COUNCIL OF THE CITY OF PHILADELPHIA

COMMITTEE ON FINANCE

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Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, February 23, 2010
1:20 p.m.

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PRESENT:
COUNCILWOMAN MARIAN B. TASCO, CHAIR
COUNCILWOMAN JANNIE BLACKWELL
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN BILL GREEN
COUNCILMAN WILLIAM GREENLEE
COUNCILMAN CURTIS JONES, JR.
COUNCILMAN JAMES F. KENNEY
COUNCILWOMAN BLONDELL REYNOLDS BROWN

BILLS 090833, 100004, 100005 and 100006

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COUNCILWOMAN TASCO: Good afternoon. The Committee on Finance will come to order. Please let me note that we have a quorum in the presence of Councilmembers Greenlee, Kenney, Goode, Blackwell and Tasco.

We'll ask the Clerk to please read the first bill listed for a hearing.

He will read all the bills scheduled for a hearing today.

THE CLERK: Bill No. 090833, an ordinance amending Chapter 19-3100, entitled "Attorney Fees in Collection Matters; Retention of Private Attorneys," by providing for imposition of attorney and collection agency fees in connection with certain collection activity, all under certain terms and conditions.

Bill No. 100004, an ordinance authorizing the Bond Committee to sell bonds at public or private negotiated sale, to provide funds toward various capital municipal purposes; providing for appropriations to the Sinking Fund

Commission for the payment of such bonds; authorizing agreements to provide credit or payment or liquidity sources for the bonds in connection with issuance of the bonds, and certain other actions; providing for obtaining the consent of the electors to increase the indebtedness of the City; and fixing a day and providing for arrangements for holding the election for obtaining such consent.

Bill No. 100005, an ordinance constituting the Thirteenth Supplemental Ordinance to the Restated General Water and Wastewater Revenue Bond Ordinance of 1989, as supplemented; authorizing the Bond Committee to issue and sell either at public or private sale Water and Wastewater Revenue Bonds; authorizing approval of the form of such Bonds; providing that such Bonds shall bear interest at prescribed fixed or variable rates, and authorizing agreements to provide credit enhancement and payment and liquidity sources for such Bonds, the investment of proceeds thereof and the City's continuing disclosure obligation; setting forth the use of proceeds; covenanting the payment of interest and principal; and supplementing the Restated General Water and Wastewater Revenue Bond Ordinance of 1989.

Bill No. 100006, an ordinance authorizing, generally, the continued issuance and sale by the City of Philadelphia of Gas Works Revenue Notes of the City, prescribing the forms of notes and providing for their execution of payment, pledging certain revenues of the Gas Works as security, adopting a rate covenant and directing the imposition and collection of rates and charges sufficient to comply therewith, prescribing the conditions precedent to the issuance of specific series of notes, including a resolution passed by the Bond Committee providing for establishment of credit support for notes, providing for designation of a fiscal agent and sinking fund depositary, providing for establishment of a sinking fund and its management, providing remedies upon default, and providing for amendments and modifications.

COUNCILWOMAN TASCO: Thank you very much.

We'll now hear Bill 090833 and we ask Mr. Dan Cantu-Hertzler to come forward and Mr. Keith Richardson, if he's with him.

(Witnesses approached witness table.)

MR. CANTU-HERTZLER: Good afternoon, Madam Chair and members of the Committee on Finance. I'm Dan Cantu-Hertzler, Chair of the Law Department's Corporate and Tax Group. I come before you today on behalf of City Solicitor Shelley Smith in support of Bill No. 090833. With me is Revenue Commissioner Keith Richardson.

The City Law Department uses both law firms and collection agencies to assist its efforts to collect delinquent taxes owed to the City. State law has for many years permitted the City to pass onto taxpayers that owe delinquent real estate taxes and other delinquent real property-based charges, like water/sewer and nuisance liens, reasonable charges for the fees of attorneys used in collection efforts. Pursuant to a bill in 1996, City Council authorized the City to pass those fees onto the delinquent taxpayers.

In 2004, the General Assembly granted the City the authority, if City Council agrees, to impose on delinquent taxpayers the costs that the City pays to collection agencies, in addition to law firms, for the collection of those same taxes. To date, we have not taken advantage of that authority, so we are paying collection agencies contingency fees of between 12 and 20 percent without being able to pass the costs onto the delinquent taxpayers that have made them necessary. We support Bill No. 090833 because it would impose some or all of those costs on delinquent taxpayers beginning at the close of the tax amnesty period this spring.

This bill is a companion to Bill No. 090686, which the Mayor signed into law on January 27th, 2010 and which establishes a temporary tax amnesty program in this coming spring. A tax amnesty generally works if the government collects more under the amnesty than it would without it. And so successful jurisdictions generally use a carrot and stick approach. The "carrot" is the forgiveness of interest or penalties or fines, or all three as we have here, but they usually use such "sticks" as the increased -- well, increased costs after the amnesty periods. So, in other words, you pay up now or you suffer later. However, the City's interest and penalty rates are about as high as we can reasonably raise them already, because

Council increased them at the time of the City's amnesty in 1986. Therefore, the Law Department and the Administration support this proposal to increase the effectiveness of the 2010 tax amnesty by enabling the City to pass on more of our collection costs to taxpayers that do not take advantage of the amnesty.

Now, currently, we have no authority from the state to impose collection agency fees on taxpayers for delinquent business taxes, wage and net profits taxes, liquor taxes, bail forfeitures or any other taxes and claims that don't automatically constitute a lien on real property. However, the General Assembly has authorized the Commonwealth itself to impose collection agency fees on all delinquent taxpayers for every type of tax. We are hopeful that the General Assembly may authorize cities and counties to do this in the future given the dire financial straits of many political subdivisions in the

Commonwealth. This bill, 090833, would also constitute Council's authority to impose such fees on taxpayers if the General Assembly passes enabling legislation.

Together, we believe these changes would provide a powerful incentive for taxpayers to utilize the opportunity to reduce their tax bills in the tax amnesty program. We also believe it is fair to impose such costs onto the delinquent taxpayers who cause the City to incur them.

Thank you. I'd be happy to try to answer any questions you may have.

COUNCILWOMAN TASCO: Thank you very much. Just a couple of questions for me, and other members of the Committee may have questions.

Can you describe for me -- this is for the record -- the difference between this bill and Bill No. 080791, which deals with the same matter that is still before the Finance Committee.

2/23/10 - FINANCE - BILL 090833, etc.

MR. CANTU-HERTZLER: Yes. That bill would have authorized the imposition of collection agency fees onto real estate taxpayers only or other claims covered by the municipal claims and tax liens law. So water/sewer, nuisance liens, things that attach to services to real property. This bill would go beyond that and it's also tied to the amnesty.

COUNCILWOMAN TASCO: It's tied to?

MR. CANTU-HERTZLER: It's tied to the amnesty. It would go into effect at the close of the amnesty this spring.

COUNCILWOMAN TASCO: So on Bill 080791 you don't need this Committee to further address that bill --

MR. CANTU-HERTZLER: That's right.

COUNCILWOMAN TASCO: -- if this bill is passed?

MR. CANTU-HERTZLER: That's right. I had not been aware that that was even still pending, and it would be appropriate to withdraw that one.

COUNCILWOMAN TASCO: Well, it just stays in Committee.

It is my understanding that the reasoning behind Bill 080791 is that collection agencies are cheaper than law firms. In fact, in Bill No. 080791, collection agencies were to be paid up to 16 percent and law firms up to 18 percent. However, this new bill has both law firms and collection agencies at 18 percent. Doesn't the fee structure in the new bill contradict the reasoning for Bill 080791?

MR. CANTU-HERTZLER: Well, we would only be charging what we have to pay the collection agency up to the maximum authorized. So in some cases -- as a general matter, collection agencies tend to be a little less expensive. However, we're thinking more not only about real estate taxes but also water and L&I where we are paying 18 percent or sometimes even a little bit more, and so we would like the authority to go up to 18 percent.

Did that answer the question?

COUNCILWOMAN TASCO: Yeah, that answers the question. Well, you know, we had this conversation about this.

MR. CANTU-HERTZLER: Yes.

COUNCILWOMAN TASCO: So I'm not all enthralled with it.

Councilman Kenney.

COUNCILMAN KENNEY: Thank you, Madam Chair.

How many delinquent accounts are there that would be impacted by this bill?

MR. CANTU-HERTZLER: Well...

COUNCILMAN KENNEY: If you don't know immediately, maybe the Revenue Commissioner. I mean, I assume that every delinquent account has an account number and a record of what is owed, interest and penalty, and when it was supposed to be paid and when it wasn't paid. So how many of those accounts are there?

COMMISSIONER RICHARDSON: Currently, within the delinquency in the City, it's about 200,000 accounts that are delinquent.

COUNCILMAN KENNEY: Of the 200,000 accounts, we're talking about 200,000 that apply to real property and/or --

MR. CANTU-HERTZLER: No.

COUNCILMAN KENNEY: No. The ones that are affected by this bill, I understand from your testimony, is real property and those fees associated, water, sewer, with the real property; is that correct? And you said in your testimony the business taxes, wage tax delinquencies, those things are not -- they may be eligible at some point with enabling legislation, but right now what we can get our arms around is real property and the fees associated with the real property. How many accounts are those?

COMMISSIONER RICHARDSON: Currently right now, as of December '09, there's 114,000 real estate tax delinquents.

COUNCILMAN KENNEY: Do we have an idea of the 114,000 accounts that are delinquent, how many of those are willful non-pays, we're just not paying you, I'm going to duck you, I'm going to do whatever legal maneuvers I can do to keep you at bay and I'm just not paying you? Do we know an estimate of what percentage those folks are?

MR. CANTU-HERTZLER: It depends how you define what's willful.

COUNCILMAN KENNEY: Let me ask it another question. Of the 114,000 accounts -- and this is probably going to be part of the subject of our next hearing. Of those 114,000 delinquent accounts, how many are really collectible? How many folks are dead, their families are scattered, there's an empty lot? I mean, how many?

MR. CANTU-HERTZLER: I think we're going to discuss this a little more in the 2 o'clock hearing, but I think some of it depends on how aggressive we should be in taking houses to Sheriff's sale, because most properties you can get at least some tax payment on by taking them to Sheriff's sale.

COUNCILMAN KENNEY: And that's a policy decision?

MR. CANTU-HERTZLER: Doing it with 100,000 properties would probably not be good for the City, but that's a policy decision, yes.

COUNCILMAN KENNEY: So I guess in relation to this particular bill and our next hearing, we at some point in time need to come out of this process with just what is collectible and what isn't. Because every complaint that we get, that I read in some letter or piece of correspondence about real estate tax increases or other fee increases, Don't raise anything until you collect the $400 million that's owed the City. Well, it may be owed, but at some point in time -- I mean, I was on the Board of a bank for a while -- you write it off, because you're never going to collect it.

So, I mean, why are we giving this kind of skewed impression that there's all this money out there that's just floating around, easily accessible to us and we're just not going to get it?

MR. CANTU-HERTZLER: Some of the money is collectible. It's theoretically collectible. You just can't collect all of it.

COUNCILMAN KENNEY: Explain that.

MR. CANTU-HERTZLER: We don't know exactly which parts we can collect.

COUNCILMAN KENNEY: You have to explain that again to me.

COMMISSIONER RICHARDSON: For example, as I said, 114,000 accounts are out there. That's going back from 1978 to current. From 1978 to 1990, there's about 10,000 cases. How many of those people may be deceased, we don't know how many of those are uncollectible, we don't know. Again, with real estate, once an individual sells their property, then the City would be deemed right to the money that is owed to them.

COUNCILMAN KENNEY: But what if they're not selling the property? What if they're dead? What if the estate was never established, the person died, there's an empty building, it's a vacant lot? Who is selling it?

MR. CANTU-HERTZLER: Real estate does pass by operation of law to somebody, and if --

COUNCILMAN KENNEY: And the property passed to the guy and the son lives in Texas and couldn't care less, take it, it's yours.

So we don't have an inventory even of what it is that's real property that has value, that real property that the taxes haven't exceeded the value of the property, so collecting it, like why waste time?

MR. CANTU-HERTZLER: Well, those properties probably should be taken by the City even if it's for less than the full amount of the tax owed, but --

COUNCILMAN KENNEY: I'm not going to belabor it, because we're going to belabor it again in the next hearing. However, it is frustrating for us as people who need to respond to constituents that when I get these letters or phone calls, Why don't you collect this magic $400 million? I don't know where that came from, but it's out there and people believe it's true.

MR. CANTU-HERTZLER: We share your frustration.

COUNCILMAN KENNEY: Is there some process that you guys can request or that we could give you to at some point in time earlier than 2010 from 1978 that you write it off and say it's not collectible?

MR. CANTU-HERTZLER: We don't think that's a good idea for real estate taxes.

COUNCILMAN KENNEY: Why is that? I mean, if we own the property, what's the difference? We're going to clear the title and waive the taxes anyway.

MR. CANTU-HERTZLER: Oh, you mean Sheriff's sale and then write it off.

COUNCILMAN KENNEY: Yeah. Write it off from the rolls as a delinquent tax bill, because you're never going to get the money. All we do is just mislead people that somehow we're just idiots and we don't collect the taxes, and we're not.

MR. CANTU-HERTZLER: Let me ask a clarifying question. Are you saying write it off with or without taking the property?

COUNCILMAN KENNEY: Take the property and write off the damn taxes. I mean, we could play this game for the next 20 years and it will be a billion dollars, but to what end?

So anyway, I don't mind supporting this bill, giving people more incentive to go out there and collect the taxes and get some money back in in relation to the amnesty program, accelerating people's desire to come in and pay. All that is great, but at some point in time, we don't account for things in the appropriate way.

MR. CANTU-HERTZLER: Yeah. Okay.

COUNCILMAN KENNEY: Thanks.

COUNCILWOMAN TASCO: Any other questions?

Councilman Jones, please forgive me. I did see your light.

COUNCILMAN JONES: Thank you, Madam Chair, and I recognize that I'm not on the Committee, and I appreciate you allowing me to ask the questions.

COUNCILWOMAN TASCO: You're

always on the Committee.

COUNCILMAN JONES: Wasn't it during the Rendell Administration that we began to implement the 18 percent level?

MR. CANTU-HERTZLER: Yes, I believe that's right. I think it was around '96.

COUNCILMAN JONES: And at that time, didn't we decide as a municipality to batch a group of receivables, delinquent taxes, and sell that off into the secondary market where they were -- we took, as Councilman Kenney said, the collectibles, the non-collectibles, we batched them all in one estimate, and I think the figure might have been a one-time payment to the City of $80 million?

MR. CANTU-HERTZLER: Yeah. That's approximately right.

COUNCILMAN JONES: Could you describe that?

MR. CANTU-HERTZLER: The City and the School District together sold most of the delinquent liens from prior to 1996, not all of them, to PAID, which financed the purchase by selling bonds.

COUNCILMAN JONES: And what revenue actually was received during that process? How much did the City net?

MR. CANTU-HERTZLER: The City and School District received -- I don't recall exactly. I think it was on the order of $70, $75 million, and that turned out to be a fairly good deal for the City and School District, but I think that's partly because the bond insurance was perhaps not well underwritten and they ended up having to cover some of the debt because not enough was collected to pay off the bonds without the bond insurance. It's probably not something that could be done economically for the City. In addition, it caused many problems with substitution of liens for many years thereafter. In fact, there's still some problems today.

COUNCILMAN JONES: In that

process, was there any tracking to note what types of Sheriff's sales and whether there were increases and things of that nature during that timeframe as a result of that batching of receivables and selling them off? Did we track that at all?

MR. CANTU-HERTZLER: I don't know. I know that there were a number of -- much greater number of Sheriff's sales than had happened before, not sold by the City but sold by the lien servicer.

COUNCILMAN JONES: And you mentioned also the process of substitution, and for those who do not know what that is, is that we took one property out of the batch and put another one in and almost, to some degree, cherry-picked some of those receivables; is that correct?

MR. CANTU-HERTZLER: That's accurate, yes.

COUNCILMAN JONES: My concern

with this is that when we talk about 18 percent, we're talking about, for certain groups of people, the 24 percent of people that live below the poverty guideline that had been besieged by economic hard times, this recession, foreclosures, a whole host of plagues that almost reminds me that we were in Egypt somewhere and we're being punished before the great return of Moses here. Now we're talking about an 18 percent. What impact will that have on that particular population, and have we looked at this to determine what those outcomes would be?

MR. CANTU-HERTZLER: Those people are largely paying 18 percent today or at least accruing that amount, because we have law firms collecting. If we end up with contracts with collection agencies, we might go lower than that.

On water bills, we would probably be more likely to -- we haven't imposed these in many cases attorney fees for water collections, because we don't have an awful lot of water collections with law firms. We have mostly with collection agencies.

COUNCILMAN JONES: And then, finally, has there been an analysis -- and I know this question has been asked before -- whether or not it is better to pick up individuals permanently within our workforce and dedicate them? One of the questions that has come up as a result of our scrambling to determine how we're going to deal with our operating budget shortfalls is collections. And have we looked at whether internal hiring, training and long-term employment of individuals within your workforce is a better long-term solution to increase our collection efforts? And I don't know if there was a study ever done, and if there is, I'd be interested in looking at it to see if it's better just to have that person brought over from PWDC trained on collections and brought into the workforce.

MR. CANTU-HERTZLER: Again, some of this will be the subject of the hearing at 2 o'clock, but I think as a general matter, we are fairly cost effective at what we do collect. I think many collection agencies, a few law firms have very good resources for skip tracing, for finding people. That isn't as much of a problem for real estate, because a lot of times we know where the owners are there, but for other taxes and for absentee owners, sometimes it's hard to track them down, and they can take the more difficult things and probably collect them more effectively than we can.

We're considering this all the time, and we do sometimes go with more collection agencies, more law firms, more internal. We'd like to have the flexibility to do what we think is most effective.

COUNCILMAN JONES: Well,

flexibility also includes our internal City workforce.

MR. CANTU-HERTZLER: That's right. We agree with that.

COUNCILMAN JONES: I just want us to constantly be checking the meter and the dials to see if that's the best way to do it.

MR. CANTU-HERTZLER: Agreed.

COUNCILMAN JONES: With an unemployment rate of ten percent and possibly even higher in some impacted neighborhoods, I'd like us to look at that first as we do that.

MR. CANTU-HERTZLER: In fact, part of this bill would allow the imposition of a six percent fee even while it's within Revenue before it gets referred out either to the Law Department or to a collection agency, because it does cost the internal people within Revenue or within Law that are not doing legal work, if there are any, that expense too. So if that is authorized to be imposed on the people that are making it necessary, we think that's a good idea.

COUNCILMAN JONES: Just the monitoring part is also, as we start moving along on this and as we start talking about long-term solutions, not temporary one-time fixes. I'm going to ask about that consistently.

MR. CANTU-HERTZLER: That's fair.

COUNCILMAN JONES: Thank you, Madam Chair.

COUNCILWOMAN TASCO: Thank you.

On that note, last year the City issued an RFP for additional companies to submit proposals for tax collections. For this RFP, collection agencies and law firms would be competing against each other.

For the firm that is selected, what will be the requirement for the diversity of its workforce and for the composition of City residents and its workforce? Do you look at that in the selection of the -- will the firm, will there be a preference for Philadelphia-based companies?

MR. CANTU-HERTZLER: Could you remind me which RFP you're talking about? Was this for real estate taxes or for business and other?

COUNCILWOMAN TASCO: It was for real estate taxes. Well, it doesn't matter. Because some of these agencies, are they hiring Philadelphia people? Are they hiring individuals from other -- are they in India, the collectors? I mean --

MR. CANTU-HERTZLER: I do not believe we have any working from India.

COUNCILWOMAN TASCO: Where are they coming from and also what does the workforce look like? What do you require in terms of diversity?

MR. CANTU-HERTZLER: I don't recall what the specific requirements were, and it's been different for real estate and for business taxes, but we have one collection agency that's been working for the City for many years, RCB, Revenue Collection Bureau. They are located in the City. It's virtually all City residents, high minority, both employment and ownership.

The firms of Linebarger and GRB, those are both law firms and both have established offices in the City in order to collect.

There are a couple of other collection agencies that we currently have for some business or water, NCO, Progressive and MuniServices. I don't know the specifics about their local offices.

We definitely consider it a strong positive for them to have a local presence. It's not an absolute requirement.

COUNCILWOMAN TASCO: It's not?

MR. CANTU-HERTZLER: It is not an absolute requirement.

COUNCILWOMAN TASCO: But when

you're making the selection, in the specifications do you note that it would be helpful if they would --

MR. CANTU-HERTZLER: Yes.

COUNCILWOMAN TASCO: -- meet the requirement?

MR. CANTU-HERTZLER: Yes.

COUNCILWOMAN TASCO: I mean, the Mayor just announced a major economic opportunity plan, and the whole issue is to create small and minority businesses and to increase the workforce, allow for a strong workforce in Philadelphia. That should be the goal --

MR. CANTU-HERTZLER: Yes.

COUNCILWOMAN TASCO: -- in awarding the RFP.

MR. CANTU-HERTZLER: Yes. We share that goal and we're trying to work for it.

COUNCILWOMAN TASCO: Any other questions?

Councilwoman Brown.

COUNCILWOMAN BROWN: Good

afternoon. The response to Chairwoman Tasco's question with regards to weight given to local firms, what was your response again? It's blank, but it's not required. What was the word you used?

MR. CANTU-HERTZLER: I don't recall. It's encouraged. It helps. We weigh it in favor of a proposal. There's no specific weight that we give it.

COUNCILWOMAN BROWN: So does that mean that X number of points are given for those firms that come with that positive?

MR. CANTU-HERTZLER: We don't generally judge by points. We haven't. We have a team that has reached a consensus of what mix seems worthwhile trying and sometimes they have different approaches, and we like to see which types of approaches succeed, and then we have the ability under our contracts to take some from one and give to another depending on how they're doing.

COUNCILWOMAN BROWN: So given

the press conference that the Mayor had about ten days ago around the issue of leveling the playing field across City departments, what internal changes or adjustments have you made with regards to how the Mayor's goals fit with what we're trying to do here?

MR. CANTU-HERTZLER: I think I should probably get back to you on that and speak with Shelley. I don't know that we've made any changes within the last ten days, but obviously we share the Mayor's goal.

COUNCILWOMAN BROWN: Well, let me just -- forewarned is forearmed, they say. Come budget time, that question will be consistently asked across the board and we will want to know what was and what is now, based on the Mayor's declaration that he expects government to look more like Philadelphia.

MR. CANTU-HERTZLER: Yeah.

COUNCILWOMAN BROWN: He expects those who do business with government to look more like Philadelphia.

Thank you for your testimony.

MR. CANTU-HERTZLER: Sure.

COUNCILWOMAN TASCO: I think you got the message very clear. We want the Administration to at least be committed to supporting the Mayor's effort. If the Department of Commerce made the effort to put forth the proposal and the agenda for more diversity, then the departments have to buy into that. You have to understand that.

Is there a review to ensure that any selected firm from any RFP, particularly this one, is current with all City taxes and licenses?

MR. CANTU-HERTZLER: Yes.

COUNCILWOMAN TASCO: If a company is not in the City of Philadelphia and they're doing business in Philadelphia -- suppose the call center is in New Jersey -- how are they taxed and how do you collect their taxes?

MR. CANTU-HERTZLER: Well, if

they're collecting here, chances are they're doing business in the City and they would be responsible for getting a business privilege license and filing and paying. Depending on where they are, they may or may not have to withhold wage taxes, but employees that are working in the City certainly would have to pay.

COUNCILWOMAN TASCO: What if the employees are working in New Jersey?

MR. CANTU-HERTZLER: If they are working in New Jersey and they are living outside the City, they would not be subject to wage tax. And obviously that's a consideration in who we choose. You know, considering that we're -- these firms are collecting many millions of dollars, just in a dollar and cents question it's not an enormous consideration, but we also think it's the right thing to do.

COUNCILWOMAN TASCO: When you're reviewing the RFP, do you look at the -- do you ask the question as to where the employees who will be making these calls, where they reside?

MR. CANTU-HERTZLER: I don't know. I think we have at times. I'm not sure we have --

COUNCILWOMAN TASCO: Wouldn't that be a very important consideration in making the determination whether a firm that's located in Philadelphia, hiring people who live in Philadelphia get more points, where you might not provide point service, but get stronger consideration than a company not in Philadelphia, employees not in Philadelphia and they are not contributing anything to Philadelphia?

MR. CANTU-HERTZLER: I hear you. That makes sense.

COUNCILWOMAN TASCO: All right. I don't know if you've issued this RFP or not, but certainly think that those considerations should be given some attention, because we will be looking at that.

2/23/10 - FINANCE - BILL 090833, etc.

MR. CANTU-HERTZLER: Okay.

COUNCILWOMAN TASCO: Any other questions?

COUNCILMAN KENNEY: In response to this RFP, what is the term of the contract you're going to award?

MR. CANTU-HERTZLER: Well, I don't think we have anything outstanding right now for the Law Department, but we award one-year contracts, with the City having the right to renew for another three years, one at a time.

COUNCILMAN KENNEY: Why do you do that?

MR. CANTU-HERTZLER: It gives us the flexibility easily to say if somebody is not doing a good job that we'll move on to somebody else, but at the same time, I think people get the sense that if they are doing a good job, they have a fair possibility of working for at least four years for the City and so they're willing to invest, come in here and --

COUNCILMAN KENNEY: How many firms that you're aware of or, Keith, that you're aware of that have been dismissed after the first year and the option not renewed, just in this Administration?

MR. CANTU-HERTZLER: In this Administration, as far as collections firms, none. There was one in the last Administration that was shortly after the first year.

COUNCILMAN KENNEY: So it's got more to do with flexibility than it does to do with the fact that we would have to approve it if it were more than one year?

MR. CANTU-HERTZLER: I'm sure that factors into it, too.

COUNCILMAN KENNEY: Why don't you make it 18 months and then at least some of the questions that these Councilmembers have raised, Councilwomen Tasco and Blondell Reynolds Brown could actually ask of the firm that's getting the award as opposed to -- I mean, I know you're doing your best to try to answer the questions from your memory, but if you have the principals at the table because they're required to be here because the length of the contract requires our approval, perhaps we can get direct answers about the workforce demographics, diversity, logistics.

MR. CANTU-HERTZLER: We can get that information for you. I just don't have it.

COUNCILMAN KENNEY: I mean, I know this art form of contracting started back in the Rendell Administration when I first came here. It was this one-year contract with three one-year options, which conveniently bypassed this room, and I think in some instances, it's warranted and in some instances, it's probably not.

So, I mean, I don't know whether other members of Council have the same concern. I believe that many of them do, but we often wind up after the fact coming back with critical questions, which we may be able to head off at the outset if we're involved a little more in the process than just hoping you do the right thing.

MR. CANTU-HERTZLER: I hear you.

COUNCILMAN KENNEY: Thanks.

COUNCILWOMAN TASCO: Thank you very much.

Are there any more questions?

Councilman Green.

COUNCILMAN GREEN: Thank you, Madam Chair.

I just have two quick points of clarification in Section 1.1 of the bill. It's the italicized language. The first is, in the first sentence, it says "Subject to revision from time to time pursuant to Subsection 19-3101(2), the following schedule," blah, blah, blah, and this is a schedule of fees. My question is, does this mean that you could change this fee schedule by regulation without coming back to Council?

MR. CANTU-HERTZLER: Yes. That's the way it is now.

COUNCILMAN GREEN: Okay. I guess I didn't understand that. You could change it up or down?

MR. CANTU-HERTZLER: Under Subsection 1, that's how it is for attorney fees now.

COUNCILMAN GREEN: Okay.

MR. CANTU-HERTZLER: The City Solicitor has never actually done that, but this would be parallel for collection agency fees, and the limitation is that it has to be no more than the City's actual cost.

COUNCILMAN GREEN: Okay. That wasn't clear to me.

The other thing is, when you're looking at 1.1(a) and (b), are they additive just for the record or are they separate fees? In other words --

MR. CANTU-HERTZLER: No, they

would not be separate fees.

COUNCILMAN GREEN: So if the Law Department is starting to collect it and then does not collect it and turns it over to a third-party collector, it wouldn't be 24 percent, it would be 18 percent?

MR. CANTU-HERTZLER: Again, that's how we do it now. If the Law Department has it at six percent, if we turn it over to one of our collections firms, it becomes 14 percent or 18 percent depending on the age.

COMMISSIONER RICHARDSON: I think your concern, is the Law fee still on there, on that additional collection, you're saying?

COUNCILMAN GREEN: I'm asking the way this is drafted, in theory you could do that. So for the record, for the legislative history, I want to make clear that it's your position that this legislation is not intended to allow you to double charge.

MR. CANTU-HERTZLER: That's correct.

COUNCILMAN GREEN: Thank you.

Thank you, Madam Chair.

COUNCILWOMAN TASCO: The Chair recognizes Councilman Goode.

COUNCILMAN GOODE: Thank you, Madam Chair.

Good afternoon.

COMMISSIONER RICHARDSON: Good afternoon.

COUNCILMAN GOODE: The issue was raised with regard to future contracting diversity. While you're not prepared to speak about that, could you speak to current contracting diversity with regard to collection agencies?

MR. CANTU-HERTZLER: It may depend on the questions, but, yes, I will try to.

COUNCILMAN GOODE: Well, the question is, what is the current diversity of the contracting you have in terms of who do you have contracts with and what percentage is going to minority businesses and what percentage is going to women businesses and what percentage, if any, is going to disabled businesses.

MR. CANTU-HERTZLER: I believe we -- the only minority firm with which we contract directly is RCB. Both Linebarger and GRB have quite substantial MBE or WBE or both. I'm not aware of any DSBEs.

COUNCILMAN GOODE: Do you know the breakdown in terms of MBE versus WBE?

MR. CANTU-HERTZLER: No. Not off the top of my head, no.

COUNCILMAN GOODE: Do you know the breakdown in Linebarger?

MR. CANTU-HERTZLER: Linebarger is here, if you'd like to ask them.

COUNCILMAN GOODE: That would be appropriate.

(Witness approached witness table.)

MR. ALDINGER: Good afternoon. I'm Drew Aldinger, a partner with the law firm of Linebarger.

COUNCILMAN GOODE: In terms of your ownership, what percentage is MBE, what percentage is WBE?

MR. ALDINGER: The ownership, it's in the 40 percent range, almost 50 percent.

COUNCILMAN GOODE: What's the breakdown?

MR. ALDINGER: For women and minorities, I'm not sure what the breakdown is of women versus minorities.

COUNCILMAN GOODE: That was the question. So you don't know?

MR. ALDINGER: No. I'd be happy to get that information to you, though. I don't know what it is. I wasn't prepared to speak to that.

MR. CANTU-HERTZLER: Can you speak to subcontracting?

MR. ALDINGER: The subcontracting, I believe last year we were at 25. I want to say 25 percent of our subcontractors were with minority or women-owned firms. Again, I don't know what the breakdown is, but I can tell you that more of that was with minority and women-owned firms, or maybe all of it actually.

COUNCILMAN GOODE: For the record, when we analyze participation, we not only break it down in terms of minority business but in terms of measurement, we measure by ethnicity as well. We would like to know how many minority businesses, how many women-owned businesses, how many African American businesses, how many Latino businesses, how many Native American businesses, how many Asian businesses, how many disadvantaged businesses operating within the Philadelphia versus operating outside of Philadelphia. And that is actually a matter of law at this point. Our disparity studies are based upon that. Our participation goals are based upon that. The economic opportunity plan strategic plan that was just released by the Mayor was based upon that and is broken down that way.

So any time any question is asked about economic opportunity, you should be prepared to talk about not just the future but current and talk about it with those specific things in mind.

MR. ALDINGER: I apologize, Councilman. I wasn't prepared to speak today, but we're very proud of our record and I'd be more than happy to get you that information.

COUNCILMAN GOODE: I was actually talking to the members of the Administration.

MR. ALDINGER: Oh, okay.

COUNCILMAN GOODE: Thank you, Madam Chair.

COUNCILWOMAN TASCO: Thank you very much.

MR. ALDINGER: Thank you.

COUNCILWOMAN TASCO: Any other questions?

(No response.)

2/23/10 - FINANCE - BILL 090833, etc.

COUNCILWOMAN TASCO: Thank you very much for your testimony.

The next bill will be Bill No. 100004, capital bond, City Treasurer, Rebecca Rhynhart.

(Witness approached witness table.)

COUNCILWOMAN TASCO: Good afternoon.

MS. RHYNHART: Good afternoon, Councilwoman Tasco and members of the Committee on Finance. I'm Rebecca Rhynhart, City Treasurer for the City of Philadelphia. I am here today to testify in support of Bill No. 100004.

The purpose of this bill is to obtain approval from City Council to place a loan authorization question on the election ballot on May 18th, 2010. The loan question requests an increase in indebtedness in an amount not to exceed $65,525,000 to fund the City's Fiscal Year 2010 Capital Budget approved by City Council. State law requires the City to

2/23/10 - FINANCE - BILL 090833, etc.

place a question before the electorate during an election to increase its borrowing authority. This loan authorization was passed by City Council on September 17th, 2009. However, it did not make it onto the ballot for the November 2009 election.

The loan authorization, if approved, would finance capital projects classified for the following purposes and in the following aggregate amounts:

Transit, 4,150,000; streets and sanitation, 10,937,000; municipal buildings, 30,177,000; parks, recreation and museums, 17,967,000; and economic and community development, 2,294,000.

As of November 1st, 2009, the City's legal debt limit is 1,469,376,000, and the amount of debt applicable to the debt limit is 1,341,511,000. Therefore, there is 127,865,000 of legal debt margin available, so this loan authorization of 65,525,000 fits within the debt limit.

In order to provide appropriate

time to advertise the ballot question prior to the May 18th, 2010 election, the bill should be enacted no later than March 25th. I would like to request a suspension of the rules to allow for first reading at the next meeting of City Council.

Finally, attached as part of this testimony is the proposed ballot question requesting loan authorization from the electorate of the City of Philadelphia.

This concludes my written testimony. I would be happy to answer any questions.

COUNCILWOMAN TASCO: Thank you.

Are there any questions on behalf of the Committee?

(No response.)

COUNCILWOMAN TASCO: I think we worked this one enough. Thank you.

Next will be Bill No. 100005, Water Revenue Bonds. Ms. Rhynhart and Joseph Clare, Deputy Water Commissioner.

2/23/10 - FINANCE - BILL 090833, etc.

(Witness approached witness table.)

MS. RHYNHART: Again, Rebecca Rhynhart, City Treasurer, City of Philadelphia. With me is Joseph Clare, Deputy Water Commissioner for the Philadelphia Water Department. We are here to testify on behalf of Bill No. 100005.

Bill No. 100005 would authorize the City to issue one or more series of water and wastewater revenue bonds in a principal amount not to exceed $460 million to provide funds to refund the City's Water and Wastewater Revenue Refunding Bonds Variable Rate Series 2003, to make a payment to terminate a swap entered into with respect to the 2003 bonds, to pay issuance costs and certain other items. The City's outstanding Series 2003 bonds are variable rate bonds with Dexia as the liquidity bank. The liquidity facility provided by Dexia expires in April 2010, and Dexia is not renewing this facility, leading to a need to take action on these bonds. The plan of finance is to issue fixed rate bonds and terminate the associated swap. This plan is less costly than keeping the 2003 bonds in variable rate mode because of the current low interest rates for the fixed rate bonds and the high costs of replacement liquidity which would be needed to keep all the bonds in variable rate mode.

Municipalities across the country have had liquidity facilities not renewed on their variable rate bonds and are facing much higher costs on any replacement liquidity facilities. This is not the result of anything to do with the municipalities' actions, but is the result of the market turmoil and the lack of liquidity in the marketplace. The fixed rate refunding bonds would be issued to handle this market problem and would remove the City's risks to variable rate markets for these bonds.

If no action is taken, the interest rate on these bonds and the associated swap will increase to 8.5 percent in April. In addition, the bonds' amortization would shorten, meaning that the Water Department would have to pay the debt service on the bonds in an accelerated schedule. The first unbudgeted payment of 25 million would come due in October 2010, creating significant cash flow pressure for the Water Department. Because of this, it is in the best interest of the City to refund the outstanding bonds.

I would like to request a suspension of the rules for Bill No. 100005 to allow for first reading at the next meeting of City Council.

This concludes my testimony.

COUNCILWOMAN TASCO: Thank you very much.

Are there any questions on behalf of the Committee?

COUNCILMAN JONES: Yes.

COUNCILWOMAN TASCO: Go ahead. I'm sorry.

DEPUTY COMMISSIONER CLARE: Good afternoon, Councilwoman Tasco and members of the Committee on Finance. I am Joseph Clare, Deputy Water Commissioner, appearing before you to testify in favor of Bill No. 100005. The ordinance authorizes the City to retire the existing 2003 series bonds and terminate the underlying swap and to replace them with up to 460 million of fixed rate refunding bonds.

I'll just summarize my testimony. Much of it mirrors the City Treasurer's.

We in the Water Department fully support the City Treasurer in this transaction. The plan of finance is to issue fixed rate bonds to refund the 2003 bonds and terminate the associated swap. This plan is currently less costly than keeping the 2003 bonds at variable rate mode, mainly because of the high cost of replacement liquidity.

I also respectfully request that the rules of Council be suspended in order to enable prompt passage of this ordinance.

Thank you.

COUNCILWOMAN TASCO: Thank you very much.

Are there any questions?

Councilman Jones.

COUNCILMAN JONES: Thank you, Madam Chair.

Although this is a slightly different matter, I think it bears enough importance for us to have it on the record. One of the things that I have been able to do as a freshman is look into the City Code and the requirement for us to do an audit of the City's Water Department. As a body we are required to do it every four years. So you've passed a resolution -- this body has passed a resolution to do just that.

One of the critical issues as

we start to talk about the capital needs of the Water Department is an issue that has come up time and time again in my office, which are replacement laterals in the City of Philadelphia because of the aging infrastructure. The other problem that -- this was raised by Councilman O'Neill in 2003 where he proposed making some provisions for those replacements, and the issue of private property came up. The importance of this is that --

COUNCILWOMAN TASCO: It has been an ongoing discussion forever.

COUNCILMAN JONES: And I don't want it to go away. And the idea here is that it was estimated that it's going to cost us about $20 million to replace, for people on fixed income, these laterals and replacements. It is imperative and we're looking at relief from the federal government. Both Congressman Brady and Congressman Fattah are looking at providing the City of Philadelphia some relief to that respect, but it is important for us to take a look at our own internal operations to see if we can't provide some relief for people.

It is my opinion, colleagues, that as important as the Sheriff's sale process was to stop, the high cost of utilities will be the second wave of that tsunami to people on fixed income, particularly the 24 percent under the poverty guidelines. It is penny wise and pound foolish for us to replace infrastructure and then because of a $4,500 plumbing bill have to put someone in a homeless shelter or senior facility because of their inability to pay.

This is an issue for me that is near and dear to my heart, and I know that we're on other business, but I want to put it on the record that it is something that I'm looking to for solutions from this department and the City of Philadelphia to solve in the near future, and have that for the record.

Thank you very much.

COUNCILWOMAN TASCO: Some things never go away, Councilman, and I agree with you, we have to figure out some way to deal with the water lateral issue. I appreciate your comments and concerns.

Anyone else here to testify on this bill?

(No response.)

COUNCILWOMAN TASCO: Thank you very much.

The next and final bill is Bill No. 100006, PGW Commercial Paper Program. Ms. Rhynhart and Joe Bogdonavage, Senior Vice-President, Finance, PGW.

(Witness approached witness table.)

MS. RHYNHART: Rebecca Rhynhart, City Treasurer. With me is Joseph Bogdonavage, Senior Vice-President for Finance for the Philadelphia Gas Works. We are here to testify on behalf of Bill No. 100006.

Bill No. 100006 would authorize

the continued issuance of Gas Works Revenue Notes, which requires reauthorization by City Council every five years. PGW utilizes this Commercial Paper Program to finance working capital needs. The authorization amount being requested is 150 million, which is 50 million less than the 200 million currently authorized. PGW only used 150 million of the 200 million previously authorized and does not anticipate needing more than 150 million for the next five years.

I would like to request a suspension of the rules for Bill No. 100006 to allow for first reading at the next meeting of City Council.

This concludes my testimony, and now Joseph Bogdonavage would like to give his testimony on the bill.

MR. BOGDONAVAGE: Good afternoon, Councilwoman Tasco and members of the Committee on Finance. I do offer one amendment to the bill, and this is an amendment to clarify the language in the Management Agreement, so there is no confusion that when the existing ordinance expires in May 2010 that the amount outstanding and authorized by PGW to be issued is for $150 million. That is an amendment to the existing bill as it was read into Council.

COUNCILWOMAN TASCO: Do you want to explain why we're doing that amendment?

MR. BOGDONAVAGE: Basically the Management Agreement that PGW has to be run by the City through the PFMC, when we went back in 2007 to extend the Commercial Paper Program from 150 million to 200 million dollars, there was some language that was inserted that may be construed that when the existing ordinance that was approved by Council in 2005 expires in May of 2010, that the amount of -- the existing amount of commercial paper to be reauthorized might drop back to the $100 million range. So what we're looking for in this amendment is to clarify that language in the Management Agreement, not in the bill per se but in the Management Agreement that PGW operates under with the City of Philadelphia.

As Ms. Rhynhart has spoken about the ordinance, we're here to testify on behalf of Bill 100006, and as Ms. Rhynhart has previously mentioned, PGW has an existing Commercial Paper Program of about $150 million. This program was initially approved by Council on five-year increments in December of 1982 and has operated consistently since that time.

The purpose of the Commercial Paper Program at PGW, which is authorized currently, as Ms. Rhynhart has said, at 200 million, is to provide sufficient liquidity so that PGW is able to purchase natural gas and other payments on a timely basis. This authorization for the Commercial Paper Program, which was approved in May of 2005, expires in 2010. So the extent that PGW is now working with the Commercial Paper Program, this paper program is supported by a letter of credit provided by a consortium of banks, which include JP Morgan, Wachovia and Scotiabank. In May 2007, the fees for this letter of credit and liquidity facility were reduced as a result of improving credit status of PGW. Back in 2007, PGW and its ratepayers saved somewhere between a quarter and $750,000 on an annual basis as a result of the improved fee structure.

The consortium of banks is now in the process of preparing a proposal to extend the term of the letter of credit through May of 2012, which is a two-year extension. The City Treasurer's Office and PGW will begin negotiations with the banks when this proposal has been finalized, and as a result of the ongoing credit crisis, there will be some upward adjustment in fee structure as a result of the credit facility.

PGW has not issued any commercial paper notes with this program since it was repaid in full in May of 2009. PGW does not anticipate issuing any commercial paper notes for the remainder of its current fiscal year through August. While PGW does not plan to issue commercial paper, it is a prudent necessity to have the authority from City Council to issue commercial paper in the case of unexpected events, such as declines in customer gas payments, higher natural gas costs and any unfavorable rate decision that is before the PUC currently.

I respectfully request that the rules of Council be suspended on this bill, 100006, so that it may have its first reading at the next City Council meeting.

That concludes my testimony. I'd be happy to answer any questions.

COUNCILWOMAN TASCO: Thank you.

You testified that PGW has issued no commercial paper notes since May 2009. Would I be correct that when PGW ended its Fiscal Year 2009 on August 31st, this was the first time it had no commercial paper outstanding at fiscal year end and instead had true internally generated funds since August 1993?

MR. BOGDONAVAGE: Councilwoman, you're probably 99 percent correct. There may have been one fiscal year end in that decade and a half when PGW did have some positive cash and no commercial paper outstanding, but it was a bare minimum amount of commercial paper notes and cash. This, as you pointed out, was the first year as a result of the ongoing actions by the PUC that PGW was able to, backtracking somewhat, pay back the City its $45 million loan, actually have positive cash, not have commercial paper outstanding and actually have liquidity support for its intended need, which is to provide working capital when it's required by the enterprise.

COUNCILWOMAN TASCO: Would it be fair to say that PGW was able to generate positive cash at year end because of at least two factors. One, the City is still granting back the $18 million annual payment to PGW?

MR. BOGDONAVAGE: That is correct.

COUNCILWOMAN TASCO: Whether that would have some impact.

MR. BOGDONAVAGE: Yes, it would.

COUNCILWOMAN TASCO: And that you got $60 million from the state in state relief from the PUC last year?

MR. BOGDONAVAGE: That is also correct.

COUNCILWOMAN TASCO: Are you going forward with the request for funds from the PUC?

MR. BOGDONAVAGE: Yes. Currently, there is a base rate case that is our affirmation of that $60 million.

We expect to have a final decision on that matter probably sometime in the September 2009 (sic) timeframe. And as we mentioned during the testimony, as a result of any unfavorable, although we don't anticipate unfavorable, decisions from the PUC, it's prudent that we have this Commercial Paper Program in existence so that PGW does have some liquidity stream in case of an unexpected event and not have to fall back upon the City's coffers as we have in the past, noting that the City has its own financial trouble right now.

COUNCILWOMAN TASCO: Thank you. Any questions?

(No response.)

COUNCILWOMAN TASCO: Thank you very much for your testimony.

MR. BOGDONAVAGE: Thank you.

COUNCILWOMAN TASCO: That ends the public hearing on Bill No. 090833. Do you request a suspension of the rules on that bill?

MR. CANTU-HERTZLER: Yes, we do.

COUNCILWOMAN TASCO: We will now adjourn the hearing and go into our public meeting.

The Chair calls on Councilman Kenney to move Bill 090833.

COUNCILMAN KENNEY: Thank you, Madam Chair. I move that Bill No. 090833 be reported out of this committee with a favorable recommendation and a request made for rules suspension to allow for first reading at our next Council session.

(Duly seconded.)

COUNCILWOMAN TASCO: It has been moved and seconded that Bill 090833 be moved out of Committee with a favorable recommendation and that a request for the suspension of rules be given so that this bill could be heard at Council's next session.

All in favor will say aye.

(Aye.)

COUNCILWOMAN TASCO: Is there any opposition?

(No response.)

COUNCILWOMAN TASCO: There being none, the motion is carried.

The Chair recognizes Councilman Goode for Bill 100004, report out of committee.

COUNCILMAN GOODE: Thank you, Madam Chair. I move that Bill 100004 be reported out of Committee with a favorable recommendation and the rules of Council be suspended so as to permit first reading at our next Council session.

(Duly seconded.)

COUNCILWOMAN TASCO: It has been moved that Bill 100004 be reported out of Committee with a favorable recommendation and that the rules of Council be suspended so this bill can be heard at Council's next session.

All in favor will say aye.

(Aye.)

COUNCILWOMAN TASCO: Is there any opposition?

(No response.)

COUNCILWOMAN TASCO: There being none, the motion is carried.

The Chair recognizes Councilwoman Blackwell for Bill 100005.

COUNCILWOMAN BLACKWELL: Thank you, Madam Chair. I move that Bill No. 100005 be reported out of Committee with a favorable recommendation and also for a suspension of the rules to be heard at our next session of Council.

(Duly seconded.)

COUNCILWOMAN TASCO: It has been moved that Bill 100005 be reported out of Committee with a favorable recommendation and that a request for the suspension of rules be approved.

All in favor?

(Aye.)

COUNCILWOMAN TASCO: Thank you very much. Any opposition?

(No response.)

COUNCILWOMAN TASCO: None. The motion is carried.

The Chair recognizes Councilman Greenlee to move the amendment to Bill 100006.

COUNCILMAN GREENLEE: Thank you, Madam Chair. I move the approval of the amendment to Bill No. 100006.

(Duly seconded.)

COUNCILWOMAN TASCO: It has been moved that the amendment to Bill 100006 be adopted.

All in favor?

(Aye.)

COUNCILWOMAN TASCO: Is there any opposition?

(No response.)

COUNCILWOMAN TASCO: There being none, the amendment is adopted.

The Chair recognizes Councilman Greenlee to move Bill 100006, as amended, out of Committee.

COUNCILMAN GREENLEE: Thank you, Madam Chair. I move that Bill No.

100006, as amended, be reported out of this committee with a favorable recommendation and move further that the rules of Council be suspended to allow for first reading at our next session of Council.

(Duly seconded.)

COUNCILWOMAN TASCO: It has been moved that Bill 100006, as amended, be reported out of Committee with a favorable recommendation and that the rules of Council be suspended so this bill can be heard at Council's next session.

All in favor will say aye.

(Aye.)

COUNCILWOMAN TASCO: Is there any opposition?

(No response.)

COUNCILWOMAN TASCO: There being no opposition, the bill is passed.

Thank you all very much. We will adjourn. Thank you.

(Committee on Finance concluded

at 2:20 p.m.)

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CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence and objections are contained fully and accurately in the stenographic notes taken by me upon the foregoing matter on February 23, 2010, and that this is a true and correct transcript of same.

____

MICHELE L. MURPHY

RPR-Notary Public

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