By Supervisor Weishan, Jr. File No. 18-802

A SUBSTITUTE RESOLUTION/ORDINANCE

To amend Section 201.24 of the Milwaukee County Code of General Ordinances relating to the Employees' Retirement System to improve the accuracy of benefit calculations and to provide procedures to resolve payment errors

WHEREAS, Milwaukee County sponsors the Employees' Retirement System of the County of Milwaukee (ERS), a defined benefit retirement plan for the exclusive benefit of its employees and beneficiaries; and

WHEREAS, the ERS must adhere to its written plan document (the Ordinances and Rules) so that it maintains its tax-qualified status as granted by the Internal Revenue Service (IRS); and

WHEREAS, the IRS provides retirement plan sponsors an opportunity to self-report errors in the administration of the plan through the Voluntary Correction Program (VCP), which reduces the potential for penalties if the errors were otherwise discovered via an IRS audit; and

WHEREAS, the County filed a VCP with the IRS in 2007 related to several errors in the administration of the plan; the IRS issued their compliance statement in June 2016 and ERS finalized all corrections in December 2016, making it one of the longest open VCPs in recollection; and

WHEREAS, additional errors discovered as part of an internal 2012 Audit as well as errors discovered by the staff in the Department of Human Resources - Retirement Plan Services Division ("RPS") were reported to the IRS in a supplemental VCP filing dated April 22, 2014; and

WHEREAS, the 2014 Supplemental VCP was amended in December 2017 to reflect many new errors discovered in an audit authorized by the County Board by Baker Tilly to help identify pension errors and develop procedures to help eliminate future errors; and

WHEREAS, the Milwaukee County Board of Supervisors hereby recognize that eligible retirees deserve to be paid an accurate pension that reflects the benefits accrued in their service to Milwaukee County; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors authorizes the Department of Administrative Services, working in conjunction with the Comptroller and Corporation Counsel, to process an appropriation transfer of $2.7 million from Org.

Unit 1945 – Appropriation for Contingencies to Org. Unit 1950 – Employee Fringe Benefits to provide the anticipated funding to effectuate this resolution/ordinance; and

BE IT FURTHER RESOLVED, that the County Board of Supervisors does hereby adopt the following:

AN ORDINANCE

The County Board of Supervisors of the County of Milwaukee does ordain as follows:

Section 1. Section 201.24(2.19) is amended as follows:

2.19. - Retirement.

Retirement shall mean termination of employment after a member has fulfilled all requirements for a pension. Effective November 1, 2018, ~~R~~retirement shall ~~be considered as~~ only commence~~ing~~ on the first day of the month immediately following a member's last day of employment (or authorized leave of absence, if later), and shall terminate~~ing~~ upon the last day of the month of the date of death of retiree or beneficiary under option.

Section 2. Section 201.24(2.22) is deleted and recreated as follows:

2.22. - ~~Masculine and feminine pronouns.~~

~~The masculine pronoun shall include the feminine~~.

RPS

RPS shall mean retirement plan services, the county department that maintains the general ledger and related books of the retirement system, administers the pension payroll, conducts retirement seminars, prepares estimates and processes benefits for retirees and surviving beneficiaries of the retirement system, and otherwise executes any administrative plan function delegated to it by either the pension board or the county.

Section 3. Section 201.24(2.23) is created as follows:

2.23. - Masculine and feminine pronouns

The masculine pronoun shall include the feminine.

Section 4. Section 201.24(3.1) is amended as follows:

3.1. - County Contributions

(1) *Budget year contributions.* The pension board shall furnish to the county executive, prior to June 1 of each year:

(a) An estimated budget contribution required by the county, including contributions required under section 3.3, to pay the following year's cost and to amortize the amount of unfunded obligation of the county over such period of years as determined from time to time by the county board ~~(e.g., in 1984, estimate the cost to be incurred in 1985, which will be payable in 1986);~~ and

(b) The established actuarial assumptions supporting said required amount. The county executive shall submit an informational report to the committees on finance and audit and personnel for consideration during the June committee cycle, providing for an estimated contribution amount for the next year's budget and shall include this pension contribution amount in the executive budget as transmitted to the county board. The final amount appropriated in the adopted budget by the county board shall be the estimated contribution to be expensed in the budget year~~., but paid to the system in the next following budget year (e.g., in 1984, an estimate will be made for the amount to be expensed in 1985 but paid in 1986).~~

(c) Effective June 1, 2018, any contribution required from the county resulting from the county's assumption of liability for overpayments from the retirement system in lieu of collection of such overpayments from members or beneficiaries under this ordinance, including section 8.24. Detail for such contribution shall be provided to the County. Any estimate of such contribution shall be provided when known to the County, so it can determine the means to pay for such liability.

Section 5. Section 201.24(8.21) is deleted and recreated as follows:

~~**8.21. - Delegation of authority.**~~

~~The secretary of the pension board is delegated the authority to implement all collective bargaining agreements which amend any provision with this ordinance governing the employes' retirement system or which create new benefits or result in different computations for entitlements as such relates to the members of specific collective bargaining unit. All provisions of such collective bargaining agreements as applicable to specific members and relating to the employes' retirement system are hereby incorporated by reference within this ordinance for the purpose of this delegation of authority.~~

8.21. - Delegation of authority.

(a) General Powers - RPS is delegated the authority to act on behalf of the pension board with respect to the general administration of the retirement system. RPS shall report to the pension board at each meeting of any material actions taken as delegate of the pension board.

(b) Collective Bargaining Agreements - RPS is delegated the authority to implement all collective bargaining agreements which amend any provision within this ordinance governing the employes' retirement system or which create new benefits or result in different computations for entitlements as such relates to the members of specific collective bargaining unit. All provisions of such collective bargaining agreements as applicable to specific members and relating to the employes' retirement system are hereby incorporated by reference within this ordinance for the purpose of this delegation of authority.

Section 6. Section 201.24(8.24) is created as follows:

8.24. Correction of Underpayment and Overpayment of Benefits

(1) General – In the event that a benefit paid to a member or beneficiary is determined to be incorrect, RPS shall take appropriate action to: (i) correct such error; and (ii) maintain the federal tax-qualified status of the retirement system under the Internal Revenue Code.

(2) Erroneous Underpayments – If the benefit paid to a member or beneficiary is determined to be less than that to which the member or beneficiary is entitled under the provisions of this ordinance, RPS shall authorize a single sum corrective payment in an amount equal to: (i) the total amount of the underpayment for the claim period (as defined in section 8.24(k)); plus (ii) applicable interest (as defined in section 8.24(d)), calculated as of the date of each such underpayment.

(3) Erroneous Overpayments – If the benefit paid to a member or beneficiary is determined to be greater than that to which the member or beneficiary is entitled under the provisions of this ordinance, RPS shall seek to recoup such overpayment from the member or beneficiary in an amount equal to: (i) the total amount of the overpayment for the claim period (as defined in section 8.24(k)); plus (ii) applicable interest (as defined in section 8.24(d)) calculated as of the date of each such overpayment. Such repayment shall be made in the manner set forth in section 8.24(e). RPS shall seek to recoup the overpayment immediately upon the expiration of the period to file an appeal with the pension board or sixty days after notice of the overpayment has been made, whichever is sooner, or, if an appeal is filed with the pension board, immediately upon the resolution of the pension board appeal. Notwithstanding the foregoing, should a member or

beneficiary seek redress in any court of law for any issue, recoupment shall commence as soon as possible after the filing of such a claim.

(4) Applicable Interest – The calculation of underpayments and overpayments shall include simple interest at a rate of five percent (5%) per annum on the underpaid or overpaid amount from the date of incorrect payment(s) through the applicable period of payback. The above notwithstanding, to the extent that a different interest rate is mandated by the Internal Revenue Service pursuant to the terms of a voluntary correction program submission under Section 8.23, such rate shall be the applicable interest rate.

(5) Repayment of Overpayment Methods – RPS shall seek to recoup any overpayment in the following order: (i) first, through a lump sum payment by the member of beneficiary; (ii) second, by entering into a voluntary repayment agreement under which the member or beneficiary agrees to make equal monthly direct payments or a lump sum to the retirement system; and (iii) third, by authorizing equal monthly offsets of future benefits payable to the member or beneficiary in the manner set forth in section 8.24(f). If the member or beneficiary fails to enter into a repayment agreement within 120 days after notification of the overpayment and calculated repayment amount, and does not otherwise file an appeal of the overpayment determination, RPS shall commence recoupment by offset beginning with the next scheduled payment. If the member or beneficiary fails to make a payment under a voluntary repayment agreement, and such payment is outstanding for thirty days, RPS shall commence such recoupment of the amount owed by offset in the manner set forth above. In all cases, payments shall be applied first to outstanding applicable interest, and then to erroneous overpayments. Upon the death of member or beneficiary, RPS shall attempt to collect the remaining amount owed from the estate or from future benefits payable to any remaining beneficiary of the member.

(6) Calculation of Monthly Repayment Amount – The monthly repayment amount (if voluntarily repaid or recouped by offset) shall be determined by reference to the total overpayment amount as set forth in the monthly repayment guidelines established by the Wisconsin Department of Employee Trust Funds under Wis. Stat. § 40.08. The above notwithstanding, if the member or beneficiary presents verifiable documentation to RPS within 30 days of notification of the overpayment that such member or beneficiary's adjusted gross household income is at or below the federal poverty threshold as established by the United States Department of Health and Human Services, then the monthly repayment amount, shall not exceed five percent (5%) of the member or beneficiary's monthly pension benefit. Acceptable documentation shall include, but is not limited to, the member or beneficiary's most recent IRS Form 1040. If

a member or beneficiary enters into a voluntary repayment agreement, such repayment agreement may provide for repayment over a shorter period and/or in a greater amount than otherwise required under this section 8.24(f).

(7) Reduction or Waiver of Repayment – RPS shall reduce or completely waive the overpayment repayment otherwise required in the event of: (i) a determination that the overpayment amount is below the de minimus threshold as set forth in section 8.24(i); (ii) a written settlement between the county and the member or beneficiary, as set forth in section 8.24(j); (iii) an agreement between the county and the Internal Revenue Service pursuant to any voluntary correction program filing as set forth in section 8.23; or (iv) a determination by RPS that certain equitable factors, set forth in section 8.24(h) below merit the mitigation of the member's or beneficiary's repayment obligation. The above notwithstanding, there shall be no reduction or waiver of repayment under this subsection if the overpayment is the direct or indirect result of the member's or beneficiary's fraud, material misrepresentation or material omission.

(8) Equitable Factors – Equitable factors which may be applied, in the discretion of RPS, to reduce monthly recoupment payments mandated under section 8.24(f) shall be: (i) the financial status of the member or beneficiary and their household; (ii) the amount of the overpayment; (iii) the amount of the monthly benefit payment; (iv) the culpability of the member or beneficiary in the circumstances that gave rise to the overpayment; (v) extraordinary medical or long-term care expenses; (vi) whether the member or beneficiary supports claimed dependents; and (vii) fairness to other members and beneficiaries.

(9) De Minimus Overpayments – RPS shall waive a member's or beneficiary's repayment obligation if the total of all overpayments is less than $165.00, inclusive of applicable interest under section 8.24(d).

(j) Settlement of Overpayments –

(1) RPS shall settle any dispute with respect to overpayments made to members and/or beneficiaries who have retired and commenced benefit payments prior to June 1, 2018, in conformity with the limitations of this subsection, subject to approval by the Office of Corporation Counsel if the requirements of this subsection are met. Any such settlement shall: (i) forgive the member or beneficiary's obligation to repay any portion of the overpayment that remains outstanding at the time of the settlement; (ii) require that the member or beneficiary accept the revised calculation of the benefit; and (iii) require that the member or beneficiary agree to release any and all claims against the county, retirement system, county

board, pension board and retirement system staff with respect to any and all claims relating to the retirement system.

(2) In addition to the requirements set forth in 8.24(j)(1), any settlements under this section which shall be administered in accordance with these restrictions: (A) the settling beneficiary or member shall be offered the opportunity to meet with a representative of the retirement system in-person to review the terms of the settlement, including any recalculated benefit; (B) the member or beneficiary shall be advised that he or she should consult with an attorney before agreeing to the settlement; (C) the member or beneficiary shall be given a reasonable time to consult with an attorney, which in no case shall be less than seven (7) days; and (D) the beneficiary or member shall be given no less than seven (7) days to revoke the settlement agreement following its execution.

(3) An offer of settlement shall not be made to any member or beneficiary if the overpayment at issue was the direct or indirect result of fraud, material misrepresentation or material omission.

(4) Any repayments made to the retirement system prior to the execution of a settlement agreement under this subsection shall remain assets of the retirement system and shall not be refunded or otherwise returned to the member or beneficiary.

(k) Claim Period – Any claim for the correction of an underpayment or overpayment must be initiated by the aggrieved party in writing on or before the sixth anniversary of the date on which the payment is issued by the retirement system. For purposes of this subsection, a payment shall be a single benefit payment or any single periodic payment if the benefit is paid in an installment or annuity form. Any claim with respect to a periodic payment shall apply to each subsequent periodic payment. A timely claim made during the claim period shall remain valid during the period of appeal (to the pension board or any court of law) and through final disposition of such appeal even if such disposition occurs after the sixth anniversary of the date of payment.

(l) Effective Date – Except as otherwise set forth above, this section shall apply to any overpayment or underpayment that is not otherwise subject to an agreement or commitment of correction as of June 1, 2018.

Section 7. Section 201.24(11.7) is amended as follows:

11.7. - Exemption of funds and benefits from taxation, execution and assignment.

All moneys and assets of the retirement system and all benefits and pensions and every portion thereof, both before and after payment to any member or beneficiary, granted under the retirement system shall be exempt from any state, county, or municipal tax, and from attachment or garnishment process, and shall not be seized, taken, detained or levied upon by virtue of any executions, or any process or proceeding whatsoever issued out of or by any court of this state, for the payment and ratification in whole and in part of any debt, claim, damage, demand or judgment against any member of or beneficiary under the retirement system, and no member of or beneficiary under the retirement system shall have any right to assign his benefit or allowance, or any part thereof, either by way of mortgage or otherwise, provided, however, that the pension board may at its option and under rules and regulations promulgated by it permit retired members to assign a portion of their pension for the regular monthly payment of medical, surgical and hospital care. The exemption from taxation contained herein shall not apply with respect to any tax on income. Effective June 1, 2018, this section shall not prohibit the forfeiture or garnishment of benefits and pensions pursuant to:

(a) Applicable requirements of Wisconsin Statutes or Milwaukee County Ordinances;

(b) A lien or levy imposed on the member or beneficiary by the Internal Revenue Service; or

(c) A lien or levy imposed on the member or beneficiary by the Wisconsin Department of Revenue.

Section 8. Section 201.24(11.8) is amended as follows:

11.8. - ~~Protection against fraud.~~ Falsification or Absence of Information and Records.

(a) Protection Against Fraud - Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record(s) of this retirement system in any attempt to defraud such system as a result of such act shall be guilty of a misdemeanor, and shall be punishable therefor under the laws of the state. Should any change or error in the records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the information and records been correct, the board shall correct such error, and as far as practicable shall adjust the payments in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

(b) Missing Information – In the event that the records containing information necessary to calculate a member or beneficiary's benefits under the system are missing, ERS may make reasonable estimates of such information as necessary to calculate the member or beneficiary's benefits. Any such calculations based upon reasonable estimates shall be presumed correct and binding upon the member or beneficiary. The above notwithstanding, should any information and records subsequently become available, any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the information and records been correct, the board shall correct such error, and as far as practicable shall adjust the payments in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. If the corrected amount results in an overpayment greater than the *de minimis* threshold as set forth in section 8.24(i), RPS shall seek to recoup any overpayment in the manner set forth in section 8.24(e).

Section 9. Effective Date. Each provision of this Act shall be effective as of the date stated therein. If no such date is stated, the provision shall be effective as of December 24, 1967. The Pension Board or RPS may, as appropriate, delay the disposition of any matter under such provision pending the establishment or amendment of interpretive Rules issued pursuant to Section 8.6. In no event shall such delay invalidate the effective date or applicably of such provision.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: May 8, 2018

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: A resolution/ordinance to amend Section 201.24 of the Milwaukee County Code of General Ordinances relating to the Employees' Retirement System to improve the accuracy of benefit calculations and to provide procedures to resolve payment errors

FISCAL EFFECT:

☐ No Direct County Fiscal Impact

- ☐ Existing Staff Time Required

☒ Increase Operating Expenditures
(If checked, check one of two boxes below)

- ☐ Absorbed Within Agency's Budget
- ☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☒ 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	SEE FISCAL ANALYSIS	SEE FISCAL ANALYSIS
	Revenue		
	Net Cost		
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.

SEE FISCAL ANALYSIS (ATTACHED TO THIS FILE)

Department/Prepared By Steve Cady, Research and Policy Director, Office of the Comptroller

Authorized Signature *Stephen J. Cady*

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.

Office of the Comptroller

Milwaukee County

Scott B. Manske • Comptroller

RECEIVED
MILWAUKEE COUNTY CLERK
2019 FEB -4 A 11:31

To:	Theodore Lipscomb, Sr., Chairman, Milwaukee County Board of Supervisors
From:	Scott B. Manske, Comptroller Cynthia J. (CJ) Pahl, Financial Services Manager, Office of the Comptroller
Date:	October 16, 2018
Re:	Fiscal Analysis of Proposed Pension Ordinance Changes to M.C.G.O. 201.24 of the Employees' Retirement System – ***UPDATED***

SUMMARY

The Comptroller's Office reviewed the proposed ordinance changes to the Milwaukee County General Ordinances (MGO) as provided by Corporation Counsel at the request of the sponsoring Supervisor. The proposed ordinance changes modify the current pension ordinances to make various operational changes and to create a forgiveness policy.

There are certain provisions within the proposed ordinance changes that cause a direct fiscal impact to the County. These provisions are related to retirement commencement dates, applicable interest, statute of limitations and forgiving or waiving repayment obligations. **In summary, these changes result in a direct, calculable impact of $2.1 million as of December 31, 2018 based on information known at this time. This amount would increase each month thereafter if the liability is not paid in full at that time.** Furthermore, this amount could increase by approximately $0.8 million as of December 31, 2018 if the 2014 Voluntary Correction Program (VCP) submitted to the Internal Revenue Service (IRS) results in an interest rate other than the five percent simple established by the proposed ordinances.

Based on discussions with Corporation Counsel, if the County assumes the $2.1 million liability for the repayment obligation, that amount would become immediately payable to the Pension System by the County. The proposed resolution/ordinance authorizes the Department of Administrative Services, working in conjunction with the Offices of the Comptroller and Corporation Counsel, to allocate $2.1 million from Org. Unit 1945 – Appropriation for Contingencies to Org. Unit 1950 – Employee Fringe Benefits to increase the payment to the Pension System.

Due to the amount of the potential payment to the Pension System under the proposed policy, there will be an increase in the Pension System's assets which will have a positive impact on the County's annual required contribution (ARC) to the Pension System. However, absent this proposed policy, the Pension System would seek to collect these overpayments from affected pensioners and beneficiaries, resulting in a positive impact on the County's ARC also once collected. Therefore, there are no fiscal savings from a reduction in the ARC that is attributable to the proposed policy.

Historically, the Pension System corrected overpayments and underpayments as part of its responsibility to ensure the Pension System and pensioners and beneficiaries are "made whole." The proposed policy sets the guidelines for how the repayment obligation for overpayments and underpayments should occur going forward. Generally speaking, any single overpayment or underpayment is not going to have an actuarial impact on the Pension System, which results in no fiscal impact on the County. It is worth noting, however, that in any event in which a significant number of retirees or beneficiaries are affected there could be a resulting actuarial impact to the Pension System's assets or liabilities, which in turn could result in a fiscal impact on the County. Absent this proposed policy, these possibilities still exist, and therefore, there are no fiscal savings or costs attributable to the proposed policy.

DIRECT FINANCIAL IMPACT

Each of the provisions below has a direct fiscal impact on the County. Some of these financial impacts are calculable, and others are not. Based on the calculable data available, the total direct financial impact for 2018 would be $2.1 million. And although the proposed changes will result in future financial impacts, due to the character of the changes, it is not possible to calculate what the financial impact of these changes will be in future years. It is, however, likely to be less than the financial impact in 2018. Moreover, the proposed changes are likely to result in efficiencies in administering the Pension System, which should provide additional savings through streamlined processes and reduced errors.

- **Changing the date that a person can commence a retirement benefit from the date of retirement to the first day of the month immediately following a member's date of retirement.**

  - The direct financial impact on the County results from potential changes to employee behavior at retirement due to the proposed changes. Current eligible employees could choose to retire earlier in the month, later or around the same time. Retiring earlier or later would provide a salary savings or a salary cost, respectively. Those retiring around the same time would have no fiscal impact. The fiscal savings or cost of this provision is incalculable because it is not known how employees will react to this change.

- **Setting the applicable interest on overpayments and underpayments to five percent (5%) simple interest annually.**

  - If a forgiveness policy is enacted, setting a five percent (5%) annual simple interest will produce a lower overall liability for the County to assume. Based on 185 overpayment cases, a five percent (5%) annual simple interest results in an interest liability of $569,000. However, regardless of the interest rate set by this ordinance, the 2014 VCP could result in a different interest rate payable by the County (or pensioners/beneficiaries if the proposed changes are not enacted) on overpayments.

Interest Rate	Interest Owed as of 12/31/2018
5 % Simple	$569,000
5 % Compound	$910,000
8 % Simple	$742,000
8 % Compound	$1,415,000

It is significant to note that the above amounts assume an interest calculation that pays all of the principle owed as of December 31, 2018. If the principal is not paid off as of December 31, 2018, additional interest will accrue under all scenarios and result in additional fiscal costs to the County (or pensioner/beneficiary). Furthermore, if the principal is paid off on December 31, 2018 (or some subsequent date) as five percent (5%) annual simple and the 2014 VCP results in a different interest rate owed, the County would incur additional fiscal costs to pay the difference.

- **Enacting a statute of limitations for correcting overpayments and underpayments.**

    - The time period for which a pensioner or beneficiary is responsible for the repayment of an overpayment is limited to those overpayments made within the past six years. The County would assume the liability for all overpayments older than six years. Conversely, the time period for which the Pension System is responsible for reimbursing pensioners or beneficiaries for underpayments is also limited to those made within the past six years. Any underpayments six years or older would not be due to the pensioner or beneficiary. This time period only applies to pensioners who retire on or after June 1, 2018. Therefore, this provision would not have any County financial impact until after June 1, 2024 at the earliest. (If the proposed changes are approved in their entirety, the "forgiveness rule" would apply and the County would be responsible for the entire repayment obligation for anyone retiring prior to June 1, 2018.) In cases where the County assumed the liability for an overpayment, it would result in a direct financial cost. In cases where an underpayment is not reimbursed, there would be no direct financial impact to the County.

- **Waiving or forgiving the repayment obligation of an overpayment amount.**

    - The pensioner retired prior to June 1, 2018 and is subject to the forgiveness policy set forth in the proposed ordinance.

        - This provision applies to 185 known cases in which there has been an overpayment in the past (the proposed statute of limitations does not apply to these cases). The total overpayment amount is estimated to be $1,564,000, with an additional $569,000 due for interest computed at five percent (5%) simple as of December 31, 2018. Per Corporation Counsel, the total amount of $2.1 million would be payable by the County immediately. If other cases are identified, this amount could increase for 2018, or could have a direct financial impact in future years. However, the fiscal cost for future years is incalculable. As stated earlier, it is likely to be less than $2.1 million if the Pension System is able to maintain the safeguards it is implementing to prevent future errors. There are important caveats to note:

            1. These costs are based on a five percent (5%) simple interest calculation. If the IRS requires a different interest rate to resolve the current 2014 VCP, the County would be required to pay additional interest costs as shown above. Interest on the unpaid interest portion would likely be due as well.

            2. This total amount of $2.1 million includes $140,000 in overpayments and $26,000 in five percent (5%) simple interest for "death overpays." This is a situation where a retiree's or beneficiary's last retirement payment was overpaid due to the retiree's or beneficiary's date of death during the month. The Pension System has requested that these 94 cases be

considered administrative in nature and not considered errors so that the County is not responsible for making the Pension System whole in these situations.

3. This total amount also includes 31 cases in which the total overpayment with five percent simple interest is less than $165, for a total liability of $2,000. The proposed changes include a $165 de minimus amount to which these cases would apply, assuming a five percent (5%) simple interest rate.

- For retirements granted after June 1, 2018, forgiveness of overpayments is possible under various proposed ordinance changes. While it is likely that there will be cases of overpayment forgiveness in the future, the financial cost of these cases is incalculable. As state earlier, it is likely to be less than $2.1 million if the Pension System is able to maintain the safeguards it is implementing to prevent future errors from occurring. However, any major error in the future could result in another substantial payment by the County.

BUDGETARY IMPACT

The total calculated cost for the proposed changes is estimated to be $2.1 million and would become immediately payable by the County. There is no current appropriation for this expense. The County would need to identify a source of funding from the 2018 Budget such as contingency funding to pay the Pension System. Because the future cost is incalculable, the impact on future budgets is unknown.

ASSUMPTIONS

- The amounts included in this fiscal note are based off a review conducted by Baker Tilly of 262 files marked as potential overpayment issues by RPS. Baker Tilly worked with RPS staff to determine what amounts were owed by these 262 members and beneficiaries. Baker Tilly determined that of the 262 files marked as potential overpayment cases by RPS, 188 had overpayment errors with a total of $1.8 million in principal and $0.7 million in interest. Subsequently, RPS staff provided the Comptroller with assurance that the calculations done by Baker Tilly were reasonable. The Comptroller has not been provided with any updates to the original list of 262 files, but it is possible that additional overpayments exist or amounts have changed that are not included herein.

- Of the 188 case files with overpayment errors, three cases were determined to be in litigation and therefore, this ordinance does not apply. Members or beneficiaries with overpayments that are currently in litigation are not able to take advantage of the forgiveness option as a matter of right because they are already seeking a resolution of the dispute over their pension benefit through the court system. As a result, the fiscal impact of those cases is not included in this analysis. However, to put those litigated matters into context, if all 3 matters currently in litigation were to be resolved through full forgiveness, the cost to the County would be $276,000 in principal and $104,000 in interest.

- This fiscal note assumes that the proposed five percent (5%) simple interest on overpayments and underpayments applies to those liabilities that the County assumes. If the VCP requires a different interest rate, the amounts payable by the County provided herein will change.

- This fiscal note also assumes that the County will be required to pay all costs related to "death overpays" as discussed above. If the County is not required to pay this amount as requested in the 2014 VCP, the amounts payable by the County provided herein will be less. Should the proposed ordinance changes be approved, these types of overpayments would be nearly eliminated in the future, since a retiree or beneficiary would be entitled to the full month of payment in which he or she died.

- With respect to potential financial savings achievable from a reduction in the County's ARC, this fiscal note assumes none. In terms of overpayments and underpayments, a change to the ARC would be a result of either an actuarial change in liabilities or an actuarial change in assets attributable specifically to this ordinance.

  Changes in Pension System liabilities occur when a retirement benefit is recalculated; however, this change offsets the change in liabilities that occurred when the retirement benefit was originally calculated. For example, prior to retirement, actuarial valuations project Employee X's liability at one amount, and allocate that charge to the County. If at retirement an erroneous retirement amount was granted to Employee X, the subsequent actuarial valuation would likely result in an adjustment to the total pension liability to account for the difference between the projected and actual liability for Employee X. This adjustment is then offset by another adjustment to the liability once the error is identified, and the actual retirement amount recalculated. The two adjustments offset each other. Furthermore, the correcting of retirement amounts is not a new, proposed practice, but one that has been exercised historically. Therefore, any change to the ARC due to liability modifications is not a direct result of these proposed ordinance changes and would have occurred regardless.

  Currently, the Pension System assets change as overpayments are recouped and underpayments are paid out. The proposed ordinance changes do not affect this; rather, the proposed ordinance change is directing who is responsible for fulfilling the repayment obligation for overpayments in certain situations. In other words, the Pension System under both current ordinances and proposed ordinances is required to be made whole and although a change to the assets may result, assets would have changed regardless of who made the payment. Therefore, any changes to the ARC due to asset modifications is not a direct result of these proposed ordinance changes and would have occurred regardless.

Comptroller
Milwaukee County

Financial Services Manager
Office of the Comptroller