

INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE

DATE: November 18, 2013

TO: Theo Lipscomb, Chair, Committee on Judiciary, Safety and General Services

FROM: Paul Bargren, Corporation Counsel *PB*
Mark A. Grady, Deputy Corporation Counsel *MAG*

SUBJECT: File No. 13-587; Appeal of decision related to the change in the pension multiplier from 2.0% to 1.6% per year
Stoker et al. v. Milwaukee County et al., Case No. 11-CV-16550

Our office previously submitted a resolution to authorize the filing of a petition for review with the Wisconsin Supreme Court in the above case, in the event of an adverse ruling by the Court of Appeals. That resolution was laid over to the call of the chair at the Committee meeting on July 12, 2013. The Court of Appeals has now issued its decision, adverse to the County's adopted policy. A petition for review must be filed no later than December 14, 2013. Section 1.28 of the ordinances provides for County Board and County Executive approval of such a filing.

Attached is a **substitute resolution**. The substitute resolution is changed merely to account for the fact that the Court of Appeals decision has now been received.

The legal fees for outside counsel to handle the petition are covered by the County's insurance policy.

Our office and outside counsel continue to recommend the filing of a petition for review.

Attachment

cc(w/att.): Kelly Bablitch
Amber Moreen
Jessica Janz-McKnight
Alexis Gassenhuber
Scott Manske

File No.
(Journal,)

From the Office of Corporation Counsel, a resolution authorizing a potential petition for review in the case of Stoker et al. v. Milwaukee County et al., Case No. 11-CV-16550, by adopting the following.

A RESOLUTION

WHEREAS, Suzanne Stoker and the Federation of Nurses and Health Professionals (FNHP) filed a lawsuit in Milwaukee County Circuit Court against Milwaukee County and the Employees Retirement System of Milwaukee County (ERS) alleging that the change in the pension multiplier from two percent (2%) per year of service to one and six-tenths percent (1.6%) per year of service violated the vested pension benefit contract of members of FNHP who were employed prior to the date of the change; and

WHEREAS, the circuit court ruled that the change in the multiplier violated the vested pension benefit contract of those FNHP members; and

WHEREAS, the ruling of the circuit court applies to the members of FNHP who were members of ERS prior to the effective date of the change, but does not invalidate the change in multiplier for members of FNHP who became members of ERS on or after the effective date of the change; and

WHEREAS, the principle of the circuit court ruling would apply to all other employees who were members of ERS prior to the date that the change in the multiplier became effective for them and therefore would potentially impact many more employees than just members of FNHP; and

WHEREAS, the principle of the circuit court ruling would also apply to any other proposed change in pension benefits that is intended to apply to employees who are already members of ERS and therefore presents a broader legal issue than just the change in the multiplier; and

WHEREAS, prior actuarial studies indicated that the change in the multiplier would save Milwaukee County and employees who must contribute to ERS approximately four million dollars (\$4,000,000) per year and thus, if not overturned, the circuit court decision will increase pension costs to Milwaukee County and to employees who must contribute to ERS by a similar amount; and

41 WHEREAS, the County Board adopted a resolution on September 27, 2012 (File
42 No. 12-646) authorizing an appeal to the Court of Appeals and that appeal has been
43 filed, briefed and is awaiting a decision; and
44

45 WHEREAS, in the event of an adverse decision from the Court of Appeals, a
46 petition for review must be filed with the Wisconsin Supreme Court within thirty (30)
47 days and the County Board wishes to determine now whether to file a petition for review
48 should an adverse decision be received; and
49

50 WHEREAS, legal fees for retained counsel to prosecute an appeal in the Court of
51 Appeals are covered by the Wisconsin County Mutual Insurance Corporation policy; now,
52 therefore,
53

54 NOW, THEREFORE, BE IT RESOLVED that in the event the Court of Appeals
55 issues a decision affirming the lower court ruling or a decision that is otherwise adverse
56 to the adopted County policy and ordinances, Milwaukee County approves the filing of a
57 petition for review in the Wisconsin Supreme Court in Stoker et al. v. Milwaukee County
58 et al., Case No. 11-CV-16550.

SUBSTITUTE RESOLUTION

File No. 13-587
(Journal,)

From the Office of Corporation Counsel, a resolution authorizing the filing of a petition for review with the Wisconsin Supreme Court in the case of Stoker et al. v. Milwaukee County et al., Case No. 11-CV-16550, by adopting the following.

A RESOLUTION

WHEREAS, Suzanne Stoker and the Federation of Nurses and Health Professionals (FNHP) filed a lawsuit in Milwaukee County Circuit Court against Milwaukee County and the Employees Retirement System of Milwaukee County (ERS) alleging that the change in the pension multiplier from two percent (2%) per year of service to one and six-tenths percent (1.6%) per year of service violated the vested pension benefit contract of members of FNHP who were employed prior to the date of the change; and

WHEREAS, the Court of Appeals ruled that the change in the multiplier violated the vested pension benefit contract of those FNHP members; and

WHEREAS, the ruling of the Court of Appeals applies to the members of FNHP who were members of ERS prior to the effective date of the change, but does not invalidate the change in multiplier for members of FNHP who became members of ERS on or after the effective date of the change; and

WHEREAS, the principle of the Court of Appeals ruling would apply to all other employees who were members of ERS prior to the date that the change in the multiplier became effective for them and therefore would potentially impact many more employees than just members of FNHP; and

WHEREAS, the principle of the Court of Appeals ruling could also apply to any other proposed change in pension benefits that is intended to apply to employees who are already members of ERS and therefore presents a broader legal issue than just the change in the multiplier; and

WHEREAS, prior actuarial studies indicated that the change in the multiplier would save Milwaukee County and employees who must contribute to ERS approximately four million dollars (\$4,000,000) per year and thus, if not overturned, the circuit court decision will increase pension costs to Milwaukee County and to employees who must contribute to ERS by a similar amount; and

44 WHEREAS, pursuant to section 1.28 of the Milwaukee County Ordinances, the
45 County Board adopted a resolution on September 27, 2012 (File No. 12-646)
46 authorizing an appeal to the Court of Appeals; and
47

48 WHEREAS, a petition for review must be filed with the Wisconsin Supreme Court
49 by December 14, 2013; and
50

51 WHEREAS, legal fees for retained counsel to prosecute an appeal in the Court
52 of Appeals are covered by the Wisconsin County Mutual Insurance Corporation policy;
53 now, therefore,
54

55 NOW, THEREFORE, BE IT RESOLVED that Milwaukee County approves the
56 filing of a petition for review in the Wisconsin Supreme Court in Stoker et al. v.
57 Milwaukee County et al., Case No. 11-CV-16550.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: June 27, 2013

Original Fiscal Note

Substitute Fiscal Note

SUBJECT: Potential petition for review of a decision related to the change in the pension multiplier from 2.0 to 1.6%.

FISCAL EFFECT:

- | | |
|--|--|
| <input checked="" type="checkbox"/> No Direct County Fiscal Impact | <input type="checkbox"/> Increase Capital Expenditures |
| <input type="checkbox"/> Existing Staff Time Required | <input type="checkbox"/> Decrease Capital Expenditures |
| <input type="checkbox"/> Increase Operating Expenditures
(If checked, check one of two boxes below) | <input type="checkbox"/> Increase Capital Revenues |
| <input type="checkbox"/> Absorbed Within Agency's Budget | <input type="checkbox"/> Decrease Capital Revenues |
| <input type="checkbox"/> Not Absorbed Within Agency's Budget | |
| <input type="checkbox"/> Decrease Operating Expenditures | <input type="checkbox"/> Use of contingent funds |
| <input type="checkbox"/> Increase Operating Revenues | |
| <input type="checkbox"/> Decrease Operating Revenues | |

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	
	Revenue	0	
	Net Cost	0	
Capital Improvement Budget	Expenditure	0	
	Revenue	0	
	Net Cost	0	

DESCRIPTION OF FISCAL EFFECT

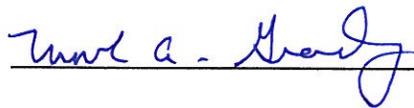
In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. ¹ If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

Approval of this Resolution will result in a petition for review in the Wisconsin Supreme Court in the event an adverse decision in this case is received from the Court of Appeals. Payment of attorney fees to represent the County will be made by the Wisconsin County Mutual Insurance Corporation and applied to the County's deductible.

Department/Prepared By Corporation Counsel

Authorized Signature



Did DAS-Fiscal Staff Review? Yes No

Did CBDP Review?² Yes No Not Required

¹ If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

² Community Business Development Partners' review is required on all professional service and public work construction contracts.