



## Legislation Text

File #: 02074, Version: 2

### Fiscal Note

See attached Fiscal Note report.

### Title

SUBSTITUTE - Authorizing the Mayor and City Clerk to execute amendments to the Operation and Cooperation Agreement with Madison Cultural Arts District and to the Option Agreement with Overture Development Cooperation; to execute a credit agreement with a financial institution selected to restructure the Overture Center construction financing; and to execute such other documents that may be deemed necessary by the City Attorney to implement the transaction.

### Body

In June of 2001, Overture Development Corporation ("ODC") borrowed \$115,000,000 through bonds issued by the Community Development Authority of the City of Madison (the "Bonds") as part of the financing of Phase I construction of the Overture Center. To assist the project, the City contributed necessary property, but retained a reversionary interest wherein if at any time the property was not used as a public cultural arts facility, the land and improvements would revert to the City (the "Reversionary Interest"). The City and ODC entered into an Option Agreement, under which the City has the right to purchase the property for one dollar when the Bonds are fully paid. The Overture Center is leased by ODC to the Madison Cultural Arts District (the "District") which manages and operates the facility.

Debt service on the Bonds is paid from the rent received by ODC from the District and is the sole obligation of ODC. ODC has secured repayment of the Bonds through a letter of credit which is further backed by the gift from W. Jerome Frautschi and additional temporarily pledged assets from Mr. Frautschi and from Overture Foundation (collectively, the "Pledged Assets"). The intent at the time of the Bonds' issuance was for investment income from the Pledged Assets, which are held by the Madison Cultural Arts Support Trust ("MCAST") to provide a revenue stream to help support the Overture Center operations, beginning in 2004. The Pledged Assets did not generate a sufficient revenue stream to make the 2004 operating grants to the District.

In order to preserve the possibility of a future revenue stream to support the District's operations, a refinancing plan has been proposed under which the collateral support for the debt will be restructured, releasing the temporarily pledged assets to be used to complete Phase II construction. A consortium of local banks including U.S. Bank National Association and JPMorgan Chase Bank, N.A. ("Lenders") has agreed to loan ODC an amount not to exceed \$27,700,000 for a term of six years (the "Series B Loan"). The loan proceeds will be used to reduce the principal amount of the Bonds from \$115 million to approximately \$87.3 million. The total amount of the debt will not change. In addition to the Series B Loan, the Lenders will provide ODC with a Debt Service Reserve Line of Credit in an amount not to exceed \$ 2,500,000 that may be drawn upon in the event ODC is unable to make debt service payments under the Series B Loan. To assist the District and ODC, the City will provide collateral support to the Series B Loan in the form of a moral obligation pledge in an amount not to exceed \$2,500,000. This pledge will be a limited obligation and shall not constitute a general obligation pledge of the City. If the Debt Service Reserve Line of Credit is drawn upon to make principal and interest payments on the Series B Loan, the City will replenish draws on an annual basis, but only if monies from other sources, as described below, are unavailable. As additional collateral support for the Bonds and the Series B Loan, the Lenders will receive a first priority mortgage on the Overture Center in the amount of \$ 40,000,000.

Whereas, the City and the District entered into an Operation and Cooperation Agreement dated as of June 28, 2001 (the "Agreement") to establish the relationship of the parties in the management and operation of the Overture Center; and

Whereas, the District has requested that the City provide credit support for the Series B Loan and the City has agreed to provide such credit support; and

Whereas, in order to increase City oversight of the District and to limit the City's financial exposure for the Series B Loan, the City proposes to enter into a First Amendment to Operation and Cooperation Agreement with the District under whose terms:

(a) the District will agree to set aside, reserve and restrict, for the sole purpose of paying debt service on the Series B Loan, the aggregate of all distributions exceeding \$250,000 that the District receives from the Madison Cultural

Arts Support Trust in each year during the term of the Series B Loan, until a funded reserve of \$2,500,000 has been accumulated and maintained. This reserve shall remain in place until the Series B Loan is paid in full.

- (b) subject to annual appropriation, the City shall agree to provide credit support to ODC in the form of a moral obligation pledge to repay the Line of Credit if it is drawn on to make Series B debt service payments, but only if funds from the following sources are unavailable to pay Series B debt service:
- i. Overture Development Corporation;
  - ii. Madison Cultural Arts Support Trust;
- iii. W. Jerome Frautschi in an amount not to exceed \$2,500,000 a year for the first four years subject to a total aggregate backstop of \$ 5,000,000;
- iv. the District's reserve fund as described in (a) above;
  - iv. all other unrestricted net assets of the District
  - v. (subject to approval by the Board of Directors of 201 State Foundation, Inc.) all unrestricted net assets of 201 State Foundation, Inc.
  - vii. the Civic Center Endowment fund held by the Madison Community Foundation.
- (c) if the Debt Service Reserve Line of Credit is drawn on and funds are unavailable to pay debt service from the sources listed in (i) through (vii) in (b) above, the City shall include in its next annual operating budget an appropriation of the funds needed to repay the amount drawn on the Line of Credit, plus interest. The District shall reimburse the City for its payment within thirty days, or be subject to default pursuant to the terms of the agreement.
- (d) the District has amended its bylaws to include a mayoral designee as a member of the District Board's Executive Committee.
- (e) the District shall reimburse the City for the costs of audits performed by the City or its consultants and for the costs related to the Series B Loan transaction.
- (f) the District shall provide annually to the City a report itemizing the fundraising receipts and investment income of 201 State Foundation, Inc. and of any other fundraising entities which support the District.
- (g) the District has amended the Board Composition of 201 State Foundation, Inc., to add as a member the Mayor's designee from the District Board.
- (h) the District will work to strengthen relationships with the appointing authorities - Mayor, County Executive and governor - and seek their assistance in securing financial support necessary for the well-being of Overture Center. If after three years the District Board has been unsuccessful in broadening its base of financial support, legislation or structural change to alter the makeup of the Board should be undertaken.

Whereas, the Lenders have asked the City to subordinate its Reversionary Interest to Lenders' first priority mortgage on the property so any future revenue from the real estate may be used to satisfy any unpaid obligations and to provide lenders with unimpaired foreclosure rights under the mortgage; and

Whereas, real estate documents and other agreements from the 2001 Bond transaction and real estate conveyances, including but not limited to the Option Agreement between the City and ODC, will need modification to reflect the parties' responsibilities as regards the Series B Loan.

Now, therefore, be it resolved:

1. Public Purpose. It is hereby found that the City's credit support of the Series B Loan serves a public purpose by assisting in the development of cultural arts facilities which will provide educational and recreational opportunities for Madison residents and will bring economic development and tourism to Madison.

2. Guarantee. The City and the District, wishing to pursue a refinancing of the Series B bonds, request that W. Jerome Frautschi guarantee that the sum of the following amounts shall not be less than \$115,000,000 on the date of closing:

- i. ~~the balance in the Madison Cultural Arts District Trust;~~
- ii. ~~the balance in the related capitalized interest fund;~~
- iii. ~~the amount of Mr. Frautschi's aggregate backstop for the first four years of the refinancing plan.~~

~~3.2. Credit Support.~~ The Common Council hereby approves of the City's credit support of the Series B Loan as described herein, and authorizes the Mayor and City Clerk to execute any documents with Lenders and ODC related thereto, all in a form consistent with this Resolution and as approved by the City Attorney and City Comptroller.

~~4.3. First Amendment to Operation and Cooperation Agreement.~~ The Mayor and City Clerk are hereby authorized to execute a First Amendment to Operation and Cooperation Agreement with the District in the form presented herein or with such insertions or corrections thereto as shall be approved by them and by the City Attorney and the City Comptroller, consistent with this Resolution, their execution thereof to constitute conclusive evidence of their approval of any such insertions or corrections.

~~5.4. Reversionary Interest.~~ The Mayor and City Clerk are hereby authorized to execute an agreement subordinating the City's Reversionary Interest to the first priority mortgage of Lenders, in a form as shall be approved by the City Attorney.

~~6.5. General Authorizations.~~ The Mayor and City Clerk are hereby authorized to execute, deliver, publish, file and record such other documents, instruments, notices and records and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution and to comply with and perform the obligations of the City hereunder.