Agenda Item #: 6C-1

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 18, 2022 **[ ] Consent** **[X] Regular**
[ ] Workshop **[ ] Public Hearing**

Department: County Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff requests direction: A) on the inclusion of a 401(a) plan as part of the County's investment options for employee participation that direct unused sick and/or vacation leave into the Special Pay Plan (SPP); and **B)** on the retention of specialized tax counsel to provide an independent legal opinion on the inclusion of specific provisions of an SPP, including mandatory participation of all employees.

Summary: Per Board of County Commissioners directive, staff has researched the parameters of setting up a 401(a) plan with the specific intent of requiring employees who have accumulated sick and/or vacation leave, to have those funds deposited into this specific fund upon completion of their service with the County. 401(a) plans are investment tools that are also known as Special Pay Plans (SPP) that can be customized for specific group participants. All identified group members must participate in the SPP. These plans are additional retirement plans that are funded by an employee's "Special Pay", which is compensation other than regular salary or wages accumulated by an employee. Those funds can be converted to a lump sum at termination of employment, or can be swept into the fund at specified increments at the end of a pay period or a fiscal year depending upon the design of the plan. Through these plans, the employer must contribute any accumulated Special Pay designated under the rules of the plan directly into the Plan. One of its' tax savings is neither the employee or employer are subject to the 7.65% Social Security and Medicare tax on funds allocated to the SPP.

Currently, Palm Beach County has a 401(a) plan administered by Nationwide. That plan was specifically created for one employee over 25 years ago who was not eligible to participate in the Florida Retirement System (FRS). Direction from the Board could include entering into a new 401(a) with the current provider or issuing an RFP for one or more specific 401(a) providers, subsequent to obtaining the aforementioned legal opinion. Countywide (DO)

Background and Policy Issues: **(Continued on Page 3)**

Attachments:
1. Presentation on 401(a) plans

Recommended By: N/A
Department Director Date

Approved By: [signature] 10/14/2022
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income(County)					
In-Kind Match(County					
* NET FISCAL IMPACT					
#ADDITIONAL FTE					
POSITIONS (CUMULATIVE					

Is Item Included in Proposed Budget? Yes No
Does this item include the use of federal funds? Yes No

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:

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III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

10/4/2022 10/12/22

OFMB 10/4 **Contract Dev. & Control**

B. Legal Sufficiency

Assistant County Attorney

C. Other Department Review

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Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

Background and Policy Issues: (Continued) Outside of the Florida Retirement System, Palm Beach County currently has one investment plan option available to all of its employees. That is a 457(b) plan referred to as a deferred compensation and administered by Nationwide. Currently, 3,152 employees, roughly 50% of county employees, participate in this voluntary investment plan. The majority of county employees contribute $5,000 or less. This plan allows employees to contribute pre-tax dollars up to the IRS contribution limit (for 2022 that amount is $20,500, with special catch up provisions of up to an additional $6,500 for those over the age of 50, and additional catch up contributions if you are within three years of retirement). The current 401(a) plan in Palm Beach County was created for one former Fire Rescue employee that was not eligible to participate in the FRS. That current plan included both a mandatory contribution by the employer, Palm Beach County, and the employee. Based on the drawdown requirements of that plan, it is expected to be closed within the next few years.

Special Pay Plan (SPP)

401a Overview

Employee Demographics and Retirement Statistics

Employee Statistics:

- Average employee age is 46.48 years old.
- Average employee years of service is 11.26 years.

Deferred Retirement Option Plan (DROP) Enrollee Statistics (3-Year Analysis 2019-2021):

- Average DROP enrollee age is 57 years old.
- Average DROP enrollee years of service are 23 years.
- Average DROP Vacation Leave Payout* is 25,594 hours.

(*Employees entering into DROP are able to sell 500 hours towards their Average Final Compensation.)

Employee Demographics and Retirement Statistics

- Number of employees union and non-union terminating each year:
  - 2021 = 608
    - Average Salary = $66,000
    - Average Age = 47 years old
  - 2020 = 454
    - Average Salary = $65,000
    - Average Age = 51 years old
  - 2019 = 473
    - Average Salary = $61,500
    - Average Age = 48 years old

Employee Sick and Vacation Payouts

- Number of employees union and non-union retiring each year:
  - 2021 = 196
    - Average Salary = $91,076.28
    - Average Age = 63.09 years old
    - Average DROP Vacation Leave Payouts Per Employee = 228 hours (average payout = $10,000)
  - 2020 = 188
    - Average Salary = $84,623.86
    - Average Age = 63.41 years old
    - Average DROP Vacation Leave Payouts Per Employee = 208 hours (average payout = $8,500)
  - 2019 = 152
    - Average Salary = $88,048.54
    - Average Age = 62.93 years old
    - Average DROP Vacation Leave Payouts Per Employee = 187 hours (average payout = $7,900)

Deferred Compensation Plan Summary 2021

Current State of Employee Contributions:

457(b) 2021 Contribution summary		
Participant Count	**Contribution range**	**Percentage**
326	$19,000.00 and over	9%
	3125 - Less than $19,000.00 - 91%	
363	Between $18,999 to $10,000	10.50%
643	Between $9,999 to $5,000	18.50%
2119	Between $4,999 to $20	62%
3451 (out of 6142)		

What is a Special Pay Plan (SPP)?

- 401(a) plans are investment tools that are also known as Special Pay Plans (SPP) that can be customized for specific group participants. All identified group members must participate in the SPP.
- These plans are additional retirement plans that are funded by an employee's "Special Pay", which is compensation other than regular salary or wages accumulated by an employee. Those funds can be converted to a lump-sum at termination of employment, or can be swept into the fund at specified increments at the end of a pay period or a fiscal year depending upon the design of the plan.
- Through these plans, the employer must contribute any accumulated Special Pay designated under the rules of the plan directly into the Plan. One of its' tax savings is neither the employee or employer are subject to the 7.65% Social Security and Medicare tax on funds allocated to the SPP.
- Some Special Pay Plans are setup to include mandatory employer and employee contributions.

What is a Special Pay Plan (SPP)?

- In 2009, the IRS formally began to allow employers to contribute the value of an employee's unused sick and vacation, aka paid time off (PTO), to its qualified retirement plan. The IRS had previously allowed this in private letter rulings, but officially allowed all plans to do this through Revenue Rulings 2009-31 (for active employees) and 2009-32 (for terminated employees).

- Generally, any plan that wants IRS qualification must meet a laundry list of requirements. One of those requirements is that the plan not be exclusively for the benefit of former employees. This requirement is found in 26 CFR § 1.401-1(b)(4) and reads as follows:
  - (4) A plan is for the exclusive benefit of employees or their beneficiaries even though it may cover former employees as well as present employees. A plan covering only former employees may qualify under section 401(a) if it complies with the provisions of section 401(a)(3)(B), with respect to coverage, and section 401(a)(4), with respect to contributions and benefits, as applied to all of the former employees.

- In our research, we have found and continue to find differing information on how Special Pay Plans can be used for the benefit of former employees.

Investment Plan Comparison

457b	401a
Tax-advantaged, deferred compensation retirement plan.	**Tax-advantaged, employer-sponsored defined contribution/personal pension (savings) account.**
2022 Annual Limit: $20,500	2022 Annual Limit: $61,000
In-Line-of-Duty Withdrawals Not Allowed: No penalty for withdrawals after termination or retirement	In-Line-of-Duty Withdrawals Allowed: Over 59 ½ - No penalty for withdrawals Under 59 ½ - 10% tax penalty; some exceptions apply
Hardship Withdrawals - Allowable	Hardship Withdrawals – Not Applicable
Unforeseeable Emergency (Disaster) - Allowable	Unforeseeable Emergency (Disaster) – Not Applicable
Loan Provision – Employees pays self back with interest	Loan Provision – Not Allowable
Voluntary Participation	Mandatory Participation

401(a) Pros and Cons

Pro’s of 401(a)	Con’s of 401(a)
Employee and employer each save 7.65% on FICA/Medicare for total of 15.3% for an annual savings of approximately $150,000 each.	IRS rules make employee and/or employer contributions mandatory.
Annual contributions up to $61,000.	Employees may need to consult other professionals to acquire disbursements.
Allows contributions to accumulate on a tax-advantaged basis for retirement.	401(a)s may favor a Paid-Time-Off (PTO) setting more favorably than a sick and vacation accrual setting like ours.
It is very customizable and can be crafted to specific employee groups and classifications (i.e. Bargaining, Non-bargaining, etc.). Employees can be grouped into classes or excluded; contribution amounts can vary between the classes.	May require that we rewrite our current leave accrual processes for sick and vacation.
Allows employees to save and invest money for retirement with tax benefits. Account is not subject to federal income taxes until they are withdrawn.	May require additional staff to handle the administrative aspects of the plan.

Vacation and Sick Leave Accruals

- Vacation Leave Accrual - The Board recognizes the employees' need for an annual period of rest and relaxation and offers employees Vacation Leave.

From Year	To Year	Accrual Hours
0	1	4.00
2	5	4.62
6	6	4.93
7	7	5.24
8	8	5.54
9	9	5.85
10	99	6.16

- Sick Leave Accrual - The Board desires to alleviate the hardships caused by illness and death and, therefore, offers employees paid Sick Leave and Compassionate Leave to meet those circumstances.

From Year	To Year	Accrual Hours
0	99	4.00

Vacation Policy

- “Vacation accruals are reflected in the employee’s pay check the week following the end of the pay period. Employees cannot take more vacation time than is shown as a balance on their last pay check.” (‘07 Merit Rule 9.03)
- “The maximum accumulation of vacation leave that can be carried over from one calendar year to another is 400 hours. Any employee who has accrued vacation leave in excess of 400 hours at the end of the last pay period of each calendar year shall forfeit the excess leave and the vacation leave balance shall automatically be reduced to 400 hours.” (‘07 Merit Rule 9.03)
- Employees are currently permitted to donate unused vacation leave, that may otherwise be swept, to the annual PBC United Way campaign.
- Employees are currently permitted to be paid out up to 500 hours to enter into the Florida Retirement System Deferred Retirement Option Plan (DROP).

Sick Leave Policy

- “Sick leave is earned bi-weekly and the accrual is based on 10% of an employee's scheduled hours per week, not to exceed 40 hours per week, times 26 pay periods. 40 scheduled hours per week equals 104 hours of sick leave per year.” (‘07 Merit Rule 9.02)
- “The maximum accumulation of sick leave is unlimited.” (‘07 Merit Rule 9.02)
- “Employees hired before 10/01/94 who voluntarily resign in good standing after completing ten (10) or more years of continuous, unbroken County service are eligible to be paid 50% of their unused sick leave, not to exceed 500 hours or the amount they would have been paid as of September 30, 1994, had they resigned on that date, whichever is greater.” (‘07 Merit Rule 9.02)
- “All new employees hired as of 10/01/94, will be paid for 10% of accrued sick time after ten (10) years of employment, not to exceed 500 hours.” (‘07 Merit Rule 9.02)

Vacation Payout for Deferred Retirement Option Plan (DROP)

- In accordance with Florida Statute 121.091, DROP participants can elect to receive a lump sum payment for accrued annual leave. **The accumulated annual leave payment will be included in the calculation of the member's average final compensation.** The maximum annual leave payment for inclusion in DROP is 500 hours.

- In accordance with County practice, employees electing a lump sum payment upon beginning in DROP, will not be eligible to receive a second lump sum payment upon termination, except to the extent the employee has earned additional annual leave that combined with the original payment does not exceed 560.16 hours. (For IAFF employees the cap on vacation payout for forty-eight (48) hour employees will be 792.19 hours. The vacation cap for forty (40) hour IAFF employees is 660.16 hours and for forty-two (42) hour IAFF employees it is 693.17 hours.) A payoff of vacation time can be transferred to Deferred Compensation within certain guidelines.

- If a member elects to wait and receive a lump sum payment upon termination of DROP and termination of employment, any accumulated leave payment made at that time cannot be included in the member's retirement benefit, which was determined and fixed by law when the employee elected to participate in DROP.

In closing…..

- We understand that we cannot mandate all employee groups into the a plan. The 401(a) allows us the flexibility to carve out those employee groups or to negotiate with them for inclusion into the plan.
- While there are benefits to establishing a 401(a), we may need to conduct more research into the specifics of the IRS code. This will require the assistance of legal professionals that specialize in tax law.
    - Can this plan be exclusively for terminating employees?
    - If so, can we solely utilize the sick and/or vacation balances of those terminating employees?

Options to Consider….

- Option 1: Maintain the status quo.

- Option 2: Direct staff to consult with a tax attorney to further clarify stipulations and provisions of the tax code.

- Option 3: Enter into a 401(a) Special Pay Plan with our current provider who manages the existing plan.

- Option 4: Direct staff to complete a 401(a) Special Pay Plan Request for Proposal (RFP) with 1 or multiple providers.