



## Legislation Text

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**File #:** 2665-2017, **Version:** 1

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**BACKGROUND:** This ordinance authorizes the Director of Finance and Management to enter into Memorandum of Understanding (MOU) with the Franklin County Commissioners in order to reimburse Franklin County for its portion of the Ohio Public Employees Retirement System (OPERS) costs arising out of the lawsuit known as *State ex re., 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 case *Altman-Bates* decision is based upon a previous court case also involving prior pension obligations known as *Mallory v. Pub. Emp. Retirement Bd. (1988)*. 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, the Ohio Supreme Court case *Mallory v. Pub. Emp. Retirement Bd.* 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 Code, 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 now have agreed to a financial settlement of pension obligations arising from this second Ohio Supreme Court case known as *Altman-Bates* for the pension liability attributable to services performed by employees of the municipal unit of the FCPD office.

**FISCAL IMPACT:** Dating back to 1999, the City's obligation under the *Mallory* case was approximately \$3.7 million. This ordinance authorizes \$3 million to settle potential claims to be paid to Franklin County for *Altman-Bates*. Funds for this claim will be appropriated in the Special Income Tax Fund for this purpose.

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

To authorize 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 appropriation and expenditure of up to \$3,000,000.00 from the Special Income Tax Fund; and to declare an emergency. (\$3,000,000.00)

**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 Code, and Chapter 120 of the Ohio Revised Code to provide legal counsel and 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 has recently ruled, in *State ex rel. Altman-Bates v. Pub. Emp. Retirement Bd.* (2016), that employees of the FCPD who began their service between the dates of 1984 and November 1992; are public employees for purposes of participation in the OPERS system, and

**WHEREAS**, the Ohio Supreme Court found that the County is liable for both employee and employer pension contributions for a public employee employed by the FCPD, and

**WHEREAS**, the City intends to reimburse the County for that portion of the County's pension liability attributable to services performed by employees of the municipal unit of the FCPD on behalf of the City, and

**WHEREAS**, assuming all eligible FCPD employees file for the OPERS benefits for which they might be eligible, the total County pension liability is estimated to be nearly \$7 million. Of this estimated amount, approximately \$3 million is estimated to be 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 Special Income Tax Fund; and

**WHEREAS**, an emergency exists in the usual daily operation of the City in that it is immediately necessary to authorize the Director of Finance and Management 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 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 from the unappropriated monies and from all monies estimated to come into said fund from any and all sources and unappropriated for any other purpose during the fiscal year ending December 31, 2017, the sum of \$3,000,000.00 is appropriated in the Special Income Tax Fund 4430, subfund 443001 in Object Class 05, per the account codes in the attachment to this ordinance.

**SECTION 3.** That the expenditure of \$3,000,000.00, or so much thereof as may be needed, is hereby authorized as follows in the Special Income Tax Fund object class 05 Non-Medical Claims 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 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.