



City of Columbus

Office of City Clerk
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Legislation Text

File #: 1098-2023, **Version:** 1

BACKGROUND: This ordinance authorizes the Director of the Department of Finance and Management to enter into a Memorandum of Understanding (MOU) with the Franklin County Commissioners in order to reimburse Franklin County for the City's portion of the Ohio Public Employees Retirement System (OPERS) costs arising out of the lawsuit known as *State ex rel., Altman-Bates v. Pub. Emps. Retirement Bd.* 2016-Ohio-3100 that mandates service credit for up to 254 current and former employees of the non-profit Franklin County Public Defender's office (FCPD) hired between 1985 and 1992. The Ohio Supreme Court's decision in *Altman-Bates* is based upon a previous court case also involving pension obligations known as *State ex rel. Mallory v. Pub. Emp. Retirement Bd. (1998)*, 82 Ohio St. 3d 235, 1998-Ohio-380. The City of Columbus and Franklin County previously negotiated an agreement to settle the financial obligations of the *Mallory* case which was authorized by City Council through ordinance 0782-1999. This agreement stated that the two entities would share expenses associated with the *Mallory* case.

The (FCPD) office was organized as a non-profit corporation prior to 1999. The Public Employees Retirement Board (PERB) had initially determined that employees of the non-profit Franklin County Public Defender's Office were not entitled to service credit in OPERS. However, in the *Mallory* case, the Ohio Supreme Court ordered OPERS to credit service time to the FCPD employees and further directed Franklin County to remit pension contributions to OPERS on behalf of the employees who worked for the former (FCPD) office hired between 1985 and 1992.

From 1976 through the present, the City of Columbus has contracted with the Franklin County Commissioners and the FCPD office for the performance of the City's duty under Chapter 173 of the Columbus City Codes, 1959, and Section 120 of the Ohio Revised Code to provide legal counsel to indigent persons charged with municipal criminal offenses. Therefore, the City of Columbus and the Franklin County Commissioners have previously shared the financial responsibility for these pension claims owed to OPERS relating to the initial claim in *Mallory* and have agreed to a financial settlement of pension obligations arising from the second Ohio Supreme Court case, *Altman-Bates* for the pension liability attributable to services performed by employees of the municipal unit of the FCPD office.

Dating back to 1999, the City's obligation under the *Mallory* case was approximately \$3.7 million. A subsequent ordinance for continued claims was processed in 2017 via Ord 2665-2017, which authorized an additional \$3.0 million. This ordinance seeks authority for \$1.0 million to fund continued claims for approximately 200 employees.

FISCAL IMPACT: This ordinance authorizes \$1 million to settle potential claims to be paid to Franklin County based upon the decision in *Altman-Bates*. Funds for these claims are budgeted in the General Fund for this purpose.

EMERGENCY ACTION: Emergency legislation is required to facilitate prompt reimbursement to Franklin County.

To authorize the Director of the Department of Finance and Management to enter into a Memorandum of Understanding with the Franklin County Commissioners in order to reimburse Franklin County for the City's portion of Ohio Public Employment Retirement Systems (OPERS) liability costs associated with the case of *State ex re., Altman-Bates v. Pub. Emps. Retirement Bd.*; 2016-Ohio-3100, to authorize the transfer of \$1,000,000.00 within the General Fund; to authorize the expenditure of up to \$1,000,000.00 from the General Fund; and to declare an emergency. (\$1,000,000.00)

WHEREAS, from 1976 through the present, the City has contracted with the County and the Franklin County Public Defender (FCPD) for the performance of the City's duty under Chapter 173 of the City of Columbus Codes, and Chapter

120 of the Ohio Revised Code to provide legal counsel to indigent persons charged with municipal criminal offenses, and

WHEREAS, the FCPD's municipal unit has provided the contracted services, and

WHEREAS, the Ohio Supreme Court ruled, in *State ex rel. Mallory v. Public Emp. Retirement Bd. (1998)* and *State ex rel. Altman-Bates v. Pub. Emp. Retirement Bd. (2016)*, that employees of the FCPD who began their service between the dates of January 1, 1985 and October 31, 1992 are public employees for purposes of participation in the Ohio Public Employee's Retirement System (OPERS); and

WHEREAS, in relation to the decisions in *Mallory* and *Altman-Bates*, the Ohio Supreme Court found that the County is liable for both employee and employer OPERS contributions for a public employee employed by the FCPD; and

WHEREAS, the City and the County have agreed, without conceding, for purposes of the actions set forth herein only, that to avoid additional risk it is in their best interest to assume that employees of the FCPD who began their service between the dates of November 1, 1992 and December 31, 1998 are public employees for purposes of participation in OPERS; and

WHEREAS, the City intends to reimburse the County for that portion of the County's OPERS liability attributable to services performed by employees of the municipal unit of the FCPD on behalf of the City who were hired between November 1, 1992 and December 31, 1998; and

WHEREAS, , assuming all eligible FCPD employees file for OPERS benefits for which they might be eligible, the additional total County OPERS liability is estimated to be \$3,000,000.00 and of this estimated amount, no more than \$1,000,000.00, is attributable to liability arising from services performed by employees of the FCPD's municipal unit on behalf of the City of Columbus; and

WHEREAS, funding for this reimbursement is available within the General Fund; and

WHEREAS, an emergency exists in the usual daily operation of the Department of Finance and Management in that it is immediately necessary to authorize the Director to enter into a Memorandum of Understanding with the Franklin County Commissioners to reimburse Franklin County so that such reimbursement can be made without delay, for the preservation of the public health, peace, property, safety, and welfare; **NOW, THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That the Director of the Department of Finance and Management be and hereby is authorized to enter into a Memorandum of Understanding with the Franklin County Commissioners to reimburse Franklin County for the City's portion of OPERS costs associated with the case of *State ex re. Altman-Bates v. Pub. Emps. Retirement Bd.*

SECTION 2. That the transfer of \$1,000,000.00 or so much thereof as may be needed, is hereby authorized within Fund 1000 (General Fund), from Dept.-Div 45-01 (Financial Management), object class 10 (Transfer Out Operating) to Dept-Div 45-50 (Director's Office), object class 03 (Services) per the account codes in the attachment to this ordinance.

SECTION 3. That the expenditure of \$1,000,000.00, or so much thereof as may be needed, is hereby authorized in the General Fund 1000, object class 03 (Services), per the accounting codes in the attachment to this ordinance:

SECTION 4. That the monies in the foregoing Sections shall be paid upon order of the Director of the Department of Finance and Management, and that no order shall be drawn or money paid except by voucher, the form of which shall be approved by the City Auditor.

SECTION 5. That the City Auditor is authorized to make any accounting changes to revise the funding source for all contracts or contract modifications associated with this ordinance.

SECTION 6. That for reasons stated in the preamble hereto, which is hereby made a part hereof, this ordinance is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval by the Mayor or ten days after passage if the Mayor neither approves nor vetoes the same.