatement of real estate taxes under Section 19-1303(3) of The Philadelphia Code;

(ix) payment for street improvements, road repairs or other site development expenditures made for the primary purpose of providing economic benefits to a particular enterprise;

(x) payments, or agreements to pay, any portion of the operating costs incurred by a business entity;

(xi) technical or managerial assistance.

(.9) *The Fund.* The Philadelphia Fund for Children into which payments required by subsection 17-104(1)(b) shall be made, and which shall be created and governed in accordance with subsection 17-104(1)(c).

(b) *Conditions to Receipt of Financial Assistance.*

In every instance in which the City or City-Related Agency provides Financial Assistance to a Business Entity in a total amount exceeding \$100,000, it shall execute an Agreement with said Entity requiring it to make a payment equal to one percent of the value of such assistance into the Philadelphia Fund for Children. Such payment may be made immediately upon signing the Agreement, upon initial receipt of Financial Assistance or, subject to approval by City Council by resolution after hearing, pursuant to some other schedule agreed to by the Director.

(c) *Creation and Governance of The Fund.*

(.1) Within ninety (90) days of the enactment of this subsection, the Director shall select, or cause to be newly incorporated, a Pennsylvania non-profit charitable Corporation to hold, maintain, and manage the Philadelphia Fund for Children. The by-laws of the Corporation shall be approved by the Director and shall, among other things, provide the following with respect to the governance and purposes of the Fund.

(.a) the Fund shall be governed by a Board of Governors, all of whose members shall be City residents, consisting of:

(i) thirteen (13) appointed members, seven (7) of whom shall be appointed by the Mayor, six (6) of whom shall be appointed by the Council; and

(ii) the Director and the President of City Council serving ex officio, each of whom may designate a representative to serve in their stead;

(.b) At least half of the appointments made by the Council and by the Mayor shall be parents or legal guardians of children under the age of 18 years of age;

(.c) All initial appointments shall be made no later than thirty (30) days after the creation or selection of the Corporation by the Director pursuant to Section 17-104(c)(.1).

(.d) The Council shall make its appointment by resolution after public hearing before the Committee of the Whole.

(.e) The term of office of all Board appointees shall be four years, except for four of the Mayor's initial appointees, and three of Council's initial appointees who shall serve two year terms. Members shall serve until their successors are appointed.

(.f) Persons appointed to fill vacancies shall serve for the balance of the terms for which their predecessors were appointed.

(.g) All expenditures from the Fund shall be subject to approval by the Director and audit by the City Controller, and shall, except for payment of necessary operating costs, be made exclusively for purposes and programs which protect, or enhance opportunities for, children under the age of 18, including but not limited to the following categories of expenditure;

(.i) operating and capital costs for after-school care, and summer children and youth programs, which categories together shall account for at least 50% of all non-overhead Fund expenditures;

(.ii) low interest loans to encourage the development and improve the quality of day care facilities complying with all applicable state and local laws;

(.iii) similar or related assistance programs which enhance or enrich children and youth programs for City residents.

(.h) All expenditures from the Fund shall be made exclusively to expand and

increase the level and quality of services available to children and youth beyond those available in Fiscal Year 2001 of the City, or to create new services not in existence in Fiscal Year 2001 of the City;

(i) All amendments to the By-Laws relating to purposes and governance of the Fund shall be subject to approval by the Director and by ordinance.

(d) Non-compliance.

The failure of a Business Entity to abide by the requirements of this section shall result in the following:

(1) the cancellation of any provisions for Financial Assistance not yet executed or performed, and the withholding of any payments required thereunder.

(2) the value of all Financial Assistance provided to the date of the violation shall be calculated by the City and shall become immediately payable by the Business Entity to the City Treasurer, plus interest and the costs of collection; and

(3) at the option of the Director, the Business Entity shall be deemed ineligible to bid on City and City-related Agency contracts or subcontracts, or to receive the Financial Assistance, for a period of up to five (5) years;

(e) Notice. All notices regarding the availability of Financial Assistance shall contain an appropriate notice and description of the duties, obligations, responsibilities, requirements, penalties and sanctions imposed by this section.

(f) Grievances. Any Business Entity aggrieved by the decision of the Director that the City may not contract with, or provide Financial Assistance to, the Business Entity, may request a hearing before the Director or her designee. Such request shall be in writing and shall be filed within seven (7) days after receipt of written notification by the Director of her decision.

(g) Rules and Regulations. The Department, in consultation with the Director of Commerce, and subject to approval of the Director, shall promulgate such rules, regulations and procedures as it may deem necessary to aid in the administration and enforcement of the provisions of this section.

(h) City-Related Agencies. Any contract, lease, grant condition or other agreement entered into by the City with any City-related Agency shall contain a provision requiring the City-Related Agency, in its provision of any Financial Assistance, to abide by and implement the provisions of this section.

(i) Penalties. A Business Entity's failure to comply with any of the requirements of this section, or any condition mandated by this section, shall be deemed a material breach by such Business Entity of its contract for Financial Assistance. In addition to the remedial provisions set forth in subsection 17-104(1) (d), a Business Entity shall be subject to a fine of not more than three hundred dollars (\$300) for each day of any violation, which fine shall be remitted by the City into the Children's Fund.

(j) Conflict of Interest. Persons appointed to the Board pursuant to Section 17-104(c) shall be deemed Officers or Employees of the City for purposes of Chapter 20-600 of The Philadelphia Code, entitled Standards of Conduct and Ethics.

(k) Enforcement. The Director, with the assistance of the Commerce Department, shall be responsible for monitoring compliance with this section.

SECTION 2. Effective Date. This Ordinance shall take effect immediately; provided, however, that until the provisions of Section 17-104(1)(c) relating to creation or selection of a corporation to manage the Fund and creation of a management Board are implemented, funds payable by recipients of Financial Assistance under this Ordinance shall be remitted to the custodial care of the Department, which shall pay over such funds to the designated corporation upon determination by the Director that said provisions of Section 17-104(1)(c) have been implemented.

Explanation:

Italics indicate new matter added.