

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 10/23/2024

Staff Report No. 24-409

TO: AC Transit Board of Directors
FROM: Michael A. Hursh, General Manager/Chief Executive Officer
SUBJECT: Deferred Compensation Governance

BRIEFING ITEM

AGENDA PLANNING REQUEST:

RECOMMENDED ACTION(S):

Consider receiving a report on the formation of a formal governance structure for the District's existing 457(b) deferred compensation plan.

Staff Contact:
Chris Andrichak, Chief Financial Officer

STRATEGIC IMPORTANCE:

Goal - High-Performing Workforce
Initiative - Employee Recruitment, Training and Retention

The District's 457(b) deferred compensation plan is an important benefit for employees to help save for their retirement as a complement to their pension.

BUDGETARY/FISCAL IMPACT:

The 457(b) plan expenses are paid for by the participants, the only direct cost to the District is the staff time required to administer the plan and its related consultants. Adding a Brown Act committee for the plan would increase workload for the District Secretary's department as well as the Finance department.

BACKGROUND/RATIONALE:

The District first established a deferred compensation plan (also known as a defined contribution plan) under Internal Revenue Service code section 457(b) in 1979 as a benefit for employees that allows them to save for retirement in addition to the existing defined benefit pension plan. The 457(b) plan is also known as a defined contribution (DC) plan, as opposed to pension plans which are also known as defined benefit (DB) plans. The 457(b) is a complement to the pension, allowing employees supplement their pension payments in retirement. A 457(b) plan is essentially the government agency version of the 401(k) plans offered by private employers.

Since the plan was established, it has primarily been administered by the Finance Department. Over the years, the federal government has added various optional provisions to 457(b) plans, such as participant loans and

catch-up provisions. Most recently congress passed the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) in 2019 and followed it up with the SECURE Act 2.0 in 2022, which together changed and added various provisions. There have also been a steady increase in legal actions against plan providers that allege breach of fiduciary duty, with investment fees as the primary area of contention. These actions have been primarily against public companies that are subject to the Employee Retirement Income Security Act (ERISA); however, the District's consultants and other industry sources have confirmed that the same actions could be used against public agency plans.

The District's plan has over \$167 million in participant funds as of July 1, 2024, from 2,680 participants. All new employees are eligible to District contributions to their plan account, which effectively means that the plan is now growing consistently as new employees are hired. Combined with the SECURE Act(s) changes and the awareness of legal actions, staff retained the services of financial consultant Buck (Gallagher) to analyze the District's plan and recommend actions to improve its administration, including what the governance structure should look like. This report is a preview of the structure that staff recommends based on the work of the consultant. The structures of peer agencies in the region were also reviewed for comparison.

Staff is proposing to have the Board formally establish and delegate authority for plan administration to a Deferred Compensation Plan Committee made up of seven participants. A plan administration committee is the most common structure among peer agencies. The Committee would oversee the work of the plan "recordkeeper" that holds the participant funds and investments and is the company that participants contact to manage their accounts (currently Empower). The Executive Director of the Retirement Plan would be an ex-officio non-voting member of the committee to gain from their subject matter knowledge in the retirement space in general.

Staff also proposes the hiring of an investment consultant that would assume fiduciary responsibility for monitoring and selecting investments for the participants. The Committee would oversee the consultant, who would provide the necessary expertise for the investment and fee analysis, Committee member education, and other analyses as needed. This significantly lowers the burden and fiduciary exposure on the Committee members, who would otherwise need extensive knowledge and training in investment and fee analysis. As with the recordkeeper, the investment consultant would be paid out of participant funds, as currently allowed by the Plan. This is also a common setup for peer plans.

Attachment 1 is a draft charter for the Committee. The suggested composition of the Committee is seven members, with one selected by each of the bargaining units and four selected by the General Manager. Members would serve continuously until they resign, are replaced, or discontinue their participation in the Plan. For administrative simplicity, staff also proposes that the General Manager be delegated the ability to appoint members in keeping with the proposed Committee composition and then report appointments to the Board.

Staff has communicated the proposed governance plan to the District's bargaining units. Any feedback from the Board on this item will be incorporated into an action item that will follow in the near future for Board adoption.

ADVANTAGES/DISADVANTAGES:

This is a briefing item and does not have advantages or disadvantages.

ALTERNATIVES ANALYSIS:

Staff worked with a consultant and researched peer agency structures to come up with the proposed structure. One alternative is to keep the plan governance as it is currently, which is not recommended. Another alternative is for the Board to delegate administration of the plan to the General Manager, who could then appoint a committee. This is not recommended as it would unnecessarily put fiduciary responsibility on the General Manager in addition to whatever committee or other structure was set up to manage it.

PRIOR RELEVANT BOARD ACTION/POLICIES:

SR 23-414 - Release RFP for 457 Plan Recordkeeper

ATTACHMENTS:

1. Draft Committee Charter

Prepared by:

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In Collaboration with:

Kenneth Myers, Controller

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Approved/Reviewed by:

Chris Andrichak, Chief Financial Officer

Aimee Steele, General Counsel/Chief Legal Officer