Agenda Item #: 5B-1

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: January 24, 2023 **[ ] 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 mandatory employee participation that directs designated unused sick and/or vacation leave into the Special Pay Plan (SPP); and B) issuance of an RFP for either one or multiple 401(a) providers.

Summary: Staff provided an update to the Palm Beach County Board of County Commissioners (BCC) on October 18, 2022, At that time based on a previous directive, staff 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.

County staff remained uncertain of the ability to use the 401(a) as a direct deposit of these unused sick and vacation hours and requested outside Counsel to opine on the matter. The BCC granted that request, and that response was received on December 2nd, and confirmed that the 401(a) could be used in this manner.

401(a) plans are investment tools that are also known as Special Pay Plans (SPP) that can be customized depending on who participates and what types of contributions are allowable, but ultimately require anyone designated as participants to 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. Special Pay for these plans may include any accumulated, unused sick, vacation or other leave payment that is eligible for contribution into the plan. Through these plans, the employer must contribute any accumulated Special Pay designated under the rules of the plan directly into the Plan. While the mandatory participation of the plan can be an argument against its' implementation, the employer and employee tax savings of 7.65% of Social Security and Medicare tax that come with the plan setup is seen as one of its advantages.

Summary continued on page 3

Attachments:

1. Presentation on the 401(a) plans

Recommended By: N/A
Department Director **Date**

Approved By: [signature] 1/5/23
Assistant County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income(County)					
In-Kind Match(County					
NET FISCAL IMPACT					
#ADDITIONAL FTE					
POSITIONS (CUMULATIVE					

Is Item Included In Current 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:

1/4/2023
MG 1/4/23 **OFMB**

Contract Dev. and Control
1/4/23

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.)

Summary continued from page 1

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).

The remaining direction requested of the Board are the specifics on how to set up the plan and whom it will apply to, in addition to, how employees entering DROP will be able to utilize their excess hours to contribute toward their Average Final Compensation. Direction from the Board is also requested regarding when we issue an RFP, will it be for one or more specific 401(a) providers. (Countywide (MM) (LDC)

Background and Policy Issues: 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 $6500 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 and Board Direction

January 24, 2023

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.

What is a Special Pay Plan (SPP)?

- Some Special Pay Plans are setup to include mandatory employer and employee contributions.

- 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).

- However a plan sponsor customizes a 401(a), the contributions are mandatory into the plan.

401(a) Pros and Cons

Pro's of 401(a)	Con's of 401(a)
Annual contributions up to $66,000*.	Employees may need to consult other professionals to acquire disbursements.
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.
Allows contributions to accumulate on a tax-advantaged basis for retirement.	May require additional staff to handle the administrative aspects of the plan.
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.	
Allows employees to save and invest money for retirement with tax benefits. Account is not subject to federal income taxes until they are withdrawn.	

*New cap effective 2023.

401a Investment Plan IRS Guideline Summary

401a
Tax-advantaged, employer-sponsored defined contribution/personal pension (savings) account.
2023 Annual Limit: $66,000
In-Line-of-Duty Withdrawals Allowed: Over 59 ½ - No penalty for withdrawals Under 59 ½ - 10% tax penalty; some exceptions apply
Mandatory Participation

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)		

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 and Sick Leave Policy

- **Vacation:** “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)
- **Vacation:** 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:** “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)
- **Sick:** “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)
- **Sick:** “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.

Legal Clarification Regarding 401(a) Questions

- Q: Is it possible to require/mandate an employee to participate in two investment programs at the same time?
  - A: *No prohibition exists that prohibits a municipality from establishing a 401(a)plan that is not part of the FRS.*

- Q: Can the County utilize the 401(a) plan to solely contribute vacation and/or sick leave balances for employees separating from employment and not require any other contributions to the plan?
  - A: *Yes, based on opinion from outside counsel, the County may utilize the 401(a) plan to solely contribute vacation and/or sick leave balances for employees separating from employment and not require any other types of contributions to the plan.*

Options for 401(a) Customized Plan Contributions

- The maximum hours that could be contributed under current policy is 400 vacation hours and 500 sick hours*.
- Sample of options for the mandatory contribution plan could be:
  - 100% of vacation and sick hours deposited into 401(a) of non-bargaining employees
  - 100% of vacation and sick hours deposited into 401(a) of non-bargaining employees who have been with the county for at least ten years
  - 75% of vacation and sick hours deposited into 401(a) of non-bargaining employees
  - 50% of vacation and sick hours deposited into 401(a) of non-bargaining employees
  - Mandatory participation of employees of a certain pay grade and above
  - Mandatory participation of highly compensated employees
  - Mandatory participation of employees above the age of 59 ½ at the age of termination

(Note: Bargaining unit employees can be added later based on negotiations with their collective bargaining units.)

*Sick Hours are calculated as a percentage of overall accumulated time based on initial hire date.

Options to Consider….

- Option 1: Maintain the status quo.
- Option 2: Enter into a 401(a) Special Pay Plan through a Request for Proposal (RFP) per the PBC Purchasing Code with one or multiple providers.