

Legislation Text

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Authorizing and approving the City to amend the payments due under an Alternative Funding Mechanism for a portion of the unfunded actuarial accrued liability of the City of Philadelphia Retirement System pursuant to the Municipal Pension Plan Funding Standard and Recovery Act, through the execution and delivery of a supplement to a Service Agreement between the City of Philadelphia and the Authority, such amendment of payments to be effected through the issuance of the Authority's bonds to provide funds to purchase outstanding bonds of the Authority previously issued to finance such Alternative Funding Mechanism; authorizing and approving the application of a portion of the proceeds of such bonds to fund a deposit to the City of Philadelphia Retirement System; authorizing and approving the obligation of the City to pay in full when due the payment requirements of such Alternative Funding Mechanism, as so amended; authorizing and approving the Director of Finance, on behalf of the City, to enter into a supplement to such Service Agreement; authorizing and approving the Director of Finance and other officers of the City to take such other actions as may be necessary or appropriate to supplement the Alternative Funding Mechanism and to accomplish the intent and purpose of this Ordinance; covenanting to make necessary appropriations and payment each year to provide for the amounts due under each Supplement to the Service Agreement or any New Service Agreement hereby authorized; and authorizing and approving a New Service Agreement under certain circumstances; all under certain terms and conditions.

WHEREAS, The City of Philadelphia ("City") has established a pension and retirement system (the "City Retirement System") pursuant to the Pennsylvania Home Rule Charter Section 6-600 by Ordinance approved December 3, 1956, as amended, and the Municipal Retirement Benefit Plan 1987 Ordinance which became effective January 8, 1987, as amended (collectively, "Retirement System Ordinance"); and

WHEREAS, The City is authorized, pursuant to the Municipal Pension Plan Funding Standard and Recovery Act, Act No. 205 of the General Assembly of the Commonwealth of Pennsylvania ("General Assembly"), approved December 18, 1984 (P.L. 1005), as amended and supplemented, including as amended and supplemented by Act No. 1998-82 of the General Assembly approved June 18, 1998 and by Act No. 2009-44 of the General Assembly approved September 18, 2009 (collectively, the "Pension Plan Act"), to use an Alternative Funding Mechanism, as defined in Section 1001 of the Pension Plan Act, to reduce the unfunded actuarial accrued liability of the City Retirement System; and

WHEREAS, Pursuant to Ordinance (Bill No. 980789) of the Council of the City, approved by the Mayor on December 22, 1998 (the "1998 Ordinance"), the Council of the City of Philadelphia determined that in order to provide for the safety and soundness of the City Retirement System and to achieve savings in the schedule of payments currently required to amortize the unfunded actuarial accrued liability of the City Retirement System, it was in the best interests of the City to provide for an Alternative Funding Mechanism consisting of: (i) the execution and delivery of a Service Agreement (the "Service Agreement") by and between the City and the Philadelphia Authority for Industrial Development (the "Authority") providing for the funding of up to \$1,250,000,000 of the unfunded actuarial accrued liability of the City Retirement System, such funding to be provided to the City by the issuance of bonds of the Authority as hereinafter described; (ii) the deposit of net proceeds of up to \$1,250,000,000 in the City Retirement System upon receipt thereof; and (iii) the obligation of the City to pay in full when due the payment requirements of the Alternative Funding Mechanism

set forth on Schedule 1 to the Service Agreement, all as authorized by the Pension Plan Act; and

WHEREAS, The City and the Authority were authorized by the Pension Plan Act and the Economic Development Financing Law, 73 P.S. 371 *et seq.* as amended, to enter into the Service Agreement and to undertake the Alternative Funding Mechanism;

WHEREAS, The Authority issued its Pension Funding Bonds (City of Philadelphia Retirement System) Series 1999A - 1999C (the “1999 Bonds”) to finance a deposit of \$1,250,000,000 in the City Retirement System pursuant to such Alternative Funding Mechanism; and

WHEREAS, The Authority may realize debt service savings by issuing bonds and applying the proceeds to purchase some or all of the 1999 Bonds from the holders thereof, and such debt service savings resulting from refinancing the Alternative Funding Mechanism in whole or in part would reduce the aggregate payments due from the City under the Service Agreement; and

WHEREAS, The City may desire to apply all or a portion of such debt service savings to fund a deposit to the City Retirement System with respect to a portion of the unfunded actuarial accrued liability of the City Retirement System; and

WHEREAS, The Council of the City has, by this Ordinance, determined that it is in the best interests of the City to authorize and approve: (i) the execution and delivery of each Supplement or a New Service Agreement (as defined below); (ii) the issuance by the Authority of bonds, notes or other evidences of indebtedness in such amount and for such purposes as described in Section 1 herein in one or more series, from time to time, either as taxable or tax-exempt obligations; and (iii) the performance by the City of its obligation to pay in full when due the Service Fee (as defined below) and other amounts payable under the Service Agreement or a New Service Agreement; and

WHEREAS, The City is authorized to enter into the Service Agreement or a New Service Agreement and to undertake the refinancing of the Alternative Funding Mechanism and the funding of a deposit to the City Retirement System; now, therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Council of the City hereby authorizes and approves: (i) the execution and delivery of one or more supplements (each a “Supplement”) to the Service Agreement dated January 15, 1999 (as amended and supplemented, the “Service Agreement”), with the Authority; (ii) the issuance by the Authority of bonds, notes or other evidence of indebtedness (the “Refunding Bonds”) in one or more series, from time to time, either as taxable or tax-exempt obligations, to pay the costs of the purchase of some or all of the 1999 Bonds, together with any deposit to the City Retirement System, the amounts necessary for any reserves, interest on the Refunding Bonds, costs of issuance and costs of credit or liquidity enhancement, subject to the limitation that each such Supplement does not increase the amount payable by the City, in the aggregate, under the Service Agreement; and (iii) the obligation of the City to pay in full when due the Service Fee payable under the Service Agreement (the “Service Fee”) and other amounts payable under the Service Agreement.

SECTION 2. It is hereby determined that the supplements to the Alternative Funding Mechanism as approved by this Ordinance are necessary and appropriate to provide for the safety and soundness of the City Retirement System.

SECTION 3. The Director of Finance is hereby authorized to execute and deliver, on behalf of the City, each Supplement, in such form as the City Solicitor shall advise and the Director of Finance shall approve, consistent with the terms of this Ordinance.

SECTION 4. The proceeds of the Refunding Bonds shall be applied to the purchase of some or all of the 1999 Bonds together with amounts necessary for any reserves, deposit to the City Retirement System, interest on the Refunding Bonds, costs of issuance and costs of credit or liquidity enhancement. The Refunding Bonds shall not be executed or delivered until the Director of Finance has approved the terms thereof.

SECTION 5. The Director of Finance, the City Treasurer and all other proper officials of the City are hereby authorized on behalf of the City, to execute all documents (including one or more continuing disclosure agreements) and to take all actions, including the filing of certified copies of this Ordinance and the Supplements with the Public Employees Retirement Commission, to the extent required by the Pension Plan Act, the Constitution and the laws of the Commonwealth, or as may be necessary or appropriate in order to accomplish the intent and purpose of this Ordinance and the Service Agreement or otherwise in order to issue the Refunding Bonds.

SECTION 6. The obligation of the City to pay the Payment Requirements of the Alternative Funding Mechanism as set forth in the Service Agreement, in full when due, as required by Section 1001(e) of the Pension Plan Act, is hereby authorized, approved and acknowledged. The City covenants to budget and make appropriations beginning in Fiscal Year 2014 and in each and every fiscal year thereafter in such amounts as shall be required in order to make all Service Fee payments and all other amounts due and payable under the Service Agreement.

SECTION 7. The City covenants to, as long as Refunding Bonds are outstanding, unconditionally make all Service Fee payments and all other amounts due as provided for under the Service Agreement directly to any trustee (the "Trustee") to which the Service Fee may be assigned as security for payment of the Refunding Bonds and the obligations of the Authority under any credit facility and/or liquidity facility securing any Refunding Bonds, only out of current revenues of the City, which payments shall not be suspended, abated, reduced, abrogated, waived, diminished or otherwise modified in any manner or to any extent whatsoever and regardless of any rights of set-off, recoupment or counterclaim that the City may have against the Authority or the Trustee or any bondholder or any other party or parties and regardless of any contingency, act of God, event or cause whatsoever and notwithstanding any circumstances or occurrence that may arise after the date thereof. The City agrees to be bound by each and every provision, covenant and agreement set forth in the Service Agreement.

SECTION 8. In the alternative, at the option of the Director of Finance, the Council of the City hereby authorizes and approves: (i) the execution and delivery of a new service agreement (the "New Service Agreement") with the Authority to provide for the payment of a service fee (the "New Service Fee") with respect to the debt service on the Refunding Bonds; and (ii) the obligation of the City to pay in full when due the New Service Fee and other amounts payable under the New Service Agreement; provided, that the City's payment obligations with respect to the Alternative Funding Mechanism under the Service Agreement and the New Service Agreement are, in the aggregate, not increased. The Director of Finance is hereby authorized to execute and deliver, on behalf of the City, the New Service Agreement, in substantially the form of the Service Agreement, with such changes thereto as the City Solicitor shall advise and the Director of Finance shall approve, consistent with the terms of this Ordinance. With respect to the New Service Fee payments and all other amounts due and payable under the New Service Agreement, the City hereby makes the covenants described in Sections 6 and 7 of this Ordinance.

SECTION 9. This Ordinance shall take effect immediately.