Office of Superintendent of Schools
Board Meeting of June 15, 2005

May 31, 2005

Rudolph F. Crew, Ed.D, Superintendent of Schools

**SUBJECT: TERMINAL LEAVE RETIREMENT PROGRAM (TLRP)**

**COMMITTEE: INNOVATION, EFFICIENCY & GOVERNMENTAL RELATIONS**

At the Board meeting of May 14, 2003, the Board approved a resolution to establish the Miami-Dade County School Board 401(a)/403(b) Terminal Leave Retirement Plan (TLRP), in the form of the Bencor National Government Employees Retirement Plan, Bencor Special Pay Plans For Terminal Leave Retirement Plan, Sponsored by Bencor, Inc. (Bencor), and AIG/VALIC, effective May 15, 2003. This action was taken following the Board's authorization to issue Request For Proposal (RFP)# 082-CC10, 401(a)/403(b) Terminal Leave Retirement Plan Administrator (TLRP), at the Board meeting of January 15, 2003.

For the past two years, the program has been in place, providing employees who are separating from service as a result of retirement, or entering into or continuing their participation in the Deferred Retirement Option Program (DROP), the opportunity to invest their accrued annual leave or terminal sick leave into a tax-favored retirement plan. These payments which are unilaterally contributed to a tax-sheltered annuity program, or other qualified plan in lieu of the cash payments, allow employees to defer Federal income tax, until funds are withdrawn in the future, subject to Internal Revenue Service (IRS) maximum contributions, as well as Social Security Tax (FICA). The benefit to the Board is the savings of Social Security Tax (FICA) match (7.65%) on these funds.

In a letter dated November 12, 2004, Bencor sent notification that the IRS had provided new guidelines for plans to which employers deposit accumulated employee sick and vacation pay. Staff has been working with Steven B. Lapidus, Esquire, Greenberg Traurig, P.A., as well as the Board's plan administrator, Bencor, to develop a strategy for continuing the program which will be the least disruptive to Board employees as possible, while not subjecting them to the possibility of negative tax consequences.

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According to the information which has been received from Bencor, it appears that the key issue for the §401(a) Plan, as determined by the IRS, is whether the Plan provides for substantial and recurring contributions. Since this contribution issue is one which the IRS would need to make its determination, based upon the facts and circumstances of each case, it is being recommended that the §401(a) Plan be frozen, effective July 1, 2005, and that no new contributions be put into the plan, until an IRS determination letter is received specifically for the M-DCPS program. While the most conservative approach would be to also freeze the §403(b) Plan, and seek a private letter ruling from the IRS with respect to that plan before making any additional contributions, staff and Mr. Lapidus feel that a reasonable approach would be to allow the §403(b) Plan to continue, and simultaneously prepare and submit a private letter ruling request to the IRS to the effect that the contributions being made under both the §401(a) Plan and the §403(b) Plan, pursuant to the arrangement are not currently taxable to the participants, and that the §403(b) Plan satisfies the requirements of §403(b) of the Internal Revenue Code. It is anticipated that the Cincinnati, Ohio office of the IRS will refer these requests to the national office in Washington DC; therefore, it is expected that it may take upwards of one year to receive the requested letters.

Currently, the Board has access to Mr. Lapidus through its employee benefits consulting contract with Deloitte Consulting, LLP. In order to have the necessary legal work performed for obtaining these determination letters from the IRS, it is recommended that the Board enter into a contract directly with the law firm of Greenberg, Traurig, P.A.. Mr. Lapidus has issued a letter, which is being provided as supplemental information to this item, outlining that fees for this work would range from $25,000 to $35,000. He also informed staff that the IRS charges user fees for the issuance of the determination letters and private letter rulings, and that the Determination Letter for the §401(a) Plan would run $700, while the User fee for Private Letter rulings would run $2,570 for each plan.

Staff is recommending that these fees be paid from the Office of Risk and Benefits Management's Professional and Technical Budget, with a budget enhancement for fiscal year 2005-2006 to cover the incurred legal and IRS fees, to come from the FICA savings derived from the Terminal Leave Retirement Account Program (TLRP).

**RECOMMENDED:** That The School Board of Miami-Dade County, Florida:

1. authorize staff to take the necessary steps to disallow any new contributions to the §401(a) Plan, as part of the Miami-Dade County School Board 401(a)/403(b) Terminal Leave Retirement Plan (TLRP), and only allow contributions to the §403(b) Plan, pursuant to IRS maximum contribution limits, effective July 1, 2005, until such time as the Internal Revenue Service (IRS) has provided a determination letter with respect to the §401(a) Plan;

2. enter into a contract with the law firm of Greenberg Traurig, P.A., effective July 1, 2005, to seek the necessary determination and private letter ruling letters from the Internal Revenue Service (IRS) on both the §401(a) Plan and the §403(b) Plan, with legal fees for such work not to exceed $35,000, to be paid from the Office of Risk and Benefits Management's Professional and Technical Budget (0100,5310,9112,7760,7790) ;

3. authorize expenditures for Internal Revenue Services user fees for the issuance of a Determination Letter for the §401(a) Plan in the amount of $700, and Private Letter Rulings fees of $5140, with such fees to be paid from the Office of Risk and Benefits Management's Professional and Technical Budget (0100,5310,9112, 7760,7790); and

4. authorize a budget enhancement for the 2005-2006 fiscal year to the Office of Risk and Benefits Management's Professional and Technical Budget, in the amount of $40,840, to cover legal and IRS fee expenditures for the Terminal Leave Retirement Plan (TLRP), with the money for such budget enhancement to come from the FICA savings generated from the TLRP.

   The appropriation for this item will be included in the General Fund of the 2005-2006 Tentative Budget to be recommended for adoption in July, 2005.

RFC:sc