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**DEPARTMENT OF BUDGET AND MANAGEMENT – PERSONNEL
FY 2024 Budget Hearing**

**Testimony of
Helene Grady, Acting Secretary
Department of Budget and Management**

**Senate Budget and Taxation Committee
February 28, 2023**

**House Appropriations Committee
February 24, 2023**

The Administration appreciates the thorough analysis put forward by the Department of Legislative Services (DLS). DBM's responses to the DLS recommendations in the analysis are below.

We are available to answer any questions.

Annual Salary Reviews (ASRs): DLS recommends that DBM develop a more proactive policy for determining classifications to award ASRs, rather than the passive policy of accepting requests from agencies and collective bargaining units.

DBM concurs with the suggestion that the agency play a more proactive role in determining appropriate classifications for ASRs. DBM plans to implement an annual review by the Classification and Salary Division of job classifications with consistently high vacancy rates in comparison to the state average. This review will take place at the start of the annual budget cycle so that any recommended ASRs may be negotiated with the exclusive bargaining representatives and considered as part of the budget process.

Health Insurance Cost Sharing: DBM should comment on how it will balance achieving the negotiated cost share with avoiding employee premium shocks.

DBM agrees with the concerns noted by DLS. Rising health care spending continues to be a concern for state governments. At the same time, the prior Administration has endeavored to avoid the impact of high premium adjustments on employees and retirees. The Administration will pursue a variety of strategies to

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control spending growth while maintaining fair cost increases between employees and the State in order to return to the stated goal of an 80/20 split.

Retiree Prescription Drug Benefits: DBM should provide an update on the status of the ongoing legal action regarding retiree prescription drug benefits.

On December 30, 2021, ruling on motions to dismiss, the District Court issued an order holding that essentially two statutes – SPP §§ 2-508 and 2-509.1 – conferred a contractual right to prescription drug benefits upon those who retired on or before December 31, 2018. As a result, the State and retirees who retired on or before that date are in the process of litigating the question of whether three reimbursement provisions enacted by the General Assembly during the course of litigation constitute a reasonable modification of the retirees’ contractual right to benefits. Discovery has concluded in that matter and summary judgment briefing commences this week.

In contrast, the District Court ruled that those who retired after December 31, 2018, *did not* have a contractual right to prescription drug benefits. The Court dismissed a complaint filed by AFSCME arguing that current employees were likewise contractually entitled to benefits, and the union appealed the matter to the Court of Appeals for the Fourth Circuit. Briefing in the appeal closed on September 15, 2022. Oral argument occurred on January 25, 2023.

On February 21, 2023, the Court of Appeals for the Fourth Circuit issued a published opinion rejecting the District Court’s conclusion that SPP §§ 2-508 and 2-509.1 vested in retirees or employees a contractual right to prescription drug benefits. Because the two statutes did not create a contractual right to prescription drug benefits, the Court of Appeals affirmed the dismissal of AFSCME from the case.

The full implications of the Fourth Circuit opinion are currently being analyzed.

Prefunding Retiree Health Costs: DBM should comment on the possibility of pre-funding retiree health costs.

The Administration is committed to continue funding retiree health expenses on a pay-as-you-go basis.

DLS Recommendations and DBM Responses

(1) DLS recommends adopting committee narrative requesting the department to submit closeout information on the Employee and Retiree Health Insurance Account.

DBM concurs.

(2) DLS recommends adopting committee narrative requesting the department to submit quarterly reports on prescription, medical, and dental plan performance reports.

DBM concurs.

(3) DLS recommends adopting committee narrative requesting a report on the State’s progress toward the Governor’s goal of reducing the vacancy rate by half.

DBM concurs.

(4) DLS recommends adding language to delay the processing of an amendment for the fiscal 2024 cost-of-living adjustment and adding intent language that funds should be provided only to agencies that make progress in filling vacant positions.

DBM concurs.

(5) DLS recommends reducing the deficiency appropriation in the Statewide Program due to a budgeting error. (-\$42,000,000)

DBM concurs.

(6) DLS recommends reducing funding due to the overestimation of fiscal 2023 statewide salary action costs. (-\$10,692,130)

DBM concurs.

(7) DLS recommends reducing the deficiency appropriation for the 4.5% November 2022 cost-of-living adjustment that is unneeded due to savings in agency budgets from the large number of vacant positions. (-\$25,000,000)

DBM concurs.

(8) DLS recommends adding a section for annual language restricting the movement of employees into abolished positions.

DBM concurs.

(9) DLS recommends adding a section requiring monthly reporting on the State’s workers’ compensation account held by the Injured Workers’ Insurance Fund.

DBM concurs.

(10) DLS recommends adding a section for the annual “Rule of 100” limit on position creation.

DBM concurs.

(11) DLS recommends adding a section for annual language requiring a report on State positions.

DBM concurs.

(12) DLS recommends adding a section for annual language requiring reporting of employee and retiree health insurance receipts and spending.

DBM concurs.