



OFFICE OF THE ATTORNEY GENERAL

BUDGET PRESENTATION

TO THE SENATE COMMITTEE ON FINANCE
THE SENATE OF WEST VIRGINIA
JANUARY 17, 2022

ATTORNEY GENERAL PATRICK MORRISEY

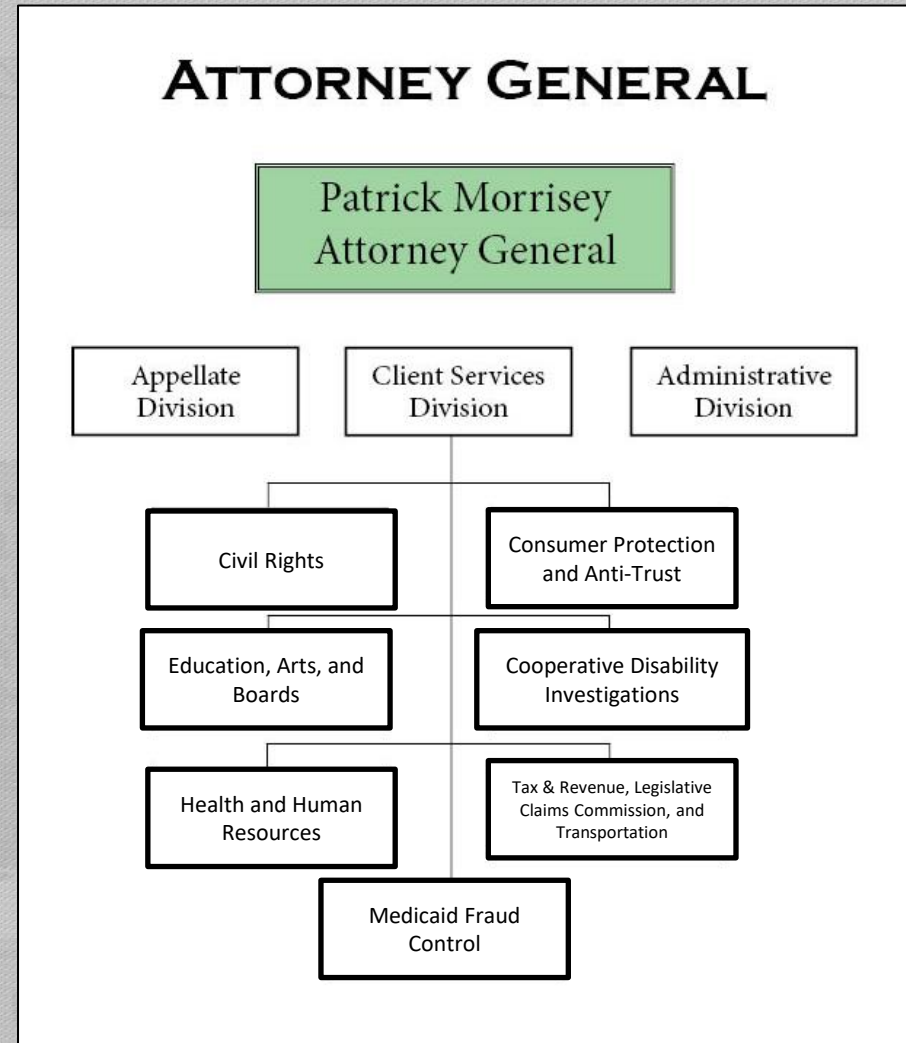
OFFICE OF ATTORNEY GENERAL OVERVIEW

- CHIEF LEGAL OFFICER FOR THE STATE OF WEST VIRGINIA
- RESPONSIBLE FOR PROVIDING LEGAL COUNSEL TO THE STATE, ITS OFFICERS, AGENCIES AND BOARDS
- ENFORCES THE LAWS OF WEST VIRGINIA AS THEY RELATE TO CONSUMER PROTECTION, CIVIL RIGHTS & OTHER IMPORTANT AREAS
- REPRESENTS THE STATE IN ALL STATE CRIMINAL

OFFICE OF THE ATTORNEY GENERAL

OFFICE STRUCTURE

- ADMINISTRATIVE DIVISION
- APPELLATE DIVISION
- CLIENT SERVICES DIVISION



RESPONSES TO SPECIFIC INQUIRES COMMITTEE ON FINANCE

- PAST FIVE YEARS APPROPRIATIONS-
 - FY18- \$4,353,262
 - FY19-\$4,645,739 (STATEWIDE PAY RAISE INCREASE)
 - FY20-\$4,953,457 (STATEWIDE PAY RAISE INCREASE)
 - FY21-\$4,953,457

IMPLICATION OF CURRENT BUDGET LEVELS

THE OFFICE OF THE ATTORNEY GENERAL WILL NOT BE NEGATIVELY IMPACTED IN FY23 BY THE 100% CURRENT-LEVEL FUNDING. HOWEVER, ANOTHER SIGNIFICANT VARIANCE FROM THIS LEVEL COULD ADVERSELY AFFECT THE OFFICE'S CONSTITUTIONAL MISSION. IN LIGHT OF GENERAL REVENUE REDUCTIONS IN PREVIOUS YEARS, WE CANNOT SUSTAIN ANY ADDITIONAL REVENUE REDUCTIONS. INDEED, WE BELIEVE CUTS INSTITUTED WILL COST THE STATE MORE IN RESOURCES BECAUSE WE WILL NEED TO RELY MORE HEAVILY ON OUTSIDE COUNSEL TO PERFORM FUNCTIONS THAT PREVIOUSLY COULD BE HANDLED IN-HOUSE. THE ATTORNEY GENERAL'S OFFICE HAS HAD A SIGNIFICANT INCREASE IN WORKLOAD. DUE TO THIS SUBSTANTIAL INCREASE, THERE MAY BE AS NEED IN THE NEAR FUTURE TO

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TO FUND THE ONGOING CONSTITUTIONALLY REQUIRED

PROPOSED BUDGET CHANGES

THE ONLY PROPOSED CHANGES ARE FOR THE 25% MATCH RELATED TO THE INCREASE IN OUR MEDICAID FRAUD CONTROL UNIT (MFCU) FEDERAL GRANT.

- GRANT INCREASED FROM \$2.336M FY21 TO \$2.703M FY22
- IMPROVEMENT REQUEST WAS SUBMITTED TO ACCOMMODATE GRANT INCREASE
- IMPROVEMENT REQUEST TOTALED \$367,113 AS FOLLOWS:
 - 75% FEDERAL SHARE - \$275,335
 - 25% STATE SHARE - \$91,778

ADDITIONAL INFORMATION

- OUR AGENCY DID NOT RECEIVE ANY CARES ACT OR ARPA FUNDING
- WE ARE FOLLOWING THE BUDGET HEARINGS AS WELL AS SESSION TO DETERMINE WHETHER PROPOSED LEGISLATION WILL AFFECT OUR BUDGET. HISTORICALLY THERE HAVE BEEN BILLS THAT TAKE SETTLEMENT FUNDS AND REDIRECT THEM. IT IS OF CRITICAL IMPORTANCE THAT THE RESOURCES COMING IN FROM OPIOID SETTLEMENTS NOT BE TAKEN FOR OTHER PURPOSES AS THERE ARE ONGOING COURT ORDERED NEGOTIATIONS OCCURRING. THESE SETTLEMENTS WILL LIKELY BE USED AS PART OF A BROADER OPIOID ABATEMENT FUND AS DIRECTED BY THE COURT.

BUDGET SAVINGS — OUTSIDE COUNSEL POLICY

- SAVINGS THROUGH REDUCED ATTORNEY COSTS
 - OVER \$37 MILLION IN SAVINGS AS A RESULT OF THE OFFICE'S OUTSIDE COUNSEL POLICY
 - ANY REDUCTION IN OUR STAFF WILL ADD TO COST THROUGH GREATER RELIANCE ON OUTSIDE COUNSEL
 - OUTSIDE COUNSEL RATES ARE 3X GREATER THAN HOURLY RATE TO HANDLE A MATTER IN-HOUSE

BUDGET SAVINGS FROM THE OFFICE OF THE ATTORNEY GENERAL

- SUBSTANTIAL REVENUE PROVIDED TO THE STATE:
 - FACILITATED THE RETURN OF APPROXIMATELY \$57 MILLION IN UNENCUMBERED MONIES OVER THE LAST NINE YEARS
 - RETURN OF OVER \$1.92 MILLION FROM THE ANTI-TRUST ACCOUNT SINCE FY 14
 - MOVED FOUR DIVISIONS ONTO THE CAPITOL COMPLEX THAT WILL BRING OVER \$1.6 MILLION

OFFICE OF THE ATTORNEY GENERAL
OVER THE NEXT 5 YEARS

COOPERATIVE DISABILITY INVESTIGATIONS

- PARTNERSHIP WITH THE SOCIAL SECURITY ADMINISTRATION
- INVESTIGATES SUSPICIOUS OR QUESTIONABLE DISABILITY CLAIMS, BENEFICIARIES, CLAIMANTS, AND ANY THIRD PARTY WHO FACILITATES FRAUD
- PARTNERSHIP ESTABLISHED IN DECEMBER 2015, MAKING IT A FIRST-OF-ITS-KIND UNIT FOR THE STATE OF WEST VIRGINIA
- AS OF JANUARY 2022, THE PROGRAM HAS EXCEEDED \$30 MILLION IN DISABILITY FRAUD SAVINGS SINCE INCEPTION OF THE OFFICE'S SOCIAL

FIGHTING MEDICAID FRAUD

- FILLED AND MAINTAINED SUFFICIENT STAFFING SO THE FEDERAL GOVERNMENT DID NOT REQUIRE PRORATED VACANT POSITIONS
- HANDLED AN AVERAGE OF 186 OPEN FRAUD CASES EACH YEAR UNDER THE ATTORNEY GENERAL'S OFFICE COMPARED TO AVERAGING 121 OPEN FRAUD CASES OVER THE LAST THREE YEARS WITHIN THE OIG
- AVERAGE NUMBER OF INDICTMENTS AND CRIMINAL CHARGES FILED PER YEAR INCREASED 50% VS. THE LAST THREE YEARS WITHIN THE OIG
- RECEIVED AN AVERAGE OF 407 REFERRALS PER YEAR. BY COMPARISON, THE MECL RECEIVED AN AVERAGE OF 271

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WITHIN THE OIG

FIGHTING MEDICAID FRAUD

- OPENED AN AVERAGE OF 120 NEW CASES PER YEAR VS. AN AVERAGE OF 47 OVER THE LAST THREE YEARS WITHIN THE OIG
- CLOSED 116 CASES IN FFY2021 VS. AN AVERAGE OF 61 CASES CLOSED PER YEAR DURING THE LAST THREE YEARS WITHIN THE OIG
- SECURED 13 CONVICTIONS DURING FFY2021 VS. ANNUAL AVERAGE OF 4.3 OVER THE LAST THREE YEARS WITHIN THE OIG
- RECOVERED AN ADDITIONAL ≈\$6.3 MILLION DURING FFY2021 FOR OVER \$21 MILLION IN RECOVERIES TO THE FEDERAL AND STATE PROGRAMS THE PAST TWO YEARS. BY COMPARISON, THE MEDIAN ANNUAL RECOVERY

OPIOIDS – LITIGATION

- CONTINUED ENFORCING THE LAW VIGOROUSLY
- CURRENTLY HAVE LAWSUITS PENDING AGAINST MANUFACTURERS, INCLUDING JANSSEN, JOHNSON & JOHNSON, TEVA, AND ENDO ENTITIES, SET FOR TRIAL IN APRIL 2022
- CURRENTLY HAVE LAWSUITS PENDING AGAINST THE FOUR NATIONAL PHARMACIES: CVS, RITE-AID, WALGREEN ENTITIES, AND WALMART, SET FOR TRIAL IN SEPTEMBER 2022

OPIOIDS – DEA REPORT

FENTANYL LAWSUIT

- IN JUNE 2020, RELEASED A 46-PAGE REPORT DETAILING FINDINGS INTO THE U.S. DRUG ENFORCEMENT ADMINISTRATION’S MISMANAGEMENT OF THE NATIONAL DRUG QUOTA SYSTEM
 - CULMINATION OF FOUR-YEAR INVESTIGATION, LAWSUIT OVER DEA’S FAILURE TO CONTROL THE SUPPLY OF OPIOIDS THAT WERE BEING MANUFACTURED AND IMPORTED
 - DEA ADOPTED NEW RULE TO CORRECT FAILURES IN FOLLOWING INDUSTRY DEMAND FOR MORE PILLS WITHOUT ACCOUNTING FOR HIGH DIVERSION RATES
- IN AUGUST 2021, SUED DEPARTMENT OF HOMELAND SECURITY FOR RESCINDING TRUMP ADMINISTRATION’S “REMAIN IN MEXICO” POLICY WITHOUT ACCOUNTING FOR FENTANYL TRAFFICKING CONSEQUENCES FROM RELAXING IMMIGRATION POLICIES

■ JOINED BRIEF SUPPORTING SIMILAR EFFORTS BY OTHER

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ANTITRUST LITIGATION

THE OFFICE HAS TAKEN ON HIGH-TECH COMPANIES THAT ARE MONOPOLIZING CERTAIN SECTORS OF THE ECONOMY. CASES WERE FILED AT THE END OF 2020.

- FILED AN ACTION WITH 25 STATES, ON TERRITORY AND THE U.S. DEPARTMENT OF JUSTICE (WHICH INCLUDES ANOTHER 14 STATES) AGAINST GOOGLE, LLC REGARDING ITS MONOPOLIZATION OVER SEARCH AND SEARCH ADVERTISING. SET FOR TRIAL IN THE FALL OF 2023
- FILED AN ACTION WITH 37 STATES AND THE DISTRICT OF COLUMBIA AGAINST GOOGLE, LLC AND ITS RELATED COMPANIES REGARDING ITS MONOPOLIZATION OF APP DISTRIBUTION ON MOBILE DEVICES RUNNING THE ANDROID OPERATING SYSTEM AND ITS MONOPOLIZATION OF PAYMENT SERVICES FOR DIGITAL PURCHASES MADE BY CONSUMERS WITHIN MOBILE APPLICATIONS. THIS MATTER WILL LIKELY BE TRIED IN JANUARY

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ANTITRUST LITIGATION

- APPEALING AN ACTION FILED AGAINST FACEBOOK FOR ITS MONOPOLIZATION OF PERSONAL SOCIAL NETWORKING SERVICES. A COMPANION SUIT BROUGHT BY THE FEDERAL TRADE COMMISSION IN THE SAME COURT RECENTLY WON A MOTION TO DISMISS AGAINST ITS AMENDED COMPLAINT. THE STATES EXPECT THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA TO REVERSE THE TRIAL COURT AND ALLOW THE STATES TO LITIGATE ALONG WITH THE FTC

STATE MATTERS

■ CARES ACT

- SUCCESSFULLY DEFENDED THE STATE'S TERMINATION OF ITS PARTICIPATION IN THE CARES ACT EXTENDED UNEMPLOYMENT BENEFITS PROGRAM

■ TOURISM

- REPRESENTING THE STATE REGARDING THE CONSTITUTIONALITY OF A TOURISM LAW IMPORTANT TO COMPLETING THE HILL TOP HOTEL PROJECT IN HARPERS FERRY
- \$138 MILLION PROJECT WITH POTENTIAL TO

STATE MATTERS

■ ELECTIONS

- PREVAILED BEFORE THE U.S. COURT OF APPEALS FOR THE 4TH CIRCUIT DEFENDING THE SECRETARY OF STATE IN A SUIT CHALLENGING CONSTITUTIONALITY OF STATE LAW SETTING ORDER OF CANDIDATES ON BALLOTS
- SUCCESSFULLY DEFENDED SECRETARY OF STATE IN MULTIPLE MATTERS BEARING ON ELECTION ISSUES

■ DEFENDING STATUTES AND INTERPRETATIONS

- NUMEROUS MATTERS IN DEFENSE OF MULTIPLE STATUTES ENACTED IN RECENT YEARS AND

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FEDERAL MATTERS

■ PIPELINE CONSTRUCTION

- SECURED TWO MAJOR VICTORIES FOR PIPELINE CONSTRUCTION AT THE U.S. SUPREME COURT, INCLUDING A STAY FROM THE U.S. SUPREME COURT OF A FEDERAL JUDGE'S ORDER THAT WOULD HAVE HALTED THOUSANDS OF ENERGY INFRASTRUCTURE PROJECTS NATIONWIDE
- ASSISTED WV DEP WITH REVIEWING AND ISSUING A CLEAN WATER ACT PERMIT FOR THE MOUNTAIN VALLEY PIPELINE PROJECT, AND IS IN THE PROCESS OF DEFENDING THE PERMIT FROM CHALLENGES IN THE U.S.

FEDERAL MATTERS

■ COAL MINERS

- FOUGHT FOR COAL MINERS BY SUCCESSFULLY PERSUADING THE U.S. SUPREME COURT TO GRANT REVIEW OF D.C. CIRCUIT DECISION INVALIDATING THE TRUMP ADMINISTRATION'S AFFORDABLE CLEAN ENERGY RULE
- THE CASE- WEST VIRGINIA V. EPA- IS THE HIGHEST PROFILE ENVIRONMENTAL AND ADMINISTRATIVE LAW CASE IN THE PAST SEVERAL YEARS
- WEST VIRGINIA IS LEADING BRIEFING BEFORE THE SUPREME COURT ON BEHALF OF 19 STATES
- THE SUPREME COURT WILL HEAR ORAL ARGUMENT ON FEBRUARY 28, 2022

BUDGET COMPARISON

Expenditure	WVOASIS Appropriation	FY 2018 Base Budget	FY 2019 Base Budget	FY 2020 Base Budget	FY 2021 Base Budget	FY 2022 Base Budget	FY 2023 Agency Request
Personal Services	00100	\$ 2,281,145.00	\$ 2,537,784.00	\$ 2,818,788.00	\$ 2,818,788.00	\$ 2,818,788.00	\$ 2,818,788.00
Repairs and Alterations	06400	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Equipment	07000	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Unclassified	09900	\$ 24,428.00	\$ 24,428.00	\$ 24,428.00	\$ 24,428.00	\$ 24,428.00	\$ 24,428.00
Current Expenses	13000	\$ 752,408.00	\$ 762,097.00	\$ 762,097.00	\$ 762,097.00	\$ 687,795.00	\$ 687,795.00
Criminal Convictions and Habeas Corpus Appeals	26000	\$ 908,529.00	\$ 923,582.00	\$ 946,078.00	\$ 946,078.00	\$ 946,078.00	\$ 946,078.00
Better Government Bureau	74000	\$ 271,991.00	\$ 275,194.00	\$ 279,412.00	\$ 279,412.00	\$ 279,412.00	\$ 279,412.00
BRIM Premium	91300	\$ 112,761.00	\$ 120,654.00	\$ 120,654.00	\$ 120,654.00	\$ 120,654.00	\$ 120,654.00
Total		\$ 4,353,262.00	\$ 4,645,739.00	\$ 4,953,457.00	\$ 4,953,457.00	\$ 4,879,155.00	\$ 4,879,155.00

CURRENT LEVEL IMPACT STATEMENT

THE OFFICE OF THE ATTORNEY GENERAL MAY NOT BE ADVERSELY IMPACTED IN FY 2023 BY THE 100% CURRENT-LEVEL FUNDING. HOWEVER, IT IS IMPORTANT TO NOTE, THIS THIS OFFICE HAS BEEN EXTREMELY BUSY THIS YEAR DEFENDING THE GOVERNOR, THE LEGISLATURE, VARIOUS CONSTITUTIONAL OFFICERS AND STATUTES THAT WERE PASSED DURING THE LEGISLATIVE SESSION. IF THE VOLUME OF CASES CONTINUES IT MAY RESULT IN A REQUEST FOR ADDITIONAL FUNDING TO HIRE PERSONNEL IN THE FUTURE. ANOTHER SIGNIFICANT VARIANCE FROM THIS LEVEL COULD ADVERSELY IMPACT THE OFFICE'S CONSTITUTIONAL MISSION. IN LIGHT OF GENERAL REVENUE REDUCTIONS IN PREVIOUS YEARS, WE CANNOT SUSTAIN ANY ADDITIONAL GENERAL REVENUE REDUCTIONS. INDEED, WE BELIEVE INSTITUTING CUTS WILL ULTIMATELY COST THE STATE MORE BECAUSE WE WILL BE FORCED TO RELY MORE HEAVILY ON OUTSIDE COUNSEL TO PERFORM FUNCTIONS THAT PREVIOUSLY COULD BE HANDLED IN-HOUSE.

THE OFFICE OF THE ATTORNEY GENERAL'S SPECIAL REVENUE FUNDING CONTINUES TO SUPPLEMENT OUR GENERAL REVENUE FUNDING. NEVERTHELESS, THE OFFICE HAS RETURNED OVER \$57 MILLION SINCE JANUARY 2013 WHILE ATTEMPTING TO MAINTAIN AN ACCOUNT BALANCE

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GENERAL APPROPRIATION BUDGET IN EXCESS OF \$725,000 IN FY 2016,

CURRENT LEVEL IMPACT STATEMENT

THE OFFICE HAS CREATED STRONGER INTERNAL CONTROLS OVER THE STATE'S MONEY, AND HAS TAKEN EXTENSIVE MEASURES TO ENSURE THE PAYMENT OF PRE-EXISTING SETTLEMENT ORDERS. THROUGH THE CONTINUED IMPLEMENTATION OF NEW ACCOUNTING PROCEDURES, THE OFFICE TRACKS INDIVIDUAL CONSUMER SETTLEMENTS TO ENSURE APPROPRIATE RESTITUTION IS PAID.

IN SUM, THE OFFICE CONTINUES TO WORK DILIGENTLY TO POSITION ITSELF UNDER THE 100% CURRENT-LEVEL FUNDING. HOWEVER, THE OFFICE IS MINDFUL THAT FURTHER DEVIATION BELOW SAID FUNDING LEVEL WOULD GREATLY INCREASE RELIANCE ON SPECIAL REVENUE ACCOUNTS — CREATING A STRESS ON SUCH ACCOUNTS THAT MAY NOT BE MAINTAINABLE GIVEN THE AMOUNT OF MONEY IN THE ACCOUNTS THAT IS TYPICALLY ENCUMBERED BY COURT ORDER FOR SPECIFIC PURPOSES.

FUTURE FINANCIAL ISSUES

THE BIGGEST FINANCIAL ISSUE FACING THE OFFICE OF THE ATTORNEY GENERAL REMAINS THE PERENNIAL UNCERTAINTY ASSOCIATED WITH SPECIAL REVENUE ACCOUNTS AND THE OFFICE'S REQUIRED DEPENDENCE ON SUCH FUNDS, AS WELL AS THE LARGE NUMBER OF LAWSUITS FILED AGAINST THE STATE. THESE SUITS INCLUDE THOSE BROUGHT AGAINST THE GOVERNOR, THE LEGISLATURE, CONSTITUTIONAL OFFICERS AND ATTACKS ON RECENTLY PASSED STATUTES. THE NEED TO STAFF THESE CASES MEANS IT IS IMPERATIVE TO AVOID CUTS TO THE PERSONAL SERVICES APPROPRIATION LINE ITEM.

THE OFFICE OF THE ATTORNEY GENERAL MUST GENERATE MILLIONS OF DOLLARS ANNUALLY FROM ITS SPECIAL REVENUE ACCOUNTS IN ORDER TO ENSURE THE SUFFICIENT OPERATION OF THE CONSUMER PROTECTION DIVISION. A FAILURE TO MEET SUCH SPECIAL REVENUE REQUIREMENTS OVER A THREE-YEAR PERIOD WOULD QUICKLY EXHAUST ANY RESERVES THE OFFICE NOW HAS, RESULTING IN A FORCED DISMANTLING OF MANY OF THE CONSUMER PROTECTION SERVICES CURRENTLY PROVIDED BY THE OFFICE OF THE ATTORNEY GENERAL. BY CONTINUING TO RELY ON THIS FUNDING MODEL, THE STATE IS SIGNIFICANTLY INCREASING ITS BUDGETARY RISK.

RECENT PLANNING HAS BETTER POSITIONED THE OFFICE TO ADDRESS THE FUNDING CHALLENGES DETAILED HEREIN, WHILE ALSO ALLOWING FOR THE RETURN

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ISSUES. HOWEVER, SIGNIFICANT DEPLETION OF SPECIAL REVENUE ACCOUNTS COULD EXPOSE THE STATE TO GREAT RISK AS ESSENTIAL SERVICES BECOME MORE

FY2023 BUDGET HEARING



OFFICE OF THE ATTORNEY GENERAL