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OFFICE OF THE ATTORNEY GENERAL

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Fiscal Year 2020 Budget Hearings

Response to the Department of Legislative Services

Budget Analysis

House Appropriations Committee

Subcommittee on Public Safety and Administration

Senate Budget and Taxation Committee

Subcommittee on Public Safety, Transportation and Environment

Thank you for the opportunity to respond to the Department of Legislative Services' Fiscal Year 2020 Budget Analysis.

The core threat to our FY20 operations is the elimination of 8 Office of the Attorney General (OAG) central office pins that have been held vacant for budget purposes.

By holding these pins vacant in the past, OAG had received general funds in its budget for the positions but did not incur the salary expenditures it would have incurred if the positions had been filled. While holding those pins vacant was fiscally responsible, it took a serious toll on OAG's operations. In a recent report to the General Assembly and in discussions with the Department of Budget and Management (DBM), OAG explained the urgent need to find a solution to OAG's budget challenges that would allow it to fill these pins.

The proposed FY20 budget eliminates 8 of the estimated 9 pins we need to meet the budgeted turnover. Eliminating these pins not only leaves OAG understaffed in its central office units, but also takes away more than \$500,000 in general funds.¹ OAG will have no way of staying within its budget without severely impacting essential operations.

¹ DLS estimates that eliminating these pins will cost OAG \$536,741.



Background

The OAG central office budget, which is the subject of today's hearing, does not encompass most of OAG's expenses. Most of our personnel (approximately 60%) are in our field offices, where the attorneys and support staff reside in the budgets of the agencies. For example, the attorneys representing the State Department of Education are funded by the Department itself through its own budget.

This is important context because any cuts to our central office budget must be absorbed by our central office attorneys and staff, which represent only 40% of our total personnel.²

Prior DLS Staffing Report

As noted in the DLS analysis, the General Assembly was concerned last session about the level of staffing at OAG. Specifically, the 2018 Joint Chairmen's Report expressed concern about (i) the high vacancy rate in the Office, reports that it is difficult to reduce this rate because other agencies hold assistant Attorney General positions open to reduce expenditures, and the constraints of OAG's turnover expectancy; (ii) the relatively low salaries for attorneys that the office can offer; and (iii) legislation during the 2017 session that significantly increased the responsibilities of OAG, without creating additional regular positions. The Committees requested that OAG "prepare a report on agency staffing needs, including the current salary schedule for OAG attorneys and a discussion of the potential to fill additional vacant positions to support recently enacted responsibilities."

The Office of the Attorney General submitted the required report. Its core conclusions were: the Office is required to hold too many positions vacant, and is constrained by turnover expectancy; the Office does not offer competitive salaries; and legislation has significantly increased the responsibilities of OAG, without creating additional regular positions.

With respect to vacancies, we noted that 9 pins must be held vacant indefinitely for the Office to stay within its budget, which has required holding general fund positions vacant in almost every general fund central office unit for years. We also noted that there is an acute need to fill vacancies in those units, and we provided detailed descriptions of the impact of the existing vacancies on our Antitrust Division, our Juvenile Justice Monitoring Unit, our Criminal Investigations Division, our Fiscal and Personnel Unit, our Securities Division, and our Civil Litigation Division. We provided a copy of our report to DBM and have discussed these issues directly with them.

Proposed Budget

There are 11 new positions in the proposed budget, including 5 new general fund positions for the Office, and DLS's report highlights the overall growth in staffing. It is important to explain

² With few exceptions, the departments we represent do not make cuts to the lawyers and support staff in their own budgets, because they understand the growing legal demands upon them and the importance of those services to the work that they are doing.

why those new positions do not remedy the problem of the 8 pins that are being eliminated and the staffing problems within OAG.

Six of the eleven new pins are dedicated to the Consumer Protection Division to establish a housing unit. This is the result of a discussion with DBM regarding the appropriate use of approximately \$25M recovered by OAG from mortgage-related settlements. DBM will be taking \$19M of these funds, and \$6M will be used by OAG to fund the housing unit within CPD. Although we continue to believe that all consumer protection recoveries should remain within CPD to continue to support the important work of that unit, we are appreciative for the opportunity to create this division and use the \$6M in funds. Those funds are restricted, however, for housing related work, are funded by case-related recoveries, and do not help us with our general fund obligations.

The remaining five pins are for opioid work in the Criminal Investigation Division (4 pins) and Courts (1 pin). Those pins do little to address the staffing challenges, because they do not even make up for the eight pins that were eliminated and that previously could not be filled because they were needed to accrue cost savings.³

DLS Recommendations

DLS makes several recommendations in its report.

First, DLS recommends that OAG “comment on what steps will be necessary to operate within its fiscal 2020 allowance and whether it will be able to fill the new positions created in the fiscal 2020 allowance.” To meet its current fiscal 2020 allowance, OAG will need to continue to hold at least 9 positions vacant on an ongoing basis. Because the proposed budget eliminates 8 of the 9 pins that were previously held vacant, OAG will need to find new pins to hold vacant. The most likely scenario is that as people leave OAG, their vacancies will not be filled for extended periods of time. OAG will attempt, as it has done in the past, to spread this burden across its central office units. This will have a very serious impact on lawyers and staff who are already under compensated and working far more than their required hours. In some circumstances, it will impact our ability to produce quality work on a timely basis.

Second, DLS recommends that OAG “not take additional responsibilities unless funds are provided to fulfill those obligations.” OAG agrees with this statement in principle, but it often conflicts with the Attorney General’s constitutional obligation to represent State agencies. For example, one of the Office’s acute needs is more personnel in the Courts division, where close to 100% of the litigation is defensive litigation that the Office is required to handle. OAG has already taken steps to hold positions vacant in its enforcement divisions, but this too comes at a serious cost to Marylanders, particularly at a time when enforcement is lacking at the federal level.

³ The report also references DPSCS pins. Two pins were transferred to OAG from DPSCS and are being used for a particular criminal matter. Two additional pins are being transferred to handle the overwhelming workload in our Correctional Litigation Division.

Finally, DLS recommends that “the committees request a study that includes a comprehensive review of the responsibilities of the Office of the Attorney General, that a plan be developed to reorganize the agency’s divisions to promote understanding of the agency’s duties, and that, to the extent practicable, workload standards should be established for OAG’s attorneys.”

OAG appreciates DLS’s commitment to addressing OAG’s ongoing staffing challenges, and we want to provide any information DLS will find helpful in addressing these challenges. We request the opportunity to work with DLS and provide feedback on the language of the recommended study. We believe that we can provide additional information on the staffing needs of each of our units that will be useful in addressing the identified issues.

Finally, we appreciate and agree with DLS’s observation that, notwithstanding the overall growth of the budget, OAG is underfunded by at least \$800,000 on a continuing services basis.⁴ We also appreciate DLS’s continuing commitment to addressing the staffing needs of OAG. Thank you for your attention to these matters, and we look forward to continuing these discussions with you.

⁴ As explained by DLS in Exhibit 7 of its analysis, new and increased spending obligations have more than consumed the growth in the budget