COUNTY OF MILWAUKEE
DAS-Division of Employee Benefits
INTER-OFFICE COMMUNICATION

Date : December 27, 2011

To : Supervisor Lee Holloway, Chairman, Milwaukee County Board of Supervisors

From : Matthew Hanchek, Interim Director, Employee Benefits

Subject : **Report from the Interim Director, Employee Benefits, requesting an amendment to Section 201.24(8.2) of the Milwaukee County Code of General Ordinances as it pertains to membership on the Pension Board.**

Issue

The Milwaukee County Pension Board is comprised of 5 appointed members (3 executive appointments and 2 appointments by the Chair of the County Board) and 4 elected members (3 active and 1 retiree representative. This board is tasked with stewardship of the County's Pension Trust and is supported in that effort by the Employees Retirement System (ERS). The Pension Board authorizes pension trust spending and directs the administration of the plan by ERS staff.

The proposed amendment to Section 201.24(8.2) of the Milwaukee County Code of General Ordinances addresses three issues currently impacting the Pension Board.

First, an elected employee member of the Pension Board who is also part of the support staff for the Pension Board would have inherent conflicts of interest that interfere with that person's ability to effectively carryout the fiduciary responsibility of both positions. The proposed amendment would preclude ERS employees from serving on the Pension Board.

Second, turnover within the Pension Board has led to instances of partial terms. The impact of partial terms on the term limits currently defined in ordinance is unclear. The proposed amendment would clarify full and partial terms, and overall term limits.

Finally, turnover and vacancies within the Board cause an impediment to the Board's ability to carry out its fiduciary duties. At the minimum, attendance for a quorum, a unanimous 5-0 vote, is required under current rules for the Pension Board to take actions. The proposed amendment would improve the Pension Board's ability to effectively carryout its duties at minimum quorum.

Requested Action

It is requested that the County Board of Supervisors authorize the attached amendment to Section 201.24(8.2) of the Milwaukee County Code of General Ordinances.

Fiscal Effect

The proposed amendment has no fiscal impact. A fiscal note form is attached.

Attachments

cc: County Executive Chris Abele
Amber Moreen, Chief of Staff, County Executive's Office
Terry Cooley, Chief of Staff, County Board Chairman
Supervisor Joe Sanfelippo, Chairman, Personnel Committee
Supervisor John Thomas, Chairman, Finance & Audit Committee
Patrick Farley, Director of Administrative Services
Kimberly Walker, Corporation Counsel
Rick Ceschin, Senior Research Analyst
Steve Cady, Fiscal & Budget Analyst
Carol Mueller, Chief Committee Clerk
Jodi Mapp, Personnel Committee Clerk

File No.

(Journal,)

A RESOLUTION

To amend Sections 201.24(8.2) and (8.5) of the Milwaukee County Code of General Ordinances as they pertain to membership on the Pension Board and decision votes of the Pension Board.

WHEREAS, the Pension Board includes three members elected from amongst the active employees, and

WHEREAS, the Pension Board is supported by the staff of the Employees Retirement System office, and

WHEREAS, having elected employee members of the Pension Board who are also part of the support staff for the Pension Board can create conflicts of interest, confidentiality and loyalty concerns, and

WHEREAS, members have been appointed or confirmed to serve partial terms on the Pension Board and clarification is necessary to limit service on the Pension Board to two, full, three-year terms, not including any partial term of service, and

WHEREAS, members have served beyond the completion of their second three-year term as holdovers until a replacement has been confirmed, but such service is contrary to the term limit policy and clarification is necessary to prevent this practice, and

WHEREAS, members are required to have certain qualifications for appointment or election and codification of prior practice is appropriate to provide that members cannot continue to serve if, during the member's term, the member no longer possesses the qualifications applicable to the member's appointment or election such that the member would not be eligible for re-appointment or re-election, and

WHEREAS, the Pension Board must be able to operate when vacancies exist on the Board and the requirement of five votes for final decisions can prevent action when the Pension Board does not have full membership and is contrary to common practice for other bodies under Robert's Rules of Order,

NOW THEREFORE,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby amends Sections 201.24(8.2) and (8.5) of the Milwaukee County Code of General Ordinances by adopting the following:

AN ORDINANCE

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

Section 1. Section 201.24(8.2) of the General Ordinances of Milwaukee County is amended as follows:

8.2 Membership

Members shall not serve more than two (2) consecutive three-year terms, but the appointment or election of a member to complete the balance of a three year term of a prior member is not included in this limitation. Members may not continue to serve after the completion of any term, unless re-appointed and confirmed or re-elected. A member having served two (2) terms may be eligible for re-election or re-appointment after not having been a member for at least three (3) years from the last date of service on the board. If re-appointed or re-elected, the members must adhere to the same term limitation of two (2) consecutive three-year terms. A member may not continue to serve if at any time the member does not possess the qualifications that would be applicable to the member at the time of the member's appointment, election, re-appointment or re-election. The board shall determine any question concerning a member's qualification or eligibility to continue to serve as a member, but the votes of five (5) members shall be necessary for a decision of the board on any such question.

None of the appointed members of the pension board nor any family members of the appointed members of the pension board shall be participants in, or beneficiaries of, the Milwaukee County Employee Retirement System. None of the appointed members of the pension board shall have relationships or ties to any provider of services to the Milwaukee County Retirement System, Milwaukee County Pension Board, or the Milwaukee County Pension Study Commission.

The membership of the board shall consist of the following:

(a) Three (3) members to be appointed by the county executive (subject to confirmation by two-thirds (2/3) or more of the members-elect of the county board), for a term of three (3) years.

(b) Two (2) members appointed by the county board chairperson (subject to the confirmation of the county board and to county executive approval or veto, with proceedings on veto), for a term of three (3) years.

(c) Four (4) elected members consisting of three (3) employee members and one (1) retiree member who shall be members of the system and who shall be elected by members of the system except for the retiree member who shall be elected by retired members only for terms of three (3) years. Employees who work for the Employees Retirement System are not eligible for election to, or service on, the pension board. The board may adopt rules and regulations governing such election including a division of county employees into groups for the purpose of electing one (1) employee member of the board from among the employees of each group. Appointing authorities shall ensure that the employee members of the pension board are released from their work assignments to attend meetings of the pension board and any other meeting related to pension board business for which public notice is required which occurs during their regularly scheduled work shift.

Section 2. Section 201.24(8.5) of the General Ordinances of Milwaukee County is amended as follows:

8.5 Decision vote.

Each member of the board shall be entitled to one (1) vote in the board. ~~Five (5) votes~~ The votes of a majority of the members present and voting, but no less than four (4) votes, shall be necessary for a decision by the members of the board at any meeting of the board.

Section 3. This ordinance shall be effective upon passage and publication.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: December 27, 2011

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: Request to amend Section 201.24(8.2) of the Milwaukee County Code of General Ordinances as it pertains to membership on the Pension Board.

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		
	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.

A.) Approval of this request would amend Section 201.24(8.2) of the Milwaukee County Code of General Ordinances as it pertains to membership on the Pension Board. This ammendment would prohibit employees of ERS from serving on the body tasked with directing ERS. Further, the ammendment would alter the minimum number of affirmative votes required for the pension board to approve action. The mandatory quorum remains unchanged.

B.) The proposed change is intended to allow the Pension Board to carry out its fiduciary responsibilities despite vacancies that may occur due to pending appointments and elections. There is no cost to the County, other than time of existing staff.

C.) No budgetary impact

D.) None

[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.

Department/Prepared By Matthew Hanchek, Interim Director - Employee Benefits

Authorized Signature ______________________________

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE

DATE: January 16, 2012

TO: Lee Holloway, Chairman, County Board of Supervisors

FROM: Mark A. Grady, Deputy Corporation Counsel

SUBJECT: Required OBRA Ordinance Amendments

It is requested that this matter be referred to the Committee on Finance and Audit, the Committee on Personnel and the Pension Study Commission.

The OBRA pension system has recently been audited by the Internal Revenue Service. In addition, as is periodically required by the Internal Revenue Code, the Pension Board recently filed for a "determination letter" with the IRS seeking the IRS's determination that the OBRA plan remains a tax-qualified plan. The Pension Board has received a draft audit closing statement from the IRS and has received a favorable determination letter from the IRS. However, both approvals are conditioned upon the passage of ordinance amendments to the OBRA plan that are required to maintain compliance with the Internal Revenue Code. These amendments relate to updates to IRS regulations and to several Congressional acts, including the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), the Pension Protection Act ("PPA") and the Heroes Earnings Assistance and Relief Tax Act ("HEART"). Attached is a summary of the amendments prepared by outside tax counsel. Pursuant to IRS requirements, these amendments must be adopted no later than February 7, 2012.

The Pension Board requests the adoption of these ordinance amendments. I am attaching the Pension Board's comment. These amendments are technical in nature. It is not expected that the amendments will result in any increased cost to the County, but they are being reviewed by the actuary and an actuarial report has been requested.

MARK A. GRADY
Deputy Corporation Counsel

Attachment

cc(w/att.): County Executive Chris Abele
Carol Mueller
Jodi Mapp

Pension Board of the Employees' Retirement System of the County of Milwaukee ("ERS")

Prospective OBRA Ordinance Amendments
Bullet Point Summary

Attorney-Client Privilege
Personal and Confidential

Certain OBRA Ordinance amendments are necessary to comply with required legislative and regulatory changes. In addition, the Internal Revenue Service ("IRS") conditioned OBRA's favorable determination letter on the County's adoption of these amendments. The closing agreement for the IRS audit also requires adoption of many of these Ordinance amendments to fully comply with the correction. The proposed amendments include requirements from federal legislation including the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), the Pension Protection Act ("PPA") and the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART").

- **Ordinance Section 203(2.4)**
    - Effective Date. January 1, 2002.
    - Purpose. This change increases the limit on annual compensation that OBRA may consider when calculating benefits based on Internal Revenue Code ("Code") section 415 requirements.
    - Previous Compliance. OBRA has previously complied with the Code requirements for limiting annual compensation, and it has operationally complied with the increased limit since 2002. This change probably has no practical impact on OBRA because members' compensation is typically much lower than the Code section 415 compensation limit.
    - Required? This change is required to comply with Code requirements, complete audit correction, and fulfill requirements contingent to receipt of a favorable determination letter.
- **Ordinance Section 203(2.12) – Vesting**
    - Effective Date. January 1, 2002.
    - Purpose. The IRS agent reviewing the determination letter submission required that the Ordinances specifically state that members will be 100% vested when they reach normal retirement

age and in the event of partial plan termination or full plan termination.

- Previous Compliance. OBRA currently provides that members are 100% vested at all times. Accordingly, members also would be 100% vested in the circumstances specified by the IRS agent. Thus, this change will have no practical effect on OBRA operations

- Required? This change is required for receipt of a favorable determination letter on OBRA.

- **Ordinance Section 203(2.12) - HEART Act**

  - Effective Date. January 1, 2007.

  - Purpose. The HEART Act made certain changes to how qualified retirement plans treat military service, providing that any additional benefits that may be provided by a plan due to the death of a participant, other than additional benefit accruals, must be provided to the beneficiaries of a participant who dies in qualified military service as if the participant were employed on the day of death. Also, differential wage payments provided to participants during qualified military service are treated as compensation to an active employee, even though the employee may be considered terminated for purposes of taking a distribution, after which elective deferrals must be suspended for 6 months.

  - Previous Compliance. OBRA does not provide additional benefits upon the death of a member, nor does it provide differential wage payments. Accordingly, these changes will have no practical effect on OBRA.

  - Required? This change is required to demonstrate compliance with the HEART Act by December 31, 2012.

- **Ordinance Section 203(4.4) and (4.5)**

  - Effective Date. March 28, 2005.

  - Purpose. Code section 401(a)(31) requires qualified plans that permit mandatory cashouts to automatically roll over into an individual retirement plan any mandatory cashout of an accrued benefit with an actuarial equivalent value in excess of $1,000 unless the member requests otherwise. The proposed amendment provides that any lump sum payment over $1,000 be rolled over to an IRA unless specified otherwise by the member.

- Previous Compliance. Lump sum cashouts by OBRA is an issue which is being corrected in the audit. Payments made as part of the audit correction have been made in accordance with the proposed amendment.

- Required? This change is required to comply with the Code, to fully complete the audit corrections, and fulfill requirements contingent to receipt of a favorable determination letter.

- **Ordinance Section 203(7.1)(a)**

  - Effective Date. January 1, 2002.

  - Purpose. To satisfy the tax qualification requirements of Code section 401(a), OBRA must comply with Code section 415. The proposed change updates the limit for annual benefit payments consistent with Code section 415 requirements.

  - Previous Compliance. OBRA has previously complied with the Code requirements for limiting annual benefit payments, and it has operationally complied with the increased limit since 2002. This change probably has no practical impact on OBRA because members' benefits are typically much lower than the Code section 415 limit.

  - Required? This change is required to comply with Code requirements, fully correct under the audit, and fulfill requirements contingent to receipt of a favorable determination letter.

- **Ordinance Section 203(7.1)(f)**

  - Effective Date. January 1, 2002; January 1, 2008.

  - Purpose. The IRS has mandated use of an updated mortality table when retirement plans make Code section 415 benefit limit conversions. Also, a minimum benefit limit floor is no longer required.

  - Previous Compliance. OBRA has previously complied with the Code section 415 requirements and mortality table requirements, and it has operationally complied with the increased limit since 2002. This change probably has no practical impact on OBRA because members' benefits are typically much lower than the Code section 415 limit.

- Required? This change is required to comply with Code requirements, fully correct under the audit, and fulfill requirements contingent to receipt of a favorable determination letter.

- **Ordinance Section 203(7.1)(g) and (h)**

  - Effective Date. January 1, 2008.

  - Purpose. This amendment revises OBRA so it is in compliance with Code section 415(b) requirements.

  - Previous Compliance. OBRA has previously complied with the Code section 415 requirements, and it has operationally complied with the increased limit since 2002. Because OBRA does not allow for forms of benefit other than a straight life annuity, this proposed change will have no practical effect on OBRA's operation.

  - Required? This change is required to comply with Code requirements, fully correct under the audit, and fulfill requirements contingent to receipt of a favorable determination letter.

- **Ordinance Section 203(7.2)(a)**

  - Effective Date. January 1, 2002.

  - Purpose. Code section 415 requires that specific items be included in the computation of compensation for benefits purposes. This amendment effectuates that requirement.

  - Previous Compliance. OBRA has previously complied with the Code section 415 requirements, and it has operationally complied since 2002. This change probably has no practical impact on OBRA because members' compensation is typically much lower than the Code section 415 compensation limit.

  - Required? This change is required to comply with Code requirements, fully correct under the audit, and fulfill requirements contingent to receipt of a favorable determination letter.

- **Ordinance Section 203(7.2)(c)**

  - Effective Date. January 1, 2002.

- Purpose. This change adds a definition of limitation year for Code section 415 purposes.

- Previous Compliance. OBRA has previously complied with the Code section 415 requirements, and it has operationally complied since 2002. This change probably has no practical impact on OBRA because members' benefits are typically much lower than the Code section 415 limit.

- Required? This change is required to comply with Code requirements, fully correct under the audit and fulfill requirements contingent to receipt of a favorable determination letter.

- **Ordinance Section 203(9.3)**

  - Effective Date. January 1, 2002.

  - Purpose. The proposed change to Ordinance section 203(9.3) updates the limit from $3,500 to $5,000, consistent with the Ordinance section 203(4.4) amendment and Code requirements.

  - Previous Compliance. OBRA is correcting its compliance with the cashout limit as part of the OBRA audit. This change will aid in that compliance.

  - Required? This change is required to comply with Code requirements and fulfill requirements contingent to receipt of a favorable determination letter.

- **Ordinance Section 203(10.7)**

  - Effective Date. January 1, 2003.

  - Purpose. Code section 401(a)(9) requires plans to begin making required minimum distributions of a participant's benefit starting by the April 1 of the calendar year following the calendar year in which the employee attains age 70½ or terminates employment, if later.

  - Previous Compliance. OBRA members should begin receiving benefits at age 65, regardless of employment status. Accordingly, this change will have no practical effect on OBRA.

  - Required? This change is required to comply with Code requirements, fully correct under the audit, and fulfill requirements contingent to receipt of a favorable determination letter.

- **Ordinance Section 203(11.3) and (11.4)**
    - Effective Date. January 1, 2002; January 1, 2010.
    - Purpose. The definition of an eligible retirement plan that could receive a rollover distribution from plans such as OBRA has been expanded under the Code. In addition, plans are now required to allow nonspouse beneficiaries to roll over benefit payments.
    - Previous Compliance. OBRA has operationally complied with these requirements since the required dates. The nonspouse beneficiary rollover change will have no practical effect on OBRA because all OBRA benefit payments cease upon death of the member.
    - Required? This change is required to comply with Code requirements, fully correct under the audit and fulfill requirements contingent to receipt of a favorable determination letter.

By Supervisor Res. File 11-
Journal,

A RESOLUTION/ORDINANCE
Amending the Benefit Provisions of the OBRA 1990 Retirement System

Whereas, the OBRA 1990 Retirement System of the City of Milwaukee ("OBRA") is a tax-qualified governmental retirement plan that must comply with the applicable provisions of the Internal Revenue Code of 1986 (the "Code"); and

Whereas, the Pension Board of the Employees' Retirement System of the County of Milwaukee (the "Pension Board") acts as the fiduciary for and oversees administration of OBRA, and as such, the Pension Board seeks to ensure that OBRA maintains its tax-qualified status; and

Whereas, the United States Congress and the IRS adopted various pieces of legislation and regulations, respectively, impacting tax-qualified retirement plans; and

Whereas, governmental defined benefit plans were expected to file for an updated determination letter from the Internal Revenue Service ("IRS") regarding the tax-qualified status of the plan under Cycle E between February 1, 2010 and January 31, 2011, but were allowed to file under Cycle C between February 1, 2008 and January 31, 2009; and

Whereas, the IRS has conducted an audit of OBRA's operations, and during such audit, amendments to OBRA provisions to comply with legislative changes were discussed; and

Whereas**,** the Pension Board desired to receive and filed for a favorable determination letter regarding the tax-qualified status of OBRA; and

Whereas, the Pension Board has now received a favorable determination letter from the IRS; and

Whereas, the IRS conditioned the favorable determination letter and the closing agreement for the audit on the County's adoption of certain OBRA amendments necessary to comply with required legislative and regulatory changes; and

Whereas, the Pension Board has requested that OBRA be amended to comply with required legislative and regulatory changes and to clarify the operation and administration of OBRA; and

Whereas, the Pension Study Commission has reviewed these proposed amendments; and

Whereas, an actuarial cost study regarding these amendments has been performed;

NOW THEREFORE, BE IT RESOLVED, that, as requested by the Pension Board, OBRA is hereby amended to comply with the laws governing tax-qualified retirement plans required by recent legislative and regulatory changes and to clarify its operation and administration.

BE IT FURTHER RESOLVED, that to ensure the above-noted revisions are properly codified, the County Board of Supervisors does hereby adopt the following:

AN ORDINANCE

To amend Chapter 203 of the General Ordinances of Milwaukee County as appropriate to comply with federal legislative and regulatory changes related to tax-qualified retirement plans that impact the OBRA 1990 Retirement System of the County of Milwaukee and to clarify the administration of the OBRA 1990 Retirement System of the County of Milwaukee.

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

Section 1. Effective January 1, 2002, section 203(2.4) of the General Ordinances of Milwaukee County is amended to read as follows:

2.4. Compensation.

"Compensation" means for any plan year the total of all amounts paid to an employee by the county defined as wages within the meaning of Internal Revenue Code section 3401(a) (determined without regard to any rules under section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2)) and all other payments of compensation paid to an employee by the county for which the county is required to furnish the employee a written statement under Internal Revenue Code sections 6401(d) and 6051(A)(3), exclusive of amounts paid or reimbursed by the county for moving expenses incurred by the employee to the extent that at the time of the payment it is reasonable to believe that these amounts are deductible by the employee under Internal Revenue Code section 217. Further, "compensation" for each plan year shall exclude any amount that is in excess of the Social Security OASDI taxable wage base as in effect for the plan year. In the event that during any plan year an employee spends time in the employment of the county during part of which the county is obligated to collect and contribute taxes under the Federal Insurance Contributions Act (other than the Medicare portion of the FICA tax described in Internal Revenue Code section 3121(u)) with respect to such employee, either by virtue of a voluntary agreement between the state and the Secretary of Health and Human Services pursuant to section 218 of the Social Security Act or by any other provision of federal law, he/she shall be credited with compensation hereunder only for the amounts earned during the portion of the year during which the county is not obligated to collect and contribute taxes under the Federal Insurance Contributions Act (other than the Medicare portion of the FICA tax described in Internal Revenue Code section 3121(u)) with respect to such employee either by virtue of a voluntary agreement between the state and the Secretary of Health and Human Services pursuant to section 218 of the Social Security Act or by any other provision of federal law. The compensation of each member taken into account for determining all benefits provided under the system for any year shall not exceed the annual compensation limit pursuant to Code section 401(a)(17); provided, however, that this limitation shall apply only with respect to members who first commence participation in the system after 1995. The annual compensation limit shall be adjusted annually for increases in the cost of living by the Secretary of the Treasury or his delegate, except that the dollar increase in effect on January 1 of any calendar year is effective for years beginning in such calendar year. The "annual compensation limit" is two ~~one~~ hundred ~~fifty~~ thousand dollars ($200~~150~~,000.00), as indexed.

Section 2. Effective January 1, 2002, the following is added as a new paragraph at the end of section 203(2.12) of the General Ordinances of Milwaukee County:

> Upon beginning membership, members are 100% vested in their benefit under the system at all times, and will remain 100% vested upon reaching normal retirement date, as defined in section 2.9. Members shall remain fully vested even in the event of a partial plan termination or full plan termination, as contemplated under section 9.1.

Section 3. Effective January 1, 2007 or as noted below, the following is added at the end of section 203(2.12) of the General Ordinances of Milwaukee County:

> To the extent required by the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART Act") and as applicable for the system, the following provisions apply:
>
> (a) Effective January 1, 2007, if a member dies while performing qualified military service, the survivors of the member shall be entitled to any additional benefits (other than contributions relating to the period of qualified military service) provided under the system as if the member had been reemployed on the day prior to death and then severed employment on the actual date of death.
>
> (b) Effective for payments made on or after January 1, 2009, Compensation for purposes of section 2.4 includes any differential wage payments (as defined in Code section 3401(h)(2)) to an individual who does not currently perform services for the County by reason of qualified military service while on active duty for a period of more than 30 days and represents all or a portion of the wages the individual would have received from the County if the individual was performing services for the County. Such differential wage payment shall be treated as a payment of wages by the County to the member.
>
> (c) Qualified military service for the purposes of the above provisions is determined pursuant to section 414(u)(5).

Section 4. Effective March 28, 2005, section 203(4.4) of the General Ordinances of Milwaukee County is amended to read as follows:

(a) If at the time a pension would otherwise become payable to a member under either section 4.1, 4.2 or 4.3 the actuarial equivalent lump sum value of that pension does not exceed five thousand dollars ($5,000.00), such lump sum value shall be paid to the member in lieu of any monthly pension payments which would otherwise have been payable under section 4.1, 4.2 or 4.3. Any mandatory lump sum payments of between $1,000 and $5,000 made under this section after March 28, 2005, will be paid directly into an Individual Retirement Account (IRA) in the member's name, unless the member requests otherwise. ~~The five-thousand-dollar amount specified in the preceding sentence shall increase as and when the five-thousand-dollar amount specified in Internal Revenue Code section 411(a)(11)(A) and regulations thereunder increases. (Code section 411 (a)(11)(A) is not in fact applicable to the system because the system is a governmental plan and such Code section does not apply to governmental plans. The amount in Code section 411(a)(11)(A) is referred to merely as a point of reference).~~

(b) In the case of a member who is working in the employment of the county after his/her normal retirement date and who had received a lump sum distribution of his/her pension pursuant to paragraph (a) of this section 4.4, such individual shall receive a single sum distribution in the month of January following each year in which he/she has employment subsequent to his/her normal retirement date if the amount determined in the next sentence does not exceed the five-thousand-dollar-amount (as adjusted) described in paragraph (a) above. The amount of such distribution shall be equal to (i) the actuarial equivalent lump sum value of a lifetime monthly pension equal to (A) one-twelfth times (B) two (2) percent of the member's average compensation computed through the end of the prior plan year times (C) the member's years of service (not in excess of thirty (30) years) computed through the end of the prior plan year minus (ii) the amount of any lump sum distribution(s) which he/she has previously received from the system. If the amount determined in the preceding sentence exceeds the five -thousand-dollar-amount (as adjusted) described in paragraph (a) above, then a lifetime monthly pension shall instead commence in such month of January, and the amount of such pension shall equal (A) one-twelfth times (B) two (2) percent of the member's average compensation computed through the end of the prior plan year times (C) the years of service earned in the prior plan year.

If a member begins receiving a lifetime monthly pension pursuant to the preceding paragraph, then for each plan year subsequent to the plan year in which his or her lifetime monthly pension commenced during which he or she continues in the employment of the county, the amount of his or her pension shall be recomputed. The amount of such recomputed pension for each month during any such plan year shall be equal to (A) one-twelfth times (B) two (2) percent of the member's average compensation computed through the end of the prior plan year times (C) the member's years of service (not in excess of thirty (30)) computed through the end of the prior plan year (but not taking into account any years of service earned prior to the member's normal retirement date or for which the member received a single lump sum distribution after his/her normal retirement date); provided, however, that any increase in such recomputed pension over the pension previously payable shall be offset by the actuarial equivalent value (determined using the UP-1984 mortality table and an interest rate of eight and five-tenths (8.5) compounded annually) of pension benefits actually distributed during the prior plan year.

(c) Lump sum actuarial equivalent value shall be computed under this section 4.4 using the UP-1984 unisex mortality table and an interest rate equal to eight and five-tenths (8.5) percent compounded annually.

Section 5. Effective March 28, 2005, section 203(4.5)(a) of the General Ordinances of Milwaukee County is amended to read as follows:

4.5 **Mandatory cash out.**

(a) *Eligibility for mandatory cashout*. A member shall not receive the pension described in sections 4.1, 4.2 or 4.3, and shall instead receive a single lump sum distribution of his or her benefit if, before attaining his or her normal retirement date and before death:

(1) The member terminates county employment.

(2) The member is absent from county employment for a period of five years.

(3) The actuarial equivalent lump sum present value of his or her pension is five thousand dollars ($5000) or less, and

(4) An employe who became a member of OBRA prior to January 1, 1994 consents to the cashout.

The mandatory cashout required under this subsection 4.5(a) shall be paid to the member as soon as practicable after the close of the plan year in which the member satisfies the conditions for the mandatory cashout. Any mandatory lump sum payments of between $1,000 and $5,000 made under this section after March 28, 2005, will be paid directly into an Individual Retirement Account (IRA) in the member's name, unless the member requests otherwise. No amount will be payable with respect to a member who dies after satisfying the conditions for a mandatory cashout but before the system makes payment in the following plan year.

Section 6. Effective January 1, 2002, section 203(7.1)(a)(ii) of the General Ordinances of Milwaukee County shall be amended to read as follows:

(ii) One hundred sixty thousand dollars ($160,000) ~~ninety thousand dollars ($90,000)~~ which amount shall be adjusted automatically each plan year to the extent permitted by and in accordance with the Internal Revenue Code and regulations promulgated by the Secretary of the Treasury.

Section 7. Effective January 1, 2002, section 203(7.1)(f) of the General Ordinances of Milwaukee County is amended to read as follows:

(f)(i)~~(A)~~ If benefits begin prior to age sixty-two (62), the limitation specified in subparagraph (a)(ii) above shall be replaced with a limitation which is the actuarial equivalent of the limitation described at subparagraph (a)(ii) above beginning at age sixty-two (62). Actuarial equivalence for this purpose will be determined using an interest rate of five (5) percent and the ~~1983 GAM~~ mortality table specified by the Internal Revenue Service in Revenue Ruling 2001–62, or any successor Revenue Ruling thereto. As of December 31, 2001, that mortality table is the 1994 GAR mortality table. ~~However, the limitation under (a)(ii) shall never be reduced below seventy-five thousand dollars ($75,000.00) in the case of a benefit beginning no earlier than age fifty-five (55).~~

~~(B)~~ ~~The limitation under subparagraph (a)(ii) for benefits commencing prior to age fifty-five (55) is the actuarial equivalent of the limitation for benefits commencing at age fifty-five (55). Actuarial equivalence for this purpose will be determined using an interest rate of five (5) percent and the 1983 GAM mortality table.~~

(ii) If benefits begin after age sixty five (65), the limitation specified in subparagraph (a)(ii) above shall be increased so that it is the actuarial equivalent of the limit described at subparagraph (a)(ii) above beginning at age sixty-five (65). Actuarial equivalence for this purpose will be determined using an interest rate of five (5) percent and the ~~1983 GAM~~ mortality table specified by the Internal Revenue Service in Revenue Ruling 2001–62, or any successor Revenue Ruling thereto. As of December 31, 2001, that mortality table is the 1994 GAR mortality table.

Section 8. Effective January 1, 2008, section 203(7.1)(f)(ii) of the General Ordinances of Milwaukee County is hereby deleted and section 203(7.1)(f)(i) is renumbered to be section 203(7.1)(f).

Section 9. Effective January 1, 2008, section 203(7.1)(g) of the General Ordinances of Milwaukee County is created to read as follows:

Except as provided for in this section, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this article. The determination of the annual benefit shall take into account social security supplements described in section 411(a)(9) of the Internal Revenue Code.

Section 10. Effective January 1, 2008, section 203(7.1)(h) of the General Ordinances of Milwaukee County is created to read as follows:

Effective for distributions in plan years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with this section.

(i) Benefit Forms Not Subject to Internal Revenue Code section 417(e)(3): The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this section if the form of the member's benefit is either (1) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the member merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Internal Revenue Code section 401(a)(11)).

(A) Limitation Years beginning before July 1, 2007. For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount: (I) an 8.5 percent interest rate assumption and the UP-1984 Mortality Table for adjusting benefits in the same form; and (II) a 5 percent interest rate assumption and the applicable mortality table defined in Internal Revenue Code section 417(e) for that annuity starting date.

(B) Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of (1) the annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in Internal Revenue Code section 417(e) for that annuity starting date.

(ii) Benefit Forms Subject to Internal Revenue Code section 417(e)(3): The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this paragraph if the form of the member's benefit is other than a benefit form described in section 7.1(h)(i). In this case, the actuarially equivalent straight life annuity shall be determined as follows:

(A) Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the member's form of benefit is in a plan year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of (I) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using an 8.5 percent interest rate assumption and the UP-1984 Mortality Table for adjusting benefits in the same form; (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in Internal Revenue Code section 417(e); and (III) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Internal Revenue Code section 417 and the applicable mortality table defined in Internal Revenue Code section 417(e), divided by 1.05.

(B) Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the annuity starting date of the member's form of benefit is in a plan year beginning in 2004 or 2005, and if the IRS so requires, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using whichever of the following produces the greater annual amount: (I) an 8.5 percent interest rate assumption and the UP-1984 Mortality Table; and (II) a 5.5 percent interest rate assumption and the applicable mortality table specified by the Internal Revenue Service in Revenue Ruling 2001–62, or any successor Revenue Ruling thereto. As of December 31, 2001, that mortality table is the 1994 GAR mortality table.

If the annuity starting date of the member's benefit is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the application of this section shall not cause the amount payable under the member's form of benefit to be less than the benefit calculated under the plan, taking into account the limitations of this article, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using whichever of the following produces the greatest annual amount:

(I) an 8.5 percent interest rate assumption and the UP-1984 Mortality Table for adjusting benefits in the same form;

(II) the applicable interest rate defined in Internal Revenue Code section 417 and the applicable mortality table defined in Internal Revenue Code section 417; and

(III) the interest rate defined in Internal Revenue Code section 417 (as in effect on the last day of the last plan year beginning before January 1, 2004, under provisions of the system then adopted and in effect) and the applicable mortality table defined in Internal Revenue Code section 417.

Section 11. Effective January 1, 2002, section 203(7.2)(a) of the General Ordinances of Milwaukee County is amended to read as follows:

For purposes of section 7.1, "compensation" shall mean the member's earnings from his/her employment with the county as defined in Internal Revenue Code section 415(c)(3), and, unless otherwise required by regulation, includes bonuses and other taxable payments and elective contributions made on behalf of the County under Internal Revenue Code sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b), 408(p)(2)(A)(i) or 457 but excludes deferred compensation, and distributions which received special tax benefits.

Section 12. Effective January 1, 2008, section 203(7.2)(c) of the General Ordinances of Milwaukee County is added to read:

(c) For purposes of section 7, limitation year shall mean the calendar year.

Section 13. Effective January 1, 2008, section 203(9.3) of the General Ordinances of Milwaukee County is amended to read as follows:

After termination of the system each member's accrued pension (accrued to the date of termination of the system or earlier cessation of benefit accrual) shall be distributed to him/her in the form of a nontransferable annuity contract which will pay him/her such accrued pension, except that, in lieu of such annuity contract, a lump sum cash distribution of the actuarial equivalent of the member's accrued pension shall be made to any member whose accrued pension is smaller than the minimum amount necessary to meet insurance company annuity requirements; provided, however, no such lump sum distribution shall be made if the actuarial equivalent value of the member's pension exceeds the five thousand dollar ($5,000) ~~three-thousand five-hundred~~ amount (as adjusted) specified in section 4.4. (Such actuarial equivalent lump sum shall be computed using the UP-1984 unisex mortality table and an interest rate equal to eight and five-tenths (8.5) percent compounded annually.)

Section 14. Effective January 1, 2003, section 203(10.7) of the General Ordinances of Milwaukee County is amended to read as follows:

10.7. Code requirements.

All distributions will be made in accordance with the rules of Internal Revenue Code section 401(a)(9) and regulations thereunder~~, including rules of IRS regulation section 1.401(a)(9)-2~~. The rules of Internal Revenue Code section 401(a)(9) and regulations thereunder shall override any distribution options described in this system to the extent that the options in this system could be considered to be inconsistent with the requirements of Internal Revenue Code section 401(a)(9) ~~and regulations thereunder. The rules set forth in this system regarding time of commencement of distribution and method of distribution shall be in lieu of the default provisions in IRS regulation sections 1.401(a)-1, 1.401(a)(9)-1 and 1.401(a)(9)-2~~.

(a) The member's benefit will be distributed, or begin to be distributed, to the member no later than the member's required beginning date, defined as the April 1 following the later of the calendar year in which the member attains age 70-1/2 or terminates county employment.

(b) Unless the member's benefit is distributed in a single sum on or before the required beginning date, distributions shall be made in accordance with section (c) below.

(c) If the member's benefit is paid in the form of annuity distributions under the system, payments under the annuity will satisfy the following requirements:

(1) The annuity distributions will be paid in periodic payments made at uniform intervals not longer than one year;

(2) The distribution period will be over the life of the member;

(3) Payments will either be nonincreasing or increase only as follows (if otherwise provided for in Chapter 203):

(i) By an annual percentage increase that does not exceed the annual percentage increase in an eligible cost-of-living index (as defined under A-14 of Treasury Regulation section 1.401(a)(9)-6) for a 12-month period ending in the year during which the increase occurs or a prior year;

(ii) By a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index (as defined under A-14 of Treasury regulation section 1.401(a)(9)-6) since the annuity starting date, or if later, the date of the most recent percentage increase, provided (in the case of a cumulative increase), an actuarial increase may not be provided to reflect that increases were not provided in the interim years;

(iii) To pay increased benefits that result from a system amendment; or

(iv) To the extent increases are otherwise permitted under A-14 of Treasury Regulation section 1.401(a)(9)-6.

(d) The amount that must be distributed on or before the member's required beginning date is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year.

Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

(e) Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(f) For purposes of this section 10.7, a distribution calendar year is a calendar year for which a minimum distribution is required. The first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date.

Section 15. Effective January 1, 2002, section 203(11.3) of the General Ordinances of Milwaukee County is amended to read as follows:

11.3. Eligible Retirement Plan.

An eligible retirement plan is an individual retirement account described in Internal Revenue Code Section 408(a), an individual retirement annuity described in Internal Revenue Code Section 408(b), an individual retirement annuity described in Internal Revenue Code Section 403(a), ~~or~~ a qualified trust described in Internal Revenue Code Section 401(a) that accepts the distributee's eligible rollover distribution, an eligible deferred compensation plan described in Internal Revenue Code Section 457(b) which is maintained by an eligible employer described in Internal Revenue Code section 457(e)(1)(A), or an annuity contract described in Internal Revenue Code Section 403(b). ~~However, in the case of an eligible rollover distribution to a distributee's surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.~~

Section 16. Effective January 1, 2010, the following is added at the end of section 203(11.3) of the General Ordinances of Milwaukee County:

Effective for eligible rollover distributions made on or after January 1, 2008, an eligible retirement plan shall also mean a Roth individual retirement account described in Code Section 408A provided that eligible rollover distributions made on or after January 1, 2008 are subject to the adjusted gross income limits of Code Section 408A(c)(3)(B), as applicable, and the distribution rules of Code Section 408A(d)((3). For a distributee who is a nonspouse designated beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Code Section 408(a) or Section 408(b) that is established on behalf of the designated beneficiary for the purpose of receiving the distribution as an inherited individual retirement account or annuity pursuant to the provisions of Code Section 408(d)(3)(C).

Section 17. Effective January 1, 2010, the following is added at the end of section 203(11.4) of the General Ordinances of Milwaukee County:

11.4. Distributee.

A distributee includes a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse. A distributee also includes a member or former member's nonspouse beneficiary.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: December 29, 2011

Original Fiscal Note X

Substitute Fiscal Note ☐

SUBJECT: OBRA Ordinance Amendments for tax compliance.

FISCAL EFFECT:

X 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	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

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.

Ordinance amendments are proposed to the OBRA pension plan in order to maintain the plan's tax compliance, to receive a favorable determination letter from the IRS on the plan's tax qualification status and to comply with the closing agreement for the IRS audit of the plan. These amendments are technical in nature to comply with federal law changes. The amendments are not expected to change the benefits that are paid under the plan and therefore are not expected to have any cost effect on Milwaukee County, but an actuarial report has been requested to review any such impact.

Department/Prepared By Corporation Counsel

Authorized Signature Mark A. Grady

Did DAS-Fiscal Staff Review? ~~X~~ Yes X No

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[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.

Milwaukee County

SECRETARY'S CERTIFICATE

The Pension Board of the Employees' Retirement System of the County of Milwaukee ("Pension Board") adopted the following resolution at its regular monthly meeting held on December 21, 2011:

> The Pension Board recommends enactment of the proposed Ordinance amendments to sections 203(2.12), (2.4), (4.4), (4.5), (7.1), (7.2), (9.3), (10.7), and (11.3) of the Milwaukee County Code of General Ordinances amending OBRA to comply with required legislative and regulatory changes and to clarify the operation and administration of OBRA, and waives the balance of its 30 day comment period provided for under section 201.24(8.17) of the Milwaukee County Code of General Ordinances. The Employees' Retirement System ("ERS") Manager estimates that implementation of the proposed Ordinance amendments would not result in additional cost to the System. The Pension Board believes that it is in the best interests of ERS for the County Board to adopt Ordinance amendments which maintain tax compliance of the retirement plans.

Dated: December 21, 2011

Certified by: Steven D Huff

Steven D. Huff, Secretary

Pension Board of the Employees' Retirement System of the County of Milwaukee

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COURTHOUSE, ROOM 210-C • 901 NORTH 9th STREET • MILWAUKEE, WI 53233 • (414) 278-4207 • (877) 652-6377

January 23, 2012

Supervisor Paul M. Cesarz
Chairman
Pension Study Commission
901 N. 9th St.
Milwaukee, WI 53233

RE: Actuary's Review of Proposed Ordinance Amendments to the OBRA 1990 Retirement System - County Board Resolution File No. 12-54

Dear Supervisor Cesarz:

As part of the process for adopting amendments to County ordinances relating to the OBRA 1990 Retirement System ("OBRA"), we have reviewed the proposed changes and present this letter detailing our findings. In general, while these changes are necessary to comply with the Internal Revenue Code, these changes have no actuarial impact either due to the plan already operating in compliance with the code or because the change has no actuarial impact or both. A summary of the proposed amendments for OBRA follows, as well as our comments on the cost impact to the plan.

OBRA Proposed Ordinance Amendments

- **Section 1** of the OBRA Resolution amends section 203(2.4) to incorporate the updated Internal Revenue Code (Code) section 401(a)(17) annual compensation limit that a plan may consider when calculating an individual's benefit.

  Buck's comments: The amendment merely updates outdated language. ERS staff have confirmed that the operation of the plan already reflects annual updates to Code section 401(a)(17). Therefore, this amendment will have no impact on the cost of the plan.

- **Section 2** of the OBRA Resolution amends section 203(2.12) to provide for 100% vesting in the benefit at all times.

  Buck's comments: ERS staff has confirmed that the operation of the plan already reflects this provision. Therefore, this amendment will have no impact on the cost of the plan.

- **Section 3** of the OBRA Resolution amends section 203(2.12) to incorporate the Heroes Earnings Assistance and Relief Act of 2008 (the HEART Act) which provides additional benefits to OBRA members with qualifying military service.

  Buck's comments: This amendment provides for additional death benefits and additional elements to be included in average compensation. While these are meaningful benefits to affected members, the amount of utilization of these benefits is likely low and also difficult to estimate. ERS staff has confirmed that very few members would have been affected by this provision in the past. Given the low likelihood of these benefits being triggered, this amendment will have little or no impact on the cost of the plan.

123 N. Wacker Drive, Suite 1000 • Chicago, IL 60606
312.846.3000 • 312.846.3999 (fax)

- **Section 4** of the OBRA Resolution amends section 203(4.4)(a) to comply with Code section 401(a)(31), to limit cashouts to members who terminate County employment with accrued benefits equal to an actuarial equivalent value of $1,000 to $5,000 to be paid directly into an IRA unless the member requests a cash payment. The escalation on the $5,000 threshold has been eliminated as well.

  Buck's comments: Payment directly into an IRA has no cost impact on the plan. Because the lump sum benefits of the plan are actuarially equivalent to the accrued benefits, the elimination of the escalation threshold has no impact on the plan.

- **Section 5** of the OBRA Resolution amends section 203(4.5)(a) to comply with Code section 401(a)(31), to limit mandatory cashouts to members who terminate County employment with accrued benefits equal to an actuarial equivalent value of $1,000 to $5,000 to be paid directly into an IRA unless the member requests a cash payment.

  Buck's comments: Payment directly into an IRA has no cost impact on the plan.

- **Section 6** of the OBRA Resolution amends section 203(7.1)(a)(2) incorporates the updated Code section 415 maximum annual benefit amounts that a plan can pay from the trust.

  Buck's Comments: There is no cost to this change for at least two reasons: the OBRA employees do not earn benefits large enough to be impacted by the Code section 415(b) limits and we understand that in operation the plan already complies with the provisions of the Code for determining Code section 415(b) limits.

- **Section 7** of the OBRA Resolution amends section 203(7.1)(f) to (a) provide for the mortality table to be used for Code section 415; (b) eliminate the $75,000 "floor" on Code section 415 benefit limits at age 55; and (c) eliminate the pre-age 55 "floor" that was equal to the actuarial equivalent of the age 55 floor.

  Buck Comments: Similar to Section 6 of the OBRA Resolution, there is no cost to this change for at least two reasons: the OBRA employees do not earn benefits large enough to be impacted by the Code section 415(b) limits and we understand that in operation the plan already complies with the provisions of the Code for determining Code section 415(b) limits.

- **Section 8** of the OBRA Resolution removes section 203(7.1)(f)(ii) and renumbers 203(7.1)(f)(i) to 203(7.1)(f) to improve readability and reflect OBRA operation.

  Buck Comments: There is no cost to this cosmetic change.

- **Section 9** of the OBRA Resolution adds 203(7.1)(g) clarify the administration of benefit forms other than straight life.

  Buck Comments: The amendment has been added to comply with the Code. ERS staff has confirmed that the operation of the plan already complies with this section of the Code, and OBRA does not allow for forms of benefit other than a straight life annuity. Therefore, this amendment will have no impact on the cost of the plan.

- **Section 10** of the OBRA Resolution adds 203(7.1)(h) to incorporate Code section 417(e)(3), which relates to determination of lump sum benefits.

  Buck Comments: The amendment has been added to comply with the Code. ERS staff has confirmed that the operation of the plan already complies with this section of the Code. Therefore, this amendment will have no impact on the cost of the plan.

- **Section 11** of the OBRA Resolution adds 203(7.2)(a) to incorporate Code section 417(e)(3), which relates to determination of lump sum benefits.

  Buck Comments: The amendment has been added to comply with the Code. ERS staff has confirmed that the operation of the plan already complies with this section of the Code. Therefore, this amendment will have no impact on the cost of the plan.

- **Section 12** of the OBRA Resolution adds 203(7.2)(c) to incorporate Code section 417(e)(3), which again relates to determination of lump sum benefits.

  Buck Comments: The amendment has been added to comply with the Code. ERS staff has confirmed that the operation of the plan already complies with this section of the Code. Therefore, this amendment will have no impact on the cost of the plan.

- **Section 13** of the OBRA Resolution amends 203(9.3) to updates the minimum lump sum amount from $3,500 to $5,000.

  Buck Comments: ERS staff has confirmed that the operation of the plan already complies with this section of the Code. Therefore, this amendment will have no impact on the cost of the plan.

- **Section 14** of the OBRA Resolution amends 203(10.7) to comply with updates to the minimum distribution requirements of Code section 401(a)(9).

  Buck Comments: ERS staff has confirmed that the operation of the plan already complies with this section of the Code. Therefore, this amendment will have no impact on the cost of the plan.

- **Section 15** of the OBRA Resolution amends 203(11.3) to include updates to the plans eligible for rollover from the OBRA as contained in Code section 408(a).

  Buck Comments: The addition of more plans that are available for rollover does not have an actuarial impact. Therefore, this amendment will have no impact on the cost of the plan.

- **Section 16** of the OBRA Resolution amends the end of 203(11.3) to include updates as contained in Code section 408(a).

  Buck Comments: The addition of these rollover provisions does not have an actuarial impact. Therefore, this amendment will have no impact on the cost of the plan.

- **Section 17** of the OBRA Resolution amends the end of 203(11.4) to expand the definition of distributee to effectuate nonspouse beneficiary rollover requirements.

  Buck Comments: ERS staff has confirmed that the operation of the plan already complies with this section of the Code. Therefore, this amendment will have no impact on the cost of the plan.

We are available to discuss this letter.

Sincerely,

Larry Langer, FCA, ASA, EA, MAAA
Principal, Consulting Actuary

LFL:pl
19150/C7325RET01-OBRA.doc