



Legislation Text

File #: 981761, Version: 1

981761
SUBSTITUTE 1

THE CHAIR

A substitute charter ordinance relating to the full indemnification of the annuity and pension board and its members and the Milwaukee employees' retirement system and its secretary and executive director, employees and staff in connection with the administration of certain 1995 catch-up and annual cost of living adjustments to the pension benefits of certain retirees.

- Analysis -

This charter ordinance fully indemnifies and holds harmless the annuity and pension board and each past, present and future member thereof, Milwaukee employees' retirement system ("MERS"), and each past, present and future secretary and executive director, staff and employe of MERS (collectively "indemnitees") against all liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees, arising from administration of the catch-up and annual cost of living adjustments (collectively, the "COLA adjustments") adopted by the city in 1995, which administration and a related overpayment of approximately \$11 million (the "overpayment") is being challenged in a lawsuit entitled Edward Walsh, et al. vs. city of Milwaukee, et al., case No. 99-CV-001419 (cir. ct. Milwaukee county). This indemnification shall relieve the indemnitees from all fiduciary obligations to:

- a) Collect the overpayment from the approximately 4,000 overpaid retirees or survivors thereof.
- b) Proceed against Watson-Wyatt, the then acting MERS actuary, for its mistakes.
- c) Proceed against the city for indemnification relating to the COLA adjustments.
- d) Administer and operate MERS under chapter 36 in its current form as it relates to the COLA adjustments.

The city's global settlement of pension- related issues provides for a temporary stay and eventual dismissal of all litigation involving the city, the board and MERS, including the Walsh litigation involving the Indemnitees. A temporary stay of the Walsh litigation is necessary to allow the city to complete the global settlement process. The indemnitees will not agree to a temporary stay of the Walsh litigation and matters relating thereto unless they receive full indemnification from the city, prior to the stay. The charter ordinance allows the city to obtain the stay of the Walsh litigation and related administration of the COLA adjustments in order for the city to complete the negotiation and implementation of the desired global settlement.

Whereas, The city of Milwaukee has entered into global settlement agreements with certain labor organizations regarding settlement of lawsuits challenging amendments to chapter 36 of the city charter, the payment of additional pension benefits and further amendments to chapter 36; and

Whereas, The city and certain labor organizations have agreed to temporary stay of pending lawsuits in order to allow the parties to complete the global settlement, to obtain consent of all actives and retirees of MERS and to obtain the approval of the common council and the court to such global settlement; and

Whereas, The city is negotiating with the city of Milwaukee Retirees Association regarding pension issues in connection with the global settlement, including issues relating to administration of the COLA adjustments and the overpayment, which may resolve these pension issues without litigation; and

Whereas, The indemnitees are prepared to assist the city and the labor organizations in obtaining member consents and common council and court approval in a manner consistent with their fiduciary duties; and

Whereas, The indemnitees will not agree to a temporary stay of all legal proceedings, including the Walsh case, and related administration matters without an indemnification agreement relating to the COLA adjustments prior thereto; and

Whereas, The common council believes that enactment of a charter ordinance indemnifying the indemnitees in connection with the administration of the COLA adjustments and the related overpayment is desirable in the interest of obtaining a global settlement of all pension-related issues; now, therefore

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. The city of Milwaukee fully indemnifies and holds harmless the annuity and pension board ("board"), and each past, present and future member thereof, the Milwaukee employees' retirement system ("MERS") and each past, present and future secretary and executive director, staff and employe of MERS (collectively, the "indemnitees") against all liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees, arising from administration of the catch-up and annual cost of living adjustments (collectively the "COLA adjustments") under

ss. 36-05-1-i and 36-08-2-a-1 of the city charter and any claims relating thereto, including the claims being asserted in the lawsuit entitled Edward Walsh, et al. vs. city of Milwaukee, et al., Case No. 99-CV-001419, now pending in the circuit court for Milwaukee county. This indemnification shall relieve the indemnitees from all fiduciary obligations to:

- a) Collect the approximately \$11 million overpayment relating to the COLA adjustments (the "overpayment") from the approximately 4,000 overpaid retirees or survivors thereof.
- b) Proceed against Watson-Wyatt, the then acting MERS actuary, for its mistakes relating to the COLA adjustments.
- c) Proceed against the city for indemnification in connection with the COLA adjustments.
- d) Administer and operate MERS under ch. 36 in its current form as to the COLA adjustments.

Part 2. This indemnification shall not affect the liability of any other persons, including actuaries, or the coverage of insurance carriers, who may be liable for any liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees or coverage, arising out of the aforementioned administration of the COLA adjustments and the overpayment and any claims associated therewith, including the claims being asserted in Edward Walsh, et al. vs. city of Milwaukee, et al., Case No. 99-CV-001419, now pending in the circuit court for Milwaukee county.

Part 3. This is a charter ordinance and shall take effect 60 days after its passage and publication, unless within such 60 days a referendum petition is filed under s. 66.01(5), Wis. Stats., in which event this ordinance shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

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CW/rk
12/8/99