

MEMORANDUM

2023 Wisconsin Act 12 and its Effects on Milwaukee County

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I. EXECUTIVE SUMMARY

2023 Wisconsin Act 12 is a generational shift in how local governments across the State of Wisconsin are funded. For Milwaukee County, this act represents a lifeline to avoid significant cuts in the very near term to life-supporting and life enhancing services.

Without adopting the sales tax, Milwaukee County will have no funding for non-mandated services by 2027 and drastic cuts would eliminate services in parks, transit, human services, housing, public safety, and more.

As illustrated by Table 1¹ below, adopting the 0.4% sales tax avoids a “doomsday scenario” that would compound annually and require increasingly draconian cuts every year. Adoption of the sales tax allows Milwaukee County to continue providing the services upon which so many residents rely and generates additional revenue for investment in local priorities.

Currently, the county faces a 5-year structural deficit of \$109 million, which would require closing a cumulative fiscal gap of \$350 million. The impact of addressing a structural deficit of that size, after a more than decade of funding reductions, would be catastrophic to county operations, dramatically reducing or eliminating critical services. Specifically, not adopting the sales tax would lead to **an approximately 40% cut across all departments, including a potential cut of roughly 1,300 positions countywide by 2028.**

Accordingly, notwithstanding elements of Act 12 that some consider undesirable, the Administration unequivocally recommends adoption of the sales tax.

| Year | Structural (Deficit) Pre-Act 12 | Structural (Deficit)/Surplus Post-Act 12 without sales tax | Structural (Deficit)/Surplus Post-Act 12 with Sales Tax | Projected New Sales Tax Revenue |
|------|---------------------------------|--|---|---------------------------------|
| 2024 | (\$18,300) | (\$10,967) | \$31,642 | \$82,168 |
| 2025 | (\$52,800) | (\$43,537) | \$2,688 | \$84,633 |
| 2026 | (\$75,800) | (\$65,890) | (\$13,022) | \$87,173 |
| 2027 | (\$93,300) | (\$80,647) | (\$23,317) | \$89,788 |
| 2028 | (\$109,700) | (\$95,201) | (\$36,193) | \$92,481 |

This report summarizes the relevant provisions of the act and explains how those

¹ Table 1 based on projections provided by Comptroller/SPB, as reflected in the Powerpoint presentation attached to this file. All dollar amounts are in thousands of dollars.

provisions affect Milwaukee County. It is important to keep in mind that with very limited exceptions, most provisions of the act are already state law and cannot be changed except by further action of the state legislature.

The only question the County Board must decide in July is whether to adopt the local option sales tax and transition new employees to the Wisconsin Retirement System.

If there are any questions as to the contents of this report, please do not hesitate to reach out. Administration staff is committed to ensuring that all information needed for the Board to make an informed decision is available.

II. INTRODUCTION

2023 Wisconsin Act 12 (“the Act”) represents generational reform to the fiscal relationship between the State of Wisconsin and Milwaukee County. The Act accomplishes the two major goals of Milwaukee County for the past four years: securing an additional local option sales tax to fund local priorities and achieving reform to the State’s shared revenue system to secure a more equitable distribution of funds.² Achieving these goals are crucial to the long-term financial viability of Milwaukee County to stave off future cuts which would endanger – and in some cases, completely eliminate – services which County residents rely upon.

Because the State of Wisconsin has divided government – that is, a legislature controlled by one party and a governorship controlled by another – compromise was necessary to achieve these critical fiscal measures. However, with careful planning, flexibility, and creativity the Administration and Corporation Counsel agree that none of the non-fiscal provision included in the Act will fundamentally imperil the work undertaken by County departments.

As highlighted above, the *only* decision at issue before the County Board is whether to enact the local option sales tax and transition new hires to WRS – all other provisions are already enacted in state law. A negative vote on the sales tax will do nothing to curtail any of the policy provisions, but will have a direct and significant negative effect on the County’s ability to provide necessary services.

This report will detail (1) the necessity of the fiscal provisions provided by the Act, (2) the pension-related changes required by the Act, as well as the entry of new employees into the state’s retirement system, (3) the impacts of non-fiscal provisions of the Act, and (4) the path forward upon County Board approval of the local option sales tax.

For a more detailed look at the fiscal analysis, please see the attached fiscal estimate/report prepared jointly between the Milwaukee County Comptroller and the Director of the Office of Strategy, Budget, and Performance.

² See, e.g., File Nos. 21-547, 19-831, 21-546, 19-559.

III. LOCAL REVENUE PROVISIONS OF THE ACT

A. The Local Option Sales Tax

Under newly-created Wis. Stat. § 77.20 (2)(a), Milwaukee County may elect to enact a 0.4% sales tax in addition to the County's currently-active 0.5% sales tax. This increase is estimated to create an additional \$82.2 million³ in revenue in 2024 and will keep pace with inflation in future years as sales tax receipts increase.⁴ The additional 0.4% sales tax requires adoption of an ordinance by a two-thirds vote of the Board of Supervisors for implementation.

If the sales tax is adopted, the County must provide at least 120-day's notice to the state Department of Revenue before the sales tax may be collected. Also, sales tax collections may only begin on January 1, April 1, July 1, or October 1. Taken together, if the County desires to implement the sales tax by January 1, 2024, the County must adopt the ordinance no later than September 1, 2023, to fulfill the 120-day notice requirement.

The Act also includes language that will sunset the sales tax after either 30 years, or when the unfunded actuarial accrued liability is paid off, whichever is sooner.⁵

i. Sales Tax Exemptions

"[A] retailer's sales price from the sales, license, lease or rental of taxable products" and the "selling, performing, or furnishing of taxable services" are subject to a sales tax under Wisconsin state law.⁶ However, there are 60 enumerated exemptions to the collection of sales tax.⁷ The most notable of these exemptions are (1) prescription drugs, (2) medical equipment, (3) food and food ingredients,⁸ (4) fuel and electricity, including motor vehicle fuel, and (5) municipal water delivery. Sales tax exemptions for these goods, the demand for which is steady and resistant to price changes because the goods are basic needs for any family, mitigates the potential negative impact on the County's poorest families. Prices for these necessities will not be subject to increase on the basis of sales tax.

³ See Comptroller/SPB report.

⁴ For example, a sales-tax-eligible purchase of \$1,000 in 2024 would net \$9.00 in sales tax revenue to the County. Assuming 3% year-over-year inflation, that same purchase would be \$1,003.00 in 2025, which would net \$9.03.

⁵ See sec. III.A of this report, below

⁶ Wisconsin Department of Revenue, *Wisconsin Sales and Use Tax Information*, January 2019, accessible at <https://www.revenue.wi.gov/DOR%20Publications/pb201.pdf> (this publication is also an extremely helpful and detailed resource for additional information about the sales tax generally).

⁷ *Id* at 54.

⁸ "Food and food ingredients" does not include candy, soft drinks, dietary supplements, and prepared food – these items are taxable.

B. Changes to the State Shared Revenue Formula

The Act includes updates to the state’s shared revenue formula, which – until this legislation – had not seen an update or increase in multiple decades. Shared revenue is shorthand for a variety of programs through which the state provides unrestricted aid payments to local governmental units. The Act makes three major changes to the shared revenue program: (1) updates the county and municipal aid program by tying growth to the state sales tax, (2) creates the supplemental county and municipal aid program, and (3) creates an Innovation Fund for local governmental units.

i. County and Municipal Aid Program

The change to the County and Municipal Aid program – the program that existed prior to this bill – is straightforward: under prior law, local governments received the same amount of payment (with limited exceptions) regardless of the size of the fund from which those payments are made. Under this bill, County and Municipal Aid payments are now tied to the overall size of the fund – beginning in 2025, the proportion of the prior year’s aid payment will be multiplied by the total size of the fund to determine each local governmental unit’s payment.⁹

ii. Supplemental County and Municipal Aid Program

The Act also creates an entirely new funding program for additional local governmental aid payments – the Supplemental County and Municipal Aid program. This program relies upon a complex funding mechanism to enhance aid payments to counties and municipalities across the state.¹⁰ As it applies to Milwaukee County, an amount equal to 10% of shared revenue payments in 2022 will be added to the total shared revenue payment beginning in 2024 – for Milwaukee County, this will equate to an approximately \$7.6 million increase in shared revenue payments beginning in 2024. This number will also increase as state sales tax receipts increase in future years.

iii. Local Government Innovation Grants

The Act creates another new program known as Local Government Innovation Grants. Counties and municipalities may submit an “innovation plan” to the Department of Revenue that will transfer county or municipal

⁹ For example, if in 2024, County A received 10% of the overall payments made under the County and Municipal Aid program, and the County and Municipal Aid fund grew from \$10 million to \$15 million between 2024 and 2025, County A would receive an additional \$500,000 under this program. These numbers are purely hypothetical and meant only for illustrative purposes.

¹⁰ See Wis. Stat. § 79.037.

services to a county, municipality, nonprofit organization, or private entity. If that plan projects to save at least 10% of the total cost of providing the service, then the state will distribute a grant equal to 25% of the total cost of that plan, up to a maximum of \$10 million per county or municipality.

The intent of the Local Government Innovation Grant Program is to incentivize counties and municipalities around the state to consolidate services to achieve cost savings. The program only applies to consolidation efforts that occur after the passage of the Act.

C. Repeal of the Personal Property Tax

Under previous law, the personal property tax was a program in which tax was collected not only on real property, but also on the assessed value of personal property. This tax was levied nearly entirely on the property of businesses, like furniture, machinery, and other equipment.¹¹ The Act eliminates the personal property tax entirely throughout the state, however, the act also increased revenue to local governments to offset this loss of property tax for no net impact on total County revenue.¹²

IV. PENSION PROVISIONS OF THE ACT AFFECTING MILWAUKEE COUNTY

A. Soft Close of the Milwaukee County Employee Retirement System¹³

The Milwaukee County Employee Retirement System (“ERS”) is the pension system for current eligible employees of Milwaukee County.¹⁴ Under the Act, to enact and receive the revenue from the Local Option Sales Tax, Milwaukee County must make an election that its new employees, beginning on January 1, 2025, will join the state-run Wisconsin Retirement System (“WRS”). All current employees and any new employees hired by the County before that date will remain in and join ERS.

A significant portion (and possible all) of the additional sales tax revenue is required to pay the annual Unfunded Actuarial Accrued Liability (“UAAL”) payment.

¹¹ For a thorough, if now-outdated, overview of the history of the personal property tax, see Wisconsin Policy Forum, *The Property Tax No One Knows*, January 2016, available at https://wispolicyforum.org/wp-content/uploads/2018/07/1601_pers-prop-tax.pdf

¹² There is a marginal effect on the property tax levy, but, as noted, no reduction in revenue associated with this repeal.

¹³ This is a brief overview of the pension provisions contained in the Act. For more detailed information, please see the attached Comptroller/SBP fiscal report.

¹⁴ For a deeper dive into the terminology and operation of Milwaukee County’s pension system, see *Milwaukee County Pension 101*, available at <https://county.milwaukee.gov/ImageLibrary/User/bpariseau/RST-Agendas/CountyPension101-UPDATED8-30-17.pdf>

Depending on market conditions and amortization schedules, all sales tax revenue may be required to pay the annual UAAL payment. Currently, the annual UAAL payment is made by utilizing property tax levy funding.¹⁵

Because property tax will no longer be used to make UAAL payments, significant property tax dollars will be newly available up for spending on other priorities. In 2024, it is estimated that \$53.3 million of the County’s property tax revenues will be newly available for spending because of the sales tax.¹⁶ **Thus, the sales tax, if adopted, will result in a real economic gain to the County equal to tens of millions of dollars every year because there will be a dedicated non-property tax funding source for the UAAL.**

The Act also requires, if the sales tax and transition to WRS is passed, that the assumed rate of return for the ERS fund is lowered to 6.8%, and the amortization period is set at not more than 30 years.¹⁷

The Act further requires that any sales tax revenue collected that exceeds the annual required UAAL payment must be spent first on the debt service payments for the Pension Obligation Bonds (“POBs”). If after paying the annual required UAAL payment and the required POB payment, sales tax revenues remain, Act 12 requires that those funds be used to further pay down the UAAL, which would help bring ERS to fully funded status more quickly. The more quickly the ERS pension reaches fully funded status, the more quickly the sales tax sunsets.

The Act also clarifies that the county is prohibited from collectively bargaining with employees on any terms of its retirement system, and that the county may not increase or enhance benefits for employees in ERS, except as required to comply with federal law.

Finally, it should be noted that the soft close of ERS is consistent with the recommendation of the 2017 Milwaukee County Retirement Sustainability Task Force, working in partnership with Pew Charitable Trusts and the Wisconsin Policy Forum. In its final report, the task force concluded that “such a move would reduce

¹⁵ Put simply, the UAAL is the difference between the estimated cost of future benefits (i.e., what the County expects to pay out to its retirees in the future) and the assets that have been aside to pay for those benefits (the County’s pension fund).

¹⁶ See Comptroller/SPB report p. 12. While the Act directs the spending of newly available property tax dollars to certain priorities (circuit court, secure residential care center for children and youths, correctional worker pay, and the medical examiner), current spending levels on those programs and departments already far exceeds \$53.3 million. In other words, the spending restrictions have zero economic impact.

¹⁷ The Legislative Council of the Wisconsin Legislature, in their memo on the Act, states that the change to the assumed rate of return and amortization period take place regardless of whether the sales tax is implemented. Milwaukee County Corporation Counsel, Pension Board Counsel, Comptroller, and fiscal staff all agree with the County’s interpretation of this provision; that is, that the change to the assumed rate of return and amortization period does not take effect until the sales tax is passed.

long-term risk and provide a more robust retirement benefit for new employees.”¹⁸ The report went on to state that “WRS is widely known as one of the healthiest public pension plans in the country.”¹⁹

B. Joining the Wisconsin Retirement System

As noted above, to enact the sales tax, an election must be made by the County that new employees join WRS instead of ERS. WRS is the State of Wisconsin’s public employee pension program, and covers state employees – including University of Wisconsin employees – and local governments that elect to participate. Roughly 90% of public employees in the state participate in the Wisconsin Retirement System.

Because it is a separate system, Milwaukee County would not administer the pension system for new employees who join the county after the soft close of ERS. Similar to how Milwaukee County’s Pension Board governs ERS, WRS has its own system of appointed governing boards that set policy and review the overall administration of the benefit programs provided by WRS.²⁰ It is worth reiterating that WRS is known for being an extremely well-managed pension fund, with the Pew Charitable Trusts recently citing WRS as one of three state pensions that are stable and sustainable, as demonstrated by the past 20 years.²¹

V. NON-FISCAL PROVISIONS OF THE ACT

A. Statewide Provisions

There are several non-fiscal changes to state law that were adopted as part of the Act. These provisions apply to local governments statewide, and – importantly – are now state law, and cannot be changed by any local government action.

i. Maintenance of Effort Requirements

The Act requires, under penalty of a 15% reduction in shared revenue payments, that certain local governments provide “maintenance of effort” (“MOE”) certifications to the Department of Revenue relating to (1) law enforcement and (2) fire prevention and emergency medical services.

All local governmental units must certify annually any of the following are equal to the prior year’s: (1) expenditures for fire protection and EMS, (2)

¹⁸ Milwaukee County Retirement Sustainability Task Force, *Report & Recommendations* at 4, available at <https://county.milwaukee.gov/files/county/county-executive/Retirement-Sustainability-Docs/RSTFinalReport.pdf>

¹⁹ *Id.* at 13

²⁰ More information on the governing boards associated with WRS can be found at <https://etf.wi.gov/about-etf/governing-boards>

²¹ <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/01/10/wisconsin-pension-official-details-states-approach-to-weathering-market-volatility>

the number of full-time equivalent fire fighters and EMS personnel employed by or assigned to the county or municipality, (3) the level of training and maintenance of licensure for fire fighters and EMS personnel providing fire protection and EMS within the county or municipality, or (4) response times for fire protection and EMS throughout the county or municipality, adjusted for call location.²² The Administration does not anticipate any issues in fulfilling at least one of those requirements.

ii. Hiring and Contracting Preferences

Act 12 includes a provision prohibiting discrimination or preferences on the basis of race, color, ancestry, national origin, or sexual orientation in government contracting and hiring. This provision applies to all local governments statewide.

Corporation Counsel advises that this provision has no unique legal affect following the June 29, 2023 U.S. Supreme Court decision in *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*,²³ this . As Corporation Counsel reviews and consults with experts on the impacts of this ruling, further guidance relating to hiring and procurement practices will be forthcoming.

iii. Advisory Referenda

Under previous law, counties, and municipalities were permitted to hold advisory referenda as ballot questions during federal, state, and local elections. The Act now prohibits counties and municipalities from holding advisory referenda with limited exceptions.

iv. Other Miscellaneous Statewide Law Changes

The Act also included numerous other provisions that largely do not affect Milwaukee County. For more information on these changes, please see the Legislative Council Act Memo.²⁴

B. Provisions Specific to Milwaukee County

Like the statewide provisions above, many of these provisions are already state law, and cannot be altered based solely upon a vote of the Milwaukee County Board of Supervisors.

²² Importantly, far more burdensome MOE provisions apply only to municipalities with populations greater than 20,000. These do not apply to Milwaukee County.

²³ [Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. \(2023\).](#)

²⁴ <https://docs.legis.wisconsin.gov/2023/related/lcactmemo/act012.pdf>

i. Supermajority Required for Spending and Position Increases

The Act requires that any proposal to either (1) adopt new program spending or (2) increases the total number of positions in the county be approved by a two-thirds vote of the Board of Supervisors. This provision exempts from the two-thirds requirement any program that is intended to reduce expenditures or consolidate or reorganize existing services into a different administrative structure without increasing spending.²⁵

ii. Cultural and Entertainment Spending Cap

The Act introduces a requirement that no more than 5% of the County's total amount of budgeted expenditures may be related to cultural or entertainment matters or partnerships with nonprofit groups. Importantly, the Act specifies that this prohibition does not apply to parks, zoos, or health or transit services. In 2023, the County budgeted approximately 0.6% for services that would fall into the category contemplated by this provision.

iii. Various Reporting and Plan Requirements

The Act sets out a variety of requirements for the County to create various reports and requires some of those reports be shared with the state legislature.

Annually, beginning in 2026, the County must prepare and submit a report to the State Legislature's Joint Committee on Finance ("JCF") detailing the County's expenditures of the County's sales and use tax. Separate, but related, the Legislative Audit Bureau is required to annually audit ERS, and is required to audit the expenditures of sales tax revenues and conduct an actuarial audit of ERS every 5 years.

As part of the annual budget preparations, the County must also create a report detailing what a 5% reduction to expenditures in each department would look like. This is a purely academic exercise and would not be considered as part of the budget submission to be voted upon by the Board. The State of Wisconsin undertakes a similar report in each of its biennial budget cycles.

The County must create a report that identifies all buildings that (1) the County has authority to sell and (2) are not being used by the County, and submit a plan to the JCF for the sale or use of those unused buildings.

²⁵ Act 12 states, "If the county imposes a tax under s. 77.70 (2) (a) and subsequently repeals the tax, this subsection does not apply after the repeal." Corporation Counsel has advised that the provision requiring a two-thirds majority likely took effect immediately upon the Act's effective date, however, if the sales tax is adopted and later repealed, the provision would no longer be in force.

Importantly, there is no requirement that the plan be acted upon by the County.

Finally, the Act requires the County to prepare a report regarding changes to the compensation plan for correctional workers to make the county competitive in the market for those employees. There is no requirement that this report be delivered to any particular body, or acted upon in any way, though the Administration agrees with the need to ensure that Milwaukee County is providing competitive benefits for these necessary County employees.

VI. POTENTIAL AFFIRMATIVE LITIGATION

Corporation Counsel advises that the County does not have standing to sue the State over Act 12 because the County is an arm of the state. The Office of Corporation Counsel also cautions that discussions of potential affirmative litigation brought by taxpayers would be premature at this juncture given recent Supreme Court decisions. Moreover, the OCC recommends that if Supervisors have questions about the legality of any provision of the bill, those concerns and the basis therefor can be raised with OCC. In response, OCC can provide a formal analysis and if questions remain, that analysis could be forwarded to the Attorney General's Office for additional interpretative guidance. While the OCC is aware that at least one other jurisdiction may be considering an affirmative lawsuit, the OCC is unaware of any persuasive substantive claims or basis for suit by a governmental jurisdiction.

VII. GOING FORWARD

Milwaukee County stands at a crossroads, and its path towards fiscal solvency is dependent on whether the sales tax is adopted. Adopting the sales tax means that the County is able to continue providing the critical services necessary for our residents and advancing our shared vision of becoming the healthiest county in Wisconsin by achieving racial equity. Rejecting the sales tax means that the County will be forced to make devastating cuts and what programs to cut entirely.

If the sales tax is not adopted, Milwaukee County will have no local dollars for local services by 2027. The projected \$109 million deficit by 2028 will necessitate cuts of approximately 40% across departments. It would lead to a reduction of approximately 1,300 positions across the county, or 33% of the workforce, in addition to the 3,500 positions eliminated over the past two decades. Put simply, Milwaukee County faces an existential threat to its core functions without adopting the sales tax.

While there are elements of this bill that some consider undesirable, to reject the sales tax would require draconian cuts to critical services and programs residents rely on. And while we know that some have suggested challenging these

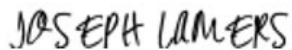
undesirable elements in court, Corporation Counsel has advised that there has not yet been a legal basis stated nor suggested for successfully challenging these provisions, as noted above.

Finally, we know that sound fiscal management of the County will still be of the utmost importance following approval of the sales tax. The sales tax is a lifeline, not a panacea. But without that lifeline, Milwaukee County will not be able to adequately perform the functions and duties that residents expect. Accordingly, **the Administration unequivocally supports – and urges the Board to adopt – the local option sales tax.**

Respectfully Submitted,



County Executive David Crowley



Joe Lamers
Director, Office of Strategy, Budget, and Performance