

CHAPTER 7:

Budget Execution and Oversight

Once the state's budget has been enacted in the form of appropriations measures, the budget cycle continues as executive agencies carry out its provisions. Budget execution includes overall management and control of spending through the Office of Budget and Management and the state Controlling Board. Management of the state's money system is a joint function of the Office of Budget and Management through its State Accounting division, the Ohio Department of Taxation, the Office of State Treasurer, and the Office of Auditor of State. When an economic downturn occurs or other unexpected development adversely affects anticipated revenues or expenditures, the governor must manage and control spending through cutback management.

Budget oversight monitors the execution of the budget. Throughout the execution of the state's budget, there is oversight provided by the Controlling Board, the Legislative Service Commission, and the Auditor of State, who has post-audit responsibilities. The courts can also play a role in state budgeting. All oversight entities work to provide checks and balances on the enacted budget.

Financial Control

The traditional function of the budget is to provide control over spending. Although modern budgeting emphasizes the budget as a policy development and management tool, control continues to be a major purpose. Budget expert Allen Schick observes, "Control must take precedence because a government's budget cannot be reliably applied to upgrading the efficiency or effectiveness of public service if it does not accurately account for the expenditure of funds."¹ Accountability is demanded by bond rating firms and their investors and by citizens who want accurate accounting and reporting on how public funds have been used.

An enacted budget authorizes spending up to the specified appropriation amount based on the assumption that anticipated revenues are received as estimated without intervening emergencies to exhaust them. What the appropriations act actually grants agencies is spending authority, not money.

Appropriation authority allows the agencies to enter into binding agreements but only for specified purposes during the period for which the appropriation is in effect. The level of detail in the budget itself serves as one form of budgetary control. Other financial control measures include those exercised by the Office of Budget and Management over financial transactions, allotment powers, the state accounting system, and internal control oversight.

Financial Control and Office of Budget and Management

Aside from its role in preparing the executive budget request and guiding it through the appropriations process, the Office of Budget and Management also performs important management functions once the appropriations bills have been enacted.

Financial Transactions

State law gives the Office of Budget and Management the duty to:

1. Prescribe and maintain the accounting system of the state and establish appropriate accounting procedures and charts of accounts.
2. Establish procedures for the approval of payment vouchers.
3. Evaluate on an ongoing basis and, if necessary, recommend improvements to the internal controls used by state agencies.
4. Authorize the establishment of petty cash accounts.
5. Process orders, invoices, vouchers, claims, and payrolls, and prepare financial reports and statements.
6. Perform such extensions, reviews, and compliance checks prior to approving a payment as necessary.
7. Issue the official comprehensive annual financial report of the state.²

Allotments

Once an appropriation is made, the Office of Budget and Management has the authority to allot, or subdivide, the appropriation into amounts authorized to be spent in certain time periods. Agencies are usually provided allotments by three-month periods, or quarters, although monthly allotments are sometimes exercised when stricter spending control is necessary. The allotment process can be the most significant aspect of budget control exercised by the executive. This power enables the governor to reduce spending by withholding a portion of appropriated funds. The assumption is that the power to allot implies the power not to allot or even to “un-allot.” However, this has never been tested in the courts.

Unallotted Appropriations

The Office of Budget and Management can, and often does, require agencies to set aside a portion of their appropriations as a reserve by placing them in either “planned” or “unplanned” unallotted status. Planned un-allotments are usually intended to accommodate expenditures that may materialize but without a particular timetable. Unplanned un-allotments are sums set aside for unforeseen contingencies. Used judiciously by the central budget agency, this device can prevent agencies from

overspending their appropriations. It can also be used, however, to build up surpluses for later use in supplemental appropriations. Only through carefully monitoring of the amounts set aside as “unallotted” can the legislature know the overall status of the state budget and the executive’s potential plans for supplemental appropriations. Time and resources, however, usually do not permit the legislature to provide attention at this level of detail.

Financial Accounting

The state’s accounting system records and reconciles transactions, using generally accepted accounting principles.³ The accounting system is the means by which agencies record each financial transaction, including appropriations, cash, expenditures, and unencumbered amounts. Analysts from the Office of Budget and Management use this information to track available revenues; monitor agency spending to ensure it does not overspend beyond its authority; advise about budget balancing problems; and determine if appropriation adjustments, either by the Controlling Board or the legislature, are necessary. The accounting system records every financial transaction. The transactions are eventually consolidated into annual financial statements, first by agency, and then statewide. The Office of Budget and Management also prepares and publishes the Ohio *Comprehensive Annual Financial Report* (CAFR) after the annual audit is completed.

In 2006, Ohio implemented a new accounting system, called the Ohio Administrative Knowledge System, or OAKS. It integrates data from the state’s accounting, human resources, purchasing, and fixed-asset management systems. This more holistic system represented an improvement over the previous Central Accounting System (CAS) because it:

- Requires reporting across more fields, particularly for a program field for all expenses, which provides richer data.
- Provides easy access to digitized data for analysis, which improves budget forecast tools especially for payroll projections.
- Increases the standardization of processes, such as facilitating the consolidation of back-office operations.

When the state’s financial operations were restructured in 1973, the responsibility for accounting was transferred from the Ohio Department of Finance to the newly created Ohio Department of Administrative Services, where it remained until 1981. In that year, the legislature transferred responsibility for overseeing and maintaining the state’s accounting system to the Office of Budget and Management, although, by law, the Auditor of State is the state’s chief accounting officer. The Auditor prescribes the accounting systems for local governments but not for the state. The Auditor’s Office, however, issued all of the state’s warrants, or checks, until 2006, when this responsibility was transferred to the Office of Budget and Management.

Other accounting responsibilities of the Office of Budget and Management include:

- Reconciling agency appropriations and expenditures, including cash balances with the Office of Treasurer of State.
- Reviewing all agency accounting documents, such as purchase orders and vouchers, and entering them into the accounting system.⁴

Internal Control Oversight

By a 1992 executive order, an internal control oversight program was established in the Office of Budget and Management to ensure that agencies complied with all applicable laws relating to financial matters and that they adopted practices to safeguard state funds, property, and other assets against waste, loss, and unauthorized use. Guidelines on properly recording revenues, expenditures, and asset transfers were issued by the office, which also provided technical assistance, training, and information to agency internal control coordinators.

In 2007, legislation was enacted formally creating an Office of Internal Audit within the Office of Budget and Management to conduct internal audits of state agencies to evaluate the adequacy and effectiveness of their risk management, control, and governance processes, and to report findings and recommendations of the audits to an independent state audit committee.

Financial Control and the Controlling Board

When the Controlling Board was created in the state's general appropriations bill in 1917, it was primarily intended to serve as an interim body to assist in making the kinds of adjustments needed to keep the budget in balance while the part-time General Assembly was out of session. The Controlling Board is unusual in that it functions as a joint executive-legislative body, unique in Ohio and throughout the country. It was made permanent in 1975, after having been recreated in temporary law every two years since 1917.

Office of Budget and Management Involvement

The Office of Budget and Management selects a presiding officer, or President, of the seven-member board, whose primary function is to manage the operations of the board, including preparing the agenda for each meeting. The president is a voting member of the board, which meets approximately twice per month. The agenda is a compilation of agency requests that Office of Budget and Management analysts have reviewed and offered comments. In addition, staff at the Ohio Department of Administrative Services is responsible for reviewing certain requests prior to their being scheduled for consideration of the board. The requests that the president submits to the board are a critical component of the budget execution process, and more requests are made than finally appear on the agenda. The remaining six members of the board are legislators, including the chairs of the House and Senate finance committees.

There have been rare instances when the Controlling Board members become aware of a request that the Office of Budget and Management fails to submit to the Board and which they wish to entertain. The Controlling Board's internal procedures permit requests by the Senate, House of Representatives, Supreme Court, or other elected officials to be added to the agenda prepared by the board's President if a majority of the members so vote.

Department of Administrative Services Involvement

Various divisions of the Ohio Department of Administrative Services (DAS) are integrally involved in the state purchasing process and in capital improvements. The department's state purchasing and

computer services divisions are required to give approval to applicable procurement requests prior to their scheduling for Controlling Board consideration. The state architect and real estate bureau are likewise empowered relative to certain capital improvements requests that must come before the board.

Legislative Involvement

In addition to the chairs of the two finance committees, the legislative leadership selects one member from each party from each house to serve on the board. Because of the power of the board, as well as the fact that board members are paid an additional \$150 per diem plus necessary travel expenses for each meeting they attend, membership is highly coveted.

Agencies' requests must be submitted to the Office of Budget and Management at least 20 days prior to the date of the desired meeting. The requests must then be submitted to the board for review at least seven days before the meeting. During the week, legislative aides and the Legislative Service Commission will review and comment on the request. The Legislative Service Commission also prepares questions for agency response and distributes these "green sheets" to the legislative members, which can be helpful to establish positions on items as may be desired. To some extent, the process maintains the separate identity of the executive and legislative participants on the Board. The president is bound to support all requests that make it to the agenda, and the legislature, acting much like the loyal opposition in a parliamentary form of government, questions the request, to hold the government accountable, but ultimately very rarely disapproves the requests. This may seem odd to the casual observer, but from a legislative perspective the focus is on governmental oversight.

Occasionally, legislators must deal with "add-on" requests, which did not follow standard procedure and appear on the agendas delivered on the morning of the meeting without prior notice. When this occurs, legislators and their staff have no opportunity to research and review the requests, and they must vote on them blindly without adequate opportunity to assess their consequences.

Meetings

Although only required to meet monthly, it has been the practice of the board for decades to meet every other Monday. The Controlling Board reviews and acts on more than 1,500 separate requests in the course of a year. Prior to 1991, a significantly lower threshold existed for waivers of competitive bidding, resulting in many more requests overall at that time.

The process used by the board is similar to legislative public hearings except that the first order of business is to dispose of all non-controversial items. These are approved as a block. The remaining items become the subject of legislative scrutiny while the president acts as a biased moderator. A majority vote is required for board action.

The Controlling Board has many important formal powers that aid in the execution of the budget. However, the real value of the Controlling Board may be the regular opportunities its meetings provide for meaningful legislative oversight of the executive branch of government. As such, the partisan nature of the proceedings of the Controlling Board is often overstated. An analysis of Controlling Board votes in 1987 discovered that only six of the more than 2,000 requests that were reviewed and acted upon during that year were approved on a four-to-three party-line vote. A closer examination

indicated that only half of these were purely partisan votes. While no similar analysis has been undertaken recently, by all appearances, the Controlling Board has not become more partisan over time.

Controlling Board Powers

The principal powers of the Controlling Board are delineated in Chapter 127 of the Revised Code and include the power to:

- Transfer appropriations within but not between state agencies.
- Transfer appropriations within an agency between fiscal years.
- Transfer appropriations within or between state agencies made necessary by administrative reorganization or by the abolition of an agency or part of an agency.
- Transfer cash balances between funds under certain circumstances.
- Transfer moneys appropriated to its Emergency Purposes account for any public purpose.
- Authorize spending of other appropriations made to it when conditions set forth in the appropriation are met.
- Increase appropriation authority based on available fund balances for certain funds.
- Create new funds and establish appropriation authority in new line items.
- Temporarily transfer appropriations or re-appropriations between existing funds when needed for capital outlays.
- Release capital appropriations for construction-related projects or the acquisition of real estate.
- Waive competitive selection requirements of the Ohio Department of Administrative Services.
- Other areas deemed by the legislature as requiring oversight, including but not limited to higher education land purchases, development grants and loans, school district loans, and certain subsidy distribution.

Transfer Powers

The transfer powers of the Controlling Board are quite extensive. They serve the dual function of providing a means of control over agency use of appropriations and provide a form of regular legislative oversight of agency operations. Historically, questions were raised in specific instances about whether the Controlling Board had overstepped its bounds to the point of altering the original intent on the use of appropriation authority. Legislation now provides that the board must “take no action which does not carry out the legislative intent of the general assembly regarding program goals and levels of support of state agencies as expressed in the prevailing appropriations acts of the general assembly.”⁵ Interpreting this provision meaningfully is difficult in light of the fact that any of the transfers that the board is authorized to approve likely depart from legislative intent as expressed in the appropriations acts. Such transfers can result in changes in program emphasis or an agency’s commitment to operate at higher levels of spending in future years. Thus, this language is far less limiting than would appear on the surface.

Authorizing Expenditures in Excess of Appropriation

Prior to 1977, the Emergency Board had statutory authority to expend money “not specifically pro-

vided by law.” This power was transferred to the Controlling Board, permitting it to authorize spending for which there are no appropriations in certain circumstances, including:

- If federal receipts into any fund of the state are greater than the amount appropriated by the General Assembly for a specific purpose.
- If the board creates additional funds to receive federal or non-federal revenue not anticipated in an appropriations act for the biennium, it may then authorize the expenditure of those additional funds during the rest of the biennium in which the funds are created.⁶

Authorizing expenditures in excess of appropriations may be the most questionable of the Controlling Board’s many powers given the legislature’s extensive “power of the purse.” However, requests for this purpose, unlike requests for the transfer of funds or certainly for the waiver of competitive bidding, are seldom noteworthy. Accordingly, this power had never been legally challenged until quite recently. In a controversial 2015 case, the Ohio Supreme Court upheld the board’s action to circumvent the legislature and fund the expansion of Medicaid to cover childless adults earning up to 138 percent of the federal poverty rate as provided under the Affordable Care Act. The board’s action was taken after Governor John Kasich vetoed an action by the General Assembly in the FY 2014–2015 budget bill prohibiting just such an expansion.

Competitive Selection Waiver

The Controlling Board most frequently exercises the waiver of competitive selection power. State agencies are prohibited from using appropriated money to make purchases from any one supplier in any amount exceeding \$50,000 when combined with all disbursements to the supplier during the fiscal year for purchases made by the agency, and the amount of all outstanding encumbrances, unless the purchase is made by competitive selection or exempted from the statute by the Controlling Board. The waiver threshold is set at \$75,000 for leases of real estate.

The power to waive competitive bidding can only be exercised after the board determines that there is an emergency or a sufficient economic reason to do so. In 1977, the General Assembly authorized the Controlling Board to establish criteria for the selection of consultants pursuant to its authority to approve the waiver of competitive bidding.⁷ Criteria established subsequent to this provision require agencies to supply considerable detail to be used by the board in exercising this power. State law holds any individual that authorizes purchases in violation of the competitive bidding statute personally liable, but there has never been a recovery made under this provision. As the Legislative Service Commission points out, “this fact, as well as the willingness of the Board to grant retroactive approvals, has diminished the deterrent effect of the sanction.”⁸ State statutes include 38 categories of exemptions from the prohibition that requires either competitive bidding or a Controlling Board waiver. Among many others, these categories include purchases made by the judicial and legislative branches of government, entertainment contracts for the Ohio State Fair, purchases from other state agencies, and purchases from a qualified nonprofit agency for the severely disabled.⁹

More recently, the board has been granted additional authority to approve purchases where the agency has utilized one of several specified competitive selection processes, provided that all applicable statutory requirements are met and a detailed explanation of the evaluation and selection processes is provided. This includes competitive sealed proposals, reverse auctions, and other competitive opportunities involving a request for proposals, request for qualifications, or request for information.

Other Powers

Whenever the legislature is uncertain about the advisability of a particular appropriation, wishes to place conditions on it before its release, or otherwise oversees specific appropriations, it may require Controlling Board approval before the agency can expend the appropriated money. Examples of other powers the board has in statute include:

- The Ohio Department of Education cannot distribute any moneys appropriated to the Foundation Funding Program without Controlling Board approval;¹⁰
- Some professional and occupational licensing boards can increase their fees by up to 50 percent more than the statutes allow, if the Controlling Board approves;¹¹
- State agencies can establish their own compensation schedule for licensed physicians they employ, if the Controlling Board approves;¹²
- Rules that must be established governing the portion of expenses paid by residents of the Ohio Veterans' Home are subject to Controlling Board approval;¹³
- The Department of Natural Resources can issue wildlife management permits and set their fees, as long as they do not exceed hunting, fishing, or trapping license fees, if the Controlling Board and the Wildlife Council approve;¹⁴
- If the Controlling Board approves, the Ohio Department of Higher Education may enter into agreements with contiguous states to allow non-resident students from those states to pay resident tuition at state-assisted higher education institutions.¹⁵

Each biennial budget, additional provisions of temporary law assign responsibilities to the board.

Legality of Controlling Board

The foregoing description of the powers of the Controlling Board make clear that the board truly is a “mini-legislature,” as its critics have maintained. The Controlling Board plays a major role in budget execution. There are very few state agencies that do not appear before the board at some time during the biennium, and most of the major agencies appear many times. Although the General Assembly sets the appropriations for the biennium, the Controlling Board often has the final word on how moneys are spent. It exercises both legislative and executive powers. When it makes transfers between appropriation items or authorizes spending in excess of appropriations, it is clearly acting legislatively. When it limits administrative discretion in spending appropriated funds, it is acting administratively.

All of its powers are legislatively derived, so objecting to the Controlling Board's exercise of its powers is difficult. There has never been a court ruling declaring that the board has exceeded the authority granted to it. In addition to the aforementioned Medicaid expansion case, the Ohio Supreme Court did rule on whether the exercise of its transfer powers constituted an improper delegation of legislative authority. The court ruled that it did not as long as there was some indication of a legislative intent to allow a transfer.¹⁶ The Ohio Supreme Court has also ruled that the powers granted to the Controlling Board to release funds appropriated to another agency are administrative, not legislative, powers; therefore, they are constitutional.¹⁷ Considering the vastness of the powers of the board, it is surprising how few court cases there have been challenging them.

Cash Management

Another aspect of budget control is through the process used to manage the receipt and distribution of cash through the state treasury. The Office of Budget and Management, the Ohio Department of Taxation, the Treasurer of State, and the Auditor of State are the four agencies responsible for managing the state's money. The interaction of these agencies is best understood by following the flow of cash into and out of the state treasury.

Collection of Receipts

All major state taxes are collected centrally in Columbus. State law provides that all state agencies must deposit receipts with the Treasurer of State within 48 hours if the receipt is contingent, and within one week if the receipt is to be deposited directly to a state operational fund. The Ohio Department of Taxation collects the individual income tax and the horse racing wager tax. The Treasurer of State is responsible for collecting all other state taxes except liquor gallonage and transportation. The Division of Liquor Control of the Ohio Department of Commerce collects liquor gallonage taxes, and the Ohio Bureau of Motor Vehicles in the Department of Public Safety collects fees for license tags and related fees. All moneys that an individual state department receives, for whatever reason, are to be remitted to the treasury using a standardized pay-in form.

Accounting for Receipts

The general accounting for receipts is performed by the Treasurer of State, the Auditor of State, and the Office of Budget and Management. Each of these agencies uses a similar coding system for computerized accounting of receipts. The agencies reconcile with each other daily on total receipts and by detailed source and type of receipt on a monthly basis. The Treasurer of State prepares a monthly report showing detailed receipts on a comparative basis with the previous fiscal year.

Each state agency is required to maintain records of all moneys received and deposited with the Treasurer of State, and these records are subject to audit by the Auditor of State not less than every two years. The Treasurer of State is audited annually, usually in January. State law also provides for an audit of the Auditor of State by an independent accountant selected by the governor when the Office of Auditor of State changes or retires. The National Association of State Auditors peer reviews the Office of the Auditor of State every three years.

The Auditor of State is the first to record each pay-in remittance presented to the Treasurer of State; each remittance is also assigned a control number. The Treasurer of State is prohibited from accepting deposits not first recorded by the Auditor of State. Upon receiving the deposit, the Treasurer of State records all checks, verifies the deposit totals, and then deposits the moneys with a local banking institution to the credit of the proper fund.

Issuance of Warrants

Ohio uses a warrant system of disbursement rather than a check system. The Office of Budget and Management issues warrants for the state. Prior to 2007, the warrant function resided in the Auditor of State's office. In a check system, the issuing agency would issue a check, which would follow through banking channels to the bank specified on the check and be paid by the bank. The state would have

money in the bank to cover the checks. The bank would then deliver the paid checks for verification by the Treasurer of State. The warrant system simplifies this process by having all warrants delivered directly to the Office of Budget and Management for payment. The warrant system allows the Office of Budget and Management to know each morning the total disbursements for the day, while a check system could delay this data by one or two days. State warrants are accepted in the same manner as a check, so negotiability is not a problem.

The Office of Budget and Management pays for the warrants daily with a check drawn on a local bank demand deposit account. Any bank in the City of Columbus is eligible for this type of account. These accounts are established at the Treasurer of State's discretion. After the warrants are received, the totals are verified, and the warrants are sorted by fund and warrant number. After a final fund distribution run, the warrants are returned to the issuing agency.

Cash Disbursement

The cash disbursement system begins with a state agency incurring an expense of some type. Prior to incurring an expense, the agency will anticipate the amount and object of the expense and encumber funds from a current appropriation. Upon receiving an invoice for goods or services purchased, the agency prepares a standard cash disbursement voucher, listing the appropriation object code, the amount, and the payee. The voucher is then sent to State Accounting in the Office of Budget and Management for examination and certification of the appropriation and to ensure the availability of funds. The Office of Budget and Management issues a warrant after entering the appropriate information into the computer that produces the warrant. The Office of Budget and Management forwards the warrant to the requesting agency for transmittal to the payee. The payee then processes the warrant through the banking system to the treasurer of state. Consequently, there are now fewer checks and balances in the cash disbursement process because the method of issuing warrants was transferred to the Office of Budget and Management from the Auditor of State's office in 2007.

Investment of Funds

Choosing the right securities and the mix of the portfolio involves considerable expertise. The Treasurer of State is a constitutional officer elected to a four-year term of office. Besides collecting taxes and fees the state treasurer also manages the state's investment portfolio, the collection of securities that the state holds, by investing the state's money to maximize its yield within the confines of safety and the provision of necessary liquidity. The main concern for the state's portfolio is to have the cash available when needed for the operations of state government. Therefore, investment maturities must be consistent with the cash requirements necessary to avoid the forced sale of securities prior to maturity.

State law governs the kinds of securities in which the state may invest. Ohio's treasurers traditionally apply a conservative investment approach. Portfolios have been structured to diversify investments to reduce the risk of loss from an over concentration of assets in a specific maturity, issuer, or type of security. Assets commonly invested in include the following: U.S. Treasury obligations; federal government agency or instrumentality securities; repurchase agreements; reverse repurchase agreements; certificates of deposits and bank deposits; municipal obligations; STAR Ohio; and money market funds.¹⁸

Purchasing

The Ohio Department of Administrative Services is the designated purchasing agency for state agencies.¹⁹ It establishes uniform rules that govern forms of specifications, advertisements for proposals, opening bids, making awards and contracts, supply purchases, and work performance. The department has authority to determine what supplies, equipment, and insurance should be purchased, although several agencies, including the judiciary, are exempted from oversight by The Ohio Department of Administrative Services.²⁰

Competitive Bidding

With certain exceptions, all purchasing by the Ohio Department of Administrative Services is done through competitive bidding. The major exception is purchases of services for \$50,000 or less or supplies that cost \$25,000 or less. The Ohio Department of Administrative Services may purchase these directly without competitive bidding.²¹ Since 1997, these spending ceilings have been increased by the average percentage increase in the Consumer Price Index.

State statutes set forth the procedure for advertising for competitive bids. The Ohio Department of Administrative Services “may divide the state into purchasing districts wherein supplies or services are to be delivered and shall describe such districts on all applications for the notification list.”²² In making competitive bid purchases, the department must advertise the time and place where bids will be opened; they must also disclose the conditions under which bids will be received, the terms of the proposed purchase, and provide an itemized list of the supplies or services to be purchased along with their quantities or amounts.²³ The department can “prescribe such conditions necessary, provided, that all such conditions and terms shall be reasonable and shall not unreasonably restrict competition.”²⁴ The department may also require that all bids be accompanied by a surety bond in a sum it prescribes in order to assure that the successful bidder will execute the terms of the contract.²⁵

Competitive Sealed Proposals

Although state law requires that contracts go to the lowest responsive and responsible bidder on each item, this provision is not as straightforward as it may seem.²⁶ In 1995, a new law was enacted to permit the director of administrative services to make purchases by competitive sealed proposal “whenever the director determines that the use of competitive sealed bidding is not possible or not advantageous to the state.”²⁷ In this case, the Ohio Department of Administrative Services authorizes an alternate procedure involving a request for proposals, as differentiated from a competitive bid proposal. A contract can be awarded under this procedure to the offer “whose proposal is determined to be the most advantageous to this state, taking into consideration factors such as price and the evaluation set forth in the request for proposals.”²⁸ This alternate procedure has proved controversial. It has been used in awarding multi-million-dollar contracts without competitive bidding. Unsuccessful bidders have sued the state and brought their case to the Controlling Board on several occasions, unsuccessfully seeking redress for what they have claimed to be arbitrary decisions on the part of the director of administrative services.

Electronic Procurement

In 2003, the legislature authorized the Ohio Department of Administrative Services to accelerate the use of electronic procurement. This legislation was based on recommendations of the “2000 Management Report to the Governor.” The process used for this type of procurement is called “reverse auctions” and is defined in Section 125.072 of the Revised Code as a purchasing process in which bids are submitted that compete to sell services or supplies in an open environment via the Internet. It is up to the director of administrative services to determine when such a bidding process is advantageous to the state and authorize a state agency to purchase services or supplies in this manner.

Trend Towards Privatization

Beginning in the 1990s, states increasingly turned to the private sector for services that were traditionally performed by public agencies. The major argument was that productivity was greater in the private sector because individuals can operate in an environment unburdened by inert bureaucracies. Another important factor contributing to increased productivity are the restrictions on employment that are governed in the public sector by civil service rules. Contracting out services is usually associated with “downsizing” and “rightsizing,” but not always. Ohio’s use of private contracts to run some state prison facilities is an example of privatization with a focus on economizing. Another example would be Medicaid managed care organizations (MCOs). Institutions of higher education have followed suit. The Ohio State University has privatized both its parking infrastructure and its energy utilities in recent years. Although controversial, privatization as an option to government service provision appears to be growing in Ohio. It is most appropriate when the privatized area is peripheral to the agency or institution’s mission, as was the case with Ohio State but not the situation with prisons.

Cutback Management

Budget execution requires the active intervention of the governor when unexpected developments occur that adversely affect revenues or expenditures. Economic slowdowns and the business cycle most often trigger cutbacks, but so too can errors in revenue forecasts, unexpected entitlement spending, and adverse court rulings. During the first half of the 1980s and the 1990s, and for much of the first decade of the 2000s, the nation was in an economic recession, and resource scarcity was the predominant theme of budgeting. In Ohio, the state budget was subjected to all of the techniques of cutback management: program reductions and eliminations, hiring freezes, unpaid furlough days, postponement of repairs and maintenance, reallocation of resources, and other responses to resource deprivation.

Budget Cutting Techniques

Ohio Revised Code Section 126.05 provides the governor with broad authority to issue executive orders to prevent expenditures and incurred obligations from exceeding revenue receipts and balances. Although neither the Ohio Constitution nor statute explicitly indicate that the state must keep its budget in balance, several provisions, when construed together, make clear that such a requirement exists.²⁹ Governors have taken different approaches when searching for politically painless ways to reduce budgets. One method of cutting budgets is the “across-the-board” approach, where agency budget requests or appropriations, or some portion of them, are reduced by a fixed percentage. This

approach is justified by maintaining that it is fair and equitable, because it treats all agencies and programs the same in “sharing the pain.” However, it does not recognize the disproportionate burden such a reduction has on different size programs and agencies. A 5 percent, across-the-board cut will have a greater impact on a small program than on a large one, because the small program has less ability to make meaningful savings.

Another method is to establish uniform budgeting principles and apply them to all agencies. Such principles might include a freeze or partial freeze on new employees or equipment, eliminating all new programs and program expansions, and placing a moratorium on new construction.

Arguably, the preferable method of budget reduction is agency-by-agency analysis. In this kind of review, fiscal judgments are based on records of past agency spending, agency testimony and responses to questions posed during the budget hearings, and material submitted in support of the budget request. This approach may appear to be more subjective than the others, but it is actually a quite reasonable way of assessing an agency’s budget needs. It relies upon the expertise that the budget analyst has developed in monitoring the ongoing operations of the agency. Since budget analysts are neutral, this kind of analysis can be quite objective. However, staff budget analysts need to understand that budget cutting is a perilous business and those being cut will act victimized if at all possible. In the executive branch, powerful political appointees may attack a “lowly” analyst’s credibility and knowledge.

Lessons in Cutback Management Policy

Historically, when forced to do so, governors would cut budgets by the same percentage across-the-board. Governor George Voinovich was the first governor to cut selectively, exempting some agencies and programs within agencies from cuts, and then applying different percentages to others. In doing so, he used his statutory power to reestablish state spending priorities. Thus, he established the ability of the governor to use this power to rewrite the state budget. Subsequent governors have followed suit when they needed to make similar budget reductions during their administrations.

Individual agencies responded to the cuts differentially. To counter state spending cuts in institutions of higher education, they cited their power to raise money locally by increasing tuition and fees. Also, many colleges and universities had accumulated significant balances at their own institutions because of state policy that enables them to retain state appropriations not used at the end of the biennium. Institutions were forced to draw these down. Local school boards reacted by seeking local property tax and school districts income tax increases. For those districts in poorer communities, the levies were most often rejected and the gap between spending by wealthier and poorer districts widened, eventually leading to the Ohio Supreme Court decision in 1997 that the state’s support of primary and secondary education was unconstitutional because it was neither adequate nor equitable. Counties, cities, and special districts providing health and human services also sought tax increases to compensate for reduced state funding.

While other agencies and programs found their own ways to cope through postponing needed repairs and maintenance, not filling employee vacancies through a hiring freeze, reducing travel, and postponing the payment of bills beyond the end of the fiscal period, the spending to support new state prisons and the justice system was allowed to grow far beyond the rate of inflation.

Agency Cutback Management

It is one thing to order budget cuts at the policymaking level, and quite another to implement them at the agency level. Agencies are constrained in what they are able to do by civil service laws that require staff reductions to follow defined procedures, including permitting “bumping,” where a reduction-in-force, or “riffed,” employee can offer to take the job of one with less seniority. It is not always possible to affect the economies expected by staff reductions when the costs of paying the accumulated sick leave and vacation benefits and unemployment compensation are weighed against the salary, wage, and benefit savings of cuts. There are also problems attendant to Veterans’ preferences that must be considered. Staff cutbacks always result in morale problems and often job dissatisfaction as well, which can lead to productivity reductions that cancel out part of the expected savings.

If agencies want to achieve cuts by reducing subsidies to other units of government to carry on government services, the effect is to export the problem to a lower level of government that must deal with the same cutback problems the state avoids by taking this action. The end result is almost certainly going to be a reduction in the level of governmental service provided to individuals.

If the circumstances leading to the reductions are endemic, that is, because a government problem has been solved and a program is no longer needed, it must be understood that there are usually costs associated with closing down an activity. Paradoxically, reducing an agency’s activities by simply reversing the way that it was built-up is difficult. Some kinds of expenditures continue regardless of the size of an organization. For example, a higher education institution will want to maintain a registration office, a financial aid office, and other infrastructure, whether it is supporting 1,500 students or 50,000. There will be a certain number of reductions possible in such circumstances, but they will not always be proportionate.

Another problem is that often it takes money to save money. If increasing productivity is necessary to manage budget reductions, usually training and equipment costs must be incurred. Yet, if an agency’s budget has been reduced, where will it find the resources for such an investment except by making even more severe cuts? If there is a long enough timeline to plan cuts, this problem can be addressed; unfortunately, most cutbacks must be undertaken in a short period of time.

All of this suggests that responding to budget cutbacks is very difficult without severe organizational stress and without severely damaging the agency’s ability to carry out its mission, goals, and objectives. However, cutback management strategies can be successfully employed. While difficult, economic necessity is driving state and local governments to achieve economies of scale through collaboration or to consider privatizing some public services. Seven county job and family service agencies in north-west Ohio came together in 2011 to centralize their business processes and streamline information and document sharing. For its part, the state explored, albeit with limited success, the sale of both adult prisons and juvenile detention facilities as well as the Ohio Turnpike.

What Works

According to organization management theory, budget cutbacks will be most effective if all those in an organization participate in the cutback process. This inclusivity will have the effect of allowing everyone to understand the nature of the problem and can lead to additional suggestions on economizing, ones that management alone would not have considered. Involving the clients or constituents

of the organization subjected to cutback management is also important, for the same reasons that all staff should be involved.

Cutback management affords an agency the opportunity to review its priorities and determine which of its operational strategies are least effective, which programs or activities it conducts are not legislatively mandated, and which are operating inefficiently. If the budget was initially built by setting priorities, the kind of data that is needed to prioritize reductions will already be at hand.

Unfortunately, there is no one-size-fits-all formula for responding to budget cuts. Each case will be different, and management skills will be the key to cutback strategies that are successful and not organizationally disruptive.

Legislative Oversight

Oversight of the executive branch of government is a legislative responsibility as part of the checks and balances system in which each branch of government acts as a constraining force on the others. Oversight is an integral component of the state budget process. The legislature conducts its oversight through budget hearings, ongoing legislative staff analyses, the Legislative Service Commission's monitoring of agency fiscal activities, and through the Controlling Board and the Joint Committee on Agency Rule Review. It is also undertaken through legislative inquiries into citizen complaints and informal agency-legislator contacts.

Legislative Budget Analyses

A good budget analysis will help legislators during budget hearings as they examine executive activities and quiz officials on how well they are meeting agency goals and objectives. Even though legislators may not dwell extensively on all questions raised in the analyses, the fact that they are raised by staff serves as a form of oversight. Agencies are often asked to provide written responses to legislative staff questions, and these responses force a kind of self-analysis. They can also be used in future years to see how well agencies met their promises. The recurring nature of the budget process is ideal as a vehicle for continuing legislative oversight. Every two years, and no less frequently, according to the Ohio Constitution, the budget of each and every state agency must be examined. The regularity of the process serves as a reminder that state agencies are responsible for their past actions.

Legislative budget analyses will point out administrative actions that deviate from legislative decisions, established legislative intent, or past budget plans. Representatives of the agency's clientele, interest groups, and constituents also make legislators abundantly aware of any problems with the agency's operations. Legislators frequently arrive at budget hearings armed with a catalog of problems. They use the opportunity of the budget hearing to quiz the agency on these problems. The potential threat of a budget cut is usually sufficient to encourage administrative resolution of the problem. The legislature also may use budget provisos or riders to ensure that agencies comply with legislative intent.

Budget Provisos and Riders

Provisos and riders are statements that usually follow an appropriation amount, although they can

be separate sections of an appropriations bill. Provisos and riders can prohibit a certain activity, describe legislative expectations for the expenditure of a particular appropriation, or require an agency to provide a report to the legislature on the use of the funds. In one instance, the legislature used a rider to eliminate a drug abuse program without changing the statutes governing the program. An interesting variant occurred where the legislature gave the Ohio Housing Development Board a “-0-” appropriation for the second year of the biennium. Presumably, if federal or other funds were not forthcoming, the agency would effectively cease to exist.

Two uses of provisos or riders can be found in the following examples from the Ohio Department of Aging’s FY 2018–2019 budget. The first example specifies the intent of an appropriation item, a common use of provisos:

“The foregoing appropriation item 490411, Senior Community Services, may be used for services designated by the Department of Aging, including, but not limited to, home-delivered and congregate meals, transportation services, personal care services, respite services, adult day services, home repair, care coordination, prevention and disease self-management, and decision support systems. The Department may also use these funds to provide grants to community organizations to support and expand evidence-based/informed programming. Service priority shall be given to low-income, frail, and cognitively impaired persons 60 years of age and over.

The second example places in temporary law responsibilities of the Ohio Department of Aging that may be delegated to it through agreement with the Ohio Department of Medicaid:

“Pursuant to an interagency agreement, the Department of Medicaid may designate the Department of Aging to perform assessments under section 5165.04 of the Revised Code. The Department of Aging shall provide long-term care consultations under section 173.42 of the Revised Code to assist individuals in planning for their long-term health care needs.

The Department of Aging shall administer the Medicaid waiver-funded PASSPORT Home Care Program, the Assisted Living Program, and PACE as delegated by the Department of Medicaid in an interagency agreement.”

Provisos and riders were discussed in detail in Chapter 6.

Controlling Board

The duties of the Controlling Board and its operations have already been described, but much of what goes on during its meetings has the effect of providing ongoing legislative oversight of agency operations. Analyses of agency requests are prepared by legislative fiscal staff for the legislative members of the board, including possible questions about selected requests. Legislative members of the board are also armed with constituent complaints, interest and clientele group concerns, and other forms of public dissatisfaction about an agency’s performance. When an agency appears before the board to justify its request, legislative members will spend whatever time is necessary to oversee the agency to review the dissatisfaction or complaints described to them, whether they are related to the agency’s request or not. Nonetheless, the vast majority of requests are approved without any discussion, and virtually none are voted down although a number of requests are deferred before the board can formally vote on them.

In rare circumstances, the Controlling Board may hold a special hearing on a particularly difficult issue, acting as an ad hoc committee. A special meeting of the board was held to review the purchase of gaming terminals by the Ohio Lottery Commission. Similar contracts had resulted in legal actions in nearly every other state because of both the size of the purchases and the intense competition within the industry. To protect the board from any potential legal action, the president of the board had a court reporter present at the special hearing to record the proceedings. Indeed, the state was sued following the approval of the contract but prevailed in sustaining the board's action.

The Joint Committee on Agency Rule Review

In 1977, the legislature created the Joint Committee on Agency Rule Review (JCARR), to review proposed new, amended, and rescinded agency rules to ensure that:

- The rules do not exceed the scope of the rule-making agency's statutory authority.
- The rules do not conflict with a rule of that agency or another rule-making agency.
- The rules do not conflict with the legislative intent of enacting the statute under which the rule is proposed.
- The rule-making agency has prepared a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment, or rescission.
- The rule-making agency has met the incorporation by reference standards for a text or other material.
- The rules do not have an adverse impact on business.³⁰

JCARR is a legislative committee consisting of five legislators from each chamber that meets once or twice monthly. Staff analyses are prepared to assist JCARR members in reviewing all agency rules as they are presented to them. JCARR members are specifically authorized to request rule-making agencies to provide information about how the agency exercises its statutory authority. This power gives JCARR extensive legislative oversight authority. Members may recommend the enactment of a concurrent resolution to invalidate or suspend a proposed or effective rule, amendment, rescission, or part thereof. Ohio is one of the few states with such ongoing, regular legislative oversight of agency rulemaking. Accordingly, JCARR, along with the Controlling Board, are often referred to as Ohio's "mini-legislatures."

Temporary Committees

In addition to these ongoing oversight activities, lawmakers sometimes assign research studies to its staff using the Legislative Service Commission as well as interim study committees as problems are brought to the attention of the legislature. For example, the legislature created a Nursing Home Commission to oversee all of the state's programs related to the nursing home industry. The commission hired its own staff and consultants and made significant recommendations that the legislature used to reform the program. The commission was disbanded after it completed its work. The workers' compensation system and state school financing were similarly reformed.

Permanent Interim Committees

Over the years, the legislature has used permanent interim committees to conduct ongoing reviews.

From 1989 to 2005, the legislature funded and staffed a Legislative Office of Education Oversight to conduct ongoing reviews of primary, secondary, and post-secondary education programs focusing on effectiveness and efficiency. The 126th General Assembly abolished the office, but the 131st General Assembly recreated it as the Joint Education Oversight Committee in 2015. Others have come and gone.

The oldest continuous permanent committee of the legislature is the Correctional Institution Inspection Committee. Created in 1977, this committee is charged with maintaining a continuing program of inspection of the state's correctional institutions, each of which is to be inspected at least once during the biennium. The committee also evaluates and assists in the development of programs to improve the condition and operation of those institutions.³⁰

More recently, a Joint Medicaid Oversight Committee of the legislature was created in 2014. Its ambitious purposes are to oversee Medicaid compliance with legislative intent, evaluate legislation for long-term impacts on the program, and assist in limiting the rate of spending growth, while improving care and health outcomes.³¹

Legislative Service Commission Fiscal Staff

Not to be overlooked in describing legislative oversight in the appropriations process is the role played by legislative fiscal staff, which continuously monitors the receipt and expenditure of state funds. Legislative Service Commission fiscal staff regularly monitors how the Office of Budget and Management has assigned appropriations or made allotments and un-allotments for each line item in appropriations acts. One of the functions of the Legislative Service Commission fiscal analyst is to monitor the spending of agencies and to review the allotment status of each appropriation item, looking for any unusual activity that might warrant questioning.

From time to time, Legislative Service Commission fiscal analysts must estimate the amounts of moneys that will not be necessary to honor agency obligations and could therefore be re-appropriated for another purpose. On one occasion, this monitoring process allowed the legislature to assemble sufficient moneys to appropriate to Medicaid when demands for those funds outstripped the appropriations. Even if the legislature does not re-appropriate surplus funds, it is beneficial to know the moneys are there should the need arise.

The very existence of a permanent, full-time legislative staff with access to all or most of the fiscal documents of the executive branch, and with the technical expertise to read and understand those documents, has served as a mechanism of legislative oversight. The administration hesitates to undertake questionable practices, knowing it is always possible that someone will be looking over its shoulder.

Since 2000, the role and importance of non-partisan legislative fiscal staff has been diminished. This change has not been brought about by external forces but rather by the legislature itself. At this time, the largely autonomous Legislative Budget Office was fully subsumed under the Legislative Service Commission, resulting in more standardized and less controversial work products. Legislators have increased their reliance on their own partisan fiscal staff and interest group advocates to provide them with the kind of assistance that had formally been provided by the Legislative Budget Office. They have also become more reliant on the executive branch's central budget agency, Office of Budget and

Management. With so many new legislators taking office with the full implementation of term limits, the reorganization made it especially difficult for the legislature to continue its equal partnership with the executive branch in the budget process. It also helped to strengthen legislative leadership in their control over the appropriations process.

Monitoring Federal Funds

Another of the General Assembly's concerns is the oversight of the state's federal funds. Throughout the 1960s and 1970s, the federal budget provided more and more aid to states in the form of grants-in-aid to induce states to initiate new programs. States could obtain the funds only if they provided matching moneys and managed the program according to dictates from Washington. Until the election of President Ronald Reagan, states were eligible for more than 500 separate grants-in-aid. Ohio, like other states, took advantage of the availability of these moneys, recognizing that they would not be permanent grants and that eventually the state would have to decide whether it could afford to, or even wanted to, take over the programs.

In 1981, President Reagan announced his "New Federalism" initiative and began a process of reducing federal participation in many joint federal-state programs. This reduction caused serious withdrawal symptoms for the states. President Reagan's philosophical change, and its attendant problems, led the state to provide for greater central controls and legislative oversight of the receipt and disbursement of federal funds.

By law, no state agency may spend any federal funds unless the expenditures are pursuant to a specific legislative appropriation or an executive order. The governor may issue executive orders to authorize agencies to participate in federal programs for which they have no legislative authorization.³² Executive orders may be issued for new federal programs that did not exist at the time the budget was enacted, or for old programs in which the agency did not plan to participate. Such executive permission for state agencies to participate in federal programs lasts for no more than one year and can be canceled by the legislature at any time. If a state match is required to participate in a federal program, the Controlling Board must approve the amount of the state match. The governor may designate an existing state agency or create a new state agency in order to qualify the state or a unit of local government for participation in a federal program. An executive order creating or designating a state agency may be in effect no more than three years.

Ohio appropriates most of the federal funds it receives, but budgeting for an agency's federal resources suffers because the legislature does not have independent means of estimating federal receipts. The Office of Budget and Management and legislature generally rely on the agency's estimates of federal funds, which agencies can either exaggerate or underestimate, depending upon whichever might result in more state moneys. Since the 1970s, the General Assembly relied on its Joint Legislative Committee on Federal Funds to review all agency requests and receipt of federal funds. In 2001, direct legislative oversight of federal funds ended when the legislature abolished the committee.

If an agency receives less federal money than it had anticipated, any state matching money provided to the agency must be reduced in proportion to the federal shortfall. An agency that receives more federal money than was anticipated must seek Controlling Board approval to spend it. If federal regulations permit, the Controlling Board may transfer state General Revenue Fund appropriations, in an amount equal to the increased federal funds, from the affected state agency to the Controlling

Board.³³ Thus, federal funds can be substituted for scarce state dollars, and the state dollars thereby released for other uses.

Agency Contacts

With a full-time legislature in Ohio, it is possible for legislators to oversee the executive through its constituent work. Legislative in-baskets overflow with public complaints about perceived agency injustices. Whenever a legislator investigates a citizen complaint, the result is a form of oversight, and when a legislator receives a series of complaints addressing the same problem, it serves as an alert to a more serious problem that may require another established method of legislative oversight to seek a solution. Constituent complaints are frequently the initiating force behind legislative staff reports, bills introduced in the General Assembly, study resolutions, and formal performance evaluations.

Membership on Executive Bodies

There is an increasing trend for legislators to serve on boards that are established to oversee the activities of agencies providing services to the public. Legislators, particularly the chairs and members of the finance committees, are involved in a number of activities that bring them into contact with executive agencies. Lawmakers serve on the Controlling Board, act as nonvoting members of the State Board of Education and the Ohio Board of Regents, and sit on various other bodies that monitor agency activities. In a recent trend, executive agencies have tapped legislators to serve on their own temporary study committees. This form of service can provide legislators with input into the initiatives the agency is thinking of pursuing. From the agency's perspective, it can create a good advance sounding board and perhaps early legislative buy-in of the new initiatives being considered.

Auditing

The final stage in the budget cycle is most commonly called auditing. Auditing involves continuous review of financial transactions as well as post-spending review. The legislature, as well as the public, is interested in assuring that government programs have been administered honestly and faithfully, economically, efficiently, and effectively. Formal mechanisms to achieve fiscal accountability include ongoing monitoring, internal auditing, fiscal-legal auditing, and performance auditing.

While external audits review financial operations to give reasonable assurance that there are no material errors in financial statements, internal auditing addresses broader concerns of policy, procedures, legality, effectiveness, and efficiency. The largest state agencies maintain their own internal auditing staff with broad authority to examine and evaluate the leadership, management, planning, policies, organization, functions, and processes of their agency, to determine if reasonable assurances exist to achieve the goals of the agency and the needs of its customers. Although originally developed as a financial function, internal auditing has evolved to encompass managerial and performance auditing.

Management Reviews

In 1974, the Office of Budget and Management created a separate unit designated to undertake organized management reviews of various state agencies, primarily upon their request. The reviews

were to be funded by charging the costs of the service back to the agency that was being reviewed. Since management audits can sometimes be critical of ongoing agency activities, it was questionable whether an agency would willingly solicit such criticism, much less pay for it. Whether this approach to management auditing would be successful was never fully tested, because shortly after the unit was established, Governor John Gilligan was defeated, and the Rhodes Administration abolished the division.

In 1975, Governor James Rhodes established a Council of Cost Control to do management audits of the larger state agencies. The council was composed of private businessmen who were directed to review every large state agency and department and make recommendations to the governor on how to achieve more effective and economical state government. The effort involved volunteers from the business community, who donated more than 35,000 hours of service during seven months. A management-consulting firm and a major accounting firm were also hired along with a full-time staff to monitor agency compliance with the recommendations and to document cost savings.

The council's goal was to assess effectiveness, but it actually concentrated on ways of achieving economy and efficiency. Its focus was on how to do things better rather than to change what was being done, which is the concern of effectiveness reviews. This study remains the largest single effort undertaken to date to apply private business principles to state government. A separate cost control implementation unit was established in the Ohio Department of Administrative Services to monitor agency implementation of the recommendations that came out of the review, and regular analyses were made of how each of the proposed recommendations were being addressed. The review resulted in a large number of government improvements. While Governor Richard Celeste chose not to continue the reviews, Republican governors George Voinovich and Bob Taft repeated the process to a lesser extent.

The Legislative Service Commission became actively involved in reviewing program effectiveness for a short period between 1978 and 1982. It issued a number of reports that focused on management improvements and were similar to performance audits. The Legislative Service Commission stopped conducting such reviews because of a lack of legislative interest in them.

Performance Auditing

There is general agreement that a performance audit should answer the basic questions of (1) whether an agency is being run as efficiently as it could be; (2) whether an agency program meets the needs of the public; and (3) whether the agency or program is providing services the way the legislative body that created it intended. Thus, performance auditing undertakes a review of agency or program operations determining if it is operating at the least possible cost to the taxpayer; it examines results determining if agency programs are meeting their objectives; and it investigates compliance, determining if administrators are doing what legislators intended. In Ohio, the Auditor of State emphasizes providing expert advice and stimulating innovation, discovery, cooperation, and assistance rather than focusing on program review, assessment, and control.

Ohio entered the field of performance auditing with the legislative directive included in the FY 1996–1997 budget, requiring the Auditor of State to undertake a performance evaluation of the Cleveland City School District. The legislature uses the report to make changes in how school districts were monitored and reviewed. In the FY 1998–1999 biennium, legislation was enacted that required the

Ohio Department of Education to implement performance-based incentives for school districts and to require that the state's 21 urban school districts, which were to be subjected to performance audits by the Auditor of State, met performance standards before they could receive funds appropriated to the state's Urban School Initiative.³⁴ Other legislation replaced the system of monitoring school performance with a new system based on state-established performance standards.³⁵ Finally, the legislature tasked the Ohio Department of Education with the issuance of annual report cards for each school district and for the state as a whole, based on education and fiscal performance data. The data is used to set benchmarks for current state and school district academic and operational performance levels, to compare these levels to those in other states, and to comparatively measure improvement in Ohio's overall public education system over time.³⁶

The Auditor of State is directed to conduct a performance audit of any school district whose finances put them in financial jeopardy, as determined by the auditor using legislatively established criteria. The use of performance auditing on school districts has been extended to the state's foster care system, which is locally operated. In 1999, an audit of that program was initiated. A 1999 attempt by the legislature to authorize the Auditor of State to conduct a performance audit of the state's Medicaid program was vetoed by Governor Bob Taft as one of his line-item vetoes of the FY 2000–2001 state budget. However, a similar provision was included in the FY 2006–2007 budget act, and it was not vetoed by Governor Taft.

Until 2011, there was no general authority for the Auditor of State, or any other body in Ohio, to conduct performance audits, as there was in other states.³⁷ However, Sub. Senate Bill 4 of the 129th General Assembly granted the state auditor statutory authority to perform performance audits on a minimum of four state agencies, or parts thereof, each biennium. Selection is done in consultation with the governor and legislative leadership. The initial four agencies selected for a performance audit during the FY 2012–2013 biennium were the Ohio Department of Education, the Ohio Department of Transportation, the Ohio Department of Job and Family Services, and the Ohio Housing Finance Agency. The Auditor of State's office estimates that more than \$1 billion in recommended savings has been identified through their various performance office since this time. In 2016, the Auditor of State's authority to conduct performance audits was extended to public institutions of higher education. The Ohio State University agreed to be the first higher education institution to undergo a performance audit.

Internal Audits

In FY 2009, the Office of Budget and Management established an internal audit office to direct internal audits to improve agency operations in areas of risk management, internal controls, and governance. The annual audit review plan developed by the Office of Budget and Management utilizes risk assessment techniques and identifies the specific audits to be completed during the year. The office also conducts periodic audits of each agency's major systems and controls, including those pertaining to accounting, administration, and information technology.³⁸

Independent Audits

Auditing state agencies is a major function of the independently elected Auditor of State. In the 1950s, most states either selected their auditor by separate election or by appointment by the governor. Increasingly, the responsibility has shifted to the legislative branch. The justification for this is that

since the legislature is responsible for setting the state's public policy and for making appropriations to carry out its intent, then a legislative unit should ultimately determine whether this policy is being implemented effectively, and if state funds are being spent in accordance with legislative intent. This is how the federal government performs this function through the U.S. Government Accountability Office, or GAO.

From 1961 until 1975, Ohio officially had a legislative auditor. However, the term "legislative auditor" was misapplied, since the responsibilities of the position organized within the Legislative Service Commission, were almost exclusively related to providing budgetary assistance to the General Assembly and staffing the Controlling Board. When the General Assembly passed the FY 1975–1976 biennial appropriations act, it removed all references to the legislative auditor, and the office was in effect abolished since the Legislative Budget Office had, by then, taken over all of the functions the legislative auditor had previously performed. Despite some subsequent legislative efforts to establish its own independent audit commission, responsibility for performance audits remains with the Office of Auditor of State which had been against legislative establishment of its own independent audit commission.

Fiscal-Legal Audits

The Office of Auditor of State expends most of its staff and expenditures on direct financial-legal audits of local governments on a one- or two-year cycle, depending on the size of the jurisdiction. While some of these audits are contracted out, most are conducted by state audit staff. The Audit Division also includes a state government unit that conducts fiscal-legal audits of "all state offices...including every state educational, benevolent, penal, and reformatory institution, public institution, and the offices of each taxing district or public institution in the state."³⁹

A fiscal-legal audit is concerned principally with ensuring the honesty and integrity of government. It reviews whether public funds have been expended according to state statutes; in accordance with recognized accounting and other principles of fiscal management, and for the specific purposes for which the funds were appropriated. According to statute, the auditor is to maintain a regular schedule of post-audits, so that each state agency and institution is audited every two years.

Special Audits

The Office of the Auditor of State, along with three other state agencies, uses investigative powers to determine whether agency officials have faithfully executed their fiduciary responsibilities. The auditor is authorized to examine the accounts of any private institution, association, board, or corporation that receives public moneys as well as those of state and local government agencies. Both government agencies and private organizations that receive public funds can be subjected to what are called "special audits" when instances of possible mishandling of public funds are called to the auditor's attention. Special audits are usually initiated as a result of information supplied by citizens and submitted to the auditor. A special committee meets weekly to review the information internally and determine whether it is sufficient to institute a special audit, which, though fiscal in nature, is more like an investigation.

Most special audits involve units of local government or recipients of government funds. In a few instances, notably the case of corruption and mishandling of funds at Central State University in 1996,

extensive auditing resources are devoted to conducting a full-scale investigation of misuse of funds by an agency of the state. Another example of a state special audit in higher education included the 1997 investigation of embezzled funds by the controller at North Central Technical College (now North Central State College). A special audit finalized in 2010 found that almost \$2.4 million in overpayments had been made to three construction companies by a Cuyahoga County community. These overpayments were a result of the companies both overbilling the City of Solon for concrete work and substituting inferior concrete in the projects.⁴⁰ In 2013, a special audit was issued regarding potential student attendance manipulation by Ohio school districts in which nine districts were identified with evidence of “scrubbed” student data. A follow-up special audit in 2014 examined allegations of intentional fraud and data rigging in the Columbus City School District. The allegations led to the conviction of its superintendent on dereliction of duty charges; two other administrators were also sentenced for their roles in the scandal and many others were disciplined for their role in the data scrubbing scandal. Unsatisfied that fewer than half of the individuals involved in the data scrubbing had been disciplined three years later, the Auditor of State launched a review in 2017 regarding the Ohio Department of Education’s disciplinary process. When a special audit is undertaken, the internal auditing unit of the agency affected is usually involved, as well as the Office of the Inspector General if the case involves an agency under the direction of the governor.

Public Integrity Assurance Team

The Public Integrity Assurance Team in the Office of Auditor of State aims to improve governmental accountability by investigating fraud and illegal acts affecting governmental resources and assisting in prosecuting identified offenders. The Special Audits Section and the Special Investigations Unit concentrate on the prevention of fraud, waste, and abuse in state government. They devote much of their attention to the state’s public assistance and Medicaid programs. On an ongoing basis, it maintains a computer-matching program to determine and locate persons with outstanding felony warrants who are on public assistance. It also performs computer matches of the names of parents owing child support and lists of persons licensed by the state’s professional licensing boards to assist local child support enforcement agencies in collecting delinquent support. State law allows license suspensions as a means of collecting child support. Another project identifies and resolves allegedly false claims on government health insurance programs for clinical laboratory tests.

Special Investigatory Units

State Highway Patrol

Since 1975, the State Highway Patrol has had a special investigative unit that has made numerous examinations, both narrow and broad, of government operations. Not all of the examinations are limited to investigating possible state government officials’ corruption. In the past, the unit has looked into such items as the management of the Bureau of Workers’ Compensation, the administration of the state’s Medicaid and public assistance programs, and problems within state institutions. Most investigations have been in the nature of fraud control. Sometimes, when a problem has been brought to the attention of the Auditor of State or the Inspector General, the governor has ordered investigations as a means of showing the public that the administration is addressing a problem that has already been made public. According to statute, highway patrol investigations are initiated by the governor

for “major criminal investigations that involve state property interests.”⁴¹

Office of the Inspector General

In 1988, Governor Richard Celeste created by executive order the first Office of Inspector General (OIG). In 1990, legislation was enacted to permanently establish the office. The inspector general is authorized to investigate wrongful acts or omissions committed by state officers or state employees involved in the management and operation of state executive branch agencies.⁴² The office does not investigate legal questions, workplace issues, or personal disputes. As an example of its workload, in 2017, the office received and assessed 397 complaints. Forty-eight new investigations were opened and an equal number of cases were closed. Of the closed cases, a determination of reasonable cause to believe an act of wrongdoing or omission had been committed by a state employee or official was found in 28 instances. In 23 cases that were closed, agencies were offered one or more administrative recommendations to consider for improving state policies and procedures. Criminal charges were brought in three cases. Since the inspector general is a gubernatorial appointee, as are the officials of the agencies reviewed, the effectiveness of its reports, and adherence to the recommendations, depends largely on the governor’s commitment. Pressures by the press, however, enhance the powers of this agency, since its reports are made public on the “Watchdog Ohio” Website.

In addition, agencies that receive federal funds are also subject to investigation by a federal OIG. A few, large state agencies, such as the Ohio Department of Job and Family Services, have an inspector general permanently assigned and housed with them.

Joint Legislative Ethics Committee

The Joint Legislative Ethics Committee was created to monitor compliance with Ohio’s ethics law as applied to the legislative branch of government. Besides receiving and reviewing financial disclosure statements and rendering advisory opinions on ethical issues raised by officials and employees of the General Assembly, the committee investigates violations of the ethics code and can either impose civil penalties or refer matters for criminal prosecution.⁴³ The committee also enforces the Legislative Code of Ethics and the House and Senate rules, which are applicable only to the legislature and its employees. The Committee has established the Office of the Legislative Inspector General, which has a full-time staff responsible for the actual implementation of the provision of the ethics and lobbying laws.

The Joint Legislative Ethics Committee is responsible for maintaining a registry of individuals and organizations who lobby either the legislature or executive agencies.⁴⁴ Lobbyists and their employers must file an Updated Registration Statement with the committee three times per year to list total expenditures for the reporting period. Strict spending limits on gifts, meals, food and beverages have been established for both lobbyists and their employers. Members and members-elect of the General Assembly must comply with similar requirements.⁴⁵

Ohio law also prohibits any public official or employee from soliciting or accepting, or any person from promising or giving, anything of value that is of such a character as to manifest a substantial and improper influence upon that official with respect to duties. In addition, no legislator may knowingly accept from a legislative agent payment of expenses for travel or lodging, although there are some exceptions; more than \$75 cash aggregated per calendar year as payment for meals or other food and

beverages; or a gift of any amount in the form of cash or the equivalent of cash, or a gift or any other thing of value whose value exceeds \$75 aggregated per calendar year.⁴⁶

Courts and the Budget

State budgeting is a shared function of the executive and legislative branches of government. However, the courts also play an important role, as part of the checks and balances system of American government. Decisions by federal and state courts have impacted budget decision-making through their power to interpret the constitution and state laws.

At the federal level, court decisions have affected state spending by mandating additional costs. For example, the United States Supreme Court's decision that prison overcrowding constituted cruel and unusual punishment, which is prohibited under the Constitution, resulted in considerable state expense in building and operating new prisons.

The state has suffered a series of setbacks as a result of judicial branch involvement in Ohio's fiscal affairs. In October 1982, the Ohio Supreme Court ruled in *Motorists Development Company et al. v. Lindley* that the state's corporate franchise and income tax had been improperly administered since its inception. The court ordered the state to repay corporations an estimated \$75 to \$80 million collected improperly since 1972. In 1982, the federal courts also ruled that the state had been guilty of contributing to segregation of the public schools, and that it must share in the costs of desegregation. This decision resulted in another new state obligation of several hundred million dollars paid to several urban school districts.

Judicial interpretation of budget provisions and statutes affecting the budget are two other ways in which the courts influence state budgeting. When legislators draft legislation, they cannot contemplate every possible circumstance under which the law will be applied. It is left to the judiciary to interpret the law as it is applied to individual cases. While the courts' interpretations apply only to the case at hand, the principle of judicial precedent serves to guide the court when the same or similar cases come before it. Precedent represents a form of judicial policy. The essential point is that the courts are the final arbiters of the meaning of appropriations and of provisions related to them.

In addition to interpreting and determining the constitutionality of legislation, courts play an important role in determining the content and scope of legislation. Some have accused the judiciary of meddling in public policy when they issue controversial decisions. The 1997 Ohio Supreme Court decision overturning the state's method of financing primary and secondary education is a case in point.⁴⁷ The prevailing judges were accused of having engaged in partisan politics and interfering with legislative policymaking prerogatives, as well as trying to force the legislature to raise taxes. As a result, the legislature never fully addressed the court decision, certainly regarding the operating needs of local schools. They were more forthcoming in meeting the capital needs of local schools through the resources obtained in the Tobacco Settlement. However, it is difficult to argue that the legislature would have even begun to address the issues of inadequate and inequitable state funding of local schools without judicial intervention.

Summary

Budget execution involves fiscal control and management. In recent years, the focus of management has shifted away from measuring outputs and workload indicators toward a system of results-based financial management. When an economic downturn or other adverse development requires cutback management, the executive can use his statutory power to reduce budgets to strategic effect. Budget execution is a shared function of several state agencies. Although it is primarily an executive function, Ohio is unique among the states in that a joint executive-legislative body, the Controlling Board, is an active participant in executing the budget. The legislature is also engaged in the execution phase through its oversight activities that also consider the audit phase of budgeting and the role that the courts play in it.

The budget process consists of a number of steps that overlap one another since the budget cycle is continuous. Oversight of the budget is also continuous. The final step in the process, the financial audit, enables both the state to close the books on a fiscal year and also the public to have faith that their tax dollars were spent properly for public purposes as defined by the legislature. While the independent auditing of one fiscal year is undertaken, execution of the current year's budget is underway, along with preparation for setting the next biennium's Executive Budget.

Endnotes

- ¹ Allen Schick, "Contemporary Problems in Financial Control," *Public Administration Review* 38, November/December 1978, 513.
- ² Section 126.21 of the Revised Code.
- ³ These documents are vital resources for financial information about state revenues and spending. They also provide statistical information about the state, including unemployment rates, personal income, population and other important data.
- ⁴ Section 126.21 of the Revised Code.
- ⁵ Section 127.17 of the Revised Code.
- ⁶ Section 131.35.
- ⁷ Section 127.161 of the Revised Code.
- ⁸ Richard Bloedel, Ohio Legislative Services Commission.
- ⁹ Section 127.16 of the Revised Code.
- ¹⁰ Section 3317.01 of the Revised Code.
- ¹¹ Sections 4709.12, 4713.22, 4715.38, 4717.16, 4723.39, 4725.15, 4725.45, 4731.75, 4732.26, 4734.20, 4736.12, 4741.17 and 4759.08 of the Revised Code.
- ¹² Section 124.181 of the Revised Code.
- ¹³ Section 5907.13 of the Revised Code.
- ¹⁴ Section 1533.113 of the Revised Code.
- ¹⁵ Section 3333.17 of the Revised Code.
- ¹⁶ State ex rel. *Meshel v. Keip*, 66 Ohio St. 2d 379, 1979.

- 17 *Kauer v. Defenbacher*, 153 Ohio St. 268, 1950.
- 18 Josh Mandel, State Treasurer of Ohio, "Statement of Investment Policy," July 5, 2016.
- 19 Section 125.02 of the Revised Code.
- 20 Section 125.04 of the Revised Code.
- 21 Section 125.05 of the Revised Code.
- 22 Section 125.08 of the Revised Code.
- 23 Section 125.07 of the Revised Code.
- 24 Section 125.09 of the Revised Code.
- 25 Section 125.10 of the Revised Code.
- 26 Section 125.11 of the Revised Code.
- 27 Section 125.071 of the Revised Code.
- 28 Section 125.071 of the Revised Code.
- 29 Ohio Legislative Services Commission, *A Guidebook for Ohio Legislators*, 2017-2018, 15th Edition, p. 72.
- 30 Section 103.73 of the Revised Code.
- 31 Section 103.41 of the Revised Code.
- 32 Section 107.17 of the Revised Code.
- 33 Section 131.35 of the Revised Code.
- 34 Am. Sub. HB 215 of the 122nd General Assembly.
- 35 SB 55 of the 122nd General Assembly.
- 36 HB 412 of the 122nd General Assembly.
- 37 For example, Minnesota's legislative auditor, through his program evaluation division, conducts "best practices reviews" of local government. Florida's Chief Internal Audit Act requires inspector generals in agencies to coordinate performance audits of their agencies.
- 38 Section 126.45 of the Revised Code.
- 39 Section 117.01 of the Revised Code.
- 40 "Taylor: Contractors Bilked Cuyahoga County Communities Out of More Than \$2.5 Million," Auditor of State, July 21, 2010.
- 41 Section 5503.02 of the Revised Code.
- 42 Sections 121.41 through 121.50 of the Revised Code.
- 43 Ohio's ethics laws include Chapter 102. and sections 2921.42 and 2921.43 of the Revised Code.
- 44 Sections 101.70 and 121.60 of the Revised Code define a lobbyist as any person engaged to influence executive agency decisions or to conduct executive agency lobbying activity as one of his main purposes on a regular and substantial basis.
- 45 Sections 101.73 and 121.63 of the Revised Code.
- 46 Sections 102.03(E), 102.03(F) and 102.031(C) of the Revised Code.
- 47 *DeRolph v. Ohio*, 78 Ohio St. 3rd 193, 1997.