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To: Interested Parties

From: Corporation Counsel Margaret C. Daun  
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Date: June 26, 2023

Subject: Sales Tax Implementation Timing

### SUMMARY

Pursuant to 2023 Wisconsin Act 12 (“the Act”), the County may adopt an Ordinance implementing a 0.4% sales tax as soon as January 1, 2024, if the Ordinance is adopted and sent to the Secretary of Revenue by September 1, 2023.<sup>1</sup> However, the sales tax cannot be implemented unless the County also closes the Employees’ Retirement System of the County of Milwaukee (“ERS”) to new hires and sends new hires to the Wisconsin Retirement System (“WRS”).<sup>2</sup> To implement the sales tax, two-thirds of the County Board must adopt an Ordinance amendment providing for the tax and directing that new employees hired on or after January 1, 2025 be enrolled in the WRS.<sup>3</sup>

While there is not an express legal requirement for the County Board to ask the Pension Board and the Pension Study Commission to review the sales tax and WRS proposal, given the importance of the decision facing the County, leaders may find input from these bodies to be useful.

If the County adopts the sales tax and WRS Ordinance, numerous other changes to ERS will take effect and there will be limited time for the County to make certain changes to ERS. Specifically, if the County adopts and delivers the Ordinance by September 1, 2023, then:

- As of January 1, 2024:
  - the sales tax will take effect;
  - ERS’ assumed rate of return must be reduced to 6.8%;<sup>4</sup>

<sup>1</sup> See Section 176 of the Act.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See Section 21 of the Act.

- ERS' employee contributions must be equal to half the normal cost;<sup>5</sup>
- neither MDSA nor IAFF may bargain any element of their pension benefits;<sup>6</sup>
- Before January 1, 2024, the County must make any final adjustments to ERS that could reasonably be argued to be benefit enhancements, such as providing an opportunity for corrections officers at the County jail and Community Reintegration Center to choose to receive an enhanced pension benefit package at an additional contribution cost (*i.e.*, to mirror Act 4 in ERS);
- During 2024, the County will need to adopt Ordinance amendments closing ERS to new hires; and
- Beginning January 1, 2025, all new hires will be enrolled in WRS.

#### TIMING OF PENSION-RELATED CHANGES

1) **September 1, 2023 - Sales Tax Ordinance Adoption.** Under the Act, an Ordinance implementing the sales tax must be effective January 1, April 1, July 1 or October 1, but a certified copy of the Ordinance must be delivered to the Secretary of Revenue 120 days prior to the effective date.<sup>7</sup> To implement the sales tax on January 1, 2024, the Ordinance implementing the sales tax must be adopted and delivered to the Secretary of Revenue by September 1, 2023.<sup>8</sup> Moreover, to do so, the County must also adopt a resolution electing to join WRS (the WRS form is attached to this opinion<sup>9</sup>).<sup>10</sup> If the County does not elect to join WRS for new hires, the sales tax cannot go into effect. These two questions (whether to implement a sales tax and whether to join WRS should be presented jointly, in a single resolution, to avoid a potential legislative fiction since the questions cannot be unpaired – *i.e.*, the County cannot implement the tax and decline to join WRS).

2) **Before December 31, 2023 - Considerations.** If the County Board adopts the sales tax and joins WRS, the County should consider the following before December 31, 2023, after which the County will no longer be able to make certain adjustments to ERS.

a. **Correction Officer Election in ERS.** Effective January 1, 2024, the County and the Pension Board cannot make any changes to ERS that increase or enhance benefits for employees who remain in ERS.<sup>11</sup> Accordingly, the County should consider whether to amend ERS to include any enhancements before that prohibition takes effect. Specifically, while the Act was under debate in the Wisconsin legislature, the County considered whether to permit correction officers at the jail and Community Reintegration Center to elect to receive increased ERS pension

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<sup>5</sup> See Sections 19 and 246 of the Act.

<sup>6</sup> See Section 219p of the Act.

<sup>7</sup> See Section 176 of the Act.

<sup>8</sup> 120 days from January 1, 2024 is Sunday, September 3, 2023. Therefore, to ensure the deadline is met, the County should have the certified copy of the Ordinance provided to the Secretary of Revenue by Friday, September 1, 2023.

<sup>9</sup> The WRS form requires a certification that the County is not operating, administering, or otherwise participating in an OBRA-type plan. The County currently operates a legacy OBRA-type plan. We will need to confer with WRS to address this issue. There may be additional fiscal costs.

<sup>10</sup> See Section 176 of the Act.

<sup>11</sup> See Section 239 of the Act.

benefits similar to what is offered to deputy sheriffs. A similar election is being offered to correction officers in WRS under Wisconsin Act 4, so new correction officers hired after January 1, 2025 who are enrolled in WRS will have that option. If the County wishes to provide this election in ERS to avoid disparity between correction officers in ERS and in WRS, the ERS Ordinances would need to be amended, which would require County Board action and a review by the Pension Board and Pension Study Commission.

b. Other Benefit Increases or Enhancements. The County and the Pension Board should also consider whether there are any other ERS amendments that could be reasonably considered increases or enhancements and make those changes prior to December 31, 2023.

3) January 1, 2024 – Sales Tax Ordinance Effective. Under the Act, if the County adopts the sales tax Ordinance in 2023 and makes the proper notifications before September 1, 2023, as noted above, then the following changes take effect on January 1, 2024.<sup>12</sup>

a. ERS Assumed Rate of Return. The Act requires that as of January 1, 2024, ERS' assumed rate of return must be equal to or less than WRS' assumed rate of return, currently 6.8%.<sup>13</sup> We do not anticipate WRS reducing its assumed rate of return again before January, so ERS' assumed rate of return would be reduced from 7.5% to 6.8% effective January 1, 2024. This will increase ERS employer and employee contributions. This change is required under the Act, and while the Pension Board will need to amend Rule 1014 to implement the change, there is no decision or other action required from the County, the Pension Board or the Pension Study Commission.<sup>14</sup>

b. ERS Legacy Contributions. The Act requires that as of January 1, 2024, except as provided in a collective bargaining agreement, ERS' employee contributions must be based on one-half of the normal cost of benefits.<sup>15</sup> Currently, ERS employee contributions are calculated using both the normal cost and a portion of unfunded liability, so it is expected that ERS employee contributions will go down. This section of the Act applies to both general employees and public safety employees. The County must cover the other half of the normal cost, plus payments towards ERS' unfunded liability. There is no action needed from the County Board, the Pension Board or the Pension Study Commission. ERS' actuary will change how the employee contributions are calculated effective January 1, 2024.

c. No Bargaining Over Benefits. Currently, MDSA and IAFF members have some ability to bargain over their pension benefits with the County. Under the Act, effective January 1, 2024, the County can no longer bargain over any terms of ERS, including contribution rates, pension calculations or design.<sup>16</sup> The Act made no changes to current bargaining powers.

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<sup>12</sup> Section 244(4) of the Act also requires ERS to submit to the legislative reference bureau for publication in the Wisconsin Administrative Register a notice specifying the date the Ordinance was passed.

<sup>13</sup> See Section 21 of the Act.

<sup>14</sup> The Act also requires that ERS employer contributions be calculated not using more than a 30-year amortization period. ERS' current amortization period is shorter than that, so no immediate changes are necessary.

<sup>15</sup> See Sections 19 and 246 of the Act.

<sup>16</sup> See Section 219p of the Act.

4) **During 2024.** If the County Board adopts the sales tax, it must also send new hires to WRS beginning in 2025.<sup>17</sup> While the County will need to adopt a resolution directing new hires to WRS at the same time the sales tax Ordinance is adopted, the Ordinance changes to ERS and other administrative changes necessary to transition to WRS can be addressed in 2024.<sup>18</sup> The County Board will need to adopt Ordinance amendments to close ERS to new members and send new hires to WRS beginning January 1, 2025. Those amendments will need to be reviewed by the Pension Board and the Pension Study Commission. Payroll, HR, RPS, and other affected departments should also consider and advise what changes they will need to implement in order to transition new hires to WRS.

5) **January 1, 2025 – New Hires Enrolled in WRS.** The Act requires that if the County implements the sales tax, the County must send new employees to WRS.<sup>19</sup> There will be significant work required for the County to send new hires to WRS by January 1, 2025, including coordinating payroll systems, so it is vital that the County have time to transition over new hires.

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<sup>17</sup> See Sections 237 and 246 of the Act.

<sup>18</sup> Legal is reviewing the extent to which the County must vest in their ERS benefits rehired employees who transition to WRS. This may have an additional fiscal impact.

<sup>19</sup> See Section 176 of the Act.