

1 By Supervisors Borkowski, Johnson, Dimitrijevic, Haas, Mayo, Broderick, Harris,
2 Alexander and Romo West
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4

5 **A RESOLUTION**
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7 authorizing payment in the matter of Milwaukee County v. Wisconsin Employment
8 Relations Commission (WERC) and American Federation of State, County and Municipal
9 Employees (AFSCME), Case No. 11-CV-12137
10

11 WHEREAS, AFSCME filed a complaint with the Wisconsin Employment Relations
12 Commission (WERC) related to, among other things, the negotiation of a successor
13 collective bargaining agreement for 2009-10 and the County's imposition of furlough days
14 for 2010; and
15

16 WHEREAS, the WERC ruled that the County failed to bargain in good faith with
17 respect to the successor agreement and with respect to the imposition of furlough days in
18 in excess of 45 hours per employee in 2010; and
19

20 WHEREAS, the WERC ordered, among other things, that AFSCME employees
21 affected by the 22 furlough days in excess of 45 hours should be re-paid, with interest;
22 and
23

24 WHEREAS, the County sought review of the WERC decision in circuit court and
25 the circuit court issued a decision dated February 27, 2012 that, among other things,
26 affirmed the WERC ruling that the County violated its obligation to bargain in good faith
27 when it imposed the 22 furlough days, in excess of 45 hours, for affected AFSCME
28 employees; and
29

30 WHEREAS, the order requiring repayment to employees of the 2010 furlough
31 days has a cost of approximately four million dollars and interest will continue to accrue
32 in the future of approximately \$35,000 per month, as more specifically set forth in the
33 fiscal note contained in File No. 12-513; and
34

35 WHEREAS, the Milwaukee County Board approved a resolution (File No. 12-
36 513) on June 28, 2012, that contained the following directives:
37

- 38 • that Milwaukee County shall pay the 2010 furlough days awarded
39 by the WERC to the affected employees in the above litigation, with
40 interest, in return for a dismissal of all appeals and cross-appeals
41 by all parties in the litigation related to 2010; and
42
- 43 • that in the event the other parties to the litigation will not agree to
44 dismissal of all appeals and cross-appeals in the litigation as set
45 forth in the preceding paragraph, Milwaukee County shall seek
46 permission from the court to pay the total amount of the WERC

FOR SUSPENSION OF THE RULES

47 award, plus interest to the date of payment, into court until the
48 resolution of all appeals and cross-appeals in the litigation related
49 to 2010 and shall do so upon receipt of the court's approval.
50

51 ; and

52
53 WHEREAS, the timing of the courts' decision granting the county authority to pay
54 the total amount of the award plus interest into court is unknown, and could take a few
55 months with interest accruing at approximately \$35,000 per month from the time the
56 petition was filed; now, therefore,
57

58 BE IT RESOLVED, that Milwaukee County approves the payment of 2010
59 furlough hours in excess of forty-five (45) hours per employee to affected employees
60 and approves the dismissal of the County's appeal in the Court of Appeals in this
61 matter.
62

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: 06/11/2012

Original Fiscal Note

Substitute Fiscal Note

SUBJECT: Fiscal Impact on 2010 Furlough Hours Decision

FISCAL EFFECT:

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

<input type="checkbox"/> Decrease Operating Expenditures

<input type="checkbox"/> Increase Operating Revenues

<input type="checkbox"/> Decrease Operating Revenues | <input type="checkbox"/> Increase Capital Expenditures

<input type="checkbox"/> Decrease Capital Expenditures

<input type="checkbox"/> Increase Capital Revenues

<input type="checkbox"/> Decrease Capital Revenues

<input type="checkbox"/> Use of contingent funds |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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	4,100,000	
	Revenue	584,000	
	Net Cost	3,516,000	
Capital Improvement Budget	Expenditure		
	Revenue		
	Net Cost		

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.

A. The County had made a decision to impose furlough hours in 2009 and 2010 for American Federation of State, County, and Municipal Employees District Council 48 (AFSCME DC-48). The maximum furlough hours imposed in 2009 was 16 hours and 208 hours in 2010. Based on a decision of the Wisconsin Employment Relations Commission (WERC) the County was only limited to 45 furlough hours in any calendar year. The 2009 imposition of furlough of 16 hours was less than the annual limit, so the County had no liability for that year. In the first part of the 2010 year, the County imposed 12 furlough days, or 96 furlough hours. In April 2010, the furlough hours were increased for AFSCME DC-48 employees by 10 days or 80 hours. In September 2010, the furlough hours were further increased for certain AFSCME DC-48 employees by 4 days or 32 hours. Certain AFSCME DC-48 employees had 208 hours for 2010. For 2010, the County exceeded the limit of 45 furlough hours by 163 hours, and was thus subject to a liability for the hours that exceeded the limit. The WERC decision was affirmed by the Milwaukee County Circuit Court in February 2012. The County has appealed this decision. Based on accounting rules, "Governments should recognize a liability for claims and judgments as soon as it appears probable that a loss has been incurred and the amount in question can be reasonably estimated." Corporation Counsel and outside counsel believe that the furlough decision should be paid at this time, in order limit the accruing interest cost on this matter.

B. Based on the 2011 WERC decision, the Controller accrued \$2.0 million of liability for the furlough hours that exceeded the 45 hour furlough limit. The 2010 liability did not include interest costs, and was offset by any departmental outside revenue that could be reasonably accrued for. The County appealed the WERC decision to the County Circuit Court, The Court in February

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.

2012 affirmed the decision of the WERC on furlough hours. Based on the recommendation from Corporation Counsel that the furlough decision be paid at this time and the litigation terminated, the Controller increased the accrual by \$1.5 million for interest costs, and the elimination of outside revenue, which had been used as an offset. The accrual was further increased by \$586,000 for the Airport and the Department of Family Care, as these departments were required to accrue these costs directly against their own reserves and revenue funding. The total accrued liability was \$4.1 million, which included \$3,480,000 for furlough hours that exceeded the imposed limit of 45 hours, and \$620,000 of accrued interest for 2010 and 2011. Interest costs continue to be incurred on the decision of \$35,000 per month. No accrual has been made for 2012 interest costs.

C. Based on the 2011 WERC decision and the fact that the WERC would not rehear their own decision on a furlough hours limitation for AFSCME DC-48, a liability of \$2.0 million was accrued for 2010. This liability reduced the surplus for 2010 by \$2.0 million. Based on the Circuit Court decision affirming the WERC decision on Furlough Hours in February 2012, the County was required to accrue for the remaining cost of furlough hours that exceeded the limit in 2011. Including the interest costs, and assuming no revenue offset, except for the Airport and Department of Family Care. The County increased the liability by \$1.516 million in 2011. An additional accrual of \$584,000 was made for the Airport and Family Care. The accrual for 2011 reduced the surplus for 2011 by \$1,516,000. The preliminary 2011 surplus reported to the County Board in June 2012, has already been reduced by and includes the cost of \$1.5 million accrued in 2011.

D. An assumption was made for the methodology for accrued interest costs on the liability. New rules were put in place for accrued interest in State Statute, in the past year. The County has not fully examined these new statutes to see if the interest cost methodology used in the calculation would change the cost accrued but the interest amount shown in the fiscal note is the maximum potential amount and any further review could only potentially decrease the amount.

Department/Prepared By Office of the Comptroller - Scott B. Manske

Authorized Signature _____

Did DAS-Fiscal Staff Review? Yes No