



## Legislation Details (With Text)

<b>File #:</b>	43888	<b>Version:</b>	2	<b>Name:</b>	Payment to Employee Trust Funds for former stagehand and continue litigation over payments
<b>Type:</b>	Resolution	<b>Status:</b>			Passed
<b>File created:</b>	7/27/2016	<b>In control:</b>			BOARD OF ESTIMATES (ended 4/2017)
<b>On agenda:</b>	9/20/2016	<b>Final action:</b>			9/20/2016
<b>Enactment date:</b>	9/22/2016	<b>Enactment #:</b>			RES-16-00686
<b>Title:</b>	SUBSTITUTE: A resolution appropriating up to \$377,438.17 \$484,313.65 plus late payment interest from the Contingent Reserve and authorizing a payment of up to that amount plus late payment interest to the Wisconsin Department of Employee Trust Funds for the employer and employee contributions for former stagehands Gary Cleven, David Gersbach, Joseph McWilliams, Christopher Gauthier and Ralph Johnston and authorizing the City Attorney to continue litigation over the payment of such funds and recovery from Cleven, Gersbach, McWilliams, Gauthier and Johnston and other current and former employees.				
<b>Sponsors:</b>	Paul R. Soglin				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	1. RES-2015-00222 ETF Payment Resolution, 2. Version 1Master29-Aug-2016-01-48-28.pdf				

Date	Ver.	Action By	Action	Result
9/20/2016	2	COMMON COUNCIL	Adopt - 15 Votes Required	Pass
9/12/2016	2	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT (15 VOTES REQUIRED) - REPORT OF OFFICER	Pass
8/29/2016	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	Pass
8/2/2016	1	COMMON COUNCIL	Refer	Pass
7/27/2016	1	Attorney's Office	Referred for Introduction	

### Fiscal Note

This resolution authorizes payment of ~~\$377,438.17~~ \$484,313.65 to the state Department of Employee Trust Funds (ETF) for employer and employee contributions to the Wisconsin Retirement System account of an individual employee plus accrued interest since the initial eligibility year. Of this amount, \$377,438.17 is due to ETF by August 31 and \$107,375.48 is due by September 30. If it is not paid by those dates, interest on the amount accrues at 0.04% per day. The resolution would also authorize payment of any interest charges that might accrue after the due dates.

If the City does not pay the amount within 30 days of the due date, ETF is authorized to request the state Department of Administration withhold the amount due plus late payment interest from state aids paid to the City.

The funds to make this payment will be appropriated from the 2016 Contingent Reserve. The balance in the Contingent Reserve is currently \$508,337. This appropriation would reduce the balance to ~~\$130,899~~ \$23,523.

There is also \$39,178 in a liability account in the General Fund related to possible payments to ETF for WRS liabilities. This account will be retained and may be increased in future years depending on the extent of additional required payments to ETF related to this litigation.

## Title

SUBSTITUTE: A resolution appropriating up to ~~\$377,438.17~~ \$484,313.65 plus late payment interest from the Contingent Reserve and authorizing a payment of up to that amount plus late payment interest to the Wisconsin Department of Employee Trust Funds for the employer and employee contributions for former stagehands Gary Cleven, David Gersbach, Joseph McWilliams, Christopher Gauthier and Ralph Johnston and authorizing the City Attorney to continue litigation over the payment of such funds and recovery from Cleven, Gersbach, McWilliams, Gauthier and Johnston and other current and former employees.

## Body

A resolution appropriating up to ~~\$377,438.17~~ \$484,313.65 plus late payment interest from the Contingent Reserve and authorizing a payment of up to that amount plus late payment interest to the Wisconsin Department of Employee Trust Funds for the employer and employee contributions for former stagehands Gary Cleven, David Gersbach, Joseph McWilliams, Christopher Gauthier and Ralph Johnston and authorizing the City Attorney to continue litigation over the payment of such funds and recovery from Cleven, Gersbach, McWilliams, Gauthier and Johnston and other current and former employees.

WHEREAS, current and former stagehands working at Overture and Monona Terrace appealed to the Department of Employee Trust Funds (ETF) seeking that they should be enrolled in the Wisconsin Retirement System (WRS); and

WHEREAS, in those appeals, ETF found that the employees must pay the employee share of the WRS contribution; and

WHEREAS, the Dane County Circuit Court recently ruled that the City should report the hours of former stagehand Gary Cleven; and

WHEREAS, ETF informed the City that the following amounts are due by August 31, 2016:

Employee share	\$48,574.14
Interest	<u>\$159,328.38</u>
	\$207,902.52
Employer Share	\$37,664.18
Interest	<u>\$131,871.47</u>
	\$169,535.65
Total Invoice	\$377,438.17

WHEREAS, ETF informed the City that the following amounts are due by September 30, 2016:

Employee share	\$35,480.05
Interest	<u>\$25,518.26</u>
	\$60,998.31
Employer Share	\$27,012.08
Interest	<u>\$19,365.09</u>
	\$46,377.17
Total Invoice	\$107,375.48

WHEREAS, the City is in litigation with Mr. Cleven, Gersbach, McWilliams, Gauthier and Johnston over the

amounts to be paid and the City Attorney intends to bring ETF into the lawsuit to challenge whether the City has to pay the employee share if the employee fails to pay it; and,

WHEREAS, the litigation may not be resolved by the due date of the invoices; and

WHEREAS, the background of this issue was also addressed in Resolution RES-15-00222, Legistar No. 37315, a copy of which is an attachment in this Legistar file; and

WHEREAS, the City should take steps to be in a position to pay this amount, if necessary, ~~shortly after August 31~~ to avoid the continued accumulation of interest; and

NOW THEREFORE BE IT RESOLVED:

1. The Finance Department is authorized to pay to ETF up to to ~~\$377,438.17~~ \$484,313.65 plus any interest accruing after ~~August 31~~ the due dates until payment, representing the employer and employee portions of WRS contributions plus interest for Gary Cleven, David Gersbach, Joseph McWilliams, Christopher Gauthier and Ralph Johnston.

2. The amount to be paid by the Finance Department is appropriated from the City's Contingent Reserve.

3. The City Attorney is authorized to commence and continue litigation against ~~Mr. Cleven,~~ Gersbach, McWilliams, Gauthier and Johnston and any other stagehands who fail to pay the employee portion of the WRS contributions due, and to commence litigation against ETF to challenge the Department's position on the City paying the employee portion.