Richard G. Sheridan's

# FOLLOW THE MONEY

4TH EDITION

## *State Budgeting and Public Policy in Ohio*

THE CENTER FOR COMMUNITY SOLUTIONS
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RESEARCH • ANALYSIS • ACTION

Co-authored by Terry M. Thomas

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# Contents

# Foreword

I remember the first time I heard Richard Sheridan describe the state budget at a Federation for Community Planning Human Services Institute. I was a 30-something human service advocate who knew next to nothing about the state budget nor how it was assembled. I was awed by his presentation and encyclopedic knowledge. I learned that if you cared about state policy, then you needed to understand the state budget, and there was no better teacher than Dick Sheridan.

As the first director of the Ohio's Legislative Budget Office (LBO) during the 1970s, Dick led a nonpartisan staff advising leaders of both parties through years of unprecedented expansion in social service provision. Then in the early 1980s, Dick joined the faculty of the Maxine Goodman Levin College of Urban Affairs at Cleveland State University. Next he joined us, where for over a decade he shared his intellectual riches as an author of five books on state government and a statewide human services finance newsletter. In 1995, Dick was recruited back into state government as chief of the Division of Finance for State Auditor Jim Petro.

Fast forward a few years and my predecessor John Begala recruited me to manage the public policy and advocacy work of The Center for Community Solutions. At the same time, he also recruited Dick to rejoin the Community Solutions staff as a regular writer and senior advisor. It meant that I was now Dick's boss (to the extent anyone could be). During this period, Dick authored comprehensive reports on state tax policy, a retrospective on the Taft administration and regular papers on all aspects of state finance and policy.

Dick was the most prolific writer I've ever known. He could literally print out 3,000 pages of the state budget (typically breaking our copier in the process) on a Friday and return on Monday with a full-scale analysis. He was a brilliant story teller who often regaled me with tales of Statehouse intrigue. Dick spent a lot of time at his home in Lakewood, Ohio, which was packed full of treasures he had acquired from around the globe. Sadly, Dick passed way in 2009.

By demystifying the state budget process, Dick helped to level the legislative playing field for Ohio's health and human service advocates. It's in this spirit that Community Solutions decided to support the publication of a fourth edition of *Follow the Money*. We could not have done this, though, without the continued assistance of one of Dick's former colleagues, Terry Thomas, who lent his own extensive knowledge and experience to this endeavor. Terry has held senior leadership posts in both the executive and legislative branches of Ohio government and was the founding director for the

Ohio Association of Community Colleges. This book also includes chapters authored by my expert colleagues Tara Britton and Loren Anthes.

Thanks to Terry, Tara and Loren's efforts to preserve *Follow the Money*, Dick's contributions to Ohio will not be forgotten, and a new generation of policy makers and advocates will have access to the history, information and data they need to help shape today's better policy decisions for Ohio's future.

John R. Corlett

*President and Executive Director*
*The Center for Community Solutions*

# Preface

The phrase "Follow the Money" was popularized in the 1976 motion picture *All the President's Men*. The film suggested that a money trail existed within the Office of the President that was indicative of corruption at the highest level. The phrase has been used in a similar context recently, but also in a variety of circumstances over the intervening years when monetary influences have had a determinative impact on political processes and fortunes. With this less sinister context in mind, the phrase became the title for this manuscript.

Money and the budget process are extremely significant in Ohio state politics. The enactment of the biennial budget and public policy-making in Ohio are virtually indistinguishable. True, some important public policy actions occur outside the confines of the budget but less frequently than they happen inside. For this reason, we have added the phrase "Public Policy" to the title of the book in this edition.

This Fourth Edition of *Follow the Money* explores state budgeting in Ohio from both a process and a historical perspective. This edition incorporates a greatly expanded budget history. In particular, it covers the administration of Governor John Kasich in considerable detail. The analysis dives deeply into the key public policy areas of Medicaid and other health and human services priorities as well as primary and secondary education, giving important context and life to the various elements of the budgetary process.

The preparation of this edition of *Follow the Money* involved the efforts of many individuals aside from the editor. Particularly noteworthy are the contributions of staff from The Center for Community Solutions (CCS). Loren Anthes authored the chapter on Medicaid funding and policy, and Tara Britton did the same for the chapter on other health and human services priorities and provided overall direction to the project. Their detailed knowledge of these subject areas made it possible to expand the framework of the book beyond simply a description of budgetary process to a more substantive discussion of the public policy emanating from that process. A mentor of mine, William J. Shkurti, suggested this expanded purpose of *Follow the Money*, and I hope that we were able to accomplish his vision in this edition.

Not to be overlooked are the steadfast support and contributions of other CCS staff members including President and Executive Director John Corlett, Dani Carlson, Rose Frech, Roslyn Bucy Kaleal, Sheila Lettsome, Brie Lusheck, Sam Sobul, William Tarter, Jr., Kate Warren, and Adam White. In addition, suggestions made by consultants Tom Zakrajsek of TOMZAK Design Inc. and Jennifer Chesak

of Wandering in the Words Press greatly improved the look and readability of the final product, while WordCo Indexing Services, Inc. improved its usability. I am also appreciative of the valuable input of our external advisory group including John Begala, Maureen Corcoran, Tim Derickson, Gene Krebs, Justin Nigro, Brian Perera, Pari Sabety, Barbara Shaner, Carter Strang, Gayle Channing Tenenbaum, Marisa Weisel, and Chris Whistler.

I also want to acknowledge the contributions of my spouse, Sheila Thomas, who carefully reviewed key portions of the text and made numerous recommendations to improve the product. She also assisted with many of the graphics. Her love and encouragement throughout the process was also very much appreciated, as was that of my adult children, Haley Lynn Thomas and Emily Detwiler, as well as Emily's husband, Michael, and their son, Eli. Haley is also an author, and we bounced many ideas, joys, and frustrations off of each other.

Finally, Dick Sheridan was my first supervisor in state government some four decades ago, and I continue to be inspired by his visionary leadership. His influence is reflected throughout this fourth edition of his seminal book.

Terry M. Thomas

Terry M. Thomas is an independent public policy consultant in the Columbus area. He has extensive experience in state government, including as senior budget analyst for the Ohio Legislative Service Commission and as president of the state Controlling Board while serving as deputy director of the Ohio Office of Budget and Management. His public service also included tenures as assistant director and chief of staff at the Ohio Department of Development, assistant director of the Ohio Department of Job and Family Services, and associate vice chancellor at the Ohio Board of Regents. Terry was also the founding executive director of the Ohio Association of Community Colleges, and the association's Friend of Community Colleges Award is named in his honor. He received his Bachelor of Arts Degree in Political Science from Penn State University with high honor and a Master of Arts Degree in the same field from The Ohio State University.

# PART I
# An Ohio Budget Primer

Part I of *Follow the Money* details the legal and political complexities of Ohio's biennial budget process. We analyze each step in the state budget process, from initial development to ultimate enactment and execution. While some budgetary principles and mechanisms may seem a bit arcane to the casual reader, a fundamental understanding of these concepts is essential for effective participation in the process, whether as a policymaker, an advocate, or simply as an informed citizen.

Chapter 1 describes the legal framework of state budgeting as applied in Ohio. It provides an understanding of the precepts and different types of budgeting, and how they evolved.

The state's tax structure changes each biennium, affecting the yield of revenues available to the executive and legislature for budgetary purposes. Chapter 2 lists the major sources of both state and local government revenues. It also outlines the principles of a sound tax structure and how Ohio measures up.

Chapters 3 and 4 describe the preparation of the Executive Budget Request and the subsequent detailed analysis of the document that legislators and legislative staff undertake following its unveiling.

Chapter 5 outlines the fundamental principles and mechanisms of the legislative appropriations process.

Chapter 6 describes how budget outcomes can be effectively influenced, for at its heart, the budget process is political as well as financial and programmatic.

After the budget is enacted, many steps are taken to implement it. Chapter 7 details these steps and how checks and balances work to oversee budget implementation.

Finally, Chapter 8 introduces some ideas for reforming the budget process to provide for greater transparency.

CHAPTER 1:

# The Legal Framework

Any citizen concerned with how public dollars are spent must understand the basic concepts of state budgeting. An understanding of the vocabulary of public budgeting and its basic precepts is a prerequisite for skill development. This includes knowledge of both the universal principles of public budgeting and the legal framework that is largely unique to Ohio.

## Public and Private Budgets

Anyone familiar with private or nonprofit sector budgets should understand that public budgets are quite different. Government is concerned with the provision of services that cannot be measured by whether they produce a profit. Government is concerned with social problems of which there is little agreement on what matters to undertake or how best to solve them. The contrasts between public and private budgeting are numerous, as summarized in Table 1-1.

**Table 1-1: Comparing Governmental and Private Sector Budgeting**[1]

| GOVERNMENTAL BUDGETING | PRIVATE SECTOR BUDGETING |
|---|---|
| Protects the interests of citizens and promotes business activity. | Based on self-interest; goal is to maximize profit without concern for facilitating the economic activity of other businesses. |
| Depends on finding agreement among decisionmakers on the existence and importance of societal problems. | Depends on market considerations to guide budget decisions. |
| Requires that budgeting decisions be made in a public forum open to taxpayers and the media. | Is conducted on the basis of formulas by professionals who work in private. |
| Incorporates extensive financial controls, many embedded in the constitution or through statute, that are designed to prevent financial mismanagement, excessive borrowing, inordinately high tax rates, and deficit spending. | Is conducted according to generally accepted financial practices that are controlled by the market and by accounting standards. |
| In the context of accountability to citizens, pursues goals of efficiency and effectiveness by balancing short-term and longer-term community interests. | Is insulated from the public and accountable only to shareholders; goal is to maximize profits in the short term. |

## Defining Public Budgeting

Public administration and public finance theorists have offered a number of definitions of a "budget." The late Aaron Wildavsky, widely regarded as a leading expert in public budgeting, provided a very simple definition: "a budget is a series of goals with price tags attached."[2] Budgets, however, are much more complicated than this description. The best description of the comprehensive nature of a public budget comes from Sydney Duncombe, who in 1977 defined state budgets variously as:

- An instrument of planning;
- A work plan with a dollar sign attached;
- A means of balancing revenues and expenditures;
- An instrument of gubernatorial policy;
- Public relations;
- A semi-judicial process in which state agencies come to the legislature to plead their case;
- A system of control without which state agencies would bankrupt states in two years;
- An instrument of good management; and
- A system of accountability.[3]

The budget is not just the vehicle for funding public policies. It is where public policies are made, either implicitly or explicitly. Concisely, a public budget is a means of allocating resources and establishing priorities, thus defining competing interests and making choices from among those interests as part of setting state policy on a variety of public issues.

**Political Document.** In Ohio, the state budget is, first and foremost, a political document. It coherently articulates a statement of political goals, objectives, and priorities. It tells us in dollars and cents what can be expected from the party in power for the ensuing two years. It is the product not simply of accountants adding up numbers, but rather of the resolution of a series of conflicts. These may be any of the following: conflicts between a bureaucracy concerned with power and control and a public concerned with accountability, the tensions between ideology and political expediency, the conflicts between special and collective interests, the struggles between politicians and bureaucrats, the partisan conflicts between Republicans and Democrats, or the clash of rural and urban concerns. We cannot overstate the significance of the state budget in Ohio politics. The state budget is much more than a "moral document" or a "road map." Perhaps, the late Speaker of the Ohio House of Representatives, Vernal G. Riffe, said it best: "The state budget is everything."

# Types of Budgets

While local governments in Ohio budget on a calendar-year basis, the state's fiscal year runs from July 1 to June 30.[4] In odd-numbered years, the governor submits the state's operating budget to the General Assembly for its review and passage before the existing budget expires on June 30. This happens four weeks after the convening of a new General Assembly or by March 15 in the case of a newly elected governor. The Executive Budget Request spells out the governor's major priorities. This document is still commonly referred to as the "Blue Book," although it has been produced solely in electronic form for many years. The submission of several appropriations bills coincides or shortly follows the release of the Executive Budget Request. When enacted, these bills will become the "state's budget" for the ensuing two-year period. Ohio is the second largest of the 20 states that still budget on a biennial rather than on an annual basis; Texas is the most populous state that budgets biennially.[5]

The format in which the governor submits the budget will have a significant impact on the questions the legislature will ask in deciding spending levels for agencies and programs. A program is defined as a cluster of activities or services with a common goal. The type of budgeting used dictates the format. The oldest and most universally used type of budgeting, though far from the best, are incremental and line-item budgeting.

## Incremental Budgeting

Incremental budgeting is perhaps the least sophisticated approach to budgeting. Although it does provide important focus on the changes an agency or program proposes from its existing level of funding, it focuses solely on the margins. The justification for funding increases or decreases for agencies and programs is only provided for deviations from either the currently budgeted level of expenditures or from base-level expenditures. Most states, including Ohio, still use incremental budgeting in some form.

## Line-Item Budgeting

Line item budgeting has long served as the foundation for budgeting in many states. Lists of the goods and services to be purchased are the centerpieces of this kind of budgeting. In this format, agencies collect and report information on inputs (costs and materials) used in the production of government services. This information becomes the object of execution and legislative interest, debate, and finally, appropriations.

The line-item budget emerged over public concern that government spending should be controlled. It provided a way of ensuring the public that its money was spent legitimately. In spite of advances in budgeting processes that better recognize the importance of achieving intended outcomes from public expenditures, line-item budgeting persists largely because it is difficult for legislators to "give up control" over the details of the budget. While line-item budgeting provides some limited measure of legislative control and transparency, it is not necessarily over specific objects of expenditures, such as salaries and travel or even programs. For example, Ohio's largest expenditure item, Medicaid Health Care Services, combines funding from state and federal sources and expenditures from various types of providers and Medicaid programs. Perhaps, more importantly though, this form of budgeting is widely criticized in that it has no concern for the actual results of spending, the purposes of the expenditures. Yet, it persists and even co-exists with other budget formats in many places, including Ohio.

## Performance Budgeting

By the 1950s, public budgeting had begun to focus on "outputs," that is, the units of work produced and how efficiently they are produced, usually expressed in cost-benefit terms, borrowing from the field of economics. As originally cast, this kind of budgeting, with its main focus on planning, was more useful to the executive than the legislative branch of government. In Ohio, as in other states, the legislature has found it difficult to make budget decisions based on outputs or units of production, like numbers of prisoners processed per month.

**Program Planning and Budgeting.** Program Planning and Budgeting System was a system of budgeting first used by the U.S. Department of Defense, as they tried to convince Congress to support it after the peace settlement at the end of World War II. The agency provided Congress with economic

data intended to prove the need for a standing army in peacetime. Many states emulated the defense department's attempt to apply formal economic analysis to rationalize the basic budget question of how much money to allocate to a given program. However, the Program Planning and Budgeting System was short-lived. Its two biggest problems were its overwhelming need for detailed data and its virtual total disregard by legislative bodies. Out of this movement, however, the development and budgetary reporting of program goals, rather than agency goals, survived.

**Zero-based Budgeting.** The next evolution in performance budgeting was Zero-based Budgeting. The Zero-based Budgeting process was adapted from the private sector and popularized by President Jimmy Carter, who had employed it as Georgia's governor in the early 1970s. It requires government agencies to begin with the assumption that they have no resources. From there, managers develop "decision packages" to justify undertaking each agency's activity and to determine at what level it should be funded. Zero-based Budgeting was never fully developed in Ohio and other states have largely abandoned it for pretty much the same reasons that led to the demise of the Program Planning and Budgeting System: its overemphasis on detail, leading to what some called "paralysis by analysis." However, a modification of Zero-based Budgeting was incorporated into Ohio's fiscal year FY 1978–1979 budget when the legislature set "survival" levels of spending and requested that agencies justify any spending above that level. What developed in Ohio from the modification of Zero-based Budgeting was an approach to executive budget-making where the central budget office sets a base level of spending, somewhere below current level spending, and requires position papers to justify spending above that level. Chapter 3 provides details of this approach.

**Target-based Budgeting.** New budgetary formats continued to develop through the 1980s with Target-based Budgeting, which reduced the amount of information agencies had to submit to justify their requested appropriation level. Under a Target-based Budgeting approach, the central budget office tells the agency the maximum amount it can request. The central budget office establishes the target after determining current-level spending and the amount of spending needed to continue ongoing programs at future prices, while also allowing for any changes in priorities required by legislative or judicial action or external circumstances, such as changes in a program's enrollment. Once again, Ohio's current budget process, which is its own unique blend of the pure forms of each succeeding change in the form of budgeting, retains targeting as a key component.

**Results-based Budgeting.** Since 1993, budget reform has focused on performance as defined by results rather than units of service. In that year, Congress enacted the Government Performance and Results Act (GPRA) to assist federal government agencies to "re-engineer" their operations. It required agencies to prepare strategic plans on their long-term goals for each major function as well as annual performance plans and reports on meeting these goals. The act was an outgrowth of increased citizen concern that governmental moneys were either spent unwisely or were wasted. Survey after survey had found that the public believed that governments at all levels were unresponsive, gridlocked, and overly bureaucratic. Government and its leaders did not have the public's trust in their ability to achieve desired results from expending public moneys, whether those results were decreased crime, an educated populace, or a healthy environment. Thus, it was not surprising that the federal government's action was followed by resolutions from a number of prominent national organizations, including the Governmental Accounting Standards Board, the National Academy of Public Administration, and the American Society for Public Administration, encouraging governments to utilize performance measurement and reporting systems. The GPRA was amended in 2010 to require agencies to publish their strategic plans and reports in machine-readable formats.

In the 1990s, results-based budgeting became viewed as one component of a total results-based system, the components of which are shown in Table 1-2.

**Table 1-2: Results-based Management Components**

| STRATEGIC PLANNING | ESTABLISHING PERFORMANCE GOALS |
|---|---|
| Performance Measurement | A government jurisdiction quantifies how efficiently and cost effectively it has used its resources in delivering public services using a baseline (standard, norm, or criterion) against which to assess performance in programs or services. |
| Benchmarking | Identifying, analyzing, adopting, and adapting the high-performance processes of other organizations that excel at a particular activity. |
| Managerial Accounting | Consists of (1) accumulating and reporting the cost of activities on a regular basis for management information purposes, (2) matching costs with outputs, (3) determining the full cost of government goods and services, (4) recognizing the cost of goods and services provided among governmental entities, and (5) using appropriate costing methodologies to accumulate and assign the cost to outputs.[6] |
| Results-based Budgeting | Utilizing a budgeting system that allocates resources according to results and holds agencies responsible for budgetary outcomes, as defined internally or externally. |

Results-based budgeting is linked to a strategic planning process in which agencies determine the goals and objectives for each program they administer. Performance measures are then developed for those programs to assess how likely the allocation of resources is to achieve the desired outcome. In results-based budgeting and managerial systems, the focus is on outcomes, not outputs.

**Ohio and Results-based Budgeting.** During the 1990s, Governor George Voinovich made a commitment to results-based management, incorporating performance measurement principles into his budgeting process. The state legislature authorized the central budget office, the Office of Budget and Management, to begin conducting performance reviews of selected state programs during the FY 1996–1997 biennium. The Office of Budget and Management worked with selected state agencies in the development of program goals, in setting measurable objectives to determine if desired outcomes were being achieved, and in establishing data collection procedures and capabilities necessary to measure the objectives. For the FY 1998–1999 budget, six major state agencies submitted performance review reports along with their budget requests and these were incorporated into the Executive Budget Request.

As with previously employed performance budgeting approaches, Ohio's attempt at objectifying or rationalizing the budget process was of more use to the executive branch than the legislature, which continued to appropriate funds by line item and by agency; although over the years, the level of line item detail has shrunk. This is largely due to the fact that the predominant interest of the executive branch is on planning while the legislative focus is primarily on control. These different philosophies are the natural outcome of different institutional roles and serve to shape the budgetary dynamics of the appropriations process.

More recently, the legislature has shown interest in improving agency and program performance through a renewed emphasis on audits. Examples include House Bill 166 of the 127th General As-

sembly, which created an Office of Internal Audit within the Office of Budget and Management, and Senate Bill 4 of the 129th General Assembly, which subjected at least four programs or agencies each biennium to performance audits by the Auditor of State. The first four departments receiving a performance audit were the Ohio Department of Education, the Ohio Department of Job and Family Services, the Ohio Department of Transportation, and the Ohio Housing Finance Agency. However, it does not appear that any significant budgetary implications resulted from any of these or subsequent performance audits.

**Blended Budgeting.** For lack of a better term, the form that Ohio's budgeting process takes can be called a blended system. It combines elements of a number of the reforms since the 1950s but changes its emphasis depending on forecasted economic conditions and the managerial style of the incumbent governor. When economic times are bad, the central budget office is likely to greatly restrict the amounts agencies can request because of the political difficulties caused by budget requests, which far exceed estimated available resources. There is no point in raising the hopes of legislators, constituents, and interest groups on expanded and new programs when the political will to raise the revenues to support them will not be there. In contrast, in good economic times or with a governor willing to take a leadership role in raising taxes, free-ranging agency budget requests are desirable, since they enable the governor to gain needed public support for spending available revenues or for raising additional resources.

# How a Budget Process Evolves

## Budget Format

The arrangement, or format, of information provided in an agency budget request, and in the Executive Budget Request presented by the governor, determine the lines of inquiry about the request. If detailed line-item information is provided, the inquiry can be expected to focus on questions such as, "How many new employees are you planning to hire?" If performance data is included, the inquiry will more likely be about whether an agency's program is cost effective or whether there are other more cost-effective ways of accomplishing the program's mission.

Individual legislators cannot be expected to perform the kind of in-depth analyses contemplated by more sophisticated budgeting formats. Thus, the legislature relies on partisan fiscal experts as well as the budget and fiscal professionals in the Legislative Service Commission to perform such analyses. The Legislative Service Commission prepares "Redbooks" on each agency's budget request. These analyses, which can be viewed at www.lsc.ohio.gov, are thorough and assist legislators in framing program and performance questions to ask of agencies. The Legislative Service Commission also produces "Greenbooks" following the enactment of the operating budget analyzing the final version of agency budgets.

## Balance of Power

While the budget format sets the parameters of the budget process, it is also a visible representation of the underlying budgetary power struggle between the executive and legislative branches of government. As discussed, some types of budgeting formats are more useful to one branch than the other.

As a result, the evolution of budgeting practices has coincided with shifts in the balance of power between the legislative and executive branches of government. Early state constitutions provided for strong legislative bodies and weak executives. In a few states, the chief executive was actually appointed by the legislature. Over time, the executive gained power and the legislature weakened as governmental services expanded and the bureaucracy grew. During the 1970s when the Ohio legislature became full-time with very little turnover, especially with respect to legislative leadership, and became professionally staffed, the balance of power shifted briefly back to the legislative branch. However, in more recent times, with the impact of term limits and increased legislative turnover, including legislative staff, the executive branch has again gained in relative strength, and this has aided the evolution of the budget process.

# Stages of Budget Development

The eight distinct phases in the development of the state budget are (1) the issuance of budget guidelines to state agencies, including the governor's policy priorities; (2) evaluation of agency budget requests by the central budget office, the Office of Budget and Management; (3) The Office of Budget and Management recommendations concerning the agencies requests submitted to the governor; (4) public release of the governor's Executive Budget Request, or "Blue Book;" (5) legislative review of the Executive Budget Request leading to the recommendation of appropriations by the Ohio House of Representatives; (6) legislative review and recommendation of appropriations by the Ohio Senate; (7) Conference Committee negotiations leading to the enactment of final legislative appropriations; and the (8) governor's signing of the enacted budget, usually line-item vetoing some matters. The timeline for these stages of state budget development in Ohio is shown in Table 1-3, which depicts the typical calendar for the main operating appropriations bill in a legislative session with an incumbent governor. In a year with a newly elected governor, as in the case of the FY 2020–2021 budget, the Executive Budget Request does not need to be unveiled until March 15.

**Table 1-3: Budget Calendar for the Main Operating Appropriations Bill**

| | |
|---|---|
| June–July | The Office of Budget and Management (OBM) distributes budget guidelines to agencies, including assumptions for budget development and budget request forms. |
| September–November | Agencies submit budget requests (and spending forecasts as appropriate) to OBM. Budget submissions are reviewed for technical accuracy and additional data is sought from agencies as necessary. |
| October–January | OBM prepares revenue and Medicaid spending forecasts for the upcoming biennium. Recommendations are made to the governor on funding priorities within established revenue and spending projections. The Legislative Service Commission (LSC) independently prepares revenue and Medicaid spending forecasts. |
| January | The new General Assembly is seated in odd-numbered years. Except in the case of a new governor, the Executive Budget Request is released four weeks after the legislature convenes. LSC prepares the budget bill based on the governor's recommendations. |
| February–April | The budget bill is introduced and referred to the House Finance Committee. OBM and LSC present their independent revenue and Medicaid spending forecasts to the committee. Subcommittees of the House Finance Committee review the budget bill and recommend changes to the full committee. LSC staffs the committee and subcommittees. |

| | |
|---|---|
| April–May | The House Finance Committee acts on subcommittee recommendations and amends the budget bill. LSC drafts both permanent and temporary law amendments. The House passes the amended bill and sends it to the Senate. |
| April–June | Subcommittees of the Senate Finance Committee review the agency budget requests and recommend changes to the full committee. The Senate Finance Committee acts on the subcommittee recommendations and amends the budget bill. LSC, which staffs the committee and subcommittees, drafts both permanent and temporary law amendments. |
| June | The Senate passes the bill with changes, and it is sent to a conference committee of the House and Senate. OBM and LSC provide updated revenue and Medicaid spending forecasts. LSC produces budget analyses comparing the House and Senate changes to the appropriations bill. The conference committee works out differences between the House- and Senate-passed versions of the bill. The House and Senate vote on the conference committee report, which is not subject to amendment. The governor signs the budget bill by June 30, usually line-item vetoing several matters. |

Note: Newly elected governors are not required to introduce the Executive Budget Request until March 15, necessarily delaying House of Representatives action on the bill.

The budget chronology references the "budget bill," whereas current practice is actually for the legislature to enact separate appropriations bills in odd-numbered years for (1) transportation, the operations of the Department of Public Safety and for operating and capital spending of the Ohio Department of Transportation, other than aviation, railroads, and mass transit; (2) the workers' compensation system, the operations of the Bureau of Workers' Compensation and the Ohio Industrial Commission, usually in separate bills; and (3) the main operating appropriations bill, or what is sometimes called the omnibus operating appropriations bill, for all other governmental operations.

In addition, in even-numbered years, two additional appropriations bills are usually passed: one for new capital improvements and a second to re-appropriate any amounts unexpended or unobligated from previously authorized capital improvements projects. Finally, one, and sometimes more, "Budget Corrections" bills are also regularly passed following the approval of the main operating appropriations act. Governor John Kasich labeled his budget corrections bills the "Mid-Biennium Review," or MBR, to indicate a more strategic focus. Far more than corrective in scope, the MBR was intended as a sequel to the budget, a second wave of policy changes or reforms designed to transform Ohio for growth. It is a term that may well continue in future administrations for the much more positive direction it connotes. The General Assembly has subsequently broken the MBRs into multiple, more manageable components.

# Principles of Budgeting

There are a number of constitutional provisions, and judicial interpretations of those provisions, which set limits on state taxing and spending. Federal and state laws frequently restrict how revenues can be used. Political processes also exert a number of very real constraints on the General Assembly and the governor as they appropriate and implement the state budget. These provisions are described as they affect (1) public debt, (2) the power to tax, and (3) the power to appropriate.

## Provisions that Govern Public Debt

Most states have at least some procedural restrictions on how debt may be incurred. Constitutional and statutory limits on how debt may be incurred as well as the amount of that debt vary considerably across the states. Ohio is very restrictive about public debt.

**Basic Principle.** Article VIII, Section 1 of the Ohio Constitution authorizes debts "to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for," but it limits the total amount of that debt to $750,000. This is, of course, virtually nothing in terms of the state's current multi-billion-dollar annual expenditures. This section of the Constitution, adopted in 1851, was probably intended to deal with short-term cash-flow problems. Additional debt may be authorized only by amendment of Article VIII, Section 2, which specifies that debt may be incurred "to repel invasion, suppress insurrection, defend the State in war, or to redeem the present outstanding indebtedness of the State...." There is no evidence, however, that the General Assembly has ever used this provision to issue debt. Public indebtedness has been incurred only through constitutional amendments that have been adopted through the years as Article VIII, Sections 2a through 2s.

Public Debt Defined. There is an open question as to what constitutes public debt within the meaning of the Constitution. Article VIII, Section 3 provides that "Except the debts above specified in sections one and two of this article, no debt whatever shall hereafter be created by, or on behalf of the State." However, when the state signs a contract with a private party to manage state-owned lodges within state parks or to run state prisons, does this create an obligation that is a public debt? These obligations are long term, but only by virtue of renewal clauses divided into two-year periods. There is a dearth of judicial opinion on questions such as these and the relevant constitutional provisions.

One form of public indebtedness that is permissible both by U.S. Code and the Ohio Revised Code is applying for an advance to the Unemployment Compensation Fund and to do all things necessary to repay such an advance. Bonds may be issued for this purpose, provided that they both satisfy federal requirements for how a state system must be established for employers and fall under the state constitutional exceptions against creating debt that exceeds $750,000.[7]

**Self-Generating Revenues.** One court case holds that Sections 2 and 3 of Article VIII do not apply to indebtedness incurred in procuring property or erecting buildings or structures for the state's use if the property or building will be paid for out of revenues or income generated by its use.[8] However, in that case, the revenue bonds issued were determined to be void because repayment was to be made out of rental charges to be paid by the Ohio Department of Public Welfare (now Job and Family Services). Since the revenues amounted to one state department owing another, this created unconstitutional state indebtedness. The state has financed the construction of parking garages associated with state buildings, using revenue bonds, under this interpretation of the constitutional provision, because they are paid for by parking fees, not tax receipts.

**Installment Contracts.** In another particular instance, a question was raised about a state agency's ability to contract to lease or purchase equipment in eight annual payments, with those payments being applied toward the purchase price of the equipment. Even though the state reserved the right to cancel the contract or to exercise an option to purchase it on any anniversary date of the agreement, the Ohio Attorney General argued that this constituted an installment purchase contract prohibited by law under the constitutional provisions on public debt.[9]

**Certificates of Participation.** State agencies may enter into lease-purchase agreements to finance capital improvements or equipment. Certificates of Participation (COPs) are issued with terms from seven to 20 years, representing fractionalized interests in or payable from state payments made under those agreements. COPs were issued by the Ohio Department of Administrative Services to finance the acquisition and installation of two information technology systems, the Ohio Administrative Knowledge System (OAKS) and the State Taxation Accounting and Revenue System (STARS).[10]

**Lending Credit and Assuming Debt.** Article VIII, Section 4 provides in part that "The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever." The word "credit" has been interpreted judicially to include (1) a loan of money and (2) the ability to borrow, that is, the ability to acquire something tangible in exchange for a promise to pay for it.[11] It has also been held not to prohibit giving or loaning the state's credit to or in aid of a public organization that is created for a public purpose.[12] In 2005, Ohio voters authorized setting this constitutional provision aside to enable the state to aid private businesses using voter-authorized moneys, when giving approval to Governor Bob Taft's "Third Frontier" initiative. Governor James Rhodes opened the door 40 years earlier to this idea with his successful constitutional amendment to guarantee loans for industrial development.

The state is prohibited from assuming "the debts of any county, city, town, or township, or of any corporation whatever, unless such debts shall have been created to repel invasion, suppress insurrection, or defend the State in war" by Article VIII, Section 5. The legislature can provide direct state grants to public organizations, as it did to assist the City of Cleveland from defaulting on its bonds in 1975, but it cannot take on a local debt.

Article III, Section 4 and Article III, Section 5 both came into discussion during a lawsuit over the constitutionality of Governor John Kasich's JobsOhio initiative. The lawsuit, which was dismissed in June 2012 because of a lack of standing on the part of the plaintiffs, questioned whether the state was extending its credit to invest in JobsOhio as a joint venture and whether JobsOhio could discharge its liabilities to the state within its contract. Before the lawsuit was dismissed, Governor Kasich responded by modifying the statute to more specifically delineate the limitation on JobsOhio's assignment of liabilities to the state, narrowing the original intentions he had for the organization. The matter highlights how restrictive the state constitution is on debt assumption.

**Higher Education Loan Guarantees.** In 1965, Ohio voters approved a constitutional amendment that has become Section 5 of Article VI. It authorizes the legislature to pass laws permitting state guarantees for repayment of higher education loans, "including the payment, when required, of any such guarantee from moneys available for such payment after first providing the moneys necessary to meet the requirements of any bonds or other obligations heretofore or hereafter authorized by any section of the Constitution." The purpose of the provision was to ratify legislation enacted in 1961 and 1963 of which constitutionality was questioned. This provision was used in 1989 to establish Ohio's Internal Revenue Service Section 529 prepaid higher education tuition program.

**Debt for Internal Improvement.** Article XII, Section 6 provides that "Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement." The courts have not interpreted this provision, which was adopted in 1912.

**Payment of Debt.** Article XII, Section 11 specifically requires that the legislation establishing or renewing state bonded indebtedness must include provision "for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity." A sinking fund is a debt service or bond retirement fund established by the voters to reserve money to guarantee the repayment of a bond.

## Taxing Power

All governments have the power to tax. Taxes are the main source of government income to support government spending. However, while Ohio's Constitution grants the General Assembly the power to tax, it also places limits on that power.

**Obligation to Tax.** The General Assembly's power to tax is found in Article XII, Section 4 as an obligation: "The General Assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay principal and interest as they become due on the state debt."

**No Referendum.** Neither "laws providing for tax levies, [nor] appropriations for the current expenses of state government and state institutions" may be subject to a referendum vote of the people, according to Article II, Section 1d. This means that the legislature cannot shirk its responsibility by seeking voter approval of a tax increase and thus avoid the political fallout from such a decision. However, legislators were able to place a one-cent sales tax increase on the fall 1998 ballot, using a legal interpretation provided by the legislature's attorneys. They noted that Section 26 of Article II provides that "all laws of a general nature, shall have a uniform operation throughout the state; nor shall any act, *except such as relates to public schools*, be passed, to take effect upon the approval of any other authority than the general assembly, except as otherwise provided in this constitution [emphasis added]." Because the tax increase was specifically to be used for public schools, it was argued that the tax increase on the 1998 ballot placed it in a uniquely privileged category.[13] Since the measure failed, no one challenged its constitutionality, and therefore the Ohio Supreme Court has not directly ruled on this issue. See Chapter 10.

While tax increases, with the exception of those for public schools, cannot be subject to a vote, it appears that, through judicial interpretation, tax decreases or exemptions could be referred to voters since they *concern* taxes but do not actually *levy* a tax. The Ohio Supreme Court has determined that "laws providing for tax levies" are limited to an actual self-executing levy of taxes and are not synonymous with laws "relating" to, "pertaining" to, or "concerning" tax levies or any agency or method provided for a tax levy by any local subdivision or authority.[14]

**Specific Taxes.** Article XII, Section 3 specifically permits the state legislature to impose (1) taxes on estates;[15] (2) taxes on income that "may be either uniform or graduated, and may be applied to such incomes and with such exemptions as may be provided by law;" (3) excise and franchise taxes; and (4) taxes on the production of coal, oil, gas, and other minerals. However, the Ohio Constitution specifically prohibits taxing "the sale or purchase of food for human consumption off the premises where sold." In other words, retail food sellers do not pay a tax on the food items they sell.

**One-Percent Limitation.** Article XII, Section 2 prohibits taxes on property to be issued in excess of 1 percent of the true or market value of the property without the approval of the voters in the taxing

district voting on the issue. Statutes clarify the provision to mean that only 10 mills of unvoted taxes may be levied by the state against any taxable property in the state. (With regard to property tax, one mill is equivalent to one dollar in property tax levied per every $1,000 of a property's taxable value. The property tax levied on a property equals the millage rate multiplied by its taxable value divided by $1,000. Ten mills on a residence with a taxable value of $120,000 would thus yield a tax obligation of $1,200.)[16]

The provision limits the imposition of property taxes to 1 percent of true value "for all state and local purposes...." Property taxes levied within the 1 percent limit, usually called "inside millage" because it is levied "inside" the constitutional limitation, are all currently utilized by local units of government. Additional voter-approved millage is logically called "outside millage." This means that the General Assembly cannot impose a statewide property tax on its own authority to the extent that the tax would cause total unvoted taxes on property to exceed the constitutional restriction. However, under another interpretation, the state could levy a state property tax.

**State Property Tax Permitted.** Ohio actually assesses real property at a fraction of its market value. Applying the 1 percent limitation to property would permit an unvoted tax up to 28.5 mills. Using an assessment rate of 35 percent on real property, a tax rate of 28.5 mills equates to 1 percent. Hypothetically, it could be argued that the General Assembly could levy an additional 18.5 unvoted mills through a state tax on real property. However, it is hard to imagine such a tax ever being approved by Ohio voters. Using the same reasoning, the 25 percent assessment rate on most business personal property would permit up to 40 unvoted mills on that class of property.[17]

**Uniform Rule.** Another provision of Article XII, Section 2 is that "land and improvements thereon shall be taxed by uniform rule, although Ohio voters did approve a constitutional amendment in 1973 permitting the valuation of agricultural property based upon current use. This provision means that the legislature is prevented from treating business real property differently from residential property for tax purposes. It also has the effect of preventing the pooling of commercial real property for purposes of a statewide tax while reserving residential property for local taxes only.

**Stated Purpose of Tax.** Article XII, Section 5 requires that every law imposing a tax must state the purpose for the tax, and that the revenues derived from that tax be applied only to its stated purpose. Under this provision, the General Assembly is prevented from redirecting the taxes levied by the voters in one taxing district to some other purpose.

**Highway Revenues.** Article XII, Section 5a provides that any "moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles" can only be used for highway and bridge construction and maintenance and repair and for the "expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways."

**Gambling Revenues.** Article XV, Section 6 specifies that net state lottery proceeds be used solely for the support of primary and secondary education programs. It further requires that tax collected on gross casino revenues be distributed according to a prescribed formula.

**Interest Revenues.** Before 1968, it was the practice of the state to credit interest earned on all idle funds to the state General Revenue Fund (GRF). Section 135.14 of the Revised Code, enacted in 1968,

provided that henceforth all interest should be credited to "the proper fund of the state or subdivision." The state continued to deposit interest earned into the GRF, assuming it to be the "proper" fund. However, a series of court decisions challenging that interpretation have led the state to credit interest earnings to the funds that have earned them. For example, interest earned on the Wildlife Fund is deposited into that fund and no other. Except for the case of highway funds, which are constitutionally protected, enabling legislation is now required for the state to return to the prior practice of crediting interest from any other state fund to the GRF if economic circumstances should justify it. An exception is the interest earned on advanced federal funds, which must be returned to the federal government.

**Fifty-Percent Rule.** Article XII, Section 9 requires that "not less than 50 percent of the income, estate, and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income, estate, or inheritance tax originates, or to any of the same, as may be provided by law." In fact, the state does not automatically credit those proceeds; instead it uses its general revenue-sharing program and other appropriations made to local governments to satisfy the requirement. The Auditor of State simply certifies each year that the General Assembly has appropriated a sum equal to 50 percent of the revenues collected by the state from the noted taxes generated in a given area for use by the units of local government listed. Those amounts have always exceeded the 50 percent requirement.

**Other Limitations.** Article XII, Section 1 prohibits the state from levying a poll tax, a provision found in many state constitutions after the abolition of slavery, to prevent persons from being denied the right to vote. Article XII, Section 5 provides that taxes can be levied only according to law, and laws imposing taxes must clearly state the object to be taxed and that the tax shall be applied only to that object.

## The Nature of Appropriations

**Legal Basis.** In Article II, Section 22, the Ohio Constitution provides that "No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years." Under this provision, it is established that (1) appropriations made by the General Assembly constitute the only legal basis for disbursing money from the state treasury; (2) no appropriation may be for longer than two years; and (3) an appropriation must be specific. An appropriation by the General Assembly is the only legal basis for disbursing any money from the state treasury, whether its origin is agency-generated receipts, state tax collections, or federal receipts.

**Two-year Limit.** An appropriation cannot be made for a period of longer than two years, but there is no restriction on when the two-year period is to begin. Appropriations for current expenses go into effect immediately, instead of the usual 90 days after the governor has filed a bill with the Secretary of State. Capital appropriations for new construction are subject to the 90-day delay, but it is not clear whether other capital appropriations would go into effect immediately or after the requisite 90 days. The Ohio Supreme Court has ruled that all sections of an act containing an appropriation for current expenses go into effect immediately, if the appropriation has a conditional influence on the rest of the act.

**Specificity.** An appropriation must be specific. Re-appropriating moneys that have been encumbered but not spent from a previous fiscal period is sufficiently specific to satisfy the constitutional requirement.[18] In addition, the legislature makes limited appropriations to the Controlling Board, a

seven-member joint executive-legislative body, for "Emergency Purposes," allowing the Board to later allocate those funds for specific public purposes. This exception has not been judicially challenged as an unlawful delegation of legislative appropriations power. Chapter 7 includes a complete listing of the Controlling Board's numerous and varied powers.

**"Un-appropriating."** When the governor, not the legislature, determines that state revenue collections are insufficient to support legislative appropriations, the governor may issue an executive order to spending units declaring a "fiscal emergency" to prevent them from expending or incurring obligations that will exceed the amount of revenue available.[19]

**Encumbrances.** When moneys that have been appropriated are not expended at the end of a fiscal period, they remain available to the agency until it has satisfied any obligations legally incurred against that appropriation.[20] In Ohio, unencumbered, unexpended funds remaining in the first year of the biennium do not lapse back to their fund of origin until the end of the second year.

**Transfers.** The state Controlling Board, consisting of six legislators and the governor's designee, which meets about every two weeks, can authorize the transfer of appropriated moneys between fiscal years within the same agency and between line items within the same agency. However, only the General Assembly can authorize the transfer of moneys between agencies.

**Balanced Budget.** Article VIII, Section 1 limits the amount of debt the state can incur to $750,000, thereby establishing the principle that Ohio's budget must be balanced with current expenses not to exceed current revenues. This principle is more complicated than it might appear. The state uses fund accounting and therefore at the end of the fiscal biennium must balance each separate fund. See Chapter 3. During the fiscal biennium, however, a fund may be negative. To meet ongoing obligations, there must always be cash available for disbursement. Setting aside a portion of an allocation so as not to spend it is one way to assure that funds remain available for future disbursement. The state also relies on working capital, a planned average positive balance in the state's funds. Knowing what this planned average balance is enables cash managers to plan disbursements and expenditures to maintain a positive cash position. The lower this average is, the more difficult it becomes to keep a positive balance on a day-to-day basis when income is low.

Though Ohio uses fund accounting for cash purposes and to reduce the amount of working capital needed in each separate fund, the state pools the cash of several of its funds into what is called the "Total Operating Fund."[21] The principle Ohio uses in maintaining a balanced budget is that unappropriated cash should approximate outstanding encumbrances, the obligations that have not been liquidated, at the end of a fiscal period.

**State Appropriation Limit.** In 2006, a proposal for a constitutional amendment to put limits on the state legislature's constitutional responsibility to determine appropriations levels was certified to be placed on the November ballot. The amendment would have placed similar limits on the legislative bodies of all local governments in the state. The ballot measure was similar to provisions adopted in other states intended to limit how much state and local governments can spend. Facing stiff opposition, petitioners who initiated the constitutional amendment agreed to withdraw it if the legislature would enact a similar statutory limitation applied only to the state legislature. Senate Bill 321 of the 126th General Assembly was passed in May 2006 and requires the governor to calculate a state appropriation limit (SAL) for the General Revenue Fund for each fiscal year of every biennium and

obligates the General Assembly to comply with the limitation.

The intent of the SAL is to limit the power of the state General Assembly to a growth factor that limits increases in spending to either 3.5 percent or the sum of the inflation rate and the rate of Ohio's population change, whichever figure is larger. There are a number of exceptions to the limitation provided in the legislation. A simple legislative majority vote can circumvent it. Given low inflation rates and low revenue growth, as a result of both a sluggish Ohio economy and the impact of state tax law changes since 2005, the SAL has not yet been imposed.

Since the SAL is not a constitutional provision, it cannot be enforced according to a 2006 Legislative Service Commission research memorandum. That memorandum states that "because the SAL limits a duty that is purely legislative in character and over which the General Assembly has exclusive control, the duty to enact appropriations, and because the Ohio Constitution does not impose the SAL on the General Assembly, the constitutional doctrine of separation of powers likely makes the General Assembly's failure to follow it non-justifiable. In that case, no court would have authority to enforce General Assembly compliance with the SAL." In addition, the SAL itself contains no provision permitting enforcement against the General Assembly, so it becomes solely an unenforceable declaration of legislative intent. Nonetheless, any budget proposal that would exceed the limits specified in the SAL would likely encounter some major political, if not legal, obstacles.

**Budget Reserves.** In addition to reserves maintained as working capital, Ohio establishes other reserves to protect against unforeseen events. In 1996, Ohio began to reserve $75 million per year of Congress' Temporary Assistance to Needy Families (TANF) block grant, which replaced several human services entitlement programs. The reserve was established out of fear that the fixed nature of the block grant would make Ohio vulnerable to a downturn in the economy and an increase in human services caseloads. The accumulation of unexpended TANF funds brought this reserve to almost $1 billion in 2000. It remained near that level until 2006, when the state began to release the accumulated reserve to be used for TANF-eligible services, although another TANF surplus would develop a decade later.

In 1996, the legislature set aside $100 million in state General Revenue Fund (GRF) funds to help pay for Medicaid or other non-cash human services programs that would suffer in an economic recession. The FY 2012–2013 budget included a $129.1 million Medicaid Reserve Fund to bridge the difference in health care caseload estimates between the Legislative Service Commission and the executive. A Health and Human Services Reserve was established in the FY 2016–2017 budget to pay for the state share of Medicaid expansion under the Affordable Care Act. However, the state met this obligation through existing Medicaid resources, avoiding the need to approach the Controlling Board to continue the initiative during that biennium.

These specific reserves are in addition to the more general Budget Stabilization Fund (BSF), or "Rainy Day Fund," that Ohio has maintained with varying balances since 1982. The fund grew to $1 billion by 2000 and was almost depleted in the recessionary years that followed. By 2006 it had been rebuilt. By 2009, however, the fund was again depleted as a result of the Great Recession. The ensuing economic recovery allowed the fund to once again be rebuilt. It reached $2 billion by FY 2015 and grew to nearly $2.7 billion in FY 2019, putting it near the statutory maximum of 8.5 percent of the preceding fiscal year's GRF revenues. Previous to 2015, the goal was to maintain the BSF at 5 percent of the previous year's GRF revenues. Any excess balances generated by revenues exceeding estimates or

spending below appropriated levels is required to be returned to the voters in the form of a personal income tax rebate.[22]

As previously noted, the General Assembly also appropriates to the Controlling Board an amount that varies each biennium to be used for Emergency Purposes or other unforeseen contingencies, including the costs to local governments of natural disasters.

**Education.** Article VI, Section 2, requires the legislature to "make such provisions, by taxation, or otherwise, as...will secure a thorough and efficient system of common schools throughout the state." This provision has been subject to considerable adjudication, as discussed in both Chapters 10 and 14.

**Mental Health Institutions.** Article VII, Section 1, provides that "institutions for the benefit of the insane, blind, and deaf and dumb, shall always be fostered and supported by the State...." It is worth noting that the state is committed to a policy of deinstitutionalizing the treatment of mental health and services for the developmentally disabled.

**Line-Item Veto.** Article II, Section 16, provides that "the governor may disapprove any item or items in any bill making an appropriation of money...." What constitutes an item has been judicially interpreted to be any provision that is "separate and distinct from other provisions in the same bill, insofar as the subject, purpose, or amount of the appropriation is concerned."[23] However, since the legislature includes substantive provisions of law often unrelated to appropriations within appropriations bills, the judiciary has expressed concern over how an "item" should be defined. The judiciary has chosen to give the governor's determination of what constitutes a separate item for the purposes of a veto a presumption of validity and permitted a line-item veto of a provision of substantive law included in an appropriations bill.[24] There are instances where the governor has vetoed not only complete paragraphs or sentences but also clauses, phrases, and even single words.

Appropriations can only be made by bills, not by joint resolutions, thereby ensuring that they will not become law without executive approval, except when the legislature overrides an executive veto by a three-fifths vote in each chamber or when the governor allows a bill to become law without his signature after letting it sit on his desk for 10 days. The Ohio Supreme Court has ruled that appropriating money in any bill makes that bill an appropriations bill, thereby subjecting the entire bill, including each of its substantive provisions, to the line-item veto.[25] This ruling has had important consequences for executive-legislative relations.

**Prior Commitments.** Although the Ohio Constitution prohibits one legislature from binding another, various provisions of substantive law, if not altered, do in fact bind succeeding legislatures to making appropriations because they amount to prior commitments. Construction of a new prison commits future legislatures to appropriate funds to operate it. Both the federal and state constitutions protect the "obligation of contracts," and therefore payments must be made to service Ohio's debts and pay for its pension programs since these are contractual obligations. In addition to these kinds of commitments, entitlements can further restrict a future state legislature.

**Retroactive Laws.** Article II, Section 28 prevents the General Assembly from passing retroactive laws. This prohibition means that the legislature cannot enact provisions that would change the terms or conditions of previously enacted budgetary, fiscal, or other provisions of law.

The state appropriation process in analyzed in depth in Chapter 5.

# Summary

The state budget has many functions. It is a means of controlling expenditures; it is a way of planning the use of resources; it is a document to express public policy; it is a public information and public relations tool; and it is the means of allocating resources. Yet, budgeting must proceed within the framework of rules established by the people as set forth in the Ohio Constitution, by previous legislatures in state statutes, and by federal law and judicial interpretations of state and federal law. These rules limit actions that can be taken on the budget. Limitations on the amount and kind of debt that may be issued by the state also restrain budget action, as do restrictions on the state's taxing powers. The reality of the uncontrollable nature of much state spending is another restraint, and politics and economics impose additional restraints.

## *Endnotes*

1 Adapted from Robert L. Bland and Irene S. Rubin, *Budgeting, A Guide for Local Governments*, International City/County Management Association, 1997, p. 4.

2 Aaron Wildavsky, *The Politics of the Budgetary Process*, Little, Brown & Company, Boston, 1964.

3 Prepared by Sydney Duncombe for Thomas D. Lynch, *Public Budgeting in America*, Prentice-Hall, Inc., Englewood Cliffs, New Jersey, 1979.

4 The fiscal year for the federal government runs from October 1 to September 30.

5 *Budget Processes in the States*, National Association of State Budget Officers, Spring 2015.

6 *Managerial Cost Accounting Concepts and Standards for the Federal Government*, Statement of Recommended Accounting Standards #4, U.S. Office of Management and Budget, Washington, D.C. 1997.

7 "Financing Unemployment Benefits—Federal Loans to Cover Shortfalls," Ohio Legislative Service Commission, *Members Only*, Volume 128, Issue 6, April 10, 2009.

8 *Kasch v. Miller, Supt. of Public Works*, 104 Ohio St. 281, 135 N.E. 818; State ex rel. Public Institutional Building Authority v. Griffith, 135 Ohio St. 604, 22 N.E. (2d) 200 (1939).

9 OAG 65–80.

10 Ohio Office of Budget and Management Website, 2012.

11 *Saxbe v. Brand*, 176 Ohio St. 44, 197 N.E. (2d) 328 (1964).

12 *State ex rel. Kauer v. Defenbacher*, 153 Ohio St. 268, 91 N.E. (2d) 512 (1950).

13 Jim Burley, Ohio Legislative Service Commission Memorandum, January 20, 1998.

14 *State v. Forney*, 108 Ohio St. 463, 141 N.E. 16 (1923).

15 The Ohio Estate Tax was repealed effective January 1, 2013.

16 Investopedia,com, September 2018.

17 Ted Sanders, Superintendent of Public Instruction, *Proposals for the Elimination of Wealth Based Disparities in Public Education*, Ohio Department of Education, Columbus, Ohio, June, 1995.

18 *State ex rel. Sceffler v. Griswold*, 35 App. 354, 172 N.E. 438 (1930).

19 Ohio Revised Code, Section 115.11 and *Cleveland Board of Education v. Gilligan*, 360 App.2nd 15 (Franklin City), 301 N.E. (2d) 911 (1973).

20 Ohio Revised Code, Section 131.33.

[21] Ohio Revised Code Section 126.06 stipulates that "The total operating fund consists of all funds in the state treasury except the auto registration distribution fund, local motor vehicle license tax fund, development bond retirement fund, facilities establishment fund, gasoline excise tax fund, higher education improvement fund, highway improvement bond retirement fund, highway capital improvement fund, improvements bond retirement fund, mental health facilities improvement fund, parks and recreation improvement fund, public improvements bond retirement fund, school district income tax fund, state agency facilities improvement fund, state and local government highway distribution fund, state highway safety fund, Vietnam conflict compensation fund, any other fund determined by the director of budget and management to be a bond fund or bond retirement fund, and such portion of the highway operating fund as is determined by the director of budget and management and the director of transportation to be restricted by Section 5a of Article XII, Ohio Constitution."

[22] Although the Revised Code requires that first claim on budget surpluses goes to maintain the ending balance of the state's General Revenue Fund at 0.5 percent of prior year's revenue, second claim goes to bring the Budget Stabilization Fund up to 8.5 percent of prior years' revenue and the remainder is to be used for personal income tax relief, the legislature may and has appropriated balances for other uses before those provisions go into effect. For example, in H.B. 650, the education funding bill for FY 1999, $30 million of FY 1998 ending year fund balances were provided to the School District Solvency Fund and up to $170 million to the School Building Assistance Fund.

[23] *State ex rel. Brown v. Ferguson*, 32 Ohio St. 2d 245, 291 N.E. 2d 434, 1972.

[24] *Elmhurst Convalescent Center v. Bates*, Franklin County Court of Appeals, 46 App 2d 106, 348 N.E. 2d 151, 1975.

[25] State ex rel. Akron Education Association v. Essex, 47 Ohio St. 2d 47, 35 N.E. 2d 118, 1976.

CHAPTER 2:

# Taxes and Revenue Structure

Every budget has a revenue side and an expenditure side. The economic climate within which Ohio's tax system operates shapes the revenue side of the equation. Several major sources of revenue fuel the state budget, and many others fund the operations of local government. However, two state taxes, the sales and use tax and the individual income tax, are preeminent in terms of their contribution to the General Revenue Fund (GRF), generating five out of every six GRF tax dollars. The commercial activity tax and cigarette and other tobacco taxes also provide significant support to the GRF.[1]

Ohio added both the individual income tax and the corporate franchise tax to the tax code in 1971. Dozens of other law changes were made at this same time in order to keep local schools from closing, to reopen state parks, and to expand other state programs. In 1983, Ohio raised individual income tax rates dramatically and altered numerous other taxes to pay for income support and health care for the poor instead of having to reduce or eliminate other state programs. In 1992, the state increased so-called "sin" taxes on cigarettes and alcoholic beverages and added a new bracket to the personal income tax, along with other tax law changes, again to finance public assistance and health care programs. With the exception of these major decennial tax increases, most of the state's tax policy has been created with an eye toward improving the state's economic development climate. Such was the case with the tax reform package enacted in 2005, which had the added effect of changing the structure of Ohio's business taxes. The intent of these tax law changes was to boost Ohio's economic competitiveness by reducing disincentives for business investment in Ohio. Increasing the state's competitiveness was also cited as a major driver of the large rate reduction in the individual income tax enacted in the 2005 reform package as well as in more recent efforts in this same direction in 2013 and 2015.

## Principles of Taxation

Since 1960, more than a dozen major studies of Ohio's state and local revenue structure have been

undertaken, including a million-dollar comprehensive study completed in 1995 by the Commission to Study the Ohio Economy and Tax Structure. Until 2005, the studies themselves had never provided the impetus to change the structure. At their best, what the studies did was provide guidance on the best way to raise additional revenues once a separate determination of need was made based on a review of spending.

Those who study tax systems largely agree on the principles of a high-quality revenue system. It contains complementary elements and is reliable, diverse, equitable, understandable, efficient, accountable, and uniform in its administration. It should also promote equalization, minimize interstate competition, and not be used as an instrument of social policy.[2] Table 2-1 briefly describes each of these principles and provides an assessment of how well the State of Ohio measures up to each.[3]

While no state, including Ohio, has a perfect tax system, the state does meet many of the principles that tax experts advocate. However, a number of problem areas remain.

### Table 2-1: How Ohio Measures Up

| PRINCIPLE | ASSESSMENT FOR OHIO |
|---|---|
| **Complementary:** components of state and local tax systems should fit together as a logical whole. | State tax policy does not take into account the relationship between the regressive nature of the municipal income tax on payroll and the state's progressive individual income tax. |
| **Stability, Certainty, and Adequacy:** components should produce revenues not overly sensitive to economic change, infrequently altered with sufficient revenues to meet needs. | The sales tax is sensitive to economic conditions, because of its relatively narrow base, and the commercial activity tax is unstable; more than adequate revenues are produced in good economic times but not enough in bad times. |
| **Diversity:** by levying a variety of taxes, individual biases tend to be canceled out. | There is a diverse revenue system, but a large number of tax expenditures require higher tax rates. |
| **Equity:** the incidence of taxes among income groups should be progressive; families with similar income should be taxed uniformly, while persons with subsistence income are shielded from taxation. | Overall, the system is regressive, with substantial tax burdens placed on low-income households, especially through the application of the sales, property, municipal income, and excise taxes. |
| **Efficient and Simple:** tax compliance should be easy. | Industry-specific taxes and a large number of tax expenditures make the business tax structure complex, but individual taxes and their collection are efficient and simple. |
| **Accountability:** components of accountability are open to discussion with regard to tax changes, property tax assessments on full value, local government mandate review, and publication of a tax expenditure budget. | There is strict adherence to accountability with mandatory fiscal notes on legislation with local government impacts and biennial tax expenditure reports, but accountability is diminished when complex tax changes are decided in the context of the state budget. |
| **Uniform Administration:** administration should be professional and uniform with regular reports showing how the tax system is working. | Except for local property taxation, where recommendations for uniformity have repeatedly been made, state administration is uniform and professional, and reporting suggests few enforcement problems. |

| PRINCIPLE | ASSESSMENT FOR OHIO |
|---|---|
| **Equalization:** state should have programs to assure that poor jurisdictions have sufficient resources to provide an adequate level of services. | Equalization of resources among school districts is a well-recognized problem; many other units of local government operating directly under state mandates have the same disparities in tax-raising capacity as school districts; general revenue-sharing assists counties, municipalities, and some special districts, but this funding has diminished markedly in recent years.4 |
| **Competitiveness:** tax concessions should only be provided to generate new jobs and investments; there should be a system to regularly evaluate how the total packages of business and personal taxes compare to competitive neighbors. | While economic and workforce development loans, grants, and tax credits are scrutinized by the Attorney General for economic impact and compliance, regular competitiveness comparisons are not made independently by the state. |
| **Social Policy:** the use of the revenue system to encourage particular social policy outcomes should be avoided. | To the extent that tax expenditures have been enacted to serve as incentives for particular behavior, they violate this principle. |

# Ohio's Economic and Tax Climate

Taxes, the major component of the state's revenue structure, are comprised of a tax rate applied to a base. The tax base is the object of the taxation. Thus, the base for the sales tax is retail sales, and the base for the individual income tax is income. Changes in the tax base are dependent on economic and demographic considerations, while the tax rate is more politically sensitive.

## Tax Base Factors

**Change from Manufacturing to Services.** Because of its central location in the nation, its highly developed transportation system, its willing and skilled labor force, its work ethic, and its proximity to markets, Ohio long occupied a position as one of the leading industrial states in the nation. However, major shifts have occurred in Ohio employment over the last half century. Between 1970 and 2010, manufacturing employment decreased from 48 percent of total employment to just 13 percent. Ohio manufacturing employment dropped an astounding 400,000 between 2000 and 2010, from 1,023,444 to 620,308. By 2010, durable manufacturing accounted for less than 10 percent of the gross state product and all manufacturing accounted for only 17 percent.[5] During this same timeframe, service jobs increased from 9.4 percent to 44.5 percent of total employment. However, while the trough in manufacturing hiring has been a major factor in state revenue woes in more than one recession, it was the productivity of the manufacturing sector, and not the service industries, that led Ohio out of the Great Recession. Ohio contributed 5.0 percent of total U.S. manufacturing output in 2015, far above its overall 3.4 percent share of total U.S. gross domestic product.

**Average Earnings.** The structural change in the economy, shifting from highly paid manufacturing jobs to lower paid jobs in the service industry, impacted both state and local budgets, the tax structures of which were weighted toward taxes based on personal income. Average weekly earnings in the service sector in Ohio are about 60 percent of those in manufacturing. Thus, although Ohio's per capita income increased from $18,669 in 1990 to $43,478 in 2015 in nominal dollars, it ranked only 30th in the nation in per capita income, significantly below the 21st ranking it enjoyed in 1990.[6]

**Transfer Payments Compared to Wages.** Another important factor contributing to Ohio's economic condition is that wages and salaries make up a declining portion of total personal income in Ohio. Whereas transfer payments, such as income maintenance, retirement, disability, unemployment insurance, veterans' benefits, and medical insurance, were 13.5 percent of Ohio personal income in 1975, they rose to 20.1 percent in 2015. This was significantly higher than the national average of 17.3 percent.[7]

The lower personal income is, the less taxable income there will be. The less disposable income there is, the less that will be spent on retail sales, meaning fewer sales tax receipts. The more personal reliance there is on transfer payments, the less that will be paid in individual income taxes. Since the 1990s, the individual income tax has been a "workhorse" for state revenue systems. It has shown itself to be elastic and has accounted for a much larger percentage of tax revenues in those states that impose it. This has been especially true in Ohio. However, the Great Recession, coupled with the impact of 2005 tax reform and subsequent individual income tax reductions in 2013 and 2015, has altered this dynamic.

**Population Growth.** Ohio's population stagnation has affected its economic and tax climate, and likely, the converse is also true. While the population grew from 7,947,000 in 1950 to 10,652,000 in 1970, Ohio's growth from that point has been quite limited. In 1985, Ohio dropped from the sixth to the seventh largest state in the nation. According to the 2015 census estimate, Ohio's total population is 11,658,609. Since 2000, Ohio's median age has increased by 3.2 years to 39.4 years, 1.4 years above the nation's median age.[8] Fully, 16 percent of Ohio's population is age 65 or greater. Given the aging of the "Baby Boomers," the expectation is that Ohio's population will continue to grow older over the next decade. It is estimated that the state's population over age 65 will increase to 18.2 percent by 2020 and to 22.8 percent by 2030.[9] The implications of this demographic change are likely to be significant, with state revenues declining and state spending increasing. An aging population spends less on durable goods and more on social services, which are taxed less but cost government more.

**Poverty Level.** Poverty has remained stubbornly high despite state and federal reform efforts, of which the goal is self-sufficiency for the large number of single-parent, female-headed households. Cleveland and Cincinnati rank first and third in the nation among cities of more than 250,000 in population in their poverty rate among children. Nearly one in every two children in these cities live in poverty.[10] The percentage of Ohioans living at or under the poverty level at any age, 14.6 percent in 2016, was just above the national average. By 2000, the poverty rate in Ohio had declined to 10 percent. However, it increased through the decade, especially during the Great Recession, to 16 percent in 2010. It declined to 14.6 percent by 2016, representing 1,645,000 individuals.[11] Among female householders with related children without a husband, the poverty rate at the height of the Great Recession was a startling 45 percent. A poor, dependent population makes for a low tax base in addition to creating a higher demand for public services.

Table 2-2 lists the federal poverty guidelines for the 48 contiguous states and the District of Columbia for 2018:

**Table 2-2: Federal Poverty Guidelines for the 48 Contiguous States and the District of Columbia for 2018**

| PERSONS IN FAMILY/HOUSEHOLD | POVERTY GUIDELINE |
|---|---|
| 1 | $12,140 |
| 2 | 16,460 |
| 3 | 20,780 |
| 4 | 25,100 |
| 5 | 29,420 |
| 6 | 33,740 |
| 7 | 38,060 |
| 8 | 42,380 |
| 9+ | add $4,320 for each additional person |

*Source: Federal Register, January 18, 2018.*

## Tax Rate Factors

**Business Climate and Taxes.** Ohio policymakers are especially concerned with the state's business climate and the connection that the level of taxation plays in determining it. Several sources rate the state's business taxes annually. Most of these rating organizations, such as the Tax Foundation, include the state's corporate and individual tax structure among their most important criteria. It ranked Ohio's business climate as only 45th among the states in 2017.

Notably, rankings that place less emphasis on state taxation levels do not reach the same conclusion about Ohio. CNBC's 2018 Top States for Business ranked the state 15th among its peers, largely on the basis of its infrastructure capacity and affordable cost of living. However, it ranked Ohio only 37th regarding its legal and regulatory environment. *Site Selection Magazine*, which annually ranks state business climate on the scope of recent corporate project investments as well as the perceived friendliness of state leadership to business, placed Ohio 3rd among all states in 2016.

Matthew Murray of the University of Tennessee dismisses the connection between taxes and economic growth, concluding, "Most studies have found that the general tax and expenditure structure either exerts no impact or a small impact on the location and growth of economic activity."[12] Nonetheless, much of the state's tax policy has been developed with an eye toward the state's economic development and recognition that, rightly or wrongly, rating firms continue to rank a state's tax structure by its business climate. Whenever the issue of raising taxes surfaces, a major concern is what the impact of doing so would be on the state's relative competitiveness.

**Voter Reaction.** Another political consideration in setting the tax rate is voter reaction. Politicians blame Governor John Gilligan's 1974 re-election loss primarily on his having taken the lead in proposing the state's individual income tax several years earlier. The Democrats' loss of the Ohio Senate in the 1984 election is often tied to their support of Governor Richard Celeste's income tax increase the prior year. The common wisdom in Ohio politics is that supporting a major tax increase is tantamount to political suicide. Voter defeat of the proposed increase in the state sales tax rate in 1997, even though tied to supposedly popular causes of state support for education and property tax relief, reinforced this notion. No major, across the board, individual income tax rate increases have been approved in Ohio since 1983. In 2005, a temporary 1 percent state sales tax increase was made permanent at one-half cent. However, the increase was coupled with a reduction in individual income tax rates that would reach 21 percent by 2011. As a result, there was little, if any, negative voter reaction. A similar result occurred in 2013 when a 10 percent individual income tax cut was paired with a one-quarter cent increase in the sales tax. There have been numerous business and individual income tax rate

reductions since 1982, usually approved in the interest of encouraging economic growth. However, lowering tax rates during periods of economic growth can have the unpopular consequence of requiring either larger increases or, more likely, necessitating significant program funding reductions later when the economy slows down.

# Sources of Revenue

Ohio's sources of revenue include (1) federal grants and entitlements; (2) other intergovernmental receipts; (3) agency receipts; and (4) state receipts. Most revenue sources are dedicated funds. That is, funds from the revenue source are designated for a particular use. Its origins are with the Ohio Constitution, which specifies that the receipts from highway use taxes and motor vehicle licenses must be used only for highway-related purposes. The state legislature has subsequently applied this same principle to many other taxes. It has dedicated all or a portion of the proceeds of certain taxes to a single purpose. For example, hunting and fishing license collections can only be used for wildlife purposes. The proceeds from court costs and driver's license reinstatement fees are deposited into a Crime Victims Compensation Fund. The legislature has assigned portions of the General Revenue Fund (GRF) as well as some existing taxes to specific uses. For example, a portion of the GRF goes exclusively to public libraries.

The dedication of funds effectively removes these resources from budget balancing. It takes "off the top" a portion of receipts and allocates them without consideration of budgetary need and with minimum budget review. Programs dependent on GRF appropriations must justify their proposed spending, illustrate how well they are meeting their goals, and demonstrate their achievements. Items funded by dedicated revenues are not subject to the same level of public accountability.

## Federal Grants and Entitlements

In addition to state-level dedicated revenues, Ohio receives a substantial amount of federal funds, all of which are for specified purposes.

**Forward Funding.** Congressional budgeting is a three-step process. First, an authorizing standing committee establishes a program and its goals, along with a formula for the distribution of funds. This step is referred to as an "authorization." Usually programs are limited to no more than five years, after which they must be reauthorized. Next, the congressional budget committee establishes maximum spending ceilings for categories of federal funds. Finally, congressional appropriations committees will make annual appropriations to the program on the basis of a fiscal year that begins on October 1 and ends on September 30. As most states operate on a July 1–June 30 basis, including Ohio, some federal programs are "forward funded." That is, funds appropriated on October 1 are not available until the following July 1. With forward funding, states receive information on the level of funding before the fiscal year starts.

While this describes how the federal budget process is supposed to work, in reality, the process is fundamentally broken. Rather, the federal government has been forced to operate virtually every year through a series of continuing resolutions. Congress has not finalized its appropriations process for all governmental agencies prior to the start of the federal fiscal year since 1994.

**Types of Federal Funding.** Federal funds appropriated to the states are either in the form of grants, which usually specify a maximum percentage or fixed amount that can be expended on administering the grant, or in the form of entitlements. In Ohio, federal funds account for nearly one third of the money the state spends each year. The state legislature appropriates federal moneys, except for in certain circumstances under which the Controlling Board can authorize spending unappropriated federal funds, as described in Chapter 7. Chapter 3 describes how the state accounts for and appropriates federal funds.

***Grants***. There are four different kinds of federal grants. The first are those appropriated for a specific project. This is now less common with diminished earmarking by members of Congress. The second type, categorical grants, are authorized for a specific purpose and usually require appropriations of state and/or local matching moneys in order to be received. A third type, block grants, are increasingly common as the federal government continues a process called "devolution," whereby more authority over the use of federal funds is delegated or devolved to states. Like categorical grants, the total amount of funds available from a block grant is capped. Fourth, and finally, the federal government makes entitlement grants, which are treated differently from other grant types.

Block grants and categorical grants are quite similar. The main distinguishing characteristic is that block grants give the recipient more freedom from complex accounting and reporting requirements. Block grants have historically arisen when the federal government consolidates a number of categorical grants into a larger block with considerably fewer restrictions than the individual categorical grants. However, in 1996, Congress created the Temporary Assistance to Needy Families Block Grant (TANF), substituting a capped appropriation for the previously open-ended entitlement program Aid to Families with Dependent Children.

***Entitlements***. The level of federal funding available from an entitlement grant depends on the number of clients who meet program eligibility requirements as defined by the states within federal guidelines. Matching rates are established by a federal formula. Thus, participation in a federal entitlement program commits a state to its own open-ended appropriation for the matching moneys. The only way a state can reduce its spending commitment in an entitlement program is to tighten its program eligibility requirements within federal limits. Over the years, the federal government has eliminated many entitlement programs. The largest remaining federally funded program that requires substantial state participation is Medicaid, which provides health care services for persons meeting prescribed eligibility requirements. However, Congressional efforts to "repeal and replace" the Affordable Care Act have targeted even this program as a candidate for block grant status in order to control and reduce expenditures.

## Other Intergovernmental Receipts

In addition to federal grants and entitlements, Ohio receives money from local units of government through matching moneys required for various state grants. However, these are not counted as revenues; instead they are deducted from the grants the local government receives from the state.

## Agency Receipts

State agencies often retain revenues for their own program use. Agency receipts come from a variety of sources, including fees for mailing and distributing documents or charges for publications, and

various fees and fines. They also include intradepartmental charges, where one state agency charges another for the use of its services. For example, a variety of centralized services, such as personnel administration and purchasing services provided by the Ohio Department of Administrative Services, are paid for by a percentage charge levied on the salaries and wages of all other state agencies. The amount cannot exceed the cost of the activity, as the state cannot make a profit on these activities.

It is difficult to distinguish agency receipts from other non-tax revenues such as licenses, permits, and fees generated by agencies that are deposited into the General Revenue Fund (GRF). Only by examining the legislation authorizing the levying of the receipt or, in some cases, an authorization by the Controlling Board, can a determination be made about whether a given license, fee, or other non-tax receipt is an agency receipt or a non-tax state revenue. For example, third-party payments made by insurance companies to support patients in regional psychiatric hospitals of the Ohio Department of Mental Health and Addiction Services and developmental centers of the Ohio Department of Developmental Disabilities used to be deposited into the state's GRF. However, a 1997 law change allowed the affected departments to retain the funds. The existence of agency receipts complicates the budgeting process.

## State Receipts

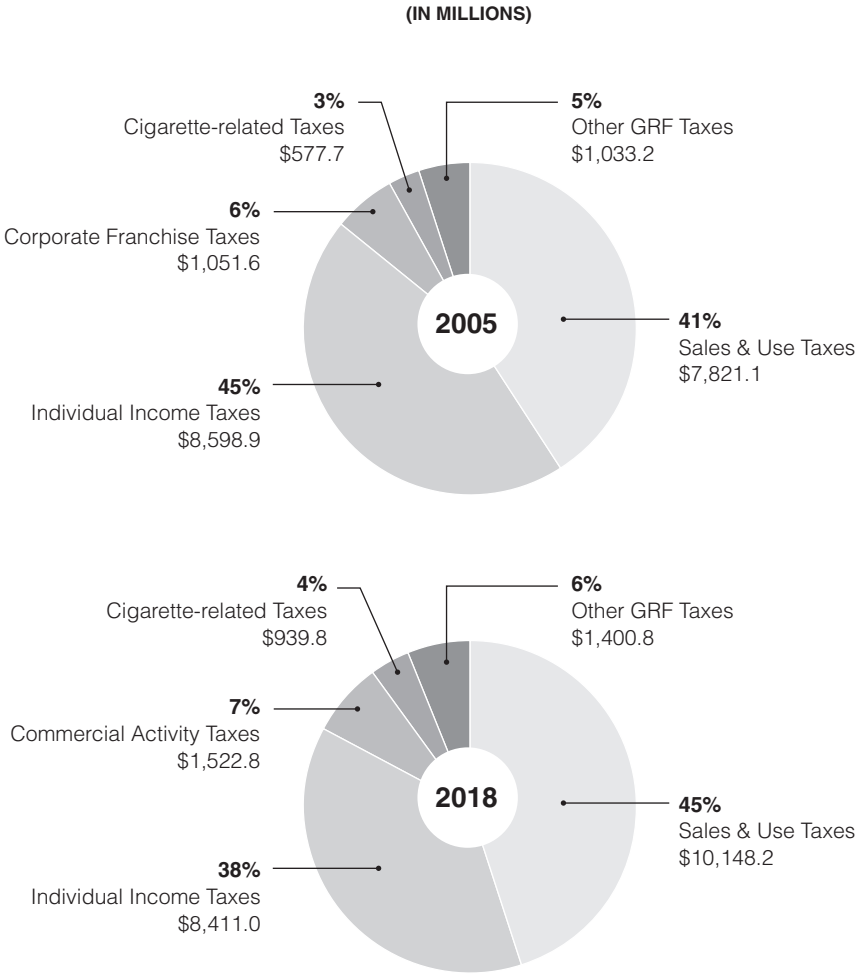
State receipts can be categorized as those derived from taxes on businesses and individuals, license fees, and non-tax revenues, including the State Lottery. The state also authorizes the imposition of taxes by local units of government. The local government tax structure is important insofar as the state's ability to raise revenues from its own taxes is influenced by the level of taxation in local jurisdictions.

## State Taxes

**Sales and Use Taxes.** The state general sales tax rate was established in 1934 with a rate of 3 percent. The use tax was added one year later. The current state sales and use tax rate is 5.75 percent. The rate was temporarily set at 6 percent for FY 2004 and FY 2005, and then "permanently" set at 5.5 percent by the budget bill for the FY 2006–2007 biennium. It was increased in the budget bill for the FY 2014–2015 biennium to 5.75 percent to help offset revenue lost from a reduction in individual income tax rates that was contained in the same legislation. The increased sales tax rate instituted in 2005, coupled with the several phased individual income tax rate cuts passed since that time, substantially narrowed the gap in revenue produced by these two vital sources. With the additional sales tax rate increase in 2013, it returned to its former position as the largest generator of General Revenue Fund (GRF) resources for the first time in 30 years, displacing the individual income tax, which had held this distinction during the interim.

Figure 2-1 depicts the changing relative shares of the sales and use tax, the individual income tax, and other major GRF taxes from FY 2005 to FY 2018. The increased importance of the sales and use tax over the period and the concomitant decrease of the individual income tax can be readily observed.

**Figure 2-1: GRF Tax Revenues – FY 2005 and FY 2018**




*Source: Ohio Legislative Service Commission.*

Beginning in 1983, the sales tax base was broadened to include more services. The list of transactions and services covered under the sales and use tax has grown steadily over time. In addition to applying the tax to the sale or rental of tangible personal property at retail, the sales and use tax is levied on hotel lodging; repair of tangible personal property; installation of tangible personal property; washing, cleaning, or painting a motor vehicle; laundry and dry cleaning services; automatic data processing, computer services, and electronic information services used in business; telecommunication services; landscaping and lawn care services; private investigation and security services; building maintenance and janitorial services; employment services and employment placement services; exterminating services; physical fitness facility services; recreation and sports club services; mobile telecommunication services; satellite broadcasting services; personal care services; transportation of persons by motor vehicle or aircraft within the state; motor vehicle towing services; snow removal services; electronic publishing services; warranty, maintenance, or service contracts; transactions by which tangible personal property is stored; and when a specified digital product is provided for permanent

or less than permanent use. Nevertheless, many services remain exempt from the sales and use tax.

Broadening the base does not make the sales tax immune to the effects of the economy. Enforcement is difficult, and many services with potential growth are not yet included. The advent of Internet sales has had a dampening impact on sales tax receipts regardless of the economic conditions. Enforcement has been especially problematic when collecting use taxes, which taxpayers most commonly owe when buying from an Internet retailer. However, a 2018 U.S. Supreme Court decision ruling that states can require online retailers to collect sales tax could do much to alleviate this problem. In anticipation of a favorable court ruling, language was included in the FY 2018–2019 budget stating that an online seller has a substantial nexus in Ohio if it has more than $500,000 in sales in the state and meets other criteria. However, guidelines at the federal level are needed to ensure consistency among the states and to minimize confusion in implementation of the court decision.

The sales tax is traditionally analyzed in two distinct components, auto sales and non-auto sales, based on how differentially they behave during variable economic conditions. While the economy impacts both auto sales and non-auto sales in a positive and negative sense, sales tax collections from the purchase or lease of an automobile are particularly sensitive to economic realities. Individuals often live where they work, and shop where they live and work; consequently, difficult economic times result in fewer purchases, especially of discretionary items. Large purchases — and few are larger for a family than the purchase or lease of an automobile — are often deferred during difficult economic times. Smaller purchases, however, more often include those day-to-day necessities that must be acquired regardless of personal circumstances. While this is true for the purchase of other durable goods as well, such as appliances, tax collections from non-auto sales only decrease during steep economic declines, such as during the Great Recession, and even then, fall less precipitously than auto sales. During periods of economic recovery, we see a mirror image with sales tax revenue derived from the sale or lease of automobiles increasing more steeply than other items subjected to the sales tax, although growth is universal. However, since non-auto sales account for seven of every eight sales tax dollars, the overall trend for the tax has been as a steady and reliable provider of state revenue, at least when compared to other sources.

**Tax Expenditures.** State law provides that all retail sales of tangible personal property are taxed unless there is a specific exemption provided in law. The numerous exemptions, deductions, and credits that pervade the state tax code are commonly known as tax expenditures. State law requires the Ohio Department of Taxation to prepare a comprehensive inventory of tax expenditures from identified General Revenue Fund taxes, and these are assembled each biennium as a second major document comprising the Executive Budget Request in addition to the "Blue Book."[13] Tax expenditures result in a state tax revenue loss and reduce the funds available to pay for government programs. Thus, their effect is the same as direct government expenditures. However, tax expenditures do not appear in appropriations bills and are not analyzed and reviewed during the budget process. Similar information will need to be provided on the FY 2020–2021 budget regarding the foregone revenue resulting from "business incentive" tax credits.

According to the Ohio Department of Taxation, there are currently 56 exemptions in the sales and use tax alone. The tax consulting firm, Levin & Driscoll (now Howard Fleeter & Associates), classified these exemptions as follows:

- Exemptions whose intent is to prevent "pyramiding" of the sales tax. These are exemptions based on the way in which the property is being used; the item itself is not exempt, but rather, how it is used creates the exemption. An example is property used in agriculture and mining.
- Exemptions that are intended to make the tax more equitable or to favor certain entities or types of economic activity. These exemptions deal with the nature of the consumer, or in some cases, the seller. An example would be the exemption of newspapers from payment of the sales tax.
- Most services are exempt not because of a specific exemption granted in law but because, unlike personal property where everything is taxable unless exempt, only certain specific services such as automobile washing are subject to the tax. All others, including those with the most potential for growth, are exempt.

Sales tax expenditures resulted in a loss of about $6.2 billion in revenue for FY 2019, according to the Department of Taxation. If all of these expenditures were repealed, the General Assembly could have reduced the sales tax rate from the current 5.75 percent state rate by nearly half to just slightly more than 3 percent without a loss in revenues. This fact illustrates that the base upon which a tax is levied is as important as the rate in determining what the yield from the tax will be.

In total, there are 129 tax expenditures in the Ohio tax code, resulting in a loss of about $9.4 billion in FY 2019. In addition to the sales and use tax, the other notable state tax with a significant number of tax expenditures is the individual income tax. It has 37 credits, deductions, and exemptions, resulting in a revenue loss of approximately $2.4 billion in FY 2019.

H.B. 9 of the 131st General Assembly, effective March 2017, created a Tax Expenditure Review Committee to ensure a regular review of each tax expenditure. The seven-person committee consists of three members of each house and the Tax Commissioner or designee. The committee is tasked with providing a report on its work by July 1st of each even-numbered year. The committee held its initial meetings during the spring of 2018.

***Individual Income Taxes***. Although a 1912 constitutional amendment authorized its imposition, Ohio's individual income tax was not enacted until 1971. It is applied only on federal adjusted gross income as reported on the federal income tax return. Various adjustments are made before applying a set of graduated tax rates with seven rate classes. Certain adjustments are added and subtracted from federal adjusted gross income and then personal exemptions are subtracted. Tax liability is determined by applying the appropriate rate to the result. There is an income tax liability even if the resulting income tax is as low as one dollar.

***Progressivity and Indexation***. Graduating the individual income tax makes it a progressive tax; the higher the income, the greater the rate of taxation levied on it. Indexation insures the continuation of the original progressivity. Indexing means that the rate would be designed so that as inflation increases, wage protection is provided to the individual to prevent a person from moving into a higher tax bracket with a higher tax liability unless income rises faster than inflation.

The effect of inflation is that it places a relatively higher burden on low- and moderate-income taxpayers, the elderly, and those with large families because of the relative tax value of personal exemptions and deductions that remain flat in spite of increases in income. To help overcome that effect, beginning in 2000, Ohio adopted an indexing system for the standard personal exemption, which was $1,050 for each dependent in tax year 1999, rising to $1,800 by 2017. In 2014, the exemption amount

for low- and middle-income individuals was increased to $1,950 for persons with incomes between $40,000 and $80,000 and to $2,200 for persons reporting income less than $40,000. By 2017, the exemptions for taxpayers in these categories had risen to $2,050 and $2,300, respectively. In 2010, tax brackets were adjusted for inflation for the first time. The top tax bracket has increased from $200,000 to $213,350 since this time.

***Individual Income Tax Credits and Exemptions***. Over the years, adjustments have been made to the individual income tax for a variety of purposes. These exclusions include income tax exemptions, which are deductions against an individual's adjusted gross income, and income tax credits, which are deductions from the individual's tax liability.

The largest exclusion is the personal exemption deduction. Other major exemptions include the deduction of all Social Security, Railroad Retirement, and other qualified retirement benefits as well as disability income and health insurance premiums paid in excess of the federal amount allowed as an adjustment to income. Income tax credits include a $20 credit for each personal exemption claimed; a $50 credit for senior citizens with reported income of less than $100,000; a child and dependent care credit; a joint filer credit; and a resident credit for income taxed by another state. There are also credits for displaced worker training, retirement income, adoption expenses, and pass-through entities. Beginning in 2005, a low-income taxpayer credit for taxpayers with $10,000 or less of taxable income reduced their tax liability to zero. This credit was eliminated in the FY 2018–2019 budget, as it was unnecessary because of the elimination of the lowest tax brackets. In 2013, a nonrefundable earned income credit was enacted to benefit other low-income individuals.

In 1996, the legislature established the Income Tax Reduction Fund, which uses a budget surplus to provide for a temporary income reduction. The reduction is applicable for only one year at a time, after which the rates return to their permanent statutory levels. The amount of the budgetary surplus minus any moneys the legislature has set aside for reserves or special appropriations is used to determine the amount of the rate reduction. At the end of FY 1996, the surplus permitted a 6.61 percent reduction in rates; in 1997, it was 3.99 percent; in 1998, it was 9.34 percent. Rate reductions continued through 2000, but none were made for subsequent tax years.

***Rate Reductions Since 2005***. A series of rate reductions were to be phased in over five years to result in a total rate reduction of 21 percent beginning with the 2005 tax year. In addition, an income tax on trusts that was enacted on a temporary basis in 2002 was made permanent in 2005 as part of the tax reform. The final year of the five-year tax cut was subsequently postponed by recommendation of Governor Ted Strickland to balance the FY 2010–2011 biennial budget, but it was subsequently restored just prior to the governor leaving office in January 2011. The FY 2014–2015 budget included a three-year additional 10 percent rate reduction that was later accelerated to full implementation in just two years. The FY 2016–2017 budget included yet one more rate reduction of 6.3 percent, a level sufficient to bring the top rate below five percent. Effective with tax year 2016, rate classes ranged from 0.495 percent to 4.997 percent. The top rate, which in 2017 applied to those with incomes of $213,350 or more, had been 7.185 percent before the series of rate reductions commenced in 2005. This represents a reduction of more than 30 percent. At this same time, a separate tax base was created for business income with a 3 percent flat rate for income over $250,000. Business income below this level was fully deductible.

Governor Kasich proposed an additional reduction in the FY 2018–2019 budget that would have reduced the top rate to 4.33 percent and collapsed the brackets from the current nine to only five. The proposal was largely rejected since it was to be paid for through a 0.5 cent sales tax increase as well as an expansion of the sales tax base. However, the number of tax brackets was reduced to seven through the elimination of the lowest two brackets. Taxpayers with incomes of $10,500 or less will owe no tax.

***Pass-Through Entity and Trust Withholding Taxes***. Beginning in 1998, the state began to collect taxes on moneys earned by partnerships, also known as S Corporations, which previously escaped the payment of individual or corporate income taxes on revenues they earn doing business in Ohio. The tax levied was a 5 percent withholding tax on the income of qualifying investors and 8.5 percent on investors who are not individuals. Revenue collected from this source is treated as individual income tax revenue. Beginning in FY 2005, the entity tax was phased out for certain investors consistent with the phase-out of the corporate franchise tax.

***Commercial Activity Taxes***. The phase-in of a new commercial activity tax (CAT) began in 2005 as a companion to the phase-out of the corporate franchise tax and the tangible property tax. Unlike the corporate franchise tax, it applies to any legal person or entity unless specifically exempted. Those excluded are public utilities, with the exception of local and long-distance telephone companies, financial institutions, insurance companies, and nonprofit institutions, all but the last of which are subject to separate taxes applying to them. Motor vehicle fuel receipts were excluded from the CAT in 2013 as a result of an Ohio Supreme Court ruling. This led to the enactment of a separate petroleum activity tax. A number of other types of finance-related businesses are exempted.

Local and long- distance telephone companies are now taxed as general businesses under the CAT rather than as utilities. Also, job creation and retention tax credits and qualified research expenses credits, available for the former corporate franchise tax and the individual income tax, are also available to CAT taxpayers.

Businesses pay the tax based on their gross receipts with those with less than $150,000 exempted from payment. Those with gross receipts between $150,000 and $1 million pay a flat $150. The annual minimum tax for those with gross receipts between $1 million and $2 million is $800; for those with gross receipts between $2 million and $4 million, it is $2,100; and for those with gross receipts in excess of $4 million, it is $2,600. Businesses whose receipts exceed $1 million pay the annual minimum tax plus the CAT at a rate of 0.26 percent for receipts in excess of $1 million. The tax specifically applies to both in-state and out-of-state businesses with taxable Ohio receipts. The tax was phased in, with taxpayers paying 23 percent of their CAT liability in FY 2006, 40 percent in FY 2007, 60 percent in FY 2008, 80 percent in FY 2009, and 100 percent in FY 2010 and thereafter. The definition of gross tax receipts includes a number of exemptions and exclusions. Since it is based on gross receipts, the CAT does not differentiate between profitable and unprofitable businesses, a frequent criticism of the tangible property tax, which was being phased out at this time.

Receipts from the CAT are earmarked for the General Revenue Fund (GRF) and also for reimbursing school districts and other local governments for the reductions and phase-out of local taxes on most tangible personal property, which was another component of the tax reform package enacted by the General Assembly in 2005. Between FY 2007 and FY 2011, none of the receipts were deposited into the GRF. All of the revenue went to school districts and other local governments. However, the FY 2012–2013 budget required 25 percent of CAT revenues to be deposited in the GRF in FY 2012 and 50

percent in FY 2013. The FY 2016–2017 budget subsequently increased the GRF share to 75 percent, as the phase-out of tangible personal property reimbursements continued. It was further increased to 85 percent in the FY 2018–2019 budget. The CAT stands only behind the sales tax and the individual income tax as a contributor to GRF income.

***Petroleum Activity Taxes***. When motor vehicle fuel receipts were excluded from the commercial activity tax (CAT) in a 2013 Ohio Supreme Court case, the General Assembly enacted a separate petroleum activity tax (PAT) on the sale or exchange of motor vehicle fuel with revenues dedicated to highway purposes. A year later, the basis for the tax was changed from actual gross receipts to calculated gross receipts: the taxable gallons sold within the state multiplied by a statewide wholesale price per gallon. The PAT is levied at a rate of 0.65 percent, 2.5 times the CAT rate. Revenue from this source is credited to the General Revenue Fund.

***Cigarette and Other Tobacco Taxes***. The current excise tax is levied at $1.60 per pack of 20 cigarettes. The rate was increased by 35 cents per pack in the FY 2016–2017 budget. Governor John Kasich proposed an additional increase in the FY 2018–2019 budget, but the recommendation was rejected. Other tobacco products are taxed at 17 percent of their wholesale price, except for "premium cigars," which carry a maximum tax of 50 cents per cigar, and "little cigars," which are taxed at 37 percent. "Premium cigars" are defined as a roll of tobacco with a binder and wrapper of leaf tobacco with no tip or mouthpiece and a weight of at least six pounds per 1,000 rolls. "Little cigars" include any rolled, filtered tobacco product other than cigarettes. Governor Kasich proposed taxing e-cigarettes in both the FY 2016–2017 and FY 2018–2019 budgets, but the efforts were unsuccessful on both occasions. Nevertheless, cigarette and other tobacco taxes remain the fourth largest contributor to the General Revenue Fund.

Proof of payment by cigarette wholesalers is shown by stamps or meter impressions attached to each pack of cigarettes. There is a discount of 1.8 percent of the face value of the tax stamps or meter impressions as compensation for affixing the stamps on the cigarette pack and a 2.5 percent discount for other tobacco product dealers.

Cuyahoga County levies two separate cigarette taxes. However, the legislature has since prohibited the local levy of cigarette taxes by other jurisdictions.

***Public Utilities Excise Taxes***. Public utilities, except for electric and telephone companies, are exempt from payment of business taxes in Ohio, which partially explains the narrowness of Ohio's commercial activity tax base. Instead, public utilities, including natural gas, heating, telegraph, water transportation, and water works companies, pay a flat percentage excise tax of 4.75 percent, and pipelines are charged 6.75 percent, based on gross receipts earned in Ohio. Approximately 95 percent of revenue from Public Utilities Excise Taxes comes from natural gas companies. Since 2008, all revenue has been transferred to the General Revenue Fund.

***Kilowatt-Hour Taxes***. In 2001, the kilowatt-hour tax was created to replace the public utility excise tax on electric companies and the tax losses from a reduction in the electric utility personal property tax assessment rates. Payment of the tax by electric distribution companies is determined by the number of kilowatt hours distributed to end users in Ohio. Revenue from this source is credited to the General Revenue Fund.

***Natural Gas Distribution Taxes***. In 2001, the legislature reduced the assessment rate for natural gas distribution companies' personal property from 88 percent to 25 percent. This revenue had gone to school districts and other local governments. In order to compensate for the revenue loss, a natural gas consumption tax was imposed based upon the amount of natural gas distributed through a meter to an end user in Ohio. Rates are based on the volume of gas used (Mcf or 1,000 cubic feet). Effective with the FY 2012–2013 budget, revenues from this tax source have been credited to the General Revenue Fund.

***Financial Institutions Taxes***. The Financial Institutions Tax is imposed on financial institutions conducting business in the state or otherwise having nexus in the state. The tax has a three-tiered rate structure: eight mills on the first $200 million of total Ohio equity capital, four mills on each such dollar greater than $200 million and less than $1.3 billion, and 2.5 mills on each dollar greater than $1.3 billion. Rates can be adjusted annually when either exceeding or falling below the targeted tax amount. Revenue from this source is credited to the General Revenue Fund.

***Insurance Premium Taxes***. Special taxes based on the amount of premiums sold are applied to both domestic and foreign insurance companies doing business in Ohio. Until a major restructuring of the tax, which was fully phased in by tax year 2003, different tax rates were applied to companies organized under Ohio law and those organized under the laws of other states. Since 2003, the base for both kinds of companies has been identical. Revenue from this tax, which is separately administered by the Ohio Department of Insurance rather than the Ohio Department of Taxation, is credited to the General Revenue Fund.

***Alcohol Beverages and Liquor Gallonage Taxes***. Different excise tax rates are applied to beer and malt beverages, wine, cider, mixed alcoholic beverages, and spirituous liquor. Alcohol beverage taxes are administered by the Ohio Department of Taxation. Liquor gallonage taxes are derived through sales by the nonprofit entity JobsOhio Beverage System. Tax rates on each alcoholic beverage vary by type and alcohol content. In addition to these taxes, various kinds of permit fees are levied for the sale, distribution, and manufacture of alcoholic beverages. All alcohol beverage taxes and fees are credited to the General Revenue Fund, except a portion of the gallonage tax on wine, sparkling wine, and vermouth, which is deposited in the Ohio Grape Industries Fund. The state permits a 3 percent advance payment credit or discount on the tax to recognize the administrative costs paid by the wholesaler applying state tax stamps to the beverages.

Until 2008, counties were authorized to levy taxes on all alcoholic beverages for the purpose of operating or servicing the debt of a sports facility operated by the county or a development corporation. Only Cuyahoga County opted to levy such taxes. The General Assembly has prohibited the levying of any additional local alcohol taxes.

***Severance Taxes***. An excise tax based on weight or volume of a natural resource removed is levied on businesses that remove those substances from the soil or water of the state. The taxes are applied to coal, salt, limestone or dolomite, sand and gravel, oil, natural gas, clay, sandstone and shale, and conglomerate, gypsum, and quartzite, with varying rates applied to each. Severance tax revenue is dedicated to a variety of natural resource purposes.

Ohio's severance taxes are insufficient for the state to take advantage of the recent boom in hydraulic fracturing, or "fracking," for natural gas shale deposits. Governor John Kasich initially proposed in-

creasing the severance tax for the purpose of providing a reduction in the individual income tax rate in his 2012 Mid-Biennium Review, but the legislature rejected the recommendation. He has made numerous similar proposals since this time, all of which have met similar fates.

***Motor Vehicle Fuel and Motor Fuel Use Taxes***. Economists call taxes on motor vehicle fuels "benefit base" excise taxes because when consumers pay them it helps to approximate the cost of the use of a governmental service. When a consumer drives more, gas consumption will increase, and more taxes will be paid. Ohio's fuel tax consists of five separate levies totaling 28 cents per gallon, each of which is distributed differently.

Although the Ohio Constitution restricts the use of the fuel tax to highway-related purposes, the state uses the revenues for a variety of purposes. After setting aside specific amounts for highway bond retirement, 0.875 percent is transferred to the Waterways Safety Fund, 0.125 percent to the Wildlife Boater Angler Fund, and an amount equal to one cent of the fuel tax is provided for the Local Transportation Improvement Program. Each month, $100,000 is transferred to the Grade Crossing Fund and 0.275 percent is allocated to the Motor Fuel Tax Administrative Fund. The remainder is distributed with approximately 70.2 percent retained by the state, 12.7 percent to municipalities, 11.1 percent to counties, and 6 percent to townships. A portion of the tax on motor fuel sold by the Ohio Turnpike Commission's gas stations is returned to the Commission for turnpike projects.

There is also a motor fuel use tax imposed on operators of motor vehicles with three or more axles and weighing more than 26,000 pounds. The motor vehicle fuel-use tax is also 28 cents per gallon.

None of these tax sources has changed since 2005. Federal fuel taxes have not changed since 1993. Given that consumption has been stable in recent years, revenues available for road projects have stagnated.

***Replacement Tire Fee***. A $1 per tire fee is assessed to defray the cost of regulating tire scrap facilities and for the efforts to limit the accumulation of scrap tires. Two percent of revenues are used to administer the program with the remainder divided evenly between the Scrap Tire Management Fund and the Soil and Water Conservation District Assistance Fund.

***Horse Racing Wager Taxes***. In addition to paying permit fees, groups conducting horse races must pay a tax on the amount wagered on horse races. The tax is called the pari-mutuel wagering tax, and the rate charged varies from 1 to 4 percent based on the amount wagered daily. A special tax of 3.5 percent applies to results other than for win, place, or show, known as "exotic" daily wagering. There is an additional pari-mutuel wagering tax levied on the total wagering per meet. It is assessed at 0.10 percent for wagering totaling less than $5 million and at 0.15 percent for wagering over $5 million.

Since 2014, seven horse racetracks have operated Video Lottery Terminals (VLTs) programs, commonly known as "racinos." In FY 2016, these "racinos" generated revenue of $868.9 million, 66.5 percent of which is distributed to racetrack owners, including a small amount for addressing problem gambling. The balance was distributed to the Ohio Lottery Commission for the benefit of primary and secondary education.

***Wireless 9-1-1 Fee***. Since 2014, wireless telephone subscribers with a billing address in Ohio have been assessed a monthly charge of 25 cents to support local wireless 9-1-1 services. Purchasers of prepaid wireless calling devices are charged a 9-1-1 fee of 0.005 percent of sale price. Wireless 9-1-1

fees provide state funding for local wireless 9-1-1 services. Three percent of the fees may be retained by the state for program administrative expenses.

## License Fees

This source of state revenue includes license and fee receipts from businesses, occupations, and motor vehicles. It also includes insurance agent fees, factory building fees, motor carrier fees, and fees from occupations and businesses not elsewhere classified, such as the managed care franchise fee enacted in the FY 2018–2019 budget to replace the Medicaid managed care sales tax.

## Non-Tax Revenues

The state collects non-tax revenues from refunds and recoveries, fines and forfeitures, sales of goods and services, and receipts from local government. Earnings on investments made by the Treasurer of State provide a large source of state income, with proceeds being credited to the fund of origin except as otherwise provided in law. Non-tax revenues to the General Revenue Fund (GRF) also include reimbursements from other funds for services rendered by state agencies that receive GRF appropriations. Lottery profits are also transferred to the GRF to partially support primary and secondary education.

***State Lottery***. The state lottery was established to generate revenue for programs benefiting primary and secondary education. A variety of online and instant ticket games are operated with traditional sales totaling $3.06 billion in FY 2016, of which profits totaling $784.1 million were transferred to the Ohio Department of Education. The balance was expended for Lottery operations, awards to players as prizes, and payments to agents as bonuses and commissions. Lottery sales grew spectacularly during the 1980s, rising from $36.7 million in 1980 to $2.3 billion in FY 1996. Then, they dropped to $1.9 billion in FY 2001 before rising to more than $3 billion in FY 2016.

VLT sales at "racinos" distributed an additional $291 million in revenue to the Ohio Lottery Commission in FY 2016. The vast majority of these funds, $282 million, was transferred to the Ohio Department of Education; the balance was for administrative expenses of the commission. In total, $1,066.1 billion was transferred for primary and secondary education purposes in FY 2016.

## Local Government Receipts

In addition to shared state revenues and federal receipts, the major sources of revenue for local governments are real and personal property taxes, municipal income taxes, and county sales taxes. In 2012, local governments in Ohio collected $21.8 billion in local taxes, with property taxes accounting for $14.0 billion of the total. Municipal income taxes generated $4.6 billion; and sales and gross receipts taxes provided $2.2 billion. Several smaller tax sources accounted for the balance.[14] Regardless of the revenue source, it is important to note that local governments include not only counties, municipalities, and townships but also school districts and a myriad of other local taxing districts. Only four states have more local governmental units than Ohio. The state's 3,842 local governmental units includes 841 special district governments in addition to its 88 counties, 937 municipalities, 1,308 townships, and 668 public school systems. In 2012, Ohio had 43.7 local governments per county compared to the national average of 28.7.[15]

In considering tax policy changes, particularly with respect to the sales and use and individual in-

come taxes, the state legislature is always concerned with the total state and local tax burden that will result for each taxpayer. The Federation of Tax Administrators, a Washington-based research group representing tax administrators, ranked Ohio's state and local tax burden near the national average in 2014. It placed Ohio 26th in state and local tax burden when measured on a per capita basis and 24th when viewed as a percentage of personal income. If only state tax burden is examined, however, Ohio's ranking is much lower. In 2014, the state ranked 36th in per capita tax burden and 34th when measured as a percentage of personal income. Using a different methodology, the Tax Foundation, a conservative-leaning Washington, D.C,. nonprofit organization specializing in tax policy, arrived at similar results. It determined that Ohio's state and local tax burden was 25th among the states in 2014 in terms of per capita taxation, while ranking 34th in 2015 when only state tax burden was considered.[16] Thus, it can be concluded that although Ohio has an average tax burden overall, its state-only tax burden is comparatively low while its local tax burden is significantly greater. These rankings mask vast differences in the level of local taxation imposed by Ohio governments.

State tax burden is not only lower in Ohio than for its national counterparts, it has been declining over the last decade. Total General Revenue Fund (GRF) tax revenue as a percentage of Ohio gross domestic product declined nearly 15 percent from a high of 4.1 percent in 2005 to just 3.5 percent in 2015.

Moreover, Ohio is unique among the states in that since 1935 it has shared its revenue sources with local taxing districts and also allows them to levy the same kinds of taxes for their own uses. However, funding distributions to local taxing districts have recently been greatly restricted when compared to historic funding support. Prior to the FY 2012–2013 budget, the Local Government Fund (LGF) received 3.68 percent of GRF distributions. In FY 2012, the LGF was reduced to 75 percent of FY 2011 distributions. In FY 2013, the LGF received just 50 percent of GRF distributions. By FY 2014, the distribution had been reduced to a fixed 1.66 percent of the GRF. The FY 2018–2019 budget redirected an additional $17.65 million annually in LGF funds that had been earmarked for municipalities to the Targeting Addiction Assistance Fund to help address the opioid epidemic confronting the state and its communities. LGF funding in total was reduced by 82 percent from FY 2011 to FY 2018. In addition to these reductions, local governments no longer receive funding from the former dealers in intangibles and estate taxes, which have been repealed. Some reductions occurred to the Public Library Fund as well at this time. This fund, which was created in 1985, currently receives 1.68 percent of GRF resources.

***Real Property Taxes***. The real property tax applies to the taxable value of land and buildings. It is Ohio's oldest tax, having been levied since 1825.[17] The rate at which real property is assessed is 35 percent of its market value. The Ohio Constitution requires that all real property must be taxed by uniform rule according to value, with some exceptions.[18] Since 1974, the market value of commercial agricultural property has been assessed on the basis of its current use instead of its "highest and best" potential use as is the case with other real property. Elected county auditors administer the property tax law and must physically reappraise all parcels every six years to determine the new market value. Every three years, the appraisal is updated without the use of a physical inspection.

Property rates vary with the taxing jurisdiction, with taxes limited by state law to 1 percent of taxable value, or 35 percent of true value, unless otherwise approved by the electorate. The Ohio Constitution, however, permits property to be levied at up to 1 percent of full value without a vote. Property taxes are expressed in mills with 10 mills equaling one cent.

Real Property Tax Credits. There are three major credits or direct reductions of the real property tax rather than reductions of value: the 10 and 2.5 percentage rollbacks, the homestead exemption for senior and disabled homeowners, and the tax reduction factor.

In the case of the 10 percent property tax rollback, which reduces each taxpayer's bill by that percentage and an extra 2.5 percent for owner-occupied dwellings, the state makes a General Revenue Fund appropriation to repay local taxing districts for the loss of revenue they experience from this rollback. Real property used in business activity was exempted from the 2.5 percent rollback in 2005 and effective with the FY 2014–2015 budget. Neither rollback applies to new and replacement levies.

The homestead exemption functions in a similar manner to the property tax rollbacks. It allows qualified elderly and disabled homeowners and their surviving spouses to shield $25,000 of the market value of their home from all local property taxes. In 2007, the homestead exemption was expanded to all senior citizens and qualifying disabled homeowners and their surviving spouses, regardless of income, dramatically increasing the number eligible for the tax break. However, the FY 2014–2015 budget restored means testing for new participants in the program, while grandfathering all existing beneficiaries. The income threshold, which was $31,800 for tax year 2017, is adjusted annually for inflation.

***Real Property Tax Reduction Factor***. The loss of revenue from the tax reduction factor is borne by the applicable local taxing districts. Separate percentage reductions are applied to the combined value of residential and agricultural property and the combined value of commercial, industrial, mineral, and public utility property. Since the enactment of House Bill 920 of the 111th General Assembly in 1976, the reductions remain in effect until there is a new increase or decrease in value, with the exception of new construction. The effect of the complicated computation is to eliminate increases in voted taxes that occur when existing real property in a taxing unit is reappraised or updated.

***Proceeds of Real Property Taxes***. Approximately two-thirds of all real property taxes are used to support public schools, with the remainder going to counties, municipalities, and special taxing districts. The local share of health and human services programs, such as programs for mental health and developmental disabilities, and for children and senior citizens, are financed by real property taxes. The state Supreme Court has ruled unconstitutional Ohio's system of financing public education, because it requires school districts to seek voter approval of real property taxes to support half of their spending.[19] One of the court's concerns was the fact that the ability of a jurisdiction to raise revenues from real property taxes varies according to the tax value of the land and buildings in the jurisdiction and the capacity of the owners of that property to pay taxes on it. Tax capacity and effort vary widely across the state; consequently, governmental services that depend upon the tax to pay for them also fluctuate.

***Property Taxes on Public Utilities***. Ohio taxes the real and tangible personal property of electric utilities differently than other businesses. Public utility tangible personal property is the only personal property remaining subject to taxation, since changes were enacted by the General Assembly in 2005. The taxes on tangible personal property apply to telegraph, electric, natural gas, pipeline, waterworks, water transportation, heating, rural electric, and railroads holding property in Ohio. The assessment rates vary from 24 to 85 percent, depending on the kind of utility.

More than 70 percent of all utility valuation comes from electric companies, which became subject

to legislation enacted in 1999, changing the way in which that industry is taxed. The 1999 Deregulation Act made revisions to the method used to determine the true value of an electric or rural electric company's production equipment and in how electric company production equipment was apportioned.[20] The assessment on electrical transmission and distribution personal property is 85 percent, and the assessment on electric production personal property is 24 percent. The act also reduced the tax assessment rates for all electric company tangible personal property, except transmission and distribution property, to 25 percent of true value. It also levied a kilowatt-hour tax on electric distribution companies to replace the revenues lost from that assessment rate reduction.

Manufactured Home Real Property Taxes. The owner of a manufactured modular home pays a specific tax based on the assessed value of the home. If the home is leased or rented and used as a residence, it is subject to this tax. Homes situated after January 1, 2000, are assessed at 35 percent of true value. For homes situated before this date, the taxable value is either 40 percent of its cost or 40 percent of its market value at the time of purchase, whichever is greater. The tax rate is determined by the voters and varies according to the location of the home, with a minimum tax of $36 per year. The 2007 homestead exemption expansion for eligible seniors and disabled homeowners was also made available to manufactured home owners regardless of how taxes were assessed on the manufactured home. Revenues for manufactured home taxes are distributed to taxing subdivisions in the same manner as other real estate and public utility taxes.

***Real Property Conveyance Fee***. There is a mandatory statewide conveyance fee on the transfer of real property of one mill, or $1 on every $1,000 of property value sold or transferred. In addition, an optional county permissive fee of up to three mills may be assessed. Ross County is the only county that does not assess a permissive fee.

***Municipal Income Taxes***. Municipalities can levy a municipal income tax on wages, salaries, and other compensation earned by residents of the municipality and by non-residents working in the municipality. The municipal income tax is also applied on the net profits of incorporated and unincorporated businesses attributable to the activities in the municipality. The City of Toledo enacted the first municipal income tax in 1946, some 25 years before the enactment of Ohio's individual income tax. In 1957, the legislature enacted the Uniform Municipal Income Tax Law establishing broad regulations for the administration of this important local revenue source. In 2015, 616 Ohio municipalities levied the tax.

Up to 1 percent of the municipal income tax can be levied without voter approval. Taxes are imposed at a rate determined locally, which currently ranges from 0.5 percent to 3.0 percent. Many Ohioans actually pay more in municipal payroll taxes than in state income taxes, largely because the tax is applied at a flat rate and without deductions. For this reason, unlike the individual income tax, it is not considered a progressive tax.

Ohio's three largest cities reported revenues in 2015 that accounted for more than 30 percent of total municipal income tax receipts. The City of Columbus alone generated $781.7 million, or 15.7 percent, of total municipal income tax revenue for that year. Cincinnati and Cleveland reported revenues from this source of $364.8 million and $357.6 million, respectively.

Legislation was enacted in 2014 to standardize several aspects of how the municipal income tax is calculated, including the establishment of a uniform tax base. Other areas standardized included the

treatment of net operating loss carryforward, pass-through entities, occasional entrant treatment, and various administrative procedures. The FY 2018–2019 Executive Budget included a provision for centralized municipal net profit tax administration, but this was rejected in favor of a voluntary opt-in approach to administration. The budget also eliminated the "throw-back" provision regarding the apportionment of the sale of goods.

Another recurring state legislative issue about the municipal income tax is "reciprocity." Since a taxpayer can be required to pay a city income tax on the basis of both residence and workplace, some consider this to be double taxation. Proposals to mandate "reciprocity" between jurisdictions, thus eliminating the system of double taxation that now exists, have frequently been advanced but never enacted. However, some Ohio municipalities have revenue-sharing agreements providing the tax liability in the municipality of employment and then applying a percentage, up to 100 percent, of the liability in the municipality of residence as a deduction from that payment.

***Municipal Income Taxes for Utilities***. In 2000, the state provided that electric light companies and telephone companies within any municipality imposing a municipal income tax were subject to payment of that tax. This tax is administered by the state rather than the individual municipalities that administer their own municipal income taxes.

***School District Income Taxes***. Since 1981, the state has authorized school districts to levy a resident income tax on the amount reported as Ohio adjusted gross income for state income tax purposes less the personal exemptions. The tax may be levied in multiples of a quarter of 1 percent, with current rates ranging from 0.25 percent to 2.0 percent. A taxpayer 65 years old or greater receives a $50 credit against the amount of school district income tax due. In 2005, the legislature authorized school districts to approve an income tax that applies only to earned income of individuals with no deductions. As of 2017, almost one third of the state's public school districts levied a school district income tax. Of the 190 school districts with an income tax, 144 districts levied it on the basis of adjusted gross income, known as the "traditional" tax base, and the remaining 46 districts did so on an earned income basis.

***County and Regional Transit Authority "Piggyback" Sales Taxes***. Counties and regional transit authorities can levy what is called a "piggyback" sales tax that is in addition to the 5.75 percent state rate. These can be levied at rates of 0.25 percent to 1.5 percent in 0.1 percent increments. The county sales tax is levied on county general revenue up to 1.0 percent, with an additional 0.5 percent tax allowable for specified purposes. The applicable rate for most taxable sales depends on the location of the vendor. For computer services, telecommunications service, private investigation and security services, and lawn care and landscaping services, the rate is based on the location of the purchaser. The applicable use tax rate for all taxable sales is the location of the purchaser. The state collects all sales taxes and then returns the piggyback share to the levying counties. All 88 counties levy a county sales-and-use tax. In addition, eight regional transit authorities levy them in addition to state and county permissive sales taxes. These can be levied at the same rates as county permissive sales taxes.

Cuyahoga and Franklin counties levy the highest combined state and local sales tax at rates of 8.0 percent and 7.5 percent, respectively. Table 2-3 shows the number of counties at each of the total combined state and local sales tax rates for 2018.

**Table 2-3: Combined State and Local Sales and Use Tax Rates**

| RATE | NUMBER OF COUNTIES |
|---|---|
| 6.50% | 2 |
| 6.75% | 11 |
| 7.00% | 10 |
| 7.25% | 60 |
| 7.50% | 4 |
| 7.75% | 0 |
| 8.00% | 1 |

Note: 2018 rates.

The elimination of the Medicaid managed care sales tax effective with the FY 2018–2019 budget resulted in a potential substantial loss of revenue to counties and regional transit authorities. Transition aid was provided to ameliorate the loss in the immediate future, but a provision to provide a more permanent solution that would require federal approval was vetoed by Governor John Kasich. The House of Representatives voted to override the veto, but the Senate did not follow suit.

***Lodging Taxes***. Municipalities, townships, and counties can levy an excise tax on charges for rooms in hotels and motels, for a total combined rate of no more than 6 percent. However, lodging taxes in several Ohio counties range considerably higher than this because of a number of special provisions concerning the construction and operation of convention, entertainment, and sports facilities.

***Admissions Taxes***. Unlike most states, admissions are not subject to the state sales tax in Ohio. However, since 1998, operators of movie theaters, theme parks, professional sporting events, and other places of amusement for which there is an admissions charge, as well as country club dues, may be subject to a municipal tax. The FY 2016–2017 budget bill created "tourism development districts" (TDD) and made these entities eligible to tax admissions. However, only an area within Stark County meets the statutory definition of a TDD.

***Resort Area Gross Receipts Taxes***. This business privilege tax is imposed on persons making general sales or providing intrastate transportation within a designated resort area or tourism development district. The tax is currently levied only by the resort areas of Put-in-Bay Township and the villages of Kelley's Island and Put-in-Bay. All revenue is locally retained.

***Gross Casino Revenue Taxes***. Authorized by a 2009 amendment to the Ohio Constitution, the casino gross revenue tax is paid by casinos in Cincinnati, Cleveland, Columbus, and Toledo at a rate of 33 percent of their operator's gross revenues. More than half (51 percent) of the proceeds of the tax are distributed to counties according to population. Counties with populations greater than 80,000 share the proceeds evenly with the largest city in the county. More than one-third (34 percent) of the receipts are distributed to public school districts based on student population. Five percent of revenues are distributed to the four casino host cities. The remaining funds are distributed for the operations of the Ohio Casino Control Commission and the Ohio State Racing Commission, and for gambling and addiction programs and law enforcement training. Although 90 percent of gross casino tax revenues are distributed to local government entities, the tax is administered by the Ohio Department of Taxation.

# Summary

The state's tax structure sets the parameters for budget development, as it determines how much money will be available for spending. While state tax policy obviously impacts state government, recent changes have had a particularly limiting effect on the resources that local taxing districts have at their disposal. Determining the level of taxation is a critically important tax policy decision involving consideration of what is occurring in neighboring states, changes in federal tax policy, economic conditions, and political consequences. While determining the level of taxation involves many variables, once the decision is made to raise or lower taxes, nationally accepted principles of taxation provide guidance on what a high-quality revenue system should look like. However, changes intended simply to make state and local taxes fairer have almost never been undertaken in Ohio despite numerous studies that have established a road map for creating a better tax structure.

## *Endnotes*

1 The Ohio Department of Taxation prepares a number of documents which provide detailed information about Ohio's taxes including its *Annual Report: Fiscal Year 2017*. Current information is also found in the biennial *State of Ohio Executive Budget*, Book One, prepared by the Ohio Office of Budget and Management, and Book Two, prepared by the Ohio Department of Taxation. These documents were used in the preparation of this chapter.

2 This compilation results from a special study by state legislators and staff convened by the Lincoln Institute of Land Policy and the National Conference of State Legislatures in 1987 and its ensuing publication in 1988, *The Unfinished Agenda for State Tax Reform*.

3 The analysis of how well Ohio measures up to these principles is derived in part from a study by Richard G. Sheridan, *Paying for Public Services, A Citizen's Guide to Ohio Taxes*, Federation for Community Planning, Cleveland, Ohio, 1993.

4 Special districts in this category, which rely upon voter-approved property taxes for most of their receipts, include among others: special developmental disabilities districts; mental health districts; independent drug and alcohol addiction services districts; and county health departments.

5 Ohio Department of Job and Family Services Labor Market Information and "Job Watch – October 2011," Policy Matters Ohio, Cleveland, Ohio.

6 Ohio Department of Job and Family Services, Labor Market Information and *Dayton Business Journal*, March 30, 2016.

7 Bureau of Business & Economic Research, University of New Mexico, 2012 and Thomas Suddes, "Ohio Hopes Next Governor Has More than Slogan," *Columbus Dispatch*, May 21, 2017.

8 Ohio Development Services Agency, 2017 and Doug Caruso and Danae King, "Growing Diversity: Ohio Sees Increase in Hispanic, Asian Residents," *The Columbus Dispatch*, June 21, 2018.

9 www.ohio-population.org.

10 U.S. Census Bureau, *American Community Survey 2017*.

11 Ohio Development Services Agency, "*The Ohio Poverty Report,*" February 2018.

12 Summary of current research provided at the 82nd Annual Conference of the National Tax Association as reported in *State Policy Reports*, Vol. 8, Issue 19, 1993.

13 Ohio Revised Code Sections 107.03 and 5703.48.

14 U.S. Census of Governments, 2012.

[15] U.S. Census of Governments, 2012.

[16] William Hershey and Lucas Sullivan, "How Tough Is Ohio's Tax Burden on Business?" *Toledo Blade*, March 20, 2011.

[17] Prior to this time, the state continued the territorial practice of taxing land, but not improvements based on the fertility of the land.

[18] The exceptions are that agricultural land may be valued according to current, rather than "highest and best" use; certified air, water, and noise pollution control facilities are exempt; property of governmental and private institutional owners is exempt; and qualified real property located in an enterprise zone is exempt.

[19] *DeRolph v. Ohio*, 86 Ohio St. 3rd 1, 1997. A more complete discussion of this case and its financial implications is found in Chapters 10 and 14.

[20] SB 3 of the 123rd General Assembly.

CHAPTER 3:

# The Executive Budget

The budget is the most important statement of the future directions planned for government services and, as such, is the single most important executive and legislative vehicle for implementing public policy. The concept of a budget originates with the executive branch of government. It is primarily an executive planning and management tool, but it is also a very personal statement of the plans and goals of the governor. This multifaceted role is especially true in Ohio, where it is traditional to include many substantive public policy matters in the budget along with appropriations to run state government. While the General Assembly reviews the governor's budget request, the executive branch usually lobbies intensely against any major changes in its proposal, unless it originates the changes.

## Statutory Requirements

State law requires the governor to submit a budget within four weeks of the convening of the General Assembly or, in the case of a non-incumbent assuming the governorship, not later than March 15.[1] State law mandates the governor's budget to be "a complete financial plan for the ensuing fiscal biennium" containing:

- A general summary of anticipated resources and planned expenditures by agency and by function.
- A detailed statement of amounts recommended for appropriation for each fiscal year, including a delineation of amounts recommended for personal services, supplies and materials, equipment, subsidies (aid to local units of government or individuals), revenue distribution (moneys collected by the state and then redistributed to local units of government), merchandise for resale (products sold by one agency to another agency), transfers (moneys transferred from one fund or account to another), non-expense disbursements, obligations, interest on the state debt, repayment of debt, and capital outlays. The statement must list the funds from which these appropriations would be made and compare the proposed appropriations to expenditures during the prior two biennia.
- A detailed estimate of anticipated revenues in each fund from each source for each year of the ensuing biennium, compared to receipts in the previous two biennia. If there is legislation proposed that would alter the revenue receipts, this too is to be estimated, and information about available cash balances is to be provided.

- A description of each tax expenditure, with a detailed estimate of the amount of revenues not available to the General Revenue Fund under existing laws during each fiscal year of the immediately preceding biennium due to the operation of each tax expenditure.

The law also prescribes the duties of the Office of Budget and Management, most of which relate directly to the preparation of the budget document and appropriations bill:[2]

- Preparing biennial budget estimates of revenues and expenditures for each state fund.
- Preparing a six-year capital plan, including recommendations on acquisition of real estate and the construction of all public improvements.
- Preparing and submitting to the governor a monthly report showing the condition of the General Revenue Fund.
- Approving or disapproving encumbrances, except for the Attorney General, Auditor of State, Secretary of State, or Treasurer of State, unless there is an insufficient unobligated balance in their appropriations or the encumbrance does not meet all other legal requirements.
- Requiring the allocation and allotment of any appropriation by quarter or by any other period of time.
- Reporting to the Attorney General all facts showing improper payment of public money or misappropriation of public property.
- Determining the monthly distribution of any subsidies appropriated by the General Assembly.
- Determining the availability of money in the Total Operating Fund.
- Preparing and administering a statewide indirect cost allocation plan.
- Designating which programs or activities are subject to performance reviews by affected state agencies and submitted to the Office of Budget and Management as part of the agency's budget request.
- Drawing warrants against the Treasurer of State for payments approved by the Office of Budget and Management Director.
- Determining the state agencies that are to be internally audited.

## Change of Administration

Even when governors are in their last term of office, they still do the initial preparation that the governor-elect will use to prepare the new administration's first Executive Budget Request. The incoming governor has only until March 15 of odd-numbered years to submit the budget request after taking office in January. The new governor, therefore, becomes partially bound to the agency budget requests prepared under the guidance of the predecessor, although additional information may still be requested from state agencies. Thus, Governor John Kasich's budget guidance for the FY 2020–2021 budget will largely determine the format of the initial budget request of his successor, Governor Mike DeWine.

From 1953 to 1982, special provisions of law recognized the importance of a new governor gaining access to budget materials prior to inauguration and directed all departments to give the governor-elect "any information desired in relation to the affairs of their respective departments, institutions, or officers." When the law was repealed, provision was made to establish a gubernatorial transition committee consisting of the director of the Office of Budget and Management as chair and such other members as the governor and the governor-elect might select.[3] In 1985, legislation was enacted

requiring the director of Office of Budget and Management to:

- Make available to the governor-elect all information that the Office of Budget and Management has in its office concerning the income and revenues of the state and the state budget, and assign one or more employees to assist the new administration in studying this information.
- Assign the new governor and immediate staff office space pending inauguration.
- Direct any state agency to furnish such information as may be necessary.[4]

Each state agency is required to submit its budget estimates including all details submitted to the *Office of Budget and Management* not later than December 1 of the year a new governor is elected.[5] The governor-elect is also given an appropriation of unearmarked moneys from the General Revenue Fund to be used for salaries, supplies, and materials during the transition from November until the inauguration in January.[6]

All of these provisions are to ensure that a new administration, especially when of the opposite party from the outgoing governor, is given the resources and information necessary to formulate a budget request. The laws were enacted after unpleasant experiences when the outgoing governor refused to be of any assistance. However, the law does not prevent the outgoing governor from also submitting a separate budget request before leaving office. This is, in fact, what outgoing Democrat Governor John Gilligan did in 1975. The Democrat-controlled General Assembly chose to use that appropriations bill as the basis for its appropriations, rather than that submitted by incoming Republican Governor James Rhodes.

# Budget Preparation

The steps involved in the preparation of the Executive Budget Request include the issuance of instructions to agencies and the preparation of their requests, Office of Budget and Management analysis and recommendations regarding the agency requests, forecasts of revenues and Medicaid spending, gubernatorial review, preparation of the Executive Budget Request, and submission to the General Assembly.

## Budget Guidance

In June or July of even-numbered years, the Office of Budget and Management issues its *Operating Budget Guidance* for the coming biennium. Included in the guidance are the format, content requirements, and due dates for agency budget requests. In the preparation of the FY 2006–2007 Executive Budget Request, substantial changes were made. The budget guidance introduced Budget Request Limitations restricting nearly all agencies' requests for all funds to 100 percent of FY 2005 appropriations. Budget requests for all agencies were submitted using a program budgeting format. Agencies were permitted to prioritize what they would do with the requested money within and by programs. They were also allowed to allocate money within a fund, rather than by line item. Agencies could also submit an Extended Program budget request for specific funding above the FY 2005 appropriation level, if they received prior approval from the Office of Budget and Management.

This process was still largely utilized many budgets later in the *Operating Budget Guidance* docu-

ment for the FY 2018–2019 budget, issued in June 2016 by the Office of Budget and Management. A major difference is that over time core funding has become defined as 90 percent of the previous year's appropriation level (FY 2017) rather than 100 percent for General Revenue Fund items. In the FY 2018–2019 budget, Extended Program budget requests were limited to 100 percent of the previous year's appropriation level.

## Mandatory Increases

A continuation budget assumes that some kinds of increases are mandatory in order to keep a program operating at an existing level of service. In the case of personal services costs, the state's salary structure provides for annual step increases, which may vary from contract to contract, for all covered state employees who are not in the last step of their pay range. If an agency's personal service budget had to absorb the full effect of these increases without additional appropriations, it would have to operate with fewer employees, thereby reducing service levels. Calculating future personal service costs is especially difficult. The Office of Budget and Management, therefore, calculates the expected costs centrally and provides each agency with a budget for personnel that accounts for attrition, step increases, and other such variables. If an agency can provide sufficient justification, those estimates can be changed.

Legislation altering an existing program or mandating a new one can result in increased costs as can legislative formula funding dependent on variables such as clientele, enrollments, and school-age population. Changes in these variables will result in changes in the state's obligation to fund these programs.

Recent Executive Budgets have demonstrated that in difficult economic times, very little spending can now be considered mandatory. In his final budget, Governor Ted Strickland proposed not only freezing state employee step increases but also eliminating personal leave days and including 10 "cost savings," or furlough, days. Governor John Kasich's budgets have included significant formula revisions that diverted moneys that would have otherwise gone to local governments to the General Revenue Fund.

## Programs

Agencies are required to submit their appropriations requests on a program basis. Since the mid-1990s, the Office of Budget and Management has worked with state agencies to categorize their activities into program series. Agencies are expected to construct their activities in terms of the goals they expect to accomplish. These are collected in what is called a "program series." Program summaries describe the purpose of each program and the activities it provides to the population or community that it serves. Program funding sources, internal and external impacts, and the performance measures used to assess program effectiveness are all identified. For example, the program series developed by the Ohio Department of Rehabilitation and Correction to fulfill its agency role are:

- Institutional operations.
- Parole and community service operations.
- Program management services.
- Debt Service.

Programs within the department's institutional operations series are:

- Institutional operations, including facility maintenance, support services, security, unit management, and facility administration.
- Medical services, which offers comprehensive health care services by qualified personnel at all institutions.
- Mental health services providing care and recovery services for inmates with various mental health needs.
- Education services, which provides educational opportunities for inmates at several levels.

The department's parole and community service operations program series also contains multiple programs for:

- Nonresidential services for low-risk offenders in community corrections programs.
- Residential programs for felony offenders and ancillary services relating to their incarceration.

The department's remaining two program series, program management services and debt service, contain only a single program each.

**Required Questions.** The Office of Budget and Management in its *Operating Budget Guidance* for the FY 2020–2021 biennium required agencies to answer a number of questions about each program in their agency budget submission. The questions were similar, but not identical, to those included in previous documents:

1. Explain the purpose of this program? What public service or existing need does this program address?
2. Explain the population served and/or community regulated by this program?
3. Describe the services or activities provided by the program.
4. Provide estimates of the volume of services that will be provided at this funding level, including people served, assistance provided, and the number of awards and amounts.
5. Describe existing activities or services that cannot be maintained or will be eliminated at this funding level.
6. Describe the various sources of revenue that will support this program. Are these funding sources dedicated solely to this program or do these funding sources support other programs?
7. If applicable, list all federal grants and funding that are anticipated, including how the state's allocation of this funding is determined and any associated state match requirements.
8. Does the program pass funds to other state or local entities?
9. Describe any internal or external factors that have contributed to the costs of this program?
10. Do any other state programs or projects interact with the work of this program? If so, please identify them and describe how efficiencies and service delivery have been improved.
11. Describe how the effectiveness of this program is gauged.
12. Provide any additional information concerning this program not included above that will serve to assist the Office of Budget and Management in the analysis of this request.

Required questions for extended program budget requests up to 100 percent for programs supported

by the General Revenue Fund (GRF), or beyond the 100 percent limitation for non-GRF funding, for the FY 2020–2021 biennium can be found in Chapter 4.

To provide a tool for understanding the revenue and expenditure patterns of non-GRF resources, Office of Budget and Management also requires agencies to answer an additional series of questions about each such fund, if applicable. Questions relate to legal authority and fund restrictions, revenue sources and history, assumptions used in developing revenue estimates, projected ending cash balance, and an explanation of programs or activities supported.

Beginning with the FY 2018–2019 biennium, Office of Budget and Management required agencies to also answer a series of detailed questions on their GRF line items, other than debt service. Questions related to the legal authority and purpose of each such line item and the activities it supported, including when funds were passed through to other state or local entities, its connection to other line items, including whether it was used to meet a state match requirement, and how the request differed from the appropriation for the last fiscal year of the preceding biennium.

New to the FY 2020–2021 budget guidance was the inclusion of a strategic information technology (IT) budget worksheet that, together with a new policy for IT governance, represented an attempt by the Office of Budget and Management to obtain a better handle on the IT planning done by agencies.

## Budget Analysis

An especially critical step in budget development is the analysis done by the Office of Budget and Management after agency requests have been submitted. The largest agencies are given the most time to prepare their requests. Office of Budget and Management analysts are assigned to work with specific agencies throughout the year, and these analysts regularly meet with the agency to help define their requests, solicit additional information, and to understand their needs and circumstances. They then prepare an analysis leading to preliminary and then final recommendations to the governor. After the Executive Budget Request is submitted to the legislature, an analysis of that request is made by the Ohio Legislative Service Commission and used in advising the General Assembly in the appropriations process. Both the Office of Budget and Management and the Legislative Service Commission use the same kinds of analytical techniques, which are described in Chapter 4.

## Budget Submission

The operating budget proposal prepared by the Office of Budget and Management under the guidance of the governor consists of three pieces. One is the budget recommendations, which includes historical spending information, special analyses on subjects the governor wishes to emphasize, the economic forecast and revenue estimates, explanatory information about proposed new spending, and the dollar amounts requested by agency, program, and line item. The budget recommendations are traditionally referred to as the "Blue Book," but the Executive Budget Request actually consists of a couple of other parts as well.

The second part of the Executive Budget Request is a report from the Ohio Department of Taxation on General Revenue Fund tax expenditures. Tax expenditures are government spending made through the tax code. It is the revenue foregone through the numerous exemptions, exclusions, deductions, and tax credits contained in either the Ohio Constitution or state statute.

The third part of the Executive Budget provides budget highlights, a broad, "30,000-foot view" of state revenue and spending trends contained in the governor's proposal.

For the FY 2018–2019 budget, the Kasich Administration chose to submit several additional analyses as part of its budget submission. These included transition aid calculations because of the phase out of the sales tax on Medicaid Health Insuring Corporations, calculations of distributions stemming from continued Local Government Fund reform, and school foundation funding estimates.

A final element of the Executive Budget Request contains the actual appropriations bills. The executive branch prepares the original drafts of the bill, but the Legislative Service Commission puts them in final form. The House Finance Committee Chair introduces the bills at the request of the executive. The form of both the budget document and the appropriations bill are prescribed by law.

## Budget Recommendations Detail

The Executive Budget Request provides the detailed information to support the governor's policy objectives. Historical information about spending is also included in this document but needs to be used with caution since the portrayal of the current year's spending is only an estimate made six months before the end of the fiscal year. Final information can be significantly different, thus skewing the comparisons to proposed new spending. The Office of Budget and Management prepares the monthly reports on actual spending, and the Legislative Service Commission analyzes them. The reports can be used to update the budget document.

The bulk of the governor's budget consists of agency-by-agency historical and proposed spending. Table 3-1 is a sample from the FY 2018–2019 Executive Budget Request for the Ohio Department of Rehabilitation and Correction. It contains a summary of the recommendations for the department and related budget history as well as detail on its various program series.

## Table 3-1: Department of Rehabilitation and Correction

| *(In Thousands)* | ACTUAL | | | EST. | % CHANGE | RECOMMENDED | | | |
|---|---|---|---|---|---|---|---|---|---|
| **BUDGET FUND GROUP** | **FY 2014** | **FY2015** | **FY 2016** | **FY 2017** | **FY 16-17** | **FY 2018** | **% CHANGE** | **FY 2019** | **% CHANGE** |
| General Revenue | 1,512,193 | 1,522,471 | 1,602,073 | 1,694,312 | 5.8% | 1,751,230 | 3.4% | 1,781,575 | 1.7% |
| Internal Service Activity | 48,216 | 50,972 | 51,065 | 56,818 | 11.3% | 59,605 | 4.9% | 59,605 | 0.0% |
| Federal | 3,416 | 2,992 | 2,327 | 2,100 | -9.8% | 2,440 | 16.2% | 2,440 | 0.0% |
| Dedicated Purpose | 27,404 | 24,276 | 11,715 | 10,033 | -14.4% | 13,580 | 35.3% | 14,190 | 4.5% |
| **Total** | **1,591,230** | **1,600,711** | **1,667,180** | **1,763,263** | **5.8%** | **1,826,855** | **3.6%** | **1,857,810** | **1.7%** |

| *(In Thousands)* | ACTUAL | | | EST. | % CHANGE | RECOMMENDED | | | |
|---|---|---|---|---|---|---|---|---|---|
| **EXPENSE ACCOUNT CATEGORY** | **FY 2014** | **FY2015** | **FY 2016** | **FY 2017** | **FY 16-17** | **FY 2018** | **% CHANGE** | **FY 2019** | **% CHANGE** |
| Personal Services | 929,515 | 936,263 | 975,751 | 1,028,564 | 5.4% | 1,056,777 | 2.7% | 1,071,346 | 1.4% |
| Purchased Personal Services | 193,301 | 231,519 | 237,587 | 259,971 | 9.4% | 276,859 | 6.5% | 282,328 | 2.0% |
| Supplies and Maintenance | 220,459 | 180,788 | 195,606 | 217,999 | 11.4% | 218,033 | 0.0% | 209,370 | -4.0% |
| Equipment | 15,519 | 14,484 | 17,969 | 14,292 | -20.5% | 14,039 | -1.8% | 13,834 | -1.5% |
| Subsidies Shared Revenue | 110,802 | 122,565 | 138,635 | 135,359 | -2.4% | 155,437 | 14.8% | 175,200 | 12.7% |
| Goods and Services for Resale | 15,156 | 16,710 | 22,087 | 25,382 | 14.9% | 25,000 | -1.5% | 25,000 | 0.0% |
| Capital Items | 0 | 402 | 225 | 0 | -100.0% | 300 | 0.0% | 300 | 0.0% |
| Judgments, Settlements & Bonds | 3,463 | 691 | 954 | 816 | -14.5% | 906 | 11.0% | 892 | -1.5% |
| Debt Service | 103,002 | 96,327 | 76,248 | 79,799 | 4.7% | 78,505 | -1.6% | 78,540 | 0.0% |
| Transfers and Non-Expense | 13 | 962 | 2,117 | 1,081 | -48.9% | 1,000 | -7.5% | 1,000 | 0.0% |
| **Total** | **1,591,230** | **1,600,711** | **1,667,180** | **1,763,263** | **5.8%** | **1,826,855** | **3.6%** | **1,857,810** | **1.7%** |

## Program Series 1: **Institutional Operations (5000A)**

This program series includes Institutional Operations (5000B), Medical Services (5100B), Mental Health Services (5180B), and Education Services (5170B), and is responsible for providing housing, security, food, healthcare, and education for adults who are sentenced to the custody of the department. The department currently operates 26 prisons and contracts with two private prisons. Research-based programs are delivered to offenders based on need in order to prepare them for re-entry to society. In addition, eligible offenders are offered work experience and training through Ohio Penal Industries.

| | | | ESTIMATED | RECOMMENDED | | | |
|---|---|---|---|---|---|---|---|
| FUND | ALI | ALI NAME | FY 2017 | FY 2018 | % CHANGE | FY 2019 | % CHANGE |
| GRF | 501321 | Institutional Operations | 983,275,829 | 1,011,42,529 | 2.9% | 1,012,150,097 | 0.1% |
| GRF | 505321 | Institution Medical Services | 249,581,581 | 257,325,288 | 3.1% | 262,956,517 | 2.2% |
| GRF | 506321 | Institution Education Services | 30,096,795 | 30,681,211 | 1.9% | 31,172,312 | 1.6% |
| 1480 | 501602 | Institutional Services | 2,494,728 | 2,925,000 | 17.2% | 2,925,000 | 0.0% |
| 2000 | 501607 | Ohio Penal Industries | 52,613,029 | 52,500,000 | -0.2% | 52,500,000 | 0.0% |
| 4830 | 501605 | Leased Property Maintenance & Operating | 250,000 | 1,900,000 | 660.0% | 1,900,000 | 0.0% |
| 5710 | 501606 | Corrections Training Maintenance & Operating | 70,000 | 70,000 | 0.0% | 70,000 | 0.0% |
| 5L60 | 501611 | Information Technology Services | 0 | 950,000 | NA | 950,000 | 0.0% |
| 3230 | 501619 | Federal Grants | 161,803 | 150,000 | -7.3% | 150,000 | 0.0% |
| 4800 | 501601 | Sewer Treatment Services | 2,213,293 | 2,230,000 | 0.8% | 2,230,000 | 0.0% |
| 4840 | 501603 | Prisoner Programs | 500,000 | 1,300,000 | 160.0% | 1,300,000 | 0.0% |
| 4550 | 501608 | Education Services | 4,031,474 | 3,900,000 | -3.3% | 3,900,000 | 0.0% |
| 5AF0 | 501609 | State and Non-Federal Awards | 225,000 | 450,000 | 100.0% | 450,000 | 0.0% |
| 51180 | 501617 | Offender Financial Responsibility | 60,000 | 110,000 | 83.3% | 110,000 | 0.0% |
| **Total for Institutional Operations** | | | **1,325,573,532** | **1,365,954,028** | **3.0%** | **1,372,763,926** | **0.5%** |

## Program Series 2: **Parole and Community Service Operations (5250A)**

This program series includes Nonresidential Services (5250B) and Residential Programs (5280B) and provides community supervision for felony offenders, parole investigations and hearings, jail inspection services, victim services, and community correction options. Community correction programs provide punishment for lower risk offenders including electronic house arrest, day reporting, and intensive supervision through jail and prison diversion programs, community based correctional facilities, and halfway houses.

| | | | ESTIMATED | RECOMMENDED | | | |
|---|---|---|---|---|---|---|---|
| FUND | ALI | ALI NAME | FY 2017 | FY 2018 | % CHANGE | FY 2019 | % CHANGE |
| GRF | 501405 | Halfway House | 69,410,170 | 66,770,618 | -3.8% | 66,770,618 | 0.0% |
| GRF | 501407 | Community Nonresidential Programs | 39,471,463 | 61,293,426 | 55.3% | 81,056,884 | 32.2% |
| GRF | 501408 | Community Misdemeanor Programs | 14,356,800 | 14,356,800 | 0.0% | 14,356,800 | 0.0% |
| GRF | 501501 | Community Residential Programs - Community Based Correctional Facilities | 78,531,698 | 78,531,698 | 0.0% | 78,531,698 | 0.0% |
| GRF | 503321 | Parole and Community Operations | 67,486,536 | 69,522,989 | 3.0% | 71,360,000 | 2.6% |
| 3230 | 501619 | Federal Grants | 160,225 | 955,000 | 496.0% | 955,000 | 0.0% |
| 3CWO | 501622 | Federal Equitable Sharing | 0 | 60,000 | NA | 60,000 | 0.0% |
| 4L40 | 501604 | Transitional Control | 499,320 | 1,750,000 | 250.5% | 1,750,000 | 0.0% |
| 5AF0 | 501609 | State and Non-Federal Awards | 54,352 | 50,000 | -8.0% | 50,000 | 0.0% |
| 5H80 | 501617 | Offender Financial Responsibility | 1,345,700 | 2,390,000 | 77.6% | 3,000,000 | 25.5% |
| **Total for Parole and Community Service Operations** | | | **271,316,264** | **295,680,531** | **9.0%** | **317,891,000** | **7.5%** |

## Program Series 3: **Program Management Services (5300A)**

This program series includes Program Management Services (5300B) only. This program provides leadership, administrative oversight and support services to the department's institutions, parole regions, Parole Board, and community corrections partners. This includes the Director's Office, Chief Inspector's Office, Office of Communications, Division of Legal Services, Legislative Office, Office of Human Resources, Office of Administration, Office of Education, Research and Offender Reentry, Ohio Penal Industries, and the Corrections Training Academy.

| | | | ESTIMATED | RECOMMENDED | | | |
|---|---|---|---|---|---|---|---|
| FUND | ALI | ALI NAME | FY 2017 | FY 2018 | % CHANGE | FY 2019 | % CHANGE |
| GRF | 501321 | Institutional Operations | 34,106,458 | 35,535,000 | 4.2% | 36,170,697 | 1.8% |
| GRF | 501407 | Community Nonresidential Programs | 918,953 | 0 | -100.0% | 0 | 0.0% |
| GRF | 501503 | Residential Grant Program | 100,000 | 0 | -100.0% | 0 | 0.0% |
| GRF | 503321 | Parole and Community Operations | 11,174,151 | 11,360,759 | 1.7% | 11,447,332 | 0.8% |
| GRF | 504321 | Administrative Operations | 23,378,789 | 24,034,553 | 2.8% | 24,611,945 | 2.4% |
| GRF | 505321 | Institution Medical Services | 10,840,758 | 9,950,000 | -8.2% | 10,250,000 | 3.0% |
| GRF | 506321 | Institution Education Services | 1,783,092 | 1,900,000 | 6.6% | 2,200,000 | 15.8% |
| 2000 | 501607 | Ohio Penal Industries | 379,800 | 400,000 | 5.3% | 400,000 | 0.0% |
| 4830 | 501605 | Leased Property Maintenance & Operating | 100,000 | 100,000 | 0.0% | 100,000 | 0.0% |
| 5710 | 501606 | Corrections Training Maintenance& Operating | 410,000 | 410,000 | 0.0% | 410,000 | 0.0% |
| 5L60 | 501611 | Information Technology Services | 500,000 | 350,000 | -30.0% | 350,000 | 0.0% |
| 3230 | 501619 | Federal Grants | 1,377,972 | 880,000 | -36.1% | 880,000 | 0.0% |
| 3CWO | 501622 | Federal Equitable Sharing | 400,000 | 395,000 | -1.3% | 395,000 | 0.0% |
| 4L40 | 501604 | Transitional Control | 200,680 | 200,000 | -0.3% | 200,000 | 0.0% |
| 4550 | 501608 | Education Services | 803,625 | 825,000 | 2.7% | 825,000 | 0.0% |
| 5AFO | 501609 | State and Non-Federal Awards | 100,000 | 375,000 | 275.0% | 375,000 | 0.0% |
| **Total for Program Management Services** | | | **86,574,278** | **86,715,312** | **0.2%** | **88,614,974** | **2.2%** |

### Program Series 4: **Debt Service (5310A)**

Debt Service (5310B) is the only program within this series. This program provides for the timely payment of debt service on debt obligations issued to fund DRC capital projects.

| | | | ESTIMATED | RECOMMENDED | | | |
|---|---|---|---|---|---|---|---|
| FUND | ALI | ALI NAME | FY 2017 | FY 2018 | % CHANGE | FY 2019 | % CHANGE |
| GRF | 501406 | Adult Correctional Facilities Lease Rental Bond Payments | 79,798,911 | 78,505,000 | -1.6% | 78,540,400 | 0.0% |
| **Total for Debt Service** | | | **79,798,911** | **78,505,000** | **-1.6%** | **78,540,400** | **0.0%** |

## Legislative Service Commission Documents

Every two years the Legislative Service Commission publishes the *Catalog of Budget Line Items*, which provides six years of historical information about every line item included in the appropriations bill, as well as the legal basis for the line item and a statement of the purpose for which the funds are to be used. Table 3-2 is a sample of the explanatory material for a single line item in the Ohio Department of

Rehabilitation and Correction. The information in the *Catalog of Budget Line Items* is contained in the Legislative Service Commission's "Redbooks." Redbooks are the Legislative Service Commission's analysis of the governor's recommendations as contained in the Executive Budget Request. Redbooks also provide a description of each department's existing functions and staffing, and an overview and detailed analysis of the executive proposal for the agency.

**Table 3-2: Department of Rehabilitation and Correction**

| GRF 501405 HALFWAY HOUSE | | | | | |
|---|---|---|---|---|---|
| 2014 ACTUAL | 2015 ACTUAL | 2016 ACTUAL | 2017 ACTUAL | 2018 ACTUAL | 2019 ADJUSTED APPROPRIATION |
| $44,555,206 | $55,021,555 | $58,452,887 | $69,362,570 | $65,485,127 | $66,770,618 |
| % Change | 23.5% | 6.2% | 18.7% | -5.6% | 2.0% |

*Source: General Revenue Fund*

Legal Basis: ORC 2967.14; Section 383.10 of House Bill 49 of the132nd General Assembly (originally established by House Bill. 694 of the114th General Assembly.)

Purpose: This line item is used to pay for the costs of the community residential program that provides supervision and treatment services for offenders released from state prisons, referred by courts of common pleas, or sanctioned because of a violation of conditions of supervision. Funds are primarily used to support more than 2,100 contracted halfway house beds, including such services as drug and alcohol treatment, electronic monitoring, job placement, educational programs, and specialized programs for sex offenders and mentally ill offenders. Funds are also used to support permanent supportive housing units, transitional control services, electronic home monitoring, and community residential centers. In FY 2017, a total of 9,336 offenders were admitted to state-contract halfway house programs.

# Revenue Forecasting

Essential to the development of a budget is the process of making revenue estimates. These are both part of the executive budget preparation and review process and the legislative review process. Legislative fiscal analysts make independent estimates largely in order to assess the adequacy of the executive estimates and to provide legislators with a second opinion. Critical to revenue estimating is a forecast of the economy. Before proceeding further with a discussion of these and other steps in the estimation process, we describe the concept of fund accounting, within which all budget decisions are made. Chapter 7 addresses financial accounting in depth. We briefly discuss it here, however, because of its connection to revenue forecasting.

## Fund Accounting

The state's accounting and budgeting systems are interconnected. Accounting systems provide information that is used in both budget preparation and execution. In governmental accounting systems, financial transactions are organized into different funds. A fund is a self-balancing set of revenue and expenditure accounts that maintain their own balances for the purpose of carrying on specific activities or achieving defined objectives within specific regulations, restrictions, or limitations.[7] Accounts are classification systems containing all transactions that affect similar assets, liabilities, expenses, or revenues.

With some exceptions, where it is possible to make transfers between funds, spending from each fund must take place within the confines of the estimated receipts to that fund. Thus, revenue es-

timates are made separately for each fund. Different variables and a different process are used in estimating receipts for each fund. The state's General Revenue Fund (GRF) is the largest fund and where spending is the least restricted. It accounts for fully 45.8 percent of all funds in the Executive Budget proposal for the FY 2018–2019 biennium. However, when the legislature appropriates moneys in its main operating appropriations bill, it appropriates funds to state agencies from a number of fund groups, which are collections of similar funds grouped for budget appropriation and reporting purposes. Thus, while there are hundreds of state funds, they are grouped into the 15 fund groups listed in Table 3-3 for convenience.

**Table 3-3: Budget Fund Groups**

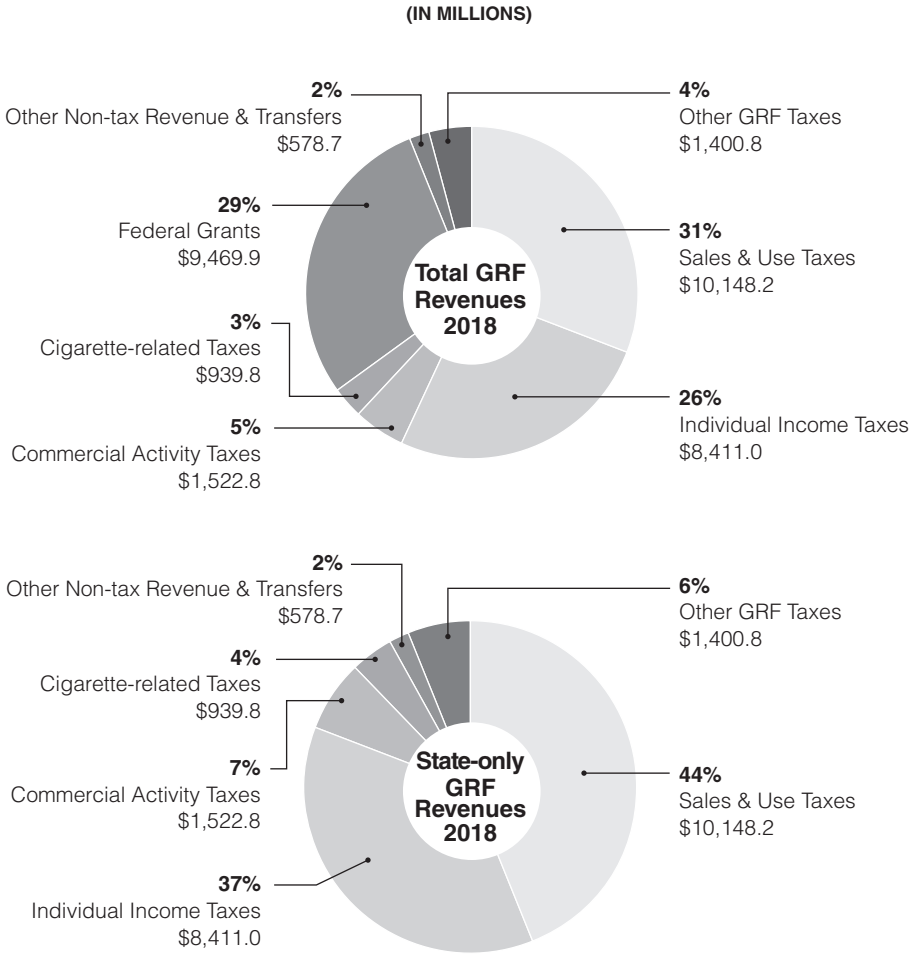
| BUDGET FUND GROUP | CODE |
|---|---|
| Bond Research & Development | BRD |
| Budget Stabilization | BCF |
| Capital Projects | CPF |
| Debt Service | DSF |
| Dedicated Purpose | DPF |
| Facilities Establishment | FCE |
| Federal | FED |
| Fiduciary | FID |
| General Revenue | GRF |
| Highway Operating | HOF |
| Highway Safety | HSF |
| Holding Account | HLD |
| Internal Services Activity | ISA |
| Revenue Distribution | RDF |
| State Lottery | SLF |

Information about the composition of each fund group is included in the "Reader's Guide" section in the Executive Budget Request prepared each biennium, but the titles provide a general sense of what kinds of funds they contain.

The GRF is defined by the Office of Budget and Management as consisting of "all financial resources except those required to be accounted for in another fund." Thus, it is a sort of residual fund out of which education, human services, general government, and property tax relief spending programs are appropriated. Its primary sources of revenue are the sales and use, individual income, commercial activity, and cigarette and other tobacco taxes. The revenues of the GRF are estimated based upon a comprehensive economic forecast made centrally by the Office of Budget and Management and also separately by the Legislative Service Commission.

Figure 3-1 depicts the primary sources and receipts yielded from each of the major sources of revenue contributing to the GRF. The sales and use tax provides the largest source of state receipts in the GRF, contributing nearly one-half of its resources. As recently as FY 2013, the individual income tax was the largest source of GRF revenue. Since Ohio is unique in that federal grants for Medicaid reimbursements are deposited in the GRF, the information is presented both with and without federal GRF receipts. Federal grants and reimbursements account for a similar amount of receipts to the sales tax when all sources of GRF revenue are considered.

**Figure 3-1: Total and State-only GRF Revenues for FY 2018**




*Source: Ohio Legislative Service Commission.*

## Revenue Estimating Considerations

Crucial to all spending decisions is the amount of resources available to be spent. Reasonable people can come to startlingly different conclusions about revenues after viewing the same set of facts. There is no magic to revenue estimates; they are planning tools, not to be etched in stone but rather to be written lightly in pencil. A fact that needs to be underlined is that revenue estimates are never completely accurate. They are not, and should not be, political judgments; they should be the result of objective professional judgments. A second important fact about revenue estimates is that they change over time. When conditions and fiscal assumptions used by professionals in making estimates change, the outcomes also change. Assumptions do not change according to any planned schedule, but when they do, it is professionally responsible to inform political leaders of the consequences of these changes. Reporting new facts is not an act of political betrayal; it is done simply to aid in determining whether political judgments already made should be altered.

Biennial revenue projections used in developing the executive budget that is submitted in January, or

March in the case of a new governor, are made the previous fall by the Office of Budget and Management. These initial projections must thus be offered for a period of 30 months or more beyond the date when the original forecast was made. Economic conditions are bound to change in the additional months that it will take to enact a budget, so there is a constant need to revise revenue estimates to reflect new conditions. It has become the custom in Ohio for the Legislative Service Commission to present its economic forecast and revenue estimates sometime after the submission of the executive budget, thereby taking advantage of an extra quarter of economic data. It is then also customary for both the Office of Budget and Management, which prepares the original executive revenue estimates, and the Legislative Service Commission, with its independent legislative estimates, to present revisions when the bills are under review by a Conference Committee appointed to reconcile the differences between the two chambers. On occasion, revisions are also presented when the Senate receives the main operating appropriations bill from the House of Representatives.

## Who Forecasts What?

Comprehensive revenue estimates subject to the detailed examination of the Office of Budget and Management and governor and the Legislative Service Commission and members of the General Assembly are only made for revenue sources deposited in the General Revenue Fund and the State Lottery Fund and then appropriated in the main operating appropriations bill. The revenue forecasts used in appropriations of other federal and state funds in the main operating appropriations bill as well as funds appropriated in the state's other appropriations bills are made by the state agencies who expend those funds. There is only limited central executive or legislative review of those estimates.

## Monthly Reporting

After the state budget is enacted, the Office of Budget and Management prepares a separate estimate that divides both estimated General Revenue Fund and State Lottery Fund receipts and spending into expectations for each of the 12 months of the fiscal year. The Office of Budget and Management and the Legislative Service Commission track and report receipts and spending on a monthly basis to show how the state is doing compared to estimates. The Office of Budget and Management provides a report to the governor that comments on economic conditions and shows actual and estimated revenues and expenditures and the percentage variance by month and year-to-date. The Legislative Service Commission reformats the information and presents its own separate analysis in its monthly newsletter, *Budget Footnotes*. Both of these reports are available on the agencies' websites.

Through these tracking systems, Office of Budget and Management and Legislative Service Commission provide decisionmakers with an early warning when revenues are either lagging or are in excess of projections. In addition to supplying the information needed to make judgments about when the estimates are likely to produce more or less revenue than anticipated, they form the basis for periodic, though not regularly scheduled, revisions. These updates make it difficult for the governor to "squirrel away" budget surpluses to use to his political advantage as had happened prior to 1975 when the monthly estimating process began.

## Economic Forecasting

Economic forecasts are prepared and used to guide in the preparation of revenue estimates. In pre-

paring its economic forecast, the Office of Budget and Management relies heavily on the economic forecasts that IHS Global Insight makes.

The subscription economic forecasting firm includes a consensus forecast that their experts agree upon each quarter and that represents the safest bet according to its own panel of economists. The consensus forecast is usually drawn upon to extrapolate a state-specific forecast for Ohio. In presenting the forecasts, Office of Budget and Management and the Legislative Service Commission are careful to describe the risks of accepting the forecast and their consequences if the forecast is not realized. In addition to using subscription forecasting services, the Governor's Council of Economic Advisors convenes to review national data and provide information about any special conditions necessary in adapting the national information to Ohio.

The Legislative Services Commission uses the same resources as Office of Budget and Management, but it always reaches different conclusions, which underscores the fact that forecasts are subject to interpretation. Because the forecasts can become politically volatile, some states have placed forecasting responsibility within an independent commission or committee and tasked them with finalizing a judgment on the economic forecast.

### Key Variables

Ohio uses several major variables in its economic forecast:

- Real Gross Domestic Product (GDP), which is the total of all goods and services produced by the country and an overall measure of whether the country's economy is expected to fall, rise, or remain constant.
- Nominal personal income and wage and salary income, primary measures for forecasting both individual income and sales taxes.
- Nonfarm employment and unemployment rates, which affect individual income tax revenues and Medicaid spending.
- Real and nominal personal consumption and retail and food service sales, which impact both sales tax collections and state expenditures.
- Light vehicle sales, estimated independently from other sales tax provisions because of the importance of this segment of the economy both to Ohio employment and to sales tax collections.

Once an economic forecast is agreed upon by the executive, it is then translated into revenue estimates.

## Forecasting Methodologies

Different methodologies are used to forecast the various taxes that comprise the state's General Revenue Fund, tax expenditures, and federal and other funds. These are briefly described.

### General Revenue Fund

The sales (auto and non-auto are separated for estimating and tracking purposes), individual income, commercial activity, and cigarette and other tobacco taxes are the four main revenue sources of the

General Revenue Fund (GRF). For these, the Office of Budget and Management uses a regression analysis. The model uses patterns, trends, and cause-and-effect relations over time, subjects them to mathematical formulas, and then projects on the assumption that what has previously happened over time will continue in the future.

A simulation model is used to forecast other GRF tax sources. It takes actual receipts for the most recent prior period, applies the expected changes to estimated receipts, and then expands the result to simulate the entire population of taxpayers.

A third method of estimating, trend analysis, assumes that historical growth rate patterns will continue in the future.

The selected methodology will produce a baseline estimate that assumes the continuation of current law. However, in Ohio it is customary for the executive to propose changes in tax law as part of the budget request submission. When this happens, estimates of the positive or negative effects of the proposed law changes are applied to the baseline estimate to produce the final estimate.

**GRF Tax Expenditures.** Tax receipts lost as a result of deductions, exemptions, and credits in tax laws are independently estimated each biennium by the Ohio Department of Taxation. Estimates are made only for tax expenditures that are subject to a specific exclusion in state law, those items which, if not specifically excluded, would be part of the defined tax base. Also, only items that are not subject to an alternative tax are included. Taxation's biennial report for FY 2018 and 2019 identifies and estimates the loss from 129 General Revenue Fund tax expenditures. The methodology used for estimating the impact of each loss can be quite variable. However, the basic principle used for all is to determine how much revenue the state would gain if the tax expenditure were repealed on the first day of the biennium under review. This number may very well be different than the value of the exemption to the taxpayer, since repeal could change the behavior of taxpayers relative to the affected item. Also, considered are the timing of the collection of the tax and the extent to which the taxpayer will comply with the change in the law. Forecasts of tax expenditures are especially difficult because the Department of Taxation has to rely on data from outside sources such as other states, or from privately generated data, which may not always be completely reliable. Nevertheless, the information is useful to assist decisionmakers in assessing the validity of an exemption.

## State Lottery Funds

Profits resulting from the operation of the state lottery are deposited directly into the State Lottery Fund and are not part of the General Revenue Fund (GRF) projections. Until 2002, state law required that 30 percent of all sales must go to education. Since then, a target amount for transfers is determined each biennium during the appropriations process. However, the amount of money appropriated to the Ohio Department of Education from the GRF is determined after subtracting the amounts expected to be raised from lottery profits. Thus, the estimates are critical to GRF budget development. Sales projections for the lottery form the basis for profit projections after business expenses are deducted, providing the legislature some control over the size of profits because they appropriate operations moneys for the lottery games. What is unknown is how well the public will receive the games.

### Federal Funds

While federal Medicaid reimbursements are deposited into the General Revenue Fund and are carefully monitored by the Ohio Department of Medicaid and the Office of Budget and Management, most Office of Budget and Management federal funds are estimated by the recipient agency. What little subsequent review of the estimates the Office of Budget and Management and Legislative Service Commission make is on an exception basis, where new grants are anticipated or where there are striking increases or decreases. The review is usually primarily concerned with policy issues, such as whether the state should participate in a new grant program or replace anticipated grant losses. Forecasting federal funds is especially difficult in Ohio with its biennial budget and its July 1–June 30 fiscal period. The federal budget operates on an October 1–September 30 basis. Estimators must try to guess what Congress will do almost three years out. It is for these reasons that comparisons of estimated versus actual federal receipts have such wide variances.

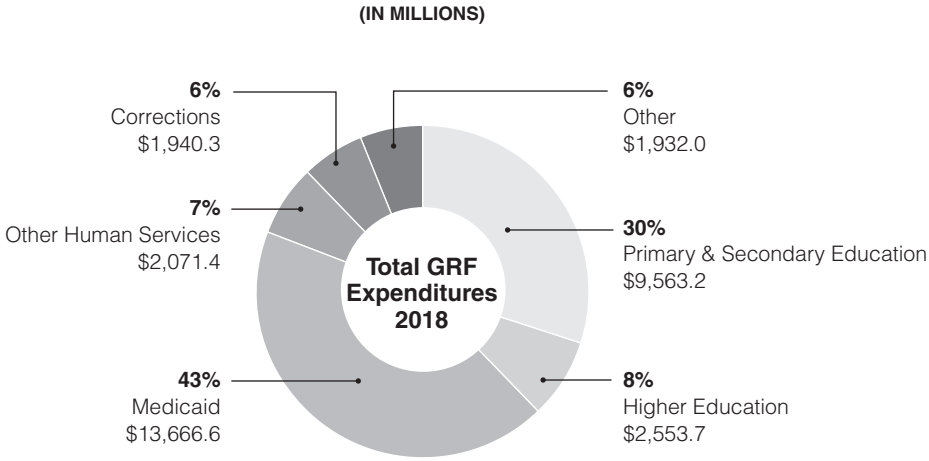
### Other Funds

Estimating receipts to the numerous non-General Revenue Fund (non-GRF) funds is mostly performed by the agency responsible for spending the moneys. The techniques they use are the same as those that the central budget office uses to forecast GRF revenues. If the agency's estimates are too high, they have to cut back in their spending. If too low, they can apply to the Controlling Board in the interim between biennial budgets and, if justified, that board can authorize spending the higher amounts. Thus, there is little to be gained by politically manipulating the forecasts. Although in an agency with mixed GRF and other funds, it could be to an agency's advantage to estimate non-GRF revenues on the low side if it thought that would result in higher GRF appropriations. There is little evidence that any agency has deliberately engaged in such a practice. Estimating revenues is a difficult enough practice without intentionally trying to alter the results and risk discovery and possible consequences. Thus, although central budget forecasting for other state funds might otherwise be desirable, there is little reason to recommend it.

## Estimating State Expenditures

For each General Revenue Fund (GRF) dollar spent by the State of Ohio, fully 85 percent is distributed back to communities in the form of subsidy. The state retains relatively little for administration and related expenses. Most GRF spending in Ohio is allocated for Medicaid and other human services, primary and secondary education, higher education, corrections, and real property tax relief. Approximately 65 percent of GRF Medicaid expenditures in FY 2018 came from federal funds. Ohio is unique in that GRF expenditures include the federal share for Medicaid reimbursements. Figure 3-2 depicts the primary GRF expenditure areas.

**Figure 3-2: Total GRF Expenditures for FY 2018**




*Source: Ohio Legislative Service Commission.*

Medicaid is Ohio's largest expenditure program. On an inflation-adjusted basis, it is the only major state program that has experienced any growth since 2000. While Medicaid expenditures, when excluding the expansion through the Affordable Care Act, have grown at a more controlled rate in recent years than was previously the case, the program continues to absorb what little state budget growth exists. When only state GRF funds are included, however, primary and secondary education continues to be the state's largest spending area. This is further addressed in Chapter 12.

## Funding Formulas

Spending decisions in major expenditure areas are determined by estimates and formulas based on these estimates. Inaccuracies in forecasting in these areas can severely impact the state budget. Like revenue forecasts, different methodologies are used for each kind of spending forecast. Medicaid is easily the largest and most important of the spending forecasts. These projections, like revenue forecasts, are performed by both the administration and the legislature.

## Medicaid Spending Projections

Medicaid is the state's largest federal entitlement program. States determine rules of eligibility for the health care program, within federal parameters, and the federal government reimburses the state for a portion of the expenses, using a formula dependent on calculations of the number of eligible persons in the state and other factors. Costs of this program are very volatile. Throughout the 1980s, Ohio struggled with the problem of finding enough money to pay for underestimated Medicaid costs. Through the 1990s, Medicaid spending was overestimated largely because of the continuing reduction in human services caseloads and federal health care cost containment efforts. During the 2000s, the state has significantly expanded Medicaid coverage and also initiated a variety of cost-reduction strategies to control spending increases for what has become the state's largest spending program.

Forecasting Medicaid spending begins with a determination of eligible populations. In Ohio, Medicaid pays for a range of health services to nearly three million low-income families, children, seniors, and

certain people with disabilities. Enrollments increased by nearly 27 percent in the four years following the Medicaid expansion through the Affordable Care Act, which went into effect in 2014. Eligibility criteria are determined on the basis of a percentage of the federal poverty level. The income guidelines vary for the different covered populations.

After caseloads are forecast, an estimate is made of the health care inflation rate. The state controls reimbursements for fee-for-service payments (inpatient and outpatient hospitals, physicians, prescription drugs, dental care, home health care, and other practitioners) through managed care organizations (MCOs). A per capita rate is actuarially determined as required by federal law, and the MCO is responsible for managing necessary client care. Client usage of services is not an important consideration for the purposes of determining costs of MCOs, but it is an important rate-setting consideration. Nursing home payments, including payments to intermediate care facilities for persons with developmental disabilities, are set in statute and controlled by using a prospective reimbursement system, that is, a system where a negotiated fee is set in advance. For all other kinds of services, usage by clients must be estimated.

The Ohio Department of Medicaid, using its data base, prepares the Medicaid spending forecast. The Office of Budget and Management reviews it, taking under major consideration what the state can afford within the framework of the rest of the budget. Proposed policy changes are introduced to reduce or increase expected spending. Once the baseline is established, proposed policy changes that might affect caseloads are taken into consideration. Programs or reimbursements are separately estimated and then added to or subtracted from the base.

In advance of each biennium, the Joint Medicaid Oversight Committee identifies its own forecasts for medical inflation apart from the executive estimates. As the budget bill proceeds through the legislative process, the Legislative Service Commission then makes its own separate estimates, taking into account the baseline, policy changes proposed by the executive, and any further changes proposed by the General Assembly.

## Education Spending Projections

Spending formulas often vary considerably from biennium to biennium. Temporary law provisions in each budget bill specify the current formulas that are in effect. Efforts to estimate the cost of providing a student with a "thorough and efficient education" during the Strickland Administration have been abandoned. Governor John Kasich's first budget did not contain a fully operative school funding formula. Recently, formula proposals put forward by the executive have been largely ignored by the legislature in favor of guarantees for districts with diminishing enrollments and caps on growth for fast-growing districts. Community schools have made a major change on the landscape, however, reporting full-time enrollment of more than 111,272 students during the 2016–2017 school year. This accounted for about 7 percent of total public-school enrollment in the state.

A useful tool for looking at the finances of each of the state's public-school districts is the Ohio Department of Education District Profile Report, commonly known as the Cupp Report. In addition to data on school district revenues and expenditures and their sources, both state and local, the Cupp Report also includes demographic data, personnel data, property valuation and tax data. The Cupp Report can be found at the Department of Education Website, www.education.ohio.gov.

The state distributes formula funding to Ohio's public universities and community colleges through the State Share of Instruction. Major revisions made during the FY 2010–2011 biennium gave priority to science, technology, engineering, mathematics, and medicine (STEMM) programs. Emphasis in the formula was also given to university degree attainment and community college success. In late 2012, Governor Kasich requested the higher education community to develop further changes to the formula that would foster improved student retention rates and timely graduation. These efforts have accelerated in subsequent biennia.

# Estimating Problems

Economic forecasting and revenue estimation are very important, yet difficult, steps in making projections. Authorities in the field are quick to point out that the biggest problem is in the collection of a consistent series of revenue data. Changes in rates and bases, failure to record receipts in the period in which they are due, inconsistent accounting, and similar problems can result in large estimation errors.[8]

In Ohio, there is also the problem of weighing alternative revenue estimates produced by two different reputable agencies, the Office of Budget and Management and the Legislative Service Commission. While the estimates of the latter are intended to assist legislators, they more often than not confuse rather than enlighten. Legislators who are not economists are reluctant to weigh alternative economic scenarios and put their political futures on the line by selecting one that might result, further down the line, in painful budget cutting. Since 1973, when the Legislative Service Commission began making revenue estimates, their estimates have almost always been higher than those of Office of Budget and Management. Likewise, their Medicaid spending estimates have been typically lower than those of the executive. What generally happens is that the House of Representatives and Senate will base their versions of the main operating appropriations bills on the estimates that help them achieve consensus. However, when the budget conference committee prepares the final appropriations bill, they most often base their budget on the executive branch's revenue and Medicaid spending forecasts, even though it has been shown that the Legislative Service Commission forecasts have historically been just as accurate.[9]

Especially difficult problems attend the estimation of tax expenditures and the fiscal impact of pending legislation, or fiscal notes. Relevant data is not always readily available to make good estimates. Since the potential effect of an inaccurate fiscal note could be to kill legislation that would otherwise have passed on its merits, care is given to make sure that the details of the estimate are included in the fiscal note. Including the assumptions used, the sources of data, and their limitations permits others to challenge the estimate and remove some of the blame if it is later found to have been inaccurate. A review of fiscal notes will reveal that most are described in terms of ranges or in terms of the magnitude of the effect rather than with exact figures.

It cannot be emphasized enough that all estimates are just that, estimates. Their accuracy depends more on thorough analysis, the judgment and experience of the estimator, and realistic assumptions. When a forecast or estimate proves to be inaccurate, that is to be expected; it is the degree of the inaccuracy, its direction, and the fiscal, programmatic, and political consequences of the inaccuracy that are important. That is why both executive and legislative estimators try always to err on the side

of underestimating revenues and overestimating Medicaid spending because the consequences are far less severe than errors in the other direction.

# Budget Logic and Strategies

An important consideration in preparing the executive budget for submission to the General Assembly is how it is to be packaged: the budget logic. Equally important is how the executive budget is sold: the budget strategies. Early in the development of the budget, the governor will establish the financial and program objectives that the central budget office will use in its review of agency budget requests and in preparing recommendations for executive review. As the budget request nears completion, concern will shift to the issue of laying the groundwork for legislative and public acceptance of administration proposals. Throughout the process of legislative consideration of the budget request, the governor will be the primary tactician in obtaining the kind of constituent, media, and public support needed to overcome legislative objections.

## Setting Objectives

During the gubernatorial campaign, the governor will have made a number of campaign promises with financial implications and will initially seek to have these incorporated into the new administration's first budget.[10] With a fresh mandate from the electorate, a new governor is likely to achieve the greatest success with agenda items in the General Assembly in his initial budget. However, fiscal realities will inevitably intervene, and it is likely that some priorities will have to be postponed until the second budget. The second administration budget is also important, because it will be the budget in place if the governor runs for re-election. By the time the second budget is being prepared, the governor can concentrate on fulfilling those campaign promises that will lead to re-election.

Much of what the governor does in setting financial objectives will be in the nature of determining what major areas of state government are to be expanded or contracted. Governor James Rhodes, for example, was renowned for his single-mindedness with respect to economic development. He cast all of his budget priorities around that theme. Governor Richard Celeste had a more expansive view of government and established new initiatives in higher education and health and human services but was not widely known for any one single focus. Governor George Voinovich announced from the outset that he wished to be known as the "education governor," a moniker that Governor Bob Taft also adopted after taking office and being faced with the judicial directive to rebuild Ohio's schools and increase their funding levels. Governor Ted Strickland also embraced this designation with his extensive efforts to reform the primary and secondary education funding formula. Governor John Kasich returned to the economic development theme of Rhodes. He spoke of transforming Ohio for growth and labeled his first two budgets: "the Jobs Budget" and "Jobs Budget 2.0." However, his last two budgets had a more futuristic focus: "Blueprint for a New Ohio" and "Building for Ohio's Next Generation."

## Bottom-Up or Top-Down

A decision that each governor will make affecting budget outcomes is whether to develop the budget from the bottom up or the top down. That is, should the budget be largely a compilation of feedback

from the agencies that the executive and the executive's budget staff assemble into an integrated package ("bottom up") or crafted from specific directives from the executive and the executive's budget staff that leave agencies only minimum latitude ("top down"). One review of the approaches used by Ohio governors suggested that there was a partisan pattern. Democrats preferred the bottom-up method, and Republicans preferred top-down.[11] Perhaps as a function of the difficult budget climate, the budget development process has become increasingly top-down in recent years regardless of the party in control.

Governor Richard Celeste, for example, asked agencies to submit formal policy papers identifying major issues with significant budget impacts they thought should be of high gubernatorial priority in the succeeding two years. After these were reviewed by the budget office and sent to the governor, he decided which should be further developed for incorporation into the budget policy-setting process. Governor James Rhodes instead set target-spending numbers centrally and required agencies to submit their budgets within those targeted numbers. If they wished to establish new priorities beyond those determined centrally, they would have to do so within their targets. Governor Bob Taft, in formulating his FY 2006–2007 budget used committees to formulate major proposals for education, higher education, Medicaid, and tax reforms.

## Importance of Economy

Economic conditions will determine much of what the governor is able to do in terms of fulfilling campaign promises or setting policy directions. If the economy is expanding, there is more opportunity for new initiatives. During economic recessions, cutback management will be required. A sour economy put Governor George Voinovich in the position of cutting both primary and secondary and higher education funding and hampered him from achieving his objective of being known as the "education governor" throughout his first term. When the Ohio Supreme Court decided, during his second term, that the state's support of primary and secondary education was constitutionally inadequate, his hope of leaving the heritage he desired was totally dashed and, instead, he became known as the governor who pushed the state into "doing more with less," his revised political budget stance. Governor Bob Taft's two terms in office followed that same pattern as did Governor Ted Strickland's single term in office. Governor Strickland also viewed himself as a champion of labor and the working class, and yet fiscal realities forced him to take strong actions in the personnel area to achieve a balanced budget. Governor John Kasich took a different approach and embraced the difficult fiscal environment present when he assumed office in order to make sweeping changes in the relationship between the state, its institutions, and its political subdivisions. As the economy improved during the next two biennia, Governor Kasich used the opportunity to prioritize reductions in individual income tax rates over new spending.

## Bureaucracy

A final constraint is the relationship with the bureaucracy. Aptly called the fourth branch of government, the bureaucracy can influence how much a governor can accomplish. The governor's success will depend upon how quickly and how well he can influence the ongoing operation of government. This success is more than a matter of selecting the heads of agencies; it also involves answering such questions as whether the governor's office attempts to direct the agencies or permits them to manage. In his office, Governor John Gilligan established policy staff positions covering the major areas

of government service. The result was constant friction between that staff and the agencies they were to coordinate, conditions which ultimately stifled the ability of the governor to establish unified policy directions. Governor James Rhodes limited his executive policy staff and relied exclusively on his agency appointees for budget leadership. Governors since Richard Celeste returned to the model established by Governor Gilligan but tried to promote cooperation between agencies and their policy staff, with mixed results. Regardless, governors need the bureaucracy to establish workable priorities and to later implement them. Executives must find a way to "capture" the bureaucracy if they are to be successful, turning government beyond its "rule driven" culture to one that is more flexible, more empowering of employees, and more "results driven."

## Preparing for Legislative Consideration

Once the budget priorities are set, the governor must decide what tactics he will use to help ensure legislative approval of them. Perhaps the most frequently used tactic is simply to require state agencies to support the budget as submitted by the governor and to adamantly oppose any deviations from it, including reference to the original agency request. This tactic is difficult to sustain when one considers the independence of agencies headed by independently elected officials, boards and commissions, and the relative independence of the bureaucracy. In the recent past, the Ohio Department of Education and the Ohio Board of Regents, representing large shares of General Revenue Fund spending, were also independent of gubernatorial control. However, the former is now at least somewhat responsive to executive control through the State Board of Education appointment process, and the latter, renamed the Ohio Department of Higher Education, is a cabinet agency. Recent unsuccessful efforts to place all education functions in a single cabinet setting are discussed in Chapter 14. A more cooperative approach that recognizes that the public hearing process will unveil new considerations during the course of legislative review, that economic and other conditions will change, and that the legislature will want to place its own imprimatur on the budget, will be more successful.

Another approach is to allow agencies to have free rein and advocate for whatever additional amounts they feel they can justify. Governor James Rhodes adopted this approach during a period of fiscal austerity to the total confusion of the legislature. Being pressured by agencies, constituent and other interest groups, and the press to do more than the governor recommended put the legislature in the untenable position of having to consider raising taxes to satisfy agencies' demands. Sorely missing the discipline of coordinated support for an executive budget, legislators were at a loss as to how to prepare a balanced budget. The governor, meanwhile, maintained that he and his budget director supported the budget they submitted to the General Assembly, but agency heads were free to advocate for whatever they wished. The budget process ended just short of chaos and illustrated the desirability of executive-legislative budget cooperation.

## Executive-Legislative Budget Cooperation

More is to be gained by cooperation between the executive and legislative branches of government than by engaging in continuous battles culminating in a "war of the budget," as has happened in the past in Ohio. Most of the data the legislature needs to review and analyze budgets is under executive control. If the legislature is to make better, more informed, and rational budget decisions, it is in the interest of the executive to cooperate in providing the legislature with all the information it requests. Withholding information, or otherwise making it unusable through distortion or manipulation, tends

to bring punitive reactions from the legislature and, in the end, probably serves no purpose other than to antagonize individual legislators and strain the relations between the two branches. Similarly, it is in the interest of the legislature to offer guidance on what it expects in formulating the budget so that the executive does not engage in fruitless labors (e.g., submitting a lump-sum or program-based budget request only to find all legislative inquiries directed to budgetary line items).

When it comes to developing good relationships, it is in the interest of the governor to curry support from as many legislative leaders as possible. This need for broad-based support means that it is in the governor's interest to utilize executive staff and expertise to help the legislative leaders solve their problems. If legislative leaders cannot obtain needed support from particular factions of the majority party, or minority support, the governor can help with constituent problems and issues and provide other favors that will strengthen the leadership's ability to secure necessary votes. It is also in the interest of the executive to assist the legislature in its search for more revenue in order to avoid the use of budget gimmicks or other questionable budgetary practices.

## Budget Realities

Legislative support comes easier if the governor recognizes some legislative budget realities. One reality is that the legislature will not increase taxes significantly without gubernatorial leadership. Developing an inadequate budget and expecting the General Assembly to fill the gap between what is needed and what is proposed is unrealistic and will increase friction between the executive and legislative branches of government.

Another caveat is that the legislature will always have pet projects they wish to fund. Smart budget directors, under executive guidance, will keep a reserve for legislators to use as a way of protecting the budgets of executive-favored programs from legislative budget cutting. Ohio's governors have used different approaches for this protection. Sometimes it is done by simply leaving a larger unappropriated budget balance than is strictly needed for cash-flow purposes. In other cases, it is done by proposing one or more "straw man" budget items that the governor is privately quite willing to cut or be eliminated. This approach strengthens the executive position with other budget items since the governor will be viewed as being cooperative in the legislative search for additional money for its priorities.

## Fiscal Staff Cooperation

Executive and legislative fiscal staff can foster cooperation by acting as the critical link between the branches. The central budget office, agency, and legislative staff must develop regular patterns of communication if budgeting is to result in desirable public outcomes. When policymakers in the executive and legislative branches are at political odds with one another, fiscal staffs can provide the communication link needed to achieve the political consensus essential to the adoption of a budget.

This cooperation is formalized at several key points in the budget development process. Agency staff meet with central budget office staff prior to the development of recommendations for the Executive Budget Request. Likewise, agency staff meet with legislative staff in anticipation of publication of the Legislative Service Commission "Redbook" for the agency.

## Securing Public Support

In Ohio, unveiling the governor's budget involves several well-defined steps. Usually there are early press leaks to staff permanently assigned to the Ohio Statehouse. Leaking information allows the governor to establish the themes of his budget. When the official budget is released, it consists of so much information that reporting may fail to give those themes the attention the executive wishes. Since newspapers want to be able to "scoop" each other, they are inclined to initially report whatever is told to them in advance of the official release of the Executive Budget Request, when they can analyze it and give it their own slant.

The governor releases the budget publicly at a press conference, which will include a lengthier presentation conducted by the governor's budget and tax staff. In addition, constituent and other interest groups, as well as agency fiscal staff, convene to receive a more detailed picture of the budget request and to raise questions. These briefings are also a public relations tool the executive uses to gain needed constituent support for the administration's proposals. Separate briefings may also be held in advance of the press conference for agency directors, legislative leaders, and legislative staff. In addition, constituent leaders can be separately briefed in order to get their early support for initiatives favoring them.

Depending on how controversial the budget and its proposals are, the governor may be better served by going directly to the media and the public for support. Major newspapers in Ohio may be given an "embargoed" copy of the governor's press package the day before it is released so that they have additional time to digest its contents. The press package is, of course, a political document in its own right, highlighting those items the governor wants to emphasize and ignoring those that are more likely to cause problems.

# Summary

Development of the Executive Budget Request requires significant interaction between the central budget office, which guides the process, and the various state agencies. A critical element of Executive Budget development is the forecasting of revenues and Medicaid spending for the next biennium. Revenue estimating is not limited to the executive branch, as the Legislative Service Commission provides its own independent estimates. Once the Executive Budget Request is developed, attention turns to selling the budget to the legislature and the general public.

## *Endnotes*

[1] Section 107.03 of the Revised Code.

[2] Sections 126.02, .03, .05, .06, .08, .09, .12, .13, .35, and .47 of the Revised Code.

[3] Section 107.09 of the Revised Code.

[4] Section 126.26 of the Revised Code.

[5] Section 126.27 of the Revised Code.

[6] Section 126.30 of the Revised Code.

[7] A more thorough examination of fund accounting can be found in Paul E. Glick, *A Public Manager's Guide to Government Accounting and Financial Reporting*, Financial Reporting Series No. 10, Chicago, Government Finance Officers Association, 1990.

[8] John L. Mikesell, *Fiscal Administration Analysis and Applications for the Public Sector*, The Dorsey Press, Homewood, Illinois, 1982, p. 254–5.

[9] See Richard G. Sheridan, *State Budgeting in Ohio*, Second Edition, Cleveland State University, Cleveland, Ohio 1983, page 89.

[10] See Richard G. Sheridan, *Governing Ohio: Administrative, Judiciary and Other Operations,* Federation for Community Planning, Cleveland, Ohio, 1990, Chapter 9, for a discussion of the differences in approaches to governing taken by governors of Ohio.

[11] Susan A. MacManus, The State Budgeting Process in Ohio: An Overview and a Look at the Impact of Economic and Political Conditions, 1975–87, Cleveland State University, Cleveland, Ohio, n.d.

CHAPTER 4:

# Budget Analysis

Some scholars differentiate program analysis from budget analysis, maintaining that the former is concerned only with new policy directions reflected in the state budget, while the latter focuses on planned management operations.[1] However, this distinction is arbitrary; program and budget analyses are co-dependent activities. While there are analysts who review only management operations, their reviews cannot escape the fiscal consequences of their conclusions and recommendations. All good budget reviews must also consider program implications. Good analysts, regardless of the branch of government where they work, prepare sound budget analyses, including both program and fiscal considerations, for use by decisionmakers in making resource allocation choices.

In addition to knowledge about the agency being studied, a good budget analyst needs to be able to use various analytical techniques, find alternative funding mechanisms, use different tools, utilize a variety of information sources, and be aware of the use of questionable budget practices.

## Good Budget Analysis

The primary job of a budget analyst is to know the agency and what it does. This familiarity requires knowledge about its history, mission, statutes, operations, staff strengths and weaknesses, constituencies and interest groups, and other challenges facing the agency. A good analyst will study reports produced by or about the agency, court cases affecting the agency, federal laws affecting it and its programs, newspaper articles, and reports on how the agency's programs operate in other states. It is this body of knowledge that is referred to as institutional memory. Institutional memory is important in helping a new governor transition into the job and is one of the major reasons that executive budget staff is never replaced by a new administration, regardless of political party. Legislative budget staff serve both political parties and their longevity likewise contributes to the institutional knowledge that will help in transitions that result from legislative term limits.

### Legislative Objectivity

Unlike the executive branch budget reviewer, the legislative analyst does not have the benefit of clear-cut objectives when reviewing the governor's budget request. The governor can set explicit ob-

jectives for the executive budget analyst to meet. For example, the governor could decide that higher education spending should be held to a fixed dollar limit. With this instruction, the higher education analyst in the central budget office is guided on a predestined course. The legislative analyst, on the other hand, serves a multitude of different and competing interests and seldom has any single guide. To some extent, this makes the legislative analysis more objective, although possibly less pleasant, since it will be impossible to please everyone.

Another difference is that the legislative process is much more open than the executive process. The work of the analyst is readily available to the affected agencies, their constituencies, and other interested parties as well as to the legislators for whom the material was prepared, thereby increasing the need for objectivity and concern for accuracy. Nevertheless, the techniques of analysis are identical, whether the work is intended for the executive or legislative branch of government.

# Analytical Techniques

A budget analyst needs to be prepared to review and question agency claims about needs and problems, as well as the agency's mission, goals, and objectives, and how its organization and staffing patterns contribute to their achievement. The analyst needs to understand agencies and programs sufficiently to offer program and service delivery alternatives and to assess their political implications. An analyst needs to be able to cost out personnel and other proposals, identify alternative methods of financing, review how agency operations compare to other states, and analyze historical spending patterns in real and constant dollars. Special analytical techniques need to be applied in reviewing new programs.

## Needs and Problems

Good budget analysis involves scrutinizing agency policies and raising questions about the specific issues, needs, or problems that are under the agency's purview and what it is doing, or should be doing, to solve them. The analyst's source of information for this kind of review includes interviews with clients, surveys, study reports, general academic research, and a review of sources of information about how other states attack the same issues and problems. The National Association of State Budget Officers has identified five fundamental steps in good policy analysis. These steps can be applied to policy questions at any level of government.

1. **Defining the problem.** What is the issue? Why is it a problem? Who is affected, and how are they affected? To what extent is it a problem? Needs should be examined in terms of whether they are supported by normative, comparative data, or whether they are simply expressed needs.
2. **Determining the current policy.** What are the statutory requirements, constitutional provisions, regulations, executive orders, court orders, federal mandates, and other requirements related to the problem? What is currently being done? What resources are allocated to it and what are the results of programs and services that address the problem?
3. **Researching the issue.** What do the people affected by the problem want? What do experts currently think based on normative or comparative data? To what extent are other states, public and private entities, and nonprofit organizations successfully dealing with the problem?
4. **Developing alternatives or options.** The range of alternatives usually includes maintaining the

status quo and letting the private sector resolve the problem, in addition to more activist solutions.

5. **Assessing each alternative.** What are the advantages and disadvantages? What are the costs and benefits to both the public and private sectors? Who supports and who opposes each alternative? How high a priority is this for the governor, legislators, and taxpayers? How would it be implemented? What resources are needed to implement each alternative?[2]

## Mission, Goals, and Objectives

Understanding an agency's mission, why it was created, and whether it is carrying out its original mission is important. A good analysis examines whether times have changed and whether the agency has responded to those changes. An agency may need to review how it is organized to do its job or even alter its mission. Can an agency's program(s), or even the entire agency, be abolished? Has the agency informally expanded its purposes beyond the scope of statutory intent? Is the legislative intent for the agency clearly being carried out? Would more or less money help to accomplish its goals? A good analysis of agency mission can lead to needed internal restructuring and budget shifts, reductions, or expansions.

Large state agencies have multiple goals and provide more than one government service. A program may become buried in a complex agency when it could be more efficiently or effectively carried out in a different organizational setting. Even in single purpose agencies there is the possibility that the same tasks could be done better and at lower cost through a different organizational structure. Budget analysis can provide options for meeting goals and objectives that could lead to cost savings or better service.

## Costing Out Personnel

One way of computing personnel costs is to divide total expenditures on salaries, wages, and benefits in a fiscal period by the average number of filled positions during that period. This kind of analysis is useful in comparing costs for similar functions between agencies. For example, while there can be reasons for differences between the average cost for information technology personnel and maintenance workers, an average cost analysis can provide the basis for raising questions about staffing levels and operational efficiency. This kind of analysis is also useful in comparing past and present costs and in determining the cost of filling vacant or newly proposed positions. Another way of estimating the cost of filling positions is to examine the state compensation plan and cost out the position based on where a new hire would be placed in the plan, assuming the new employee would start on the first step on the compensation schedule, absent information to the contrary.

Benefit costs are fairly standard among agencies. Benefits are stated in terms of a percentage, which represents the average costs statewide of salaries and wages.

## Costing Out Other Expenses

Depending on the degree of accuracy that is needed, costs for items other than personnel can be calculated in different ways. For some purposes, it is sufficient to calculate the total cost of all recurring, as opposed to one-time, maintenance items in an agency's budget, expressed as a percentage of salaries and wages. This percentage can then be assigned to the cost of a new employee as an add-on to the salaries, wages, and benefits costs to provide a more accurate depiction of the costs of a new hire.

When costing out a new program, after calculating personnel costs, a more detailed analysis of other costs can be undertaken. A standard approach is to identify specific kinds of maintenance and equipment items, such as travel, communications, office space, and equipment rental or purchase, that are normally associated with that kind of program. A determination should be made of what factors normally drive the cost of the program, such as clients, employees, and service units. Based on historical information, or information gathered from agencies operating similar programs in other states, the unit cost can be determined and then multiplied by the number of units. In addition, any one-time costs, such as the purchase of equipment, should be identified and typical costs determined. This approach was developed by the National Association of State Budget Officers and is illustrated in Table 4-1.

**Table 4-1: Sample Calculation for Each Category of Cost**

| COST DRIVER UNITS X | COST PER UNIT X | LIFE OF PROGRAM | ANTICIPATED COST |
|---|---|---|---|
| 2,000 Clients | $10 Travel Expense | Two-year Program | $40,000 Travel Cost |
| 10,000 Information Requests | $2 Printing/Supplies | One-time Cost | $20,000 Printing & Supply Cost |
| 50 Employees | $2,000 Rent | Two-year Program | $200,000 Office Rent |

*Source: National Association of State Budget Officers, Overview of State Budgeting, Washington, DC, 1998.*

## Program and Service Delivery Alternatives

Besides reviewing an agency's budget to find more efficient and effective ways of providing a government service, the service itself can be analyzed to determine whether economies are possible. An analyst should ask not only whether the program could be combined with a similar program in another agency, but whether it should be performed at all. If a determination could be made that incremental dollars spent in one of the programs yielded greater measurable societal benefits than incremental dollars spent in the other program, the decision to eliminate the program with lesser benefits in favor of the program with greater benefits would be easy. Unfortunately, such definitive conclusions cannot always be reached. Not only are benefits difficult to quantify, but also program cost data are frequently unavailable.

## Political Implications

All budget actions have political implications that need to be identified as a part of budget analysis. The political effects of a budget decision can include partisan or regional conflicts, executive-legislative branch conflicts, conflicts with individual legislators, or conflicts between units of local government and the state. Good analysis will always consider what effect an agency proposal has on the political decision-making environment. Analysts can gain information about the political environment through regular contacts with interest groups and their newsletters, from agency legislative staff, and from newspapers and other media sources. It is especially important to recognize when a proposal will affect an individual legislator's district and to be certain that the legislator is made aware of the potential impact before a budget decision is finalized.

## Alternative Methods of Financing

When an agency proposes spending General Revenue Fund (GRF) moneys, an analyst should also

try to determine whether there are alternative methods that could be employed to fund the program or activity. A basic rule in state budgeting is that the GRF is to be protected as the only completely discretionary revenue source available to the state. This imperative is especially important since agencies are the source of revenue estimates for virtually all other funds. Since there is only a limited review of these forecasts, it may be to the advantage of the agency to underestimate its anticipated receipts from federal and other non-GRF sources. Underestimation could result in an increased "demonstrated need" for GRF moneys.

## Comparisons to Other States

The late United States Supreme Court Justice Louis D. Brandeis was the first to describe states as "laboratories of democracy."[3] Accordingly, it is always important to understand how other states address the same societal problems, what programs they have developed to help solve them, how they are administered, and at what cost. There is no need to "reinvent the wheel" when a creative solution may already exist next door. For most comparative purposes, analysts study states of the same general size and economic condition. It is usually useful to compare Ohio with Illinois, Indiana, and Michigan. However, if the comparison is for a best-practices review, then an analyst would try to locate the states that are considered to be leaders in the particular area under review. The National Conference of State Legislatures and the National Association of State Budget Officers can be useful resources when conducting such a review.

## Historical Spending Patterns

Analyzing historical spending patterns of agencies, programs, and activities is basic to determining how efficiently and effectively they are operating. To be most useful, the historical spending analysis will be related to the mission of the agency, the services it performs, and the clients that it serves as described in supporting program and performance information and data. What this kind of analysis should seek to discover is the relationship between funding and meeting client needs. Figure 4-1 features typical questions for this kind of analysis.

**Figure 4-1: Analytical Historical Spending Questions**

- Is spending in line with the amounts budgeted for a particular activity or function?
- How has spending changed over time? Are these changes attributable to known events?
- Do the activities represented in the expenditures fit within the mission of the agency?
- Are the position allocations consistent with the activities of the agency, and are they funded at the proper amounts and from the proper funding sources?
- Are the revenue forecasts consistent with historical patterns?
- What statutory or regulatory changes have occurred, and how will they affect the agency's mission, activities, and spending patterns?
- How many customers are being served, and will this number change?
- Is there a more effective and efficient approach to delivering services?
- Are mandated services, activities, or programs appropriately funded?
- Do past expenditures reflect any major one-time items?

*Source: Adapted from National Association of State Budget Officers, Overview of State Budgeting, Washington, D.C., 1998.*

## Historical Spending in Constant Dollars

Comparing a spending request with past expenditures can be misleading. Agency budget requests are not stated in real dollars, which would translate a budget request into its real value at current market prices. While current numbers are usually larger than historical spending, they may represent less buying power than previous years. Increased spending can result because of inflation rather than because of service expansion or a reduction in efficiency. By using the United States inflation indexes, an analyst can calculate true expenses without the effects of inflation. This kind of analysis translates current dollars into "constant" dollars.

The most common inflation index is the Consumer Price Index, which is compiled and reported monthly by the U.S. Bureau of Labor Statistics. It measures changes in a shopping bag of products typically purchased by consumers and is often used in collective bargaining negotiations to justify wage increases. However, for analyzing government spending, it is not as useful as the Implicit Price Deflator (IPD), which is compiled by the U.S. Department of Commerce's Bureau of Economic Analysis. It reports on changes in the price of the types of goods and services that governments purchase. These deflators are published regularly in the *Survey of Current Business*.

The following is the formula used to convert current dollars to constant dollars using the Implicit Price Deflator (IPD) and a selected base year.

$$\text{Current dollar revenue or expenditure} \times \frac{\text{Base Year IPD}}{\text{Current IPD}} = \text{Current revenues or expenditures in base year dollars}$$

## Proposals for New Spending

Analyzing proposals for new spending is different from analyzing current or expansion funding requests. Much more attention needs to be devoted to determining how critical the new spending is to the mission of the agency and the achievement of its goals, whether it goes beyond existing state law, and how it fits into state policy priorities of the governor or the legislative leadership. The *Operating Budget Guidance* issued by the Office of Budget and Management sets the parameters for the inclusion of new requests in an agency's budget. The grim realities of FY 2012–2013 budget preparation provided a particularly limiting definition of "new spending." The Office of Budget and Management required agencies to answer a series of questions in their agency budget submission for each extended program requesting General Revenue Fund (GRF) support up to 100 percent of FY 2011 appropriation levels or for non-GRF funding beyond the 100 percent limit. Governor John Kasich maintained this approach in each of his succeeding biennial budgets. When economic conditions improved, the governor still found it useful to maintain stringent criteria for new program spending. The required questions relating to new spending are asked in terms of whether the funding is needed to maintain or expand current services, or whether it would be used to provide entirely new services. Questions for the FY 2020–2021 budget included:

### Maintaining or Expanding Current Services

1. Describe the purpose of the extended funding and whether it is required by state or federal law.
2. Estimate the volume of services or activities that would be provided at this funding level, including the number of people served, the amount of assistance provided, and the number of awards and amounts to be made.
3. Describe the funding sources for the extended request. Are these funding sources dedicated solely to this initiative, or do they support other programs as well?
4. Do any federal grants support the extended request and, if so, list them? Describe whether the extended request meets any state match or Maintenance of Effort requirements.
5. Describe the impacts if the extended request is not granted.

### Expanding into New Services

6. Explain the purpose of the extended request, including the public service or need that the service or activity addresses.
7. Explain the population served by the activity or service.
8. Describe the services or activities provided.
9. Provide estimates of the services or activities provided at the requested funding level, including the number of people served, the amount of assistance provided, and the number of awards and amounts to be made.
10. Describe the funding sources for the extended request. Are these funding sources dedicated solely to this initiative, or do they support other programs as well?
11. Do any federal grants support this extended request and, if so, list them? Describe whether the extended request meets any state match or Maintenance of Effort requirements.
12. Does this request pass funds through to other state or local entities? If so, describe the distribution methodology and legal authority.
13. Describe any internal or external factors contributing to the costs of the request, including demographic trends, caseloads, technology, and any changes in federal or state funding or regulations.
14. Do any other state programs interact with the request, and, if so, describe these programs. What efficiencies and service delivery have been made to best meet the purpose and intended outcome of the program.
15. Describe how the effectiveness of this initiative will be gauged.

Executive or legislative analysts will be concerned with assessing workload and performance measurement data that accompanies the request for new spending, as well as the agency's explanation of why it cannot absorb the cost within existing resources. A projection of future costs is especially critical; future costs could be significantly higher than start-up costs and commit the state to unsustainable future increases.

Constituent groups and other outside sources that request new spending from legislators should be expected to provide the same kind of justification and data that agencies proposing new programs provide. The agency that would be administering the new program needs to be consulted to verify the data and also to make its own independent assessment of the program, both financially and programmatically. It is also useful to review other states' experience with similar programs.

# Analytical Tools

Specialized forms of analysis have evolved as budget review has itself evolved from exclusively being concerned with the budget as a control mechanism to a planning and management resource. These budgeting techniques include cost-benefit analysis, productivity analysis, performance measurement, benchmarking, and investment decision making.

## Cost-Benefit Analysis

Cost-benefit analysis is a way of estimating a limited, well-defined set of costs and gains that would result over time from alternative courses of action. It is most useful when it is possible to state costs and benefits in financial terms, such as when the costs of reducing air pollution are weighed against the public health benefits as assessed in financial terms. It is much less useful in assessing situations that are difficult to quantify, such as the value of clean air to endangered species of wildlife. However, even when defensible financial numbers cannot be assigned to alternatives, the analysis itself may help to clarify the issues.

Cost-benefit analysis cannot help in setting spending priorities, but it is useful in charting the fiscal advantages and disadvantages of a particular course of action. The result is a comparison of expected outcomes with expenditures needed to get there. This kind of analysis is useful in a variety of situations, especially when evaluating proposed new programs or activities.

The usual approach to a cost-benefit analysis is to begin with an assessment of the current situation. There needs to be a clear understanding of what the desired end is. Often, it is the solution to an important societal problem. The next step is to define all possible alternatives to reaching the desired end result. Direct and indirect costs of each alternative need to be estimated after an appropriate costing methodology is selected and assumptions are made. The same approach is used to evaluate the benefits of each alternative.

An analyst must decide what benefits are to be assessed. This is not an easy task. In general, only real or technological benefits, that is, benefits that increase real output and not pecuniary benefits, should be included in the analysis. Pecuniary benefits are excluded because they do not constitute real increases in output or cost reductions and often simply represent a redistribution of existing resources. For example, in the case of mass transit, the construction of a subway system may result in a reduction in expenditures for highways and a net reduction in transportation costs for individuals. These constitute real, definable benefits. Another benefit may be that businesses near the subway system may experience increased land values and sales activity, but this may occur through a reduction in similar activities for businesses located elsewhere. These would be considered pecuniary benefits and are excluded from the cost-benefit analysis.

Estimating the value of direct benefits will vary. When a user charge is imposed for a service, such as a toll on a bridge, estimates can be developed based on experiences with other bridges in terms of what individuals might be willing to pay to cross the bridge. The maximum the bridge users are willing to pay in tolls will constitute the dollar estimate of the value of direct benefits provided by the bridge. In the case of a dam to be used exclusively for irrigation, there will be indirect benefits, such as the creation of swimming and fishing facilities and the preservation of the scenic beauty of a lake, which could also enhance property values. However, estimating these benefits concretely would be quite difficult.

Analysts must take care to use the ratio of benefits to costs properly once the financial analysis is completed. It is not always most beneficial to choose the alternative that maximizes the cost-benefit ratio. Other considerations enter into that choice such as the size of the project.

## Productivity Analysis

There are continuous pressures on government to increase its productivity by "doing more with less." Productivity is defined as the ratio of inputs to outputs. Both must be measured in order to determine whether productivity has increased or decreased. A classic example of productivity analysis is found in early time and motion studies, in which there was a systematic review of organizational processes to determine whether steps in the processes could be eliminated or improved, thereby reducing costs and improving efficiency.

A typical question an analyst would ask would be how many staff hours are required to produce a unit of service, such as processing an application, stocking a fish pond, or patrolling a highway. The analysis would go further and examine whether computerized methods are used, how old a vehicle is and what its gas mileage is, whether materials are purchased in bulk with appropriate discounts taken, and how much time is spent on activities unrelated to the assigned task. After these variables are analyzed, the quality of the end product is taken into consideration. It is here that analysts can be most faulted if they conclude that simply by increasing workloads or reducing funding, the same product quality can be obtained. The state may end up paying less, but clients may also end up getting less.

Measurements of the effects on quality should also be taken when employees are pushed to work harder and smarter. For example, if an economic development program is proposed to place more clients into jobs, appropriate questions might include whether the jobs are sustainable, provide a living wage with reasonable advance opportunities, and carry adequate health care and other benefits. Indexes can be developed, adding these quality components to a productivity analysis. Quality measures, such as customer satisfaction surveys, can also be taken independently and added to the analysis. Productivity analysis is most useful when linked to performance budgets that define and measure the quality as well as the quantity of program outputs over time.

## Performance Measurement

Taxpayers expect government to be accountable for the use of their money. In the past, governmental accountability was determined by defining how money was spent, on which programs and on what defined objects of expenditures, such as personnel, supplies, equipment, or buildings. Increasingly, government accountability is focused on results: what taxpayers are getting for their moneys in terms of benefits to their lives and the lives of others for whom they care, and how efficiently and effectively this is being achieved through spending those funds. Government is being held responsible not only for its actions but also for the results of those actions. In other words, what is the return on taxpayer investment? New measurement and reporting systems, alternately called "performance measurement systems," "performance accountability systems," or "outcome measurement systems" have been developed as a result. The following steps are essential to performance measurement:

1. **Identifying desired outcomes.** This step typically consists of applying the strategic planning process after an agency identifies the outcomes it wishes to achieve through its programs.
2. **Selecting measures or indicators.** The Government Accounting Standards Board has developed

a categorization of service measures as shown in Figure 4-2.

3. **Setting standards for performance and outcomes.** Actual program outcomes or results are compared to some agreed upon standards.
4. **Reporting results.** Regular public reporting is essential, using a report format and including content that is tailored toward the intended audience, whether it be decisionmakers or the general public.
5. **Using outcome and performance information.** The information generated should be used regularly in: (a) program planning to re-evaluate goals and objectives and to adjust priorities; (b) managing for results to promote continuous improvements in program operations and results; and (c) performance budgeting systems.

**Figure 4-2: Service Efforts and Accomplishments (SEA) Measures**

| ELEMENTS OF SEA PERFORMANCE MEASURES | DEFINITION | EXAMPLE |
|---|---|---|
| **Measures of Service Efforts** | | |
| Input Measures | Measure the amount of financial and nonfinancial resources applied to a service | Financial—cost of road maintenance<br>Nonfinancial—total lane-miles of roads used in providing a service |
| **Measures of Service Accomplishments** | | |
| Output Measures | Measure the quantity of services provided; a quality requirement may be included | Number of lane-miles of road repaired or the number of lane-miles of road repaired to a certain minimum satisfactory condition |
| Outcome Measures | Measure the results associated with the provision of services; may include measures of public perceptions of results | Percentage of roads in good or excellent condition, or the residents' rating of the smoothness of the roads |
| **Measures Relating Service Efforts to Service Accomplishments** | | |
| Efficiency Measures | Measure the resources used per unit of output or the cost per unit of output | Cost per lane-mile of road maintained or, more specifically, resurfaced, or seal-coated |
| Cost-outcome Measures | Measure the resources used per unit of outcome or result, or the cost per unit of outcome or result | Cost per lane-mile of road maintained in good or excellent condition |

*Source: Concepts Statement No. 5: Service Efforts and Accomplishments Reporting, an Amendment of GASB Concepts Statement No. 2, Governmental Accounting Standards Board, Issued November 2008.*

## Performance Analysis and Budgeting

As the use of performance indicators becomes more and more widespread within all levels of government, budget analysts are becoming more involved in assisting agencies in developing appropriate performance measures. Analysts are increasingly relying on efficiency, quality, and outcome measures included in the budget request when examining agency budget requests and presenting alternatives to the governor and the legislature. To make performance measurement truly useful, agencies producing the data must know that it is going to be meaningfully used by legislative bodies, top government

managers, and the public. When performance data becomes part of the oversight and policymaking processes, there will be compelling reasons to ensure that high-quality data are produced. Budget analysts can assist in this process by incorporating performance data into the budget process.

While the use of performance measurement in budgeting is widely recommended as a critical component in results-based management, there is no clear answer as to how decisionmakers should use the information. If an organization produces well-documented results with fewer inputs because of the sound application of strategic planning and performance-based management, should that organization receive fewer financial resources or more? If the agency or program is rewarded with more resources, it can be argued that poor or unsubstantiated performers risk being denied the resources they need to improve or document their performance. Alternatively, it can be argued that providing more resources to the poor performer will demoralize the good performer and hinder further improvement. Producing such data carries a good deal of risk when cost-effective performance may fare less well than the more traditional approach of finding ways to disguise poor performance. Yet, failure to identify the outcomes of good performance will result in skepticism about the process of producing large quantities of data if they are not used in subsequent decision-making. Results should improve if the measures are used by government employees for self-correction and continuous improvement, without risk of punishment and with some prospect for reward.

## Performance Measurement in Ohio

Governor George Voinovich made a commitment to performance review analysis by authorizing the Office of Budget and Management to begin conducting performance reviews of selected state programs during the FY 1996–1997 biennium. The Office of Budget and Management worked with selected state agencies in the development of clear program goals, in identifying measurable objectives to determine if desired outcomes were being achieved, and in establishing data-collection procedures and capabilities necessary to measure the established objectives. Subsequently, in the FY 1998–1999 budget, performance review reports were incorporated into the Executive Budget Request for six major state agencies.

The Taft Administration largely abandoned performance measurement. An exception was the Ohio Department of Job and Family Services with its Performance Center, but it was largely focused on substantive policy concerns rather than budgetary ones. The same was true of the Strickland Administration's performance contracts, which emphasized accountability to the Governor's strategic vision. However, during both administrations and into the administration of Governor John Kasich, higher education funding did become increasingly less driven by enrollment and cost considerations and more so on performance measures. At least initially, this was based more on the strategic interests of the higher education community than on central budget office or legislative considerations.

It is important to note that performance measurement differs from performance auditing in that it is an ongoing enterprise. Performance auditing, described in Chapter 7, was authorized in Ohio for the first time during the FY 2012–2013 biennium. It is a non-recurring examination of economy, efficiency, and effectiveness of government programs and functions.

## Benchmarking

Related to performance measurement is the concept of benchmark reviews, also called best practices. This kind of analysis examines specific governmental services and compares their performance with cost-effective and innovative practices in order to create a framework for benchmarking future performance. Instead of focusing on organizational and performance deficiencies, the best-practices approach collects and highlights evidence of success in delivering services, defining success as achieving the highest level of desired effectiveness at the lowest cost.

Even with extensive information available about comparative performance and best practices to help in setting program spending levels, decisionmakers still have the problem of choosing between alternatives in the allocation of limited resources. If, for the same investment, one agency proposes an increase in spending for a highway safety program based on increasing the number of lives saved, and another agency promises improvement in the number of students passing a proficiency test, how is a budget decisionmaker to decide which investment to choose? Recognizing the importance of this issue, the Alliance for Redesigning Government developed a process called "investment decision making."

## Investment Decision Making

Investment decision making combines program outcome measurement with jurisdictional benchmarking and adds a mechanism for estimating the return on investment for public spending, a critical ingredient to aid decisionmakers in making choices on where to allocate resources.[4] The Alliance for Redesigning Government offered the following example of how the process works:

Assuming a community benchmark is to reduce the percentage of families living in poverty from 15 percent to 5 percent in the next five years, there might be two alternative governmental initiatives. One would have a goal of moving 50,000 poor families out of poverty through a combination of job training programs, tax incentives to employers, and individual development accounts. The other plan would seek to prevent the formation of impoverished families through a combination of health, education, and mentoring programs that would reduce the number of teen births from 3,300 to 600 per year. The investment decision-making process recommends estimating the cumulative monetary value of achieving each type of outcome. The values are calculated at three levels:

- Value to the individual (increase in earnings, avoidance of child care costs).
- Value for government (increase in taxes paid, decrease in human services expenditures).
- Value to society (increased domestic spending, reduced crime).

Performance-based budgeting provides estimates on the average unit cost to the government for each outcome. Comparing the cumulative value of the outcome to the cost helps to calculate the return on investment to the individual, government, and society. Decisionmakers can then determine whether the value of the outcome over time substantially outweighs current costs of the program or service. If one of the strategies offers a much greater return on investment, then decisionmakers might be justified in shifting priorities and spending more in that area.

Requiring the reporting of the unit cost of an outcome also permits decisionmakers to determine whether particular programs are good investments. An example would be in choosing a job training

program in which to invest. One choice might be to invest in a job placement service that has a low cost per client served, but a high unit cost per outcome, because very few of its clients find jobs that will move them out of poverty. Another choice would be to invest in a high-cost registered apprenticeship program that is very successful in placing its graduates in good jobs, yielding a better outcome. An investment in the latter might be justified in meeting a goal of moving families out of poverty.

# Financing Alternatives

One objective of budget analysis is to find ways of financing meritorious proposals. Financing alternatives can be developed at every level of analysis: internal agency budget review, central executive agency review, or legislative budget review. However, while agencies are usually limited to considerations which are internal to their operations, the central budget office can look to options between agencies. There are also legislative options to add the possibility of changing existing legislation if necessary. Whatever the level of analysis involved, the menu of available options remains the same: (1) reduce proposed expenditures for programs and agencies; (2) broaden the existing tax base either by expansion or by eliminating tax expenditures; (3) make budget and accounting changes; (4) accelerate revenue collections; (5) increase rates of existing taxes; (6) levy new taxes; (7) increase existing or impose new user charges, fees, fines, and forfeitures; (8) increase budget balances; or (9) raise revenue forecasts.

## Budget Cutting

Agency and program budget review always consists of "looking for fat" in the budget, regardless of whether the state treasury is empty or full. There are various approaches to determining where budget weaknesses exist. Figure 4-3 provides examples of typical kinds of questions that may help uncover these weaknesses.

**Figure 4-3: Sample Budget Cutting Questions**

**Are all personnel in a new or expanded program likely to be hired immediately upon passage of the appropriations act?**

Traditionally, an agency planning a new or expanded program will request funds for a full 24-month period for the salaries, wages, and benefits of new employees. However, historically, it has been shown that at least one-fourth of funds budgeted for new employees goes unspent because of delays in recruitment, gaining needed approvals for hiring, and the vagaries of the state personnel system.

**Are the assumptions used in the continuation budget reasonable, or can they be altered?**

Numerous assumptions are made in setting an agency's continuation budget. Some of these are internal, and others are incorporated in the Office of Budget and Management's Operating Budget Guidance. Each has fiscal implications that can be challenged. For example, if the assumption used in calculating personnel costs is that all employment is fixed as of a certain date, changing the date will change the amount required for salaries, wages, and benefits. Changes in assumptions about inflation have a similar effect on maintenance costs.

**Is allowance made for the so-called "washout factor"?**

It is appropriate to assume that when an employee leaves state service, the employee will not be immediately replaced and that the new employee, once hired, will be paid at a lower wage rate, particularly if the former employee retired. Under the state's pay plan, seniority increases the rate of pay for most employees each year. The costs of employee promotions are, as a general rule, said to equal or "wash out" the savings from employee attrition. Funds budgeted for promotions can be eliminated, or past experience with employee turnover can be weighed against the cost of promotions, with the difference removed from the budget request.

**Can contracting for a government service instead of using state employees to provide the service, or vice versa, save money?**

Sometimes agencies embark on a short-term activity that could be carried out more economically by contract with a consulting firm or even another state agency to do it. At other times, the opposite may be true. In recent years, some major governmental functions, such as certain prison operations of the Ohio Department of Rehabilitation and Correction, have been provided by service contractors in the interest of cost savings. Personal service contracts should be scrutinized to determine whether they are necessary and whether they are the most economical way of providing the service.

**Does the law require all of the budgeted services?**

Often a state agency will justify an expenditure stating that it is a requirement of state or federal law or of a court decision. The original source for such a claim should always be examined. If no source is cited, and in the absence of other evidence submitted by the agency, it can be assumed that the program or service is optional and thus subject to reduction or elimination.

**Is there duplication within the same agency or between agencies in performing a service?**

If it is determined that more than one agency is administering programs or performing activities with the same objective, the duplication should be noted to determine whether one or more services can be combined, reduced, or eliminated.

## Tax Base Enhancement

Tax expenditures are deductions, exemptions, and credits to taxes that have the effect of reducing state revenues. A list of exemptions, their statutory basis, and an estimate of the revenue lost to the state General Revenue Fund as a result is prepared each biennium and submitted as Book Two of the Executive Budget Request. Tax expenditures are described more fully in Chapter 2. A review of the history of selected tax expenditures can reveal that the original justification for granting them may have expired. Some serve only a single business. For others, the competitive arguments on which they were originally established may no longer be valid. These are ideal candidates for sources of revenue for spending proposals. However, budget analysts should be aware that eliminating most tax expenditures would simply not be politically palatable, regardless of what an analysis might suggest.

## Budget and Accounting Changes

There are ways of changing budget and accounting practices to increase state revenues, such as in these two examples:

- Generally accepted accounting principles permit the accrual of revenues for which the payee's liability is established on a modified basis. Artificially accruing such revenues would raise the amount of state revenues available for spending, but at some risk to the state's bond rating.

- Encumbrances are obligations incurred for which moneys have not yet been expended. Generally, an agency has five months to spend prior-year encumbrances for operating expenses, although some encumbrances have been left open for many years. Reviewing open encumbrances to determine whether the expenditure will really be obligated, or paying them out of current appropriations, can release moneys for other uses. A statewide change in the rules that govern how long an encumbrance can remain open would have the same effect; applying such a statute generally could raise substantial amounts of money.

## Revenue Collections

Unpaid revenues due to the state total hundreds of millions of dollars. In some cases, the money is not paid because it is more economically advantageous to the debtor to pay penalty and interest charges, which are often less than the yield from investing the money owed. In some instances, there is fraud or error and the delinquent taxpayer has simply escaped detection. There are ways of addressing all of these problems. Some states have chosen to utilize a tax amnesty program that permits one-time payments without penalties. Ohio used a tax amnesty program for the first time in 2006, resulting in the collection of nearly $60 million. The FY 2012–2013 budget included a provision for a consumer's use tax amnesty program to be administered by the Ohio Department of Taxation. The FY 2018–2019 budget included a tax amnesty program with respect to delinquent sales and use, individual income, commercial activity, cigarette and other tobacco, financial institutions, and alcohol taxes, as well as local sales and use, school district income, and alcohol and cigarette taxes. Other approaches to collecting unpaid tax obligations include adoption of new collection procedures, hiring additional enforcement officers, and changing the schedule of penalties and delinquent charges.

## Tax Rate Increases

Increasing the rates of major state taxes is much more problematic than increasing those of minor taxes. In the major taxes, such as the sales and use and individual income taxes, even a small rate increase yields so much public attention and scrutiny that it requires considerable effort to convince legislators to overcome their natural tendency to resist rate increases. Even if these objections are overcome, a massive campaign to sway public opinion is inevitable, since every tax increase dating back to the 1970s not offset by an equal or larger decrease in another tax has been followed by a referendum or initiative proposal to repeal it. While the temporary one-cent sales tax that was in effect for FY 2004 and FY 2005 was not challenged by a voter referendum, there was a movement to repeal it before its expiration. The permanent continuation of a one-half-cent increase was accompanied by a reduction in individual income taxes and for that reason it was not challenged. However, those tax law changes provoked the legislature into enacting a state appropriation limit to be applied beginning with the FY 2008–2009 budget. That statute, though unenforceable as described in Chapter 1, was enacted to forestall a constitutional amendment, which would have set a more restrictive spending limit, from being placed on the November 2006 ballot.

Legislators have been somewhat more amenable to applying a "surcharge" to an existing tax rate, sometimes on a temporary, one- or two-year, basis to address a downturn in the economy. The way a surcharge operates is that a percentage increase is applied at the end of the tax liability. Thus, if a taxpayer calculates what is owed to the state in individual income taxes after all deductions and credits are taken, then the surcharge would be applied to add an extra percentage to that liability. This procedure can be applied to many other taxes, though not to the sales tax, which has on occasion been raised "temporarily." An advantage to the surcharge approach is that it can be earmarked or

dedicated, making it a candidate to support a particular governmental function, program, or proposal.

There are numerous possibilities for raising the rates of the other taxes described in Chapter 2, especially to raise smaller sums of money.

## New Taxes

A new tax base can be the source of general revenue increases to fund programs or activities. Finding a new tax source that is somehow related to the program or activity to be funded can be crucial to generating needed legislative support. For example, a statewide tax on lodging could be proposed as a source for funding a statewide housing or homeless sheltering program.

The state Department of Taxation is the main resource used by the executive branch to develop alternative sources of new revenues in Ohio. The Legislative Service Commission is used for the same purpose by the Ohio General Assembly. Other sources of information include reviewing the tax structures of other states as well as studies of taxation that have been done in Ohio and elsewhere.

Analysts should be cautioned regarding the increasing difficulty in gaining executive and legislative approval of a new tax, regardless of its fairness or merit, particularly if it is for the purpose of enhancing revenues. In 2005, a new major tax on commercial activity was instituted while the state simultaneously phased out the corporate franchise tax. This major change, described in Chapter 2, shifted the focus of business tax structure from manufacturing to services to reflect changes in the Ohio economy. However, while important, it was not enacted for the purpose of increasing resources. Similarly, in 2012, a new financial institutions tax was enacted concomitant with the repeal of the dealers in intangibles tax. In addition to banking institutions, other financial institutions that paid the commercial activity tax became subject to the new tax.

## User Fees

The usual rule of thumb in applying a user charge is to determine whether the governmental service being provided inures more to the benefit of society as a whole or to a group that uses the services most widely. If society benefits more, than a general tax should pay for the service; but if a small group benefits more than society in general, then a user charge should pay for part or all of the costs. The challenge for budget analysis is to identify the specific services to which the rule of thumb should be applied. One illustration of this principle is the use of fishing licenses as a revenue generator for state expenditures to stock ponds and improve access for fishermen. Society in general has only a relatively small interest in seeing ponds and lakes stocked with fish; the major beneficiaries are fishermen. Therefore, a user fee is applied to pay the full costs of wildlife preservation and related state services.

Another example involves the provision of higher education facilities and services. Public policy has determined that the state should pay for only a portion of higher education costs; students who benefit by improving their future lifetime incomes also pay a portion of those costs, with the portion rising as the level of education increases. Thus, graduate and professional students at public universities pay more than their undergraduate student counterparts, who in turn pay more than community college students.

The state has a large number of charges for licenses and fees that, taken in total, raise substantial

sums of money. Most of those fees are dedicated for use by the agencies that raise them and are earmarked for specific purposes. For example, fees that are charged for licensing various professions and occupations may go to defray the costs of examinations given to potential licensees or to defray the costs of license renewals. Even if the rates of these were increased, it would be difficult to overcome objections to using the proceeds for anything besides their current use. A similar approach has also been used to pay for "linked" programs or activities. For example, the state's Crime Victims Compensation program is financed by a surcharge on traffic violations; marriage license fees were increased to support domestic violence shelters; and a surcharge on death certificate fees is dedicated to the Children's Trust Fund.

### Budget Balances

Part of the job of a budget analyst is to monitor budget balances carefully and to establish a safety zone to accommodate possible adverse contingencies, such as a faulty revenue forecast or a dip in the economy. Maintaining a reserve such as the Budget Stabilization Fund, the state's rainy-day fund, serves both to insure sufficient cash flow to meet daily obligations and to retain a high bond rating. When balances rise faster than necessary to insure those purposes, reducing the reserve can be justified.

### Revenue and Spending Forecasts

Just as budget balances need to be monitored consistently and regularly, so do revenue forecasts. Both the Office of Budget and Management and the Legislative Service Commission publish monthly reports comparing actual and estimated revenues and expenditures from the General Revenue Fund. When a pattern of collections exceeding estimates or expenditures that are lower than appropriations is found, an official forecast revision will be made, thereby officially releasing additional money to be used to reduce taxes or increase state spending. The tendency of revenue forecasters is to resist such revisions until there is little doubt that they represent an immutable trend as opposed to an unexplained aberration.

## New Funding Source Analysis

Identifying new funding sources is only part of an analyst's job. It is also essential that the analyst recognize where opposition to the use of that funding source will come from and what the arguments of the opposition will be. The following case study illustrates the difficulty that can be encountered even after successfully locating viable new sources of revenue to pay for a legitimate public purpose.

### Case Study: The Housing Trust Fund

Ohio has provided funding for low-and moderate-income housing programs through county recordation fees since 2004. It took 14 years for the state to arrive on a permanent funding source for these programs after voters approved a referendum in 1990. The constitutional amendment made housing a public purpose, thus permitting the use of state tax dollars to support it. Thus, in 1991, the legislature created the Housing Trust Fund to implement this constitutional amendment by providing loans and grants to assist low- and moderate-income persons with their housing needs. However, a new revenue source was still needed to provide a permanent source of funding. The enabling legislation created the Governor's Advisory Committee on Financing of the Housing Trust Fund and charged it with coming up with recommendations on how to pay for the loan and grant program.

The committee examined how other states funded similar trust funds, used the resources of both the Ohio Department of Taxation and the Legislative Service Commission and outside consultants, and came up with a list of possible revenue sources. These included increasing the real estate conveyance fee by one mill, establishing a surcharge on the estate tax, and collecting the interest income on tenant security deposits. Each of the recommendations was intentionally related to the purpose of the trust fund in the belief that this would enhance its likelihood of successful passage. In fact, either the opposition generated against each revenue source, or a lack of commitment on the part of the legislature to the "trust fund" concept resulted in failure to adopt any of these permanent revenue sources. So, the legislature relied upon annual appropriations from a variety of different sources each biennium to fund the Housing Trust Fund.

In FYs 1992 and 1993, legislators appropriated moneys the state received from funds such as savings accounts, safety deposit boxes, and stocks that remained unclaimed by their owners. The following biennium, they made direct appropriations from the General Revenue Fund (GRF). In succeeding biennia, interest from the state's Budget Stabilization Fund and other surplus funds were used. Finally, in FY 2004, county recording fees took the place of GRF funding.

This source would eventually prove problematic as well. Revenues dropped steadily over time because of the nature of the per-page recording filing fee being used to support the program. In the FY 2018–2019 budget, the House of Representatives attempted to modernize and stabilize the fee structure by moving to a per-document fee, but the provision was stripped out of the final budget approved by the conference committee.

## Is It Doable?

Identifying and producing a list of financing alternatives is an essential task. Selecting which alternatives from that list are doable can provide a greater challenge, as the taxpayers and the beneficiaries of the tax are not always the same. For political leaders, the real question is almost always whether the good will generated by the object of expenditure to which the increased revenue will be applied is sufficient to overcome the ill will that will be generated by the persons who will have to pay the increased tax. This translates into an assessment of the numbers and the intensity of voters affected on both sides of the equation.

Every interest group or legislator proposing a revenue increase will have a claim on the funds generated and will have to prove that the benefits outweigh the disadvantages in individual cases. In the absence of an understanding as to how revenues are to be applied, it is useful to know whether the

idea has been floated successfully in the past. It is a political axiom in Ohio that new ideas, when first launched, are seldom adopted. Like fruit, they must ripen before they are seriously considered or eventually adopted.

If identifying viable financing alternatives is difficult enough, selling it can be Herculean. The job of budget analysis does not end with identifying the alternatives. It includes finding ways of making them doable.

# Some Questionable Budgetary Practices

Another task of a budget analyst is to identify and guard against the use of questionable budget practices. Such practices include the avoidance of lapses by agencies, executive rewriting of the budget, budget gimmicks, dedicated funding, and the preeminence of fiscal policy.

## Avoidance of Lapses

Appropriations cannot exceed 24 months, according to the Ohio Constitution. However, obligations incurred near the end of a fiscal period may not be discharged for a number of legitimate reasons. A delivery of goods that have been ordered may be stalled. Consultants employed to produce a report may become ill. Liabilities incurred near the end of a fiscal period may not be able to be paid before the end of the period. Because of these and similar realities, state accounting practices permit the encumbrance of appropriation authority for as long as five months after the completion of a fiscal period. All unspent and unencumbered moneys lapse at the end of a fiscal period; that is, they will become part of the beginning balance for the succeeding fiscal period in the fund from which they were to be drawn. Exceptions are made for federally sourced funds that are awarded on a federal fiscal year basis.

For accountants, lapses are part of a process whereby agencies are held accountable for their expenditures. If appropriated moneys cannot be expended for the purpose they were intended and within the time limit set, then they should be withdrawn. For budget analysts, lapses are seen as a source of moneys available for alternative use in a current fiscal year or as funds that can be used as part of an opening cash balance in a future fiscal year. For agencies, however, lapses are something to be avoided at all costs. They are the visible demonstration of the agency's failure to live up to its promises.

There is a bureaucratic mindset holding that once moneys are appropriated, they must be spent or else be lost to the agency and program forever. Failure to use appropriated moneys could, it is feared, make it difficult to obtain appropriations in the future. Asking for a "re-appropriation" of lapsed moneys in the next fiscal period entails explaining why the moneys lapsed with an ensuing fear that the explanation will lead to castigation of program administrators for not working diligently. Another fear is that substantial lapses will jeopardize future appropriations requests by encouraging the conclusion that the agency typically overstates its spending needs. As the process for requesting the carryover of excess funds at the end of a fiscal year is more of a penalty for an agency, it is understandable why an agency would go on a spending spree prior to the end of the year. Thus, the phenomenon of "use it or lose it," as illustrated in the following case study:

### Case Study: **Use It or Lose It**

In 1989, Governor Richard Celeste proposed reorganizing the administration of the state's alcohol and drug abuse services by transferring moneys appropriated to several state agencies to a new cabinet-level agency, along with additional moneys appropriated by the legislature. These were appropriated to the Controlling Board, contingent on the passage of separate legislation to form a new cabinet-level Ohio Department of Alcohol and Drug Addiction Services. The funds were finally transferred to the new department nine months after the appropriation became effective. Thus, one year's appropriation was made available with only three months to spend it. Most of the agency's funds were to be released to counties that would actually administer the drug and alcohol programs. So local agencies were given only a few weeks to plan and establish programs to spend millions of new dollars. However, the alternative for the state agency would have been to lapse the funds and thereby threaten its future budget needs.

The full year's money was released to the counties. They managed to spend most of it in three months by buying materials, supplies, and equipment, and conducting spending needs assessments and specialized training. The question is whether this was the wisest use of these moneys or an example of the "use it or lose it" phenomenon.

## Executive Rewriting of the Budget

In Ohio, when the legislature is unable to balance the budget and keep it in balance, it relies on the governor to do so, essentially authorizing an executive rewrite of the budget. One power granted to the governor in this respect is through the allotment process. After passage of an appropriations act, the Office of Budget and Management divides the appropriations and allots the authority to separate programs, activities, and line items within agencies. The governor can use this allotment process to un-allot, or withhold, appropriated funds, sometimes eliminating an entire program that the legislature had funded and other times making it impossible to carry out legislative intent.

Another opportunity for executive budget rewriting occurs when the governor establishes a new activity or program by executive order and directs agencies, by interagency voucher transfer, to provide moneys to pay for the new program. In this way, one agency bills another for services which may or may not have been contemplated during the legislative appropriations process. Paying for such a service can have adverse fiscal effects. It enables spending to occur in an area not previously legislatively reviewed or authorized and, in the process, reduces the money available for the program from which the donor agency takes it to fund the new activity.

Finally, when revenues are not keeping pace with expenditures, the governor is empowered to reduce expenditures through executive order to bring the budget into balance. While some items, such as debt service, are always immune from such executive reductions, governors can effectively rewrite the budget by exempting certain policy areas. In balancing the state budget in FY 1993, Governor George Voinovich exempted schools because of the intense backlash he had taken for previous cuts to primary and secondary education. As a result, higher education bore a large share of the executive imposed reductions. This is described more fully in Chapter 10.

Selective use of the power to cut appropriations to prevent total spending from exceeding available revenues has enabled governors to make major changes in whole categories of spending. However,

in defense of executive budget rewriting is the fact that the legislature could overturn an executive decision at any time that it wished to do so.

## Use of Budget Gimmicks

The straightforward approach to setting a balanced budget calls for initially determining how much should be spent for what purposes and then deciding how much needs to be raised to pay for that spending. However, raising taxes is politically painful. Resorting to easier, but questionable, ways of financing programs is often tempting. Budget gimmicks, disguised as fiscal realities, can include holding bills for goods and services over from one fiscal year to the next; failing to encumber moneys for planned expenditures; centrally forcing agency lapses; extending the life of long-term bonded indebtedness; securitization of moneys due the state, such as through the Tobacco Master Settlement described in Chapter 11; speeding up the payment schedule for collecting individual taxes to get more money into the current fiscal year; holding up the processing of tax refunds; transferring balances from one fund to another; and transferring second-year appropriations to the first year. All of these budget gimmicks and more have been used in Ohio to avoid budget cuts or increased taxes. For the most part, the use of budget gimmicks simply postpones difficult decisions and can have the effect of accentuating them.

## Dedicated Funding

Virtually all legislative analysis focuses on the General Revenue Fund (GRF), where the greatest discretion and incentive exists to either hold down spending or reallocate resources. When funds are set aside in a non-GRF fund, scrutiny of the appropriation is effectively eliminated. This can be a useful strategy to protect these resources from being subject to budget cuts or redirection. If done excessively, however, it can have a constraining effect on the GRF and budget management.

Having dedicated funding does not guarantee security to an agency when it encounters powerful interests on the other side. Funding for the Office of Consumers' Counsel was more than halved in the FY 2012-2013 budget. The stated rationale was because the office duplicated some functions of the Public Utilities Commission of Ohio (PUCO). However, in fact, the Consumer Counsel's primary function is to provide opposite counsel to the utilities in rate setting cases before the PUCO, which acts as the adjudicating body.

During the depths of the Great Recession in 2009, the Strickland Administration raided surpluses in 70 dedicated purpose accounts to obtain $120 million, funds that would be used to help close a $1.9 billion shortfall. The governor had to pledge to return $2.7 million of these funds earmarked to thwart childhood blindness and to help solve the shortage of organ donations when these cuts became public.[5] Faced with a significant, if smaller, budget shortfall in finalizing the FY 2018–2019 budget, the legislature authorized a cash raid of dedicated funds of eight state agencies of up to 2 percent of their FY 2017 appropriations. Business groups and labor organizations were especially critical of the provision with regard to the dedicated funds of the Bureau of Workers' Compensation and the Industrial Commission.

## Fiscal Policy Preeminence

A proposed new program can be fully justified in terms of solving a defined societal problem and

can have all the political support needed, but it can still fail to be established because of its costs. A fiscal note prepared by the Legislative Service Commission can result in the referral of substantive legislation to the standing finance committees of the House or Senate, even before the completion of a substantive policy discussion, in order to get a fiscal review. The result of such a referral is frequently a death knell to the legislation.

This singular focus on fiscal policy implications affects the nature of the policy debate and makes the question of what it will cost and how to pay for it more important than what it will buy and how worthwhile it is. It also means that more and more major policy issues are either resolved when the state budget is under review as part of the budget debate, or often not resolved at all because they cannot be woven into the budget process. Program initiation often must await the next budget, when it will be considered within the context of weighing fiscal priorities.

## Summary

Both in the literature of budgeting and the budget development process, a good deal of attention is given to the format within which a budget is presented. Equal or more attention should be placed on quality program and budget analyses. These are extremely useful tools in the budget allocation process, but they are only as good as the analysts performing them. Techniques, tools, and resources are only guides analysts must use to balance their expertise with political realities. They must understand that analyses should not be performed just for the sake of being performed or just because they can. Often analyses are performed because they can be and not because they should. If it is clear that political judgments have already been made about a program, its usefulness, or its level of funding, it is a futile exercise to conduct elaborate analyses. Good analysis requires a major investment of time, and that time should not be used unproductively.

Equally important is knowledge of what kind of analysis is required. In many circumstances, a quick and simple review of historical spending and percentage change is all that is needed, while in other circumstances a detailed and more time-consuming performance measurement review or cost-benefit analysis is desirable. An analyst can become overly involved in gathering data and applying sophisticated research and analytical techniques for their own sake rather than because they will be used in decision-making. Also, relevant to this consideration is the matter of timeliness. An analysis, no matter how sophisticated and sound, is of no use if it cannot be presented before a policy or budget issue is to be decided.

Finally, and especially critical, is the format for presentation of the analysis. Decisionmakers need information presented to them clearly, concisely, and in a well-reasoned and easily understood manner. A budget analysis should clearly identify all of its assumptions and recognize its weaknesses, as well. Should the analysis be relied upon, the analyst is protected by having identified the limitations of the work so that decisionmakers clearly know the risks they take in accepting it.

If public budgeting is to result in well-reasoned rational judgments, it will in part be because program and budget analyses have improved through the employment of well-qualified staff regularly trained in the newest and best analytical techniques. Success also necessarily depends, however, on the willingness of decisionmakers to better utilize the talents and resources that they do have. Very few administrative agencies actively maintain research staff to develop and assess policy alternatives. The legislature has been even more reluctant in recent years to use its nonpartisan budget staff on substantive policy development or even for the analysis of new executive branch policies. Instead, they are too often underutilized on tasks that are largely technical in character.

## *Endnotes*

1 Thomas D. Lynch, *Public Budgeting in America*, Prentice-Hall, Inc., Englewood Cliffs, New Jersey, 1979.

2 National Association of State Budget Officers, *Overview of State Budgeting*, Washington, DC, 1999.

3 Michael S. Greene, "Laboratories of Democracy: Anatomy of a Metaphor," *AEI Online*, March 31, 2001.

4 This discussion is based on information provided by the National Academy of Public Administration Foundation in its review of materials included in Jack Brizius and The Designing Team's book, *Deciding for Investment: Getting Returns on Tax Dollars*, Alliance for Redesigning Government, National Academy of Public Administration, 1994.

5 Joe Hallett, "Donations for Blind, Organs Were Rerouted to Balance State Budget, *Columbus Dispatch*, August 21, 2009.

CHAPTER 5:

# The Appropriations Process

State government appropriations, which are legal authorizations to spend money, can only be authorized in Ohio by the legislature through the enactment of appropriations bills. Multiple appropriations bills, taken together, comprise Ohio's biennial budget. Knowing how to read the appropriations bills and understanding the formal process leading to their adoption are essential skills for any serious observer of the budget process.

Four characteristics distinguish appropriations bills from other kinds of legislation: (1) appropriations have a maximum life of two years and are treated as temporary provisions of law and not codified, although appropriation bills often contain numerous permanent law changes as well; (2) appropriations for current expenses go into effect immediately rather than waiting for 90 days after the governor's signature as with other laws; (3) items of appropriation within the bill are subject to executive veto, whereas other bills must be vetoed in their entirety or not at all; and (4) appropriations cannot be submitted to the voters by referendum.

## Multiple Appropriations Bills

At one time in Ohio, it was correct to speak of a single state appropriations bill, as the measure is called while being processed through the legislature, or act, after it has been approved by the legislature and signed by the governor. That time is long past. In practice, the legislature enacts a number of separate appropriations bills which, when tallied, become the totality of authorized spending for a two-year period, the maximum amount of time for which appropriations can be authorized according to the Ohio Constitution. Each biennium, the General Assembly passes a number of separate appropriations bills. Appropriations bills that may be passed are listed in Table 5-1.

**Table 5-1: Description of Appropriations Bills**

| NAME | CONTENT | WHEN PASSED |
|---|---|---|
| Main Operating Appropriations Bill | Appropriations to operate most agencies and programs of state government from the (1) General Revenue Fund, (2) federal revenues, and (3) dedicated revenue funds | Odd-numbered years |
| Transportation Bill | Highway appropriations for construction, operation, and maintenance, and for operating the public safety department, using gasoline and motor vehicle tax revenues | Odd-numbered years |
| Workers' Compensation System Bills (usually separate bills for the Bureau of Workers' Compensation and the Industrial Commission) | Appropriations to operate the state workers' compensation program, using revenues generated from a tax on employers | Odd-numbered years |
| Mid-Biennium Review/Budget Corrections Bills | Additional broad policy reforms beyond those contained in the Main Operating Appropriations Bill as well as corrections to previously passed operating appropriations bills | Generally passed in even-numbered years, but could occur any time after enactment of the Main Operating Appropriations Bill |
| Capital Improvements Bill | Land, buildings, and improvements financed by the issuance of long-term bonds | Even-numbered years |
| Capital Re-appropriations Bill | Extension of capital improvement appropriations already approved beyond the original two years | Even-numbered years |

## Rationale for Multiple Bills

Before 1970, the legislature passed only a single operating appropriations bill and a capital improvements bill each biennium. As the scope of government increased, the legislature chose to separate the appropriations for the transportation and workers' compensation agencies and programs from the main operating appropriations bill. This practice enabled the legislature to enact transportation and workers' compensation system bills before the main operating appropriations bill was considered and to have them scrutinized by legislative specialists in those programs. During the FY 2000–2001 biennium, education appropriations were also separated from general appropriations. This was not done for convenience, but in order to comply with the Ohio Supreme Court ruling in *DeRolph v. Ohio*, which in 1996 declared Ohio's system of funding primary and secondary education to be unconstitutional. However, the practice was abandoned after just one biennium.

## Ohio's Defined Fiscal Period

The General Assembly can pass additional appropriations bills at any time throughout the year as long as the appropriations do not exceed two years. However, operating in this manner would invite fiscal chaos because of the difficulty in tracking authorized spending against revenues. It would also invite the risk that outstanding appropriations could exceed available revenues. Thus, the General Assembly established a two-year fiscal period beginning July 1 in odd-numbered years and ending on June 30 two years hence as a fixed fiscal period for operating appropriations. Capital appropriations and re-

appropriations run on the same calendar, except that they begin and end in even-numbered years.

### Two Annual Appropriations

Ohio does not have a true biennial budget. What it has is two, one-year budgets enacted at the same time with limited authority given to the state Controlling Board to transfer moneys from the first year to the second year, or from the second year to the first-year if it can be guaranteed that there will be sufficient revenues to cover the additional first-year spending. This institution, which is unique to Ohio, is described in Chapter 7. Thus, appropriations are shown for each year of the biennium along with a biennial total with the latter provided only for information purposes. In a true biennial budget, an agency would receive a single appropriation for the entire biennium with authority to determine how much it will spend each year without further legislative intervention.

## How to Read the Main Operating Appropriations Bill

The main operating appropriations bill is a massive piece of legislation that makes changes in almost every title of the Ohio Revised Code, codifies numerous permanent laws, and enacts a wide array of temporary, two-year provisions of law. The main operating appropriations act for the FY 2018–2019 biennium contained 3,384 pages, a number that was significantly smaller than the three previously approved budget acts.[1] Recent main operating appropriations acts have made many more changes to permanent law than was the case in the past.

New sections of permanent law are easily distinguished from temporary law in appropriations bills. Permanent law appears in lower case. New provisions of permanent law are distinguished from existing sections by being underlined. As the bill moves forward in the legislative process, changed provisions of temporary law appear in all capital letters.

The main operating appropriations bill the legislature enacts each biennium contains appropriations along with language explaining legislative intent, including conditions and limits, on how the appropriations should be spent. This mixing of fiscal and policy issues makes main operating appropriations bills voluminous and all-encompassing with their combinations of general law and appropriations. The practice has also drawn judicial scrutiny. In several instances, the Ohio Supreme Court has found provisions in the appropriations act to be unconstitutional for containing more than one subject in violation of the single-subject rule delineated in Section 15(D) of Article II of the Ohio Constitution.

Table 5-2 describes what may be included in the main operating appropriations bill.

**Table 5-2: Contents of Main Operating Appropriations Bill**

| SECTION | WHAT ITS PROVISIONS DO |
|---|---|
| **Permanent Law Provisions** | • Amend how programs operate<br>• Establish new programs<br>• Convert temporary law provisions into permanent law<br>• Reorganize state government<br>• Make changes in general laws such as criminal and civil laws unrelated to appropriations |
| **Appropriations** | • Authorizes spending of specified sums on specified programs in specified agencies<br>• Authorizes spending pending the enactment of separate legislation<br>• Subdivides or earmarks the appropriations through "provisos" or "riders"<br>• Attaches provisos or riders to specific appropriations concerning the operation of the programs for which the appropriations are made; provisos and riders expire when the appropriation expires |
| **Temporary Law**<br>(in effect for either a specified time or, if not specified, the same period as the appropriations bill) | • Separate sections concerning the operation of programs for which there are specific appropriations elsewhere[2]<br>• Establish new programs<br>• Earmark money in a larger appropriation<br>• Establish reporting and accountability requirements<br>• Require agencies to conduct studies<br>• Provide various boilerplate provisions necessary to satisfy legal requirements |

## Appropriations and Line Items

Appropriations are authorizations that can be made only by the legislature to allow the state to spend money. The basic unit of every appropriation is a state agency, within which there are subdivisions of appropriations. Each agency is designated with its own three-digit number. The first subdivision of appropriations to a state agency is by the name of the fund from which the money is to be expended. Depending on which fund is being used, there can be a further subdivision defining the account within the fund that will be the source of the appropriation. General Revenue Fund (GRF) appropriations are subdivided by "line item" into (1) operating expenses, which are identified by having three-digit accounting codes numbered 100–399; (2) special purposes appropriations, which may be either operating expenses or subsidies, or both, numbered 400–499; and (3) subsidies, numbered 500–599.

Appropriations from funds other than the GRF are identified by fund group and then by account names, which give a general indication of the purpose of the spending item. See Chapter 3. With the exception of federal funds, whose purposes are always specified, these expenditures are not further delineated and thus could be used for the state agency's own operations or for subsidies to individuals or other units of government. These accounts are numbered 600–699.

Capital improvement appropriations in any agency, in any fund, are designated by project title and numbered in the 700 series of appropriation line-item codes. While capital improvements are funded in a separate bill just for this purpose, it should be noted that the legislature can, and sometimes does, appropriate moneys for capital improvements in its main operating appropriations bill. The transportation bill always contains both operating and capital improvements moneys in a single bill.

## Appropriations for Operating Expenses

In the past, the legislature appropriated money separately for the three major sets of accounts compose an agency's spending for its own operations. Thus, there was a separate line item appropriated to the agency for personal services (line item numbers 100–199), another for maintenance objects of expenditure (200–299), and another for equipment (300–399). Occasionally, the legislature went even further and used language to restrict how much might be spent for consultants or public relations, within the personal services line item, or for travel within the maintenance appropriation. This meant that in order for an agency to transfer funds between any of these line items, it would have to obtain legislative approval as delegated to the Controlling Board. As the state budget process moved toward outcome measurement, legislative control over individual line items lessened. Currently, most agencies receive their operating expenses in a single line item numbered 321, which combines personal services, maintenance, and equipment. The accounting system still requires that each item be tracked separately to provide an accurate, current, and complete reporting of expenditures.

## Special Purpose Expenses

When the appropriations bill arrives on the governor's desk for signature in June, it will likely include more 400 series special purpose appropriations than when it was first introduced to the General Assembly. The reason for these additions is that as the appropriations bill is reviewed, advocates fear that their special interests will not be satisfied by the agency administering a program in which they are interested. They want a guarantee of a fixed amount of money for such activities as minority business development and breast and cervical cancer screening. They do not want "their" activity buried in a larger appropriation, thereby running the risk of not being able to garner and sustain support for it. They want it to be visible, and they also want to ensure that the administering agency does not subsume it within the broader spending authority. Advocates also often find it easier to work with sympathetic legislators to guarantee a set amount for their projects, programs, or activities without having to take on advocacy for a broader project. Thus, special purpose items are birthed. They make it difficult, however, to determine accurately how much of an agency's funding is retained for its use and how much is distributed through subsidies, since special purpose line items never delineate how they will be used. That is, there is no indication if the funding is for agency operating expenses or for subsidies distributed to other units of government, or both.

## Subsidies and Shared Revenues

The 500 series items represent state payments to or on behalf of individuals or organizations, and to local government units. There are also subsidies that are provided directly to individuals for the payment of bills for medical, rehabilitative, or other services for clients determined by the state to be eligible for such services. Other shared revenues are appropriated by language so that whatever is collected is distributed according to a preset formula. Many subsidies are distributed on the basis of complicated formulas, such as the school Foundation Funding formula for primary and secondary education, and the State Share of Instruction and Ohio College Opportunity Grant subsidies for higher education. Even though subsidies are formula based, the total available for distribution is the amount of the appropriation.

## Appropriations Bill Organization

Appropriations for the Industrial Commission, the Bureau of Workers' Compensation, and the Department of Public Safety and the Department of Transportation have separate bills. All other state agencies receive their operating appropriations in the main operating appropriations bill. Finding an agency's appropriation is facilitated by having them arranged within the bill alphabetically. Table 5-3 is an actual page from Amended Substitute House Bill 49 of the 132nd General Assembly, the Main Operating Appropriations Act for the FY 2018–2019 biennium. Annotations are provided to show how to read an appropriations bill. The same format is used in all other operating appropriations bills.

### Table 5-3: Am. Sub. HB 49, Main Operating Appropriations Act for the FY 2018–2019 Biennium

| SECTION 383.10. DRC DEPARTMENT OF REHABILITATION AND CORRECTION[1] | | | | |
|---|---|---|---|---|
| **GENERAL REVENUE FUND** | | | **FY 2018[4]** | **FY 2019** |
| GRF | 501321[2] | Institutional Operations | $1,046,933,977 | $1,047,161,916 |
| GRF | 501405 | Halfway House[3] | 66,770,618 | 66,770,618 |
| GRF | 501406 | Lease Rental Payments | 78,505,000 | 77,707,100 |
| GRF | 501407 | Community Nonresidential Programs | 56,578,573 | 73,161,958 |
| GRF | 501408 | Community Misdemeanor Programs | 9,356,800 | 9,356,800 |
| GRF | 501501 | Community Residential Program - Community Based Correctional Facilities | 78,531,698 | 78,531,698 |
| GRF | 503321 | Parole and Community Operations | 80,883,748 | 82,807,332 |
| GRF | 504321 | Administrative Operations | 24,034,553 | 24,611,945 |
| GRF | 505321 | Institution Medical Services | 267,206,462 | 272,013,566 |
| GRF | 506321 | Institution Education Services | 32,581,211 | 33,372,312 |
| **Total GRF General Revenue Fund** | | | **1,741,382,660** | **1,765,495,245** |
| **DEDICATED PURPOSE FUND GROUP** | | | **FY 2018** | **FY 2019** |
| 4B00 | 501601 | Sewer Treatment Services | 2,230,000 | 2,230,000 |
| 4D40 | 501603 | Prisoner Programs | 1,300,000 | 1,300,000 |
| 4L40 | 501604 | Transitional Control | 1,950,000 | 1,950,000 |
| 4S50 | 501608 | Education Services | 4,725,000 | 4,725,000 |
| 5AF0 | 501609 | State and Non-Federal Awards | 875,000 | 875,000 |
| 5H80 | 501617 | Offender Financial Responsibility | 2,500,000 | 3,110,000 |
| 5TZ0 | 501610 | Probation Improvement and Incentive Grants[5] | 5,000,000 | 5,000,000 |
| 5UB0 | 501612 | Institution Addiction Treatment Services | 1,000,000 | 1,000,000 |
| **Total DPF Dedicated Purpose Fund Group** | | | **19,580,000** | **20,190,000** |

| INTERNAL SERVICE ACTIVITY FUND GROUP | | | FY 2018 | FY2019 |
|---|---|---|---|---|
| 1480 | 501602 | Institutional Services | 2,925,000 | 2,925,000 |
| 2000 | 501607 | Ohio Penal Industries | 52,900,000 | 52,900,000 |
| 4830 | 501605 | Leased Property Maintenance and Operating | 2,000,000 | 2,000,000 |
| 5710 | 501606 | Corrections Training Maintenance and Operating | 480,000 | 480,000 |
| 5L60 | 501611 | Information Technology Services | 1,300,000 | 1,300,000 |
| **Total ISA Internal Activity Fund Group** | | | **59,605,000** | **59,605,000** |
| **FEDERAL FUND GROUP** | | | **FY 2018** | **FY 2019** |
| 3230 | 501619 | Federal Grants | 1,985,000 | 1,985,000 |
| 3CW0 | 501622 | Federal Equitable Sharing | 455,000 | 455,000 |
| **Total FED Federal Fund Group** | | | **2,440,000** | **2,440,000** |
| **Total All Budget Fund Groups**(6) | | | **1,823,007,660** | **1,847,730,245** |

**Probation Improvement and Incentive Grants**(5). The foregoing appropriation item 501610, Probation Improvement and Incentive Grants, shall be allocated by the Department of Rehabilitation and Correction to municipalities as Probation Improvement and Incentive Grants in accordance with division (G)(2) of section 757.20 of this act with an emphasis on: (1) providing services to those addicted to opiates and other illegal substances, and (2) supplementing the programs and services funded by grants distributed from the foregoing appropriation item 501407, Community Nonresidential Programs.

***Annotations for Table 5-3***

*(1) Each agency's appropriation is in a separate section of the appropriations bill, arranged alphabetically. These are the appropriations for the Department of Rehabilitation and Correction, agency number 501.*

*(2) All appropriations from the General Revenue Fund are listed first. This is the appropriation for the operating expenses of the agency, identified by the agency code number (501), followed by the designation for combined operating expenses (321).*

*(3) The 405 designation is for a Special Purpose line item. The name of the Special Purpose line item, "Halfway House," gives a strong indication of the purpose of the expenditure.*

*(4) This is the year for which appropriations are authorized to be spent, unless special approval is obtained from the Controlling Board to transfer funds from one fiscal year of the biennium to the other fiscal year.*

*(5) This item has related temporary law only in effect during the biennium with respect to this specific appropriation.*

*(6) The subtotals for the GRF and the other fund groups are summed to give the total appropriation to the agency.*

## Provisos, Riders, and Temporary Law Sections

The General Assembly is not very rigorous or comprehensive in establishing what it intends from the many appropriations that it makes. However, where it has discovered problems in the past, it can be quite explicit about what it wants. Items described in great detail, either following the appropriation or in separate temporary law sections at the end of the appropriations bill, always include the State Share of Instruction and Ohio College Opportunity Grant program for higher education, and the state Foundation Funding formula for individual school districts. These are described, refined, and changed each biennium. Beyond these, it is difficult to predetermine what areas legislators will select for special provisos, riders, or other temporary law sections.

One legislator may be concerned about how funds for alcohol prevention programs are being distributed and used. On the legislator's behalf, a proviso may be inserted that stipulates that only cities with

populations above 50,000 can receive grants from the program. Another legislator may try to prevent any state moneys from being expended on methadone maintenance programs. What is of concern in one fiscal biennium may generate little or no legislative interest in the next budget bill. Thus, these provisions change from budget bill to budget bill and have only a two-year life.

### Permanent Law Provisions

The budget instructions ask agencies to include requests for permanent law changes affecting the programs they administer. It is up to the governor to determine whether to introduce these as part of the appropriations bill or in separate pieces of legislation for which legislative sponsorship will be sought. Sometimes the request is to convert a temporary law provision of the current budget act into a permanent law provision. If there is a clear link between the appropriation and the permanent law, it can be made a part of the appropriations bill; that's the rule of thumb that is used. What constitutes a clear link, however, is not always well-defined.

The Ohio Supreme Court has provided some guidance in a case where the issue was whether a section of law included with an appropriation was so bound to the appropriation that it too could not be subject to referendum. The Ohio Constitution prohibits submitting appropriations decisions to a referendum vote by the people. In that case, the court stated that the referendum exemption only applies to sections of the appropriations bill that are actual appropriations for current expenses, an earmarking of the whole or part of an appropriation for current expenses, or when implementation of the section depends upon an appropriation for current expenses that is contained in the act.[3]

An Ohio Supreme Court case involving Congressional redistricting provided further guidance on the subject. House Bill 319 of the 129th General Assembly included an appropriation to bring the act into effect immediately. The reason was threefold: to avoid a referendum; to avoid enactment of an emergency clause; and to enact a map in time for the Congressional primaries. In its ruling, the Supreme Court stated that the legislature's appropriation was unrelated to the remainder of the bill, thus subjecting the legislatively approved redistricting map to possible referendum. The delayed enactment and potential for referendum threw off the timing for Congressional primary filing, subjecting the election to uncertainty. This uncertainty led to renewed consideration of the Congressional redistricting map, which was enacted through separate legislation.

## Single Subject Rule

Ohio's appropriation bills are unique in terms of their scope. The legislature uses the appropriation process to create and make changes in programs and agencies throughout state government, as well as to appropriate funds to operate them. As a result, appropriations bills are now thousands of pages long, tasking the abilities of the public, interested parties, and even legislators and their staff to fully comprehend their contents.

It has been the practice of the legislature to include many provisions of permanent law that are not in any way linked to appropriations in the bill in order to garner the necessary votes to assure passage of the appropriations bill. This practice, called logrolling, has not gone unnoticed by the judiciary.[4] It was dealt a blow by the Ohio Supreme Court in 1999, when the court ruled unconstitutional the creation of

a new state program established through permanent law provisions added to an appropriations bill.

In *Simmons-Harris v. Goff*, the Ohio Supreme Court ruled that a school voucher program that the state created in permanent law in the FY 1996–1997 main operating appropriations act was unconstitutional because it violated Section 15(D) of Article II of the Ohio Constitution. This provision states that "no bill shall contain more than one subject, which shall be clearly expressed in its title."[5] This ruling dealt only with the inclusion of unrelated permanent law provisions included in appropriations bills, but some of the language used in the decision suggests that, in the future, there may be reason to challenge provisions of temporary law or even provisos if, in the words of the court, "there is an absence of common purpose or relationship between specific topics in an act and when there are no discernible practical, rational, or legitimate reasons for combining the provisions in one act…"[6]

What the legislature did in response to *Simmons-Harris* was startling. Instead of reintroducing the School Voucher Program as a separate bill and letting it wend its way through education committee review and public hearings in the two chambers, the Senate reinserted it into an already House-passed appropriations bill, House Bill 282 of the 122nd General Assembly. Later, the conference committee went even further and expanded the program to fifth and sixth grade children. Thus, there were no public hearings on it, and members of the House never had an opportunity to consider it separate from the primary and secondary and higher education appropriations and language included in HB 282. Cases have also been filed challenging other sections of permanent law similarly included in other appropriations acts based on this court ruling.

History repeated itself in the FY 2012–2013 budget bill that contained a voucher expansion for a new program, the "Jon Peterson Special Needs Scholarship Program." It appears that the legislature will continue unabated melding multiple subjects into appropriations bills, despite the continuing judicial interest in the subject.

## Implications of *Simmons-Harris*

The main operating appropriations bill is a very convenient vehicle for the legislative leadership to use to inject provisions of permanent law that could not withstand careful public debate. The appropriations bill, according to the Supreme Court, "presents a special temptation for the attachment of riders" because "it is a necessary and often popular bill which is certain of passage." It has been likened to a Christmas tree with something for everybody. Advocates have learned that it is often much easier to find a favored legislator to propose a permanent or temporary law as an amendment to the appropriations bill than to risk exposing the issue to separate debate. In past appropriations bills, the legislative leadership recognized the difficulty of passing legislation affecting school desegregation, the use of public funds for abortions, and other controversial issues and added them to the main operating appropriations bill, thereby avoiding review by a substantive standing committee along with public hearings and a separate vote on that issue alone.

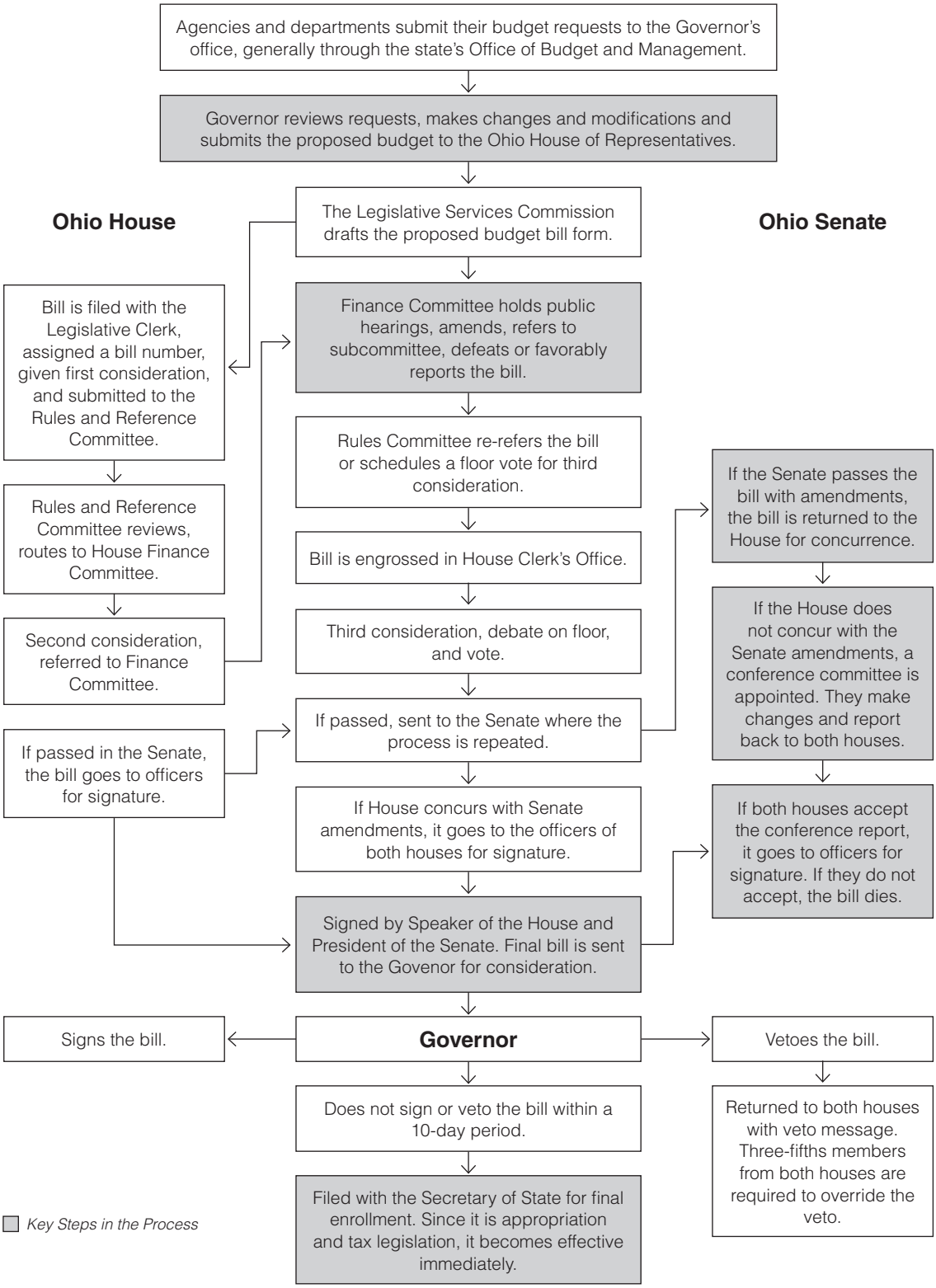
The use of provisos to appropriations bills serves other legislative aims as well. Appropriations bills go into effect immediately upon signature by the governor, or after 10 days without the governor's signature. General legislation, on the other hand, goes into effect after 90 days, unless an emergency clause is included. Emergency clauses require a separate vote and approval by three-fifths of each house of the General Assembly. Also, appropriations bills are not subject to a referendum vote by the people.[7] *Simmons-Harris* has not caused the General Assembly to alter the practice of loading appropriations

bills with unrelated statutes and temporary law. Abandoning this practice of attaching such riders to appropriations bills is unlikely and would clearly alter the dynamics of legislative budget adoption.

## The Appropriations Adoption Process

The process that a budget bill follows in the General Assembly is a variant of the general process for enacting any bill. It is shown in Figure 5-1, which also highlights key steps in the process.

## Figure 5-1: The State Budget Process



By custom, appropriations bills are introduced in the House of Representatives under the sponsorship of the chair of the House Finance Committee. They are usually labeled as being introduced "by request," indicating its origin in the executive branch but without committing the sponsor to endorsement of all of its provisions.

Sometimes appropriations bills may be introduced in the Senate under the sponsorship of the Senate Finance Committee Chair. When this occurs, it is usually based on either workload or political considerations. For example, if the legislative leadership perceives that there might be difficulty reaching agreement in the Senate on a supplemental appropriations bill, and the House appears to be in accord with the governor's wishes, the bill might be sent first to the Senate to give them as much time as they need to work out their differences.

Under joint rules of the House and Senate, it is possible to expedite passage of any bill by appointing a joint committee that can hold hearings and then pass the bill directly to both houses. This process was first used in 1999 when two cabinet agencies, the Ohio Department of Human Services and the Ohio Bureau of Employment Services, were merged into a new Ohio Department of Job and Family Services under a proposal advanced by Governor Bob Taft. The bill went from introduction to enactment in less than two weeks.

## House Finance Committee

The main operating appropriations bill is always referred by the House Reference Committee, which acts as legislative gatekeeper, to the House Finance Committee. The finance committee consists of nearly one-third of the full House membership; current membership is 32. The full finance committee usually holds several hearings to receive an overview of the governor's proposed budget, including the economic and revenue forecasts and Medicaid spending estimates of the Office of Budget and Management, and the independent revenue and Medicaid spending forecasts of the Legislative Service Commission. Directors from the largest state agencies may also make their initial budget presentations to the full committee, although the actual work of reviewing and making recommendations about all agency budget requests, large and small, is done in subcommittees.

The number and composition of the subcommittees may change but has usually consisted of five committees with five members each that divide the budget into the subject areas of primary and secondary education, higher education, health and human services, agriculture development and natural resources, and transportation. The FY 2018–2019 budget deliberations included a sixth subcommittee on state government and agency review; this subcommittee had seven members. All agencies whose activities do not fit these defined categories are split among these subcommittees, usually on the basis of evening up the workload. A schedule for agency hearings is posted on the Internet and in the legislature. It is not unusual for different subcommittees to meet in different rooms at the same time of day. Schedule changes are relatively frequent, and the best way to be sure that a scheduled hearing is going to take place is to telephone the office of the subcommittee chair the day of the scheduled hearing or to check the Internet. In addition, as with other state legislatures, Ohio is increasingly embracing social networking sites like Facebook, Twitter, and YouTube to communicate with constituencies.[8]

## Committee Budget Hearings

Budget hearings typically begin with a presentation of the governor's Executive Budget Request for

the affected agency by the agency director or representative. After questioning, which usually includes requests for additional supporting documentation and information, members of the public and interest groups in attendance are called upon to testify if they wish. Those testifying are often asked to limit their remarks to a few minutes and to submit their full testimony in writing "for the record." The committee minutes available for general public review typically contain only a limited amount of detail.

## Partisan Staff Participation

Several staff members assist the subcommittees and the full finance committee. Staff to the chair serves as secretary to the committee. The majority and minority parties each employ fiscal staff, who report to the chair and ranking minority member of the committee. They brief their members before and after hearings and provide information as requested.

## Legislative Service Commission

In addition to partisan staff, the Legislative Service Commission provides staff to the full finance committee and to each subcommittee to assist them in fiscal matters as well as for technical bill-drafting and assistance in the preparation of amendments and the review of those that are prepared without their assistance. The Legislative Service Commission is responsible for drafting the appropriations bill and any subsequent amendments to it. The Legislative Service Commission clearly delineates all proposed changes to permanent law in the budget bill, as well as in all other bills for the members of the General Assembly as well as the general public. New language is underlined to distinguish it from current law, and current law that is changed or deleted is lined out. With regard to proposed temporary law amendments, new language is provided in capital letters to distinguish it from the current version of the bill. This differs from the process used by the U.S. Congress, of which the staff does not similarly provide a mark-up function for its members or the general public.

The Legislative Service Commission prepares independent analyses of each agency's budget, and these "Redbooks," as they are called, are posted on the Legislative Service Commission Website for public review. They distribute their analyses to finance committee members before agency hearings and also supply the chair with possible questions to ask an agency. Often, the Legislative Service Commission will be asked to provide additional analytical materials to individual members on request. These are not generally available, but the offices of individual legislators can request them.

## Committee Atmosphere

Observers of a finance committee or subcommittee hearing on an agency's budget request might very well come away confused and bewildered. Budget hearings often appear disorderly and disorganized. To the inexperienced, it might be unclear what is being accomplished. However, the kinds of issues and questions raised during the hearings guide legislative concerns expressed by constituents, interest groups, and lobbyists. Each issue and question will receive special agency attention. None of this is evident in the hearing itself, but it is a critical part of the budget hearing process.

Budget hearings serve as the only means by which each and every state government activity is scrutinized on a regular basis to determine whether executive agencies are carrying out the will of the legislature. It is the single most important means of achieving executive and administrative account-

ability. When agencies are brought before the subcommittees, questions posed most often revolve around past expenditures and the agency's plans to carry out its legislatively established goals and purposes. How an agency performs during its budget hearings can be the most significant factor in determining the level and nature of the spending that will ultimately be approved for it. Figure 5-2 illustrates some examples from past budget hearings. Others can be found in Chapter 6.

**Figure 5-2: Agency Budget Hearing Examples**

| Case 1 | Case 2 | Case 3 |
|---|---|---|
| In 1976, the General Assembly appointed a select legislative committee with a view toward containing large increases in human services expenditures. The then-named Ohio Department of Public Welfare failed to provide the committee with a damaging federal report on the state's Medicaid operations when requested to present all materials and reports bearing on the question of how to reduce expenditures. The committee nevertheless obtained the report independently amidst the state agency's denials that it even existed. Subsequent budget hearings used the report to cut the agency's budget. The agency lost credibility with respect to its other programs, and the actions of the department were used adversely during Senate confirmation hearings on the department's director. | Some agencies have found that the appearance of prominent individuals to support their cause can add luster to their presentation, hoping that the appearance will divert legislators from asking difficult and penetrating fiscal questions. In the case of higher education, for example, each university brings forth its president, and often influential business and community leaders serving on their boards of trustees, to address the finance committee. Few embarrassing questions are presented during such presentations because of the prestige of the presenters and the media attention that always accompanies them. | Emotional appeals have often proven successful. This was true in the legislature's rejection of a Kasich Administration proposal in the FY 2018–2019 budget to shift the Ohio Department of Health's Bureau of Children with Medical Handicaps into the Medicaid managed care program. The proposal would have cut family income eligibility for medicine, treatment, and services for babies born on or after July 1, 2017, with conditions such as cerebral palsy, cystic fibrosis, and epilepsy. Compelling testimony was provided by former Cincinnati Bengals quarterback Boomer Esiason, whose own son is afflicted with cystic fibrosis, as well as by other parents with these conditions. |

## Preparing the House Version

After the budget hearings are completed, subcommittee chairs will ask their members to prepare amendments to the appropriations bill for review, after which the chair prepares a set of recommendations for review by the full finance committee. In fact, these recommendations are transmitted informally to the chair before the full committee meets. Each subcommittee chair will negotiate the

recommendations with the other subcommittee chairs, the full committee chair, and the Speaker of the Ohio House, who helps to guide the process. The Legislative Service Commission is not usually present at these meetings but information is passed on to the commission as decisions are made. They will likely prepare an entirely new, or substitute, appropriations bill for release at the full finance committee meeting. It is only when the substitute bill is completed by legislative staff that the public will have its view of what represents the priorities of the majority party of the House, although it may very well incorporate some of the recommendations of minority members. After the first draft of the substitute bill emerges, additional public testimony is heard in the full finance committee. Considerable activity, generated by both majority and minority party members and aided by lobbyists, culminates in numerous amendments being offered during a series of "budget mark-up" meetings of the full committee.

Generally during these sessions, members of the majority party who were not privy to the discussions with leadership can offer and obtain a favorable vote to modify the draft bill. The chair and his staff keep careful score of amendments affecting the total amount appropriated to make certain that the final bill balances within the revenue estimates from the Office of Budget and Management and the Legislative Service for their version of the budget.[9] These sessions can be quite lengthy and confrontational. Minority members may try to embarrass the majority by siding with a small band of majority members to pass an unwanted amendment. They also frequently propose amendments that will be defeated but that can later be used adversely against the members who voted against the amendments. For example, by offering an amendment to raise primary and secondary education funding by cutting human services spending, the minority can later claim that the majority prefers public assistance to school spending, especially during re-election campaigns. To avoid this result, the majority party will typically "table" the amendment so that no direct up or down vote is taken on the minority proposal. Only those minority party amendments that will assure gaining minority support for the budget will usually be adopted, but there are almost always one or two unexpected surprises.

What emerges from this process is an amended substitute bill that, for all intents and purposes, will be the final bill passed by the House since only technical amendments will usually be accepted during floor debate in the House. Minority members are afforded the opportunity to present extensive amendments on the floor, usually to establish the minority posture on the budget rather than with any expectation of passage. The House-approved budget then becomes the bill that will be used for the remainder of the deliberations, and the governor's budget request, including the supporting documentation in the Blue Book, is relegated to budget history.

## Senate Appropriations Review

Typically, the Senate has about half as much time to review the budget as the House of Representatives, with its larger membership and extensive hearings. The gatekeeper, the Senate Rules and Reference Committee, will refer the bill to the Senate Finance Committee, whose main interests will be to establish its priorities on larger issues, such as how to equalize educational opportunities, and to referee disputes between the governor and executive branch agencies with provisions or levels of spending in the House version of the budget.

Unlike the House, historically, the Senate budget review took place at the full finance committee level, although on occasion either ad hoc subcommittees were appointed to provide an initial review on complex subjects, or such a review was provided by another standing committee of the Senate. More

recently, the finance committee, which currently consists of 13 members, has divided its work into several substantive subcommittees. For deliberations on the FY 2018–2019 budget, these subcommittees were primary and secondary education, higher education, health and Medicaid, and general government and agency review. The subcommittees each had seven members, with the exception of the general government and agency review subcommittee, which had nine. In the House, the Speaker and the finance committee chair may have to overrule the recommendations of the subcommittees. The Senate is a smaller body with more seasoned members as a result of four-year, rather than two-year, terms of office. Therefore, Senate majority party agreement is more easily achieved.

After the new substitute Senate version of the bill is approved by the finance committee and the full Senate, a conference committee of Senate and House members is appointed to carve out a final financial plan for the state, using as its framework both the House and Senate versions of the budget.

## Conference Committee

In setting the timetable for budget deliberations, the legislative leadership tries to allocate at least two weeks for final deliberations by a conference committee. This body comprises the chairs of the House and Senate Finance Committees and four other members, one from each party in each house. Although technically the meetings are open to the public, major decisions are made before the open public meetings. Conference committees set their own rules of operation, including whom they wish to invite to provide any additional information about budget items, and which version of the budget to use in developing the conference report, which is, in reality, still another substitute bill. New revenue and Medicaid spending forecasts are requested from the Office of Budget and Management and the Legislative Service Commission. These can lead to dramatic changes not considered in either version of the bill.

At some point during their private deliberations, the Speaker of the House and the President of the Senate will either join in the negotiations directly or work through their members to set overall budget priorities. They also may get involved in negotiations on individual items and have the power to rewrite the appropriations bill if they choose to do so. The governor may also weigh in more heavily at this stage of the process through the budget director, particularly if the executive is from the same political party as the legislative majority.

A conference report must be signed by at least two members from each chamber. When the conference report has been signed, it is submitted to the full House and Senate, both of which must approve or reject the report in total; they cannot amend it. Failure to approve a conference report results in the appointment of a new conference committee and a renewed effort to prepare a report acceptable to a majority of the members of each chamber.

## Gubernatorial Review

When an appropriations bill is approved by both houses, it is sent to the governor usually only a day or two before the July 1 start of the new biennium. Thus, the governor typically has, at most, a day or two to consider all items in the budget to determine which to line-item veto. On rare occasions, where there has been strong executive-legislative branch animosity, the governor has vetoed the entire bill. For purposes of gubernatorial review, the governor asks each agency to review its appropriations and language, and to make recommendations for items to veto. As with any gubernatorial veto, the Gen-

eral Assembly can override a line item veto with a three-fifths majority vote in each house, although this seldom happens. The six items the General Assembly overrode in the FY 2018–2019 budget bill were the first vetoed budget items that any legislature had acted upon since 1977.[10] If all goes well, the budget will be enacted by the end of June 30. There have been several biennia, however, where the budget process has extended well into July or even beyond.

### Coordination with Other Legislation

The legislature continues to enact bills while the budget is under review and after its enactment during the remaining 18 months in the life of each General Assembly. Since some of these bills could affect budget decisions by adding new spending requirements or reducing anticipated revenues, it is important that there be a way to evaluate the fiscal impact of all legislation. This task is centralized in the Legislative Service Commission through its fiscal note preparation process. As bills are passed, the Legislative Service Commission will also be responsible for harmonizing the new legislation with existing permanent law provisions.

## Capital Budget Process

Unlike the process leading to the main operating appropriations bill, the process for adopting the capital improvements budget is primarily a matter of private negotiations. By the time the bill is introduced, each major city in the state has developed a list of preferred projects and has subjected the list to review by that city's legislative delegation. Each city uses a different process. In Cleveland, for example, the Greater Cleveland Partnership acts as a broker between the community, its leaders, and its legislative delegation, sifting through the various requests for state funding. The lists compiled by the legislative delegations, as well as projects submitted by state agencies, are coordinated by the Office of Budget and Management. It then determines the availability of funds from the various bond authorizations, and then helps to prioritize those projects that must be funded through the General Revenue Fund.

The governor's office is an active participant in negotiating with the legislative leadership on which projects, especially community projects, will be included in the governor's budget request. However, unlike the operating budget, once the bill is introduced, it is passed in a matter of weeks with only minor changes. It is only with rare exceptions that the legislature adds a new project. Public input into the process is generally not necessary or expected, unless there is a major controversy over including some project. The capital improvements budget is often referred to as "pork barrel legislation" as legislators approve projects in each other's districts in order to secure approval of projects in their own districts. The fact that the bill is usually passed a few months before the general election enables incumbent legislators to publicize that they "brought home the bacon" to their districts before the November general elections.

### Other Specialized Appropriations Bills

The budget adoption process described here applies to each of the different appropriations bills. There is a difference with respect to the transportation and workers' compensation system budgets. For the FY 2018–2019 budget, these bills were considered in the Senate by the standing committee

on transportation, commerce and workforce, rather than the finance committee. The workers' compensation system budget was reviewed in the House by the standing committee on insurance as well as the finance committee. This serves to even the budget review workload as well as brings specialized expertise to the task. Changes in this structure can vary from one General Assembly to the next.

## Summary

Despite these outside restraints, budgeting is most of all a people-oriented art. The formulation of a budget involves achieving a delicate balance among the desires and wishes of many players in the budget game. When it comes to forging the final budget bill that is passed, these people's personalities, their personal relationships, their interrelationships with one another, which newspaper they read, and what they thought of what they read are just as important as all the form and substance that can be studied and reviewed by examining documents and textbooks. The budget's formulation is much more complicated than the formal budget adoption process described here. It is the product of a unique set of circumstances that place persons of widely different backgrounds and interests in competition with one another. Each appropriations act is a unique measure that will probably not be replicated.

## *Endnotes*

1 "By the Numbers: Budget Bills through the Years, *Capitol Monitor*, Hannah News Service, February 17, 2017.

2 There is no logical way of determining why provisions are sometimes inserted after the actual appropriation and, at other times, inserted as their own separate temporary law section.

3 *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St. 3d 225, 234 to 237, 1994.

4 Logrolling is a term describing the exchange of influence or votes to help passage of projects of personal interest or political significance to legislators.

5 *Simmons-Harris v. Goff*, 86 Ohio St. 3rd 1, 1999. The Court is referring to Article II, Section 15(D).

6 While invalidating the school voucher program on the purely technical basis of its violating the single subject rule, the Ohio Supreme Court upheld the program on the important question of it not violating the establishment clause of the First Amendment of the U.S. Constitution. In a landmark decision, the U.S. Supreme Court would, in *Zelman v. Simmons-Harris*, uphold the constitutionality of the program relative to the establishment clause in 2002.

7 The Supreme Court in State *ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St. 3e 225, 234 to 237 limited the application of the referendum and immediate effect components to codified or uncodified sections of law contained in an appropriations act only if the following apply: (A) the section is an appropriation for current expenses; (B) the section is an earmarking of the whole or part of an appropriation for current expenses; or (c) implementation of the section depends upon an appropriation for current expenses that is contained in the act.

8 National Conference of State Legislatures Website, NCSL.org, September 2018.

9 An exception was the FY 2018-2019 budget. The House of Representatives, facing a large estimated gap of $800 million because of revised revenue estimates, made up only about $650 million of this amount, leaving the Senate to deal with the remainder. Subsequent revenue declines made the gap even larger prior to Senate action on the budget.

10 The House of Representatives voted to override 11 items in the FY 2018–2019 budget, but the Senate took action on only six of these items.

CHAPTER 6:

# The Politics of Budgeting

A budget can be analyzed in three distinct ways: as policy, as politics, and as influencing outcomes. Budgets are more than authorizations to spend money. They reflect decisions on policy issues, such as the level of taxation, the relative balance between how much businesses and individuals should pay to support government, and what new programs government should engage in and which it should reduce or terminate. In Ohio, the state budget also makes changes in hundreds of permanent state laws affecting many different subjects and titles of the Ohio Revised Code. These policy changes are made as a result of deliberations on the state budget rather than through the work of subject matter committees and the regular legislative process.

The government determines fiscal and non-fiscal policy that evolves through the budget process on the basis of three kinds of considerations: program, financial, and political. Individual state agencies and their constituencies develop programs and present proposals to solve perceived societal problems. These program ideas are then subjected to financial analysis within state agencies by a central budget office and by legislative fiscal analysts. The third consideration, the political component, is equally important in policy development.

The governor employs specialists to help gauge the politics of program and fiscal decisions. The legislative process is almost exclusively a political one. All budget decisions are made within the framework of executive politics, legislative politics, and interest group politics. No study of the budget process is complete without considering how politics affect fiscal decision-making.

## Budget as Policy

### What Is Public Policy?

Public policy is the term applied to all governmental laws and rules that prescribe individual behavior. State public policy determines what portion of a college education a student should pay and what portion is justifiably supported by general taxpayers. It determines how long a child must remain in school and what that child must be taught. It even determines when a child becomes an adult. Some public policy is set by the legislature, with a gubernatorial sign-off, through the enactment of

statutes. Much policy is set through the formal adoption of regulations by executive agencies. A good deal results from interpretations of the Ohio Constitution, statutes, and regulations by the judiciary. Determining and implementing public policy is a constitutive feature of politics.

## Who Are the Public Policy Decisionmakers?

Participation in the public policy debate is an activity limited to a small number of people inside and outside state government. Inside participants, often called decisionmakers, include all of the state's elected officials in the three branches of government, the appointed governing bodies of state boards and commissions and institutions of higher education, and appointed executive and judicial branch agency directors. Always critical to inside policymaking are the government employees who remain from one administration to the next, although more commonly they can be major impediments to change.

## Public Policy Stakeholders

Outside participants include a host of paid and unpaid advocates and other persons with a stake in the outcome of public policy debate. These individuals populate the corridors of the Ohio Statehouse on a regular basis. Although they are not exactly stakeholders, public opinion makers, such as the press and electronic media representatives, make up another significant group of persons who influence public policy. Of particular importance are the media members permanently stationed at the Statehouse to cover activities and events.

## Political Framework

Critical to affecting public policy is the structure within which the political debate takes place. This structure includes political players and their personalities, skills, and backgrounds, as well as its institutions and cultural traditions and customs. It also includes the political framework within which decisions are made. In Ohio, the relative importance of local government, the public's distrust of state government, the power of the press, the governor's victory margin, the fragmentation of the executive branch, the lack of policy focus and the phenomenon of "issueless politics," and the state's fiscal and social conservatism establish the framework for state budgeting in Ohio.

## Importance of Local Government

State government in Ohio has never been considered a very important provider of governmental services. It has been viewed more as a conduit for providing funds to counties, cities, villages, townships, school districts, and special districts that will be responsible for the actual delivery of governmental services. Such a system helps explain why the vast majority of the state's General Revenue Fund budget is distributed in the form of subsidies to local taxing districts. This fact is underlined by the revealing statistic that local tax collections of $21.8 billion in 2014 were almost as high as state government tax receipts of $27.0 billion that year, of which $16.9 billion was, in turn, distributed to local taxing districts through grants and in general revenue sharing.[1] However, state revenue distributions have diminished in recent years because of the significant cuts imposed on local government throughout the Kasich Administration, particularly the severe budget balancing measures taken during the FY 2012-2013 biennium.

## Public Attitude

State government and politicians are viewed by the public and, perhaps more importantly, by the press and other opinion leaders, with distrust. This lack of trust, while perhaps less than that for the federal government and its officials, is nonetheless quite significant. Quite regularly, this distrust is justified by the regular eruption of scandals involving misuse of public funds and trust. The first administration of Governor James Rhodes ended in 1971 with the indictment of the state treasurer and other state officials, and with criminal accusations levied against the governor. The voters then replaced all statewide Republican-elected officials with Democrats. Governor Richard Celeste's Democrat administration (1983–1991) was beset with cabinet officials accused, and one even convicted, of criminal misconduct. Republican Governor George Voinovich's administration (1991–1998) began with two appointees resigning amidst charges of conflict of interest and ended with charges of political favoritism leveled against the governor regarding campaign finance irregularities and in the awarding of state contracts to his brother. His chief of staff was indicted for accepting bribes while in office.

Republican Governor Bob Taft (1999–2007) became the first Ohio governor to be indicted, and then convicted, on criminal charges when he pled no contest to several misdemeanor charges for failure to report certain gifts. His former chief of staff was also convicted of ethics violations in a widening "Coingate" scandal that centered on coin dealer Thomas Noe, a Republican political appointee and prominent fundraiser. In "Coingate," Noe was found guilty of theft, money laundering, forgery, and corrupt activity related to his management of Bureau of Workers' Compensation investments in high-risk, unconventional vehicles. He was sentenced to 18 years in state prison in addition to a 27-month federal sentence for violating campaign contribution laws. A couple of years later, Democrat Attorney General Marc Dann (2007–2008) was forced to resign when a sexual harassment scandal tainted his office. Scandal also touched the office of Democrat Treasurer of State Kevin Boyce (2009–2011) when a key staff member was indicted, and later convicted, of felony charges. Although the administrations of governors Strickland and Kasich were relatively scandal-free, this lurid political legacy remains an important factor in public distrust of state government. Contributing to the distrust have been numerous periodic scandals involving state legislators. Most notable was the abrupt resignation of Republican House Speaker Cliff Rosenberger in April 2018, following the announcement of a federal investigation for possible extortion, bribery, and Travel Act violations.

## Role of the Press

Ohio has a highly competitive news media. Although intra-city newspaper competition no longer exists, major city dailies, especially in Cleveland and Columbus, compete with one another to reach the statewide market. Part of this rivalry is reflected in a competition for exposés of state government corruption. All of the major newspapers have investigative reporters who, over the years, have exposed numerous instances of fraud and abuse of public office.[2] Scandals and general news coverage appear to have as significant an influence on Ohio voting behavior as the issues.

## Margin of Victory

Another constraint on what the governor can successfully accomplish, particularly in the administration's initial budget, will be the margin of victory. Governor James Rhodes defeated Governor John Gilligan by an infinitesimal number of votes and spent most of 1975 to 1977 fighting budget issues with legislative Democrats who foresaw the possibility of regaining the governorship after his first

term. It was only after his re-election that he was able to successfully adopt a leadership stance in budget matters, but once again, the economy intervened, and he left office after a bitter fight to keep the budget in balance. Governors with wide margins of victory and high public approval ratings will have more success in advancing their budget agendas. The relationship between margin of victory and ease of agenda was the case with the first budgets of both Governors Bob Taft and Ted Strickland. Conversely, Governor John Kasich was narrowly elected in 2010, but he managed to achieve significant successes in his first budget. However, the public viewed at least part of his legislative success as an overreach when it overwhelmingly repealed Senate Bill 5 of the 129th General Assembly, a bill that would have ended collective bargaining for public workers, in November 2011.

## Executive Branch Fragmentation

Four separately elected state officials, the Attorney General, Auditor of State, Secretary of State, and Treasurer of State, provide legal support, government audits, electoral process regulation, and money management. Although the governor reviews the budgets for these elected officials and the state judiciary for form, each official is free to propose and advocate for his own appropriations request, regardless of what the governor might prefer.

Primary and secondary education policy development and administration reside in a combined elected and appointed State Board of Education and its appointed Superintendent of Public Instruction. This structure enhances its independence. Numerous other independent boards and commissions have spending that is outside the governor's direct control. The independently elected officials and independent boards and commissions represent a significant portion of state General Revenue Fund spending.

## Issueless Politics

A study of Ohio politics prepared in the 1960s characterized the state's political affairs as "issueless."[3] While Ohio politics has more closely mirrored its national counterpart over time, this characterization is still largely true. The lessons of electoral politics repeatedly demonstrate that promoting or supporting social issues in Ohio provides no political payoff for either state or local candidates for office. A winning strategy in Ohio is one which proposes no new or expanded taxes, cutbacks in human services spending, increasing support for education without raising taxes, promoting economic development and bringing in new jobs, and "cleaning up" politics.[4] Typically, the governor and successful state legislators do not take office with a long list of policies they are committed to alter or enact. The biggest political criterion in determining the success of proposed public policy is whether it will impact the next election.

## Policy Development

Orderly analytical research proceeding from hypothesis through analysis and on to conclusions and recommendations seldom finds practical application in Ohio, unless it is proposed through appropriate, usually bureaucratic, "insider" sources. In Ohio, the interplay of personalities and institutional forces has a much stronger influence than what is disparagingly viewed by many Ohio politicians as "academic research." Who proposes an idea, how and when it is proposed, whose support for it is sought and received, how it is advocated for and advanced, are all more vital to pursuing political

change in Ohio successfully. Those proposing policy change who fail to understand this fact of Ohio politics, including governors whose institutional role places them in ideal political leadership positions, are doomed to failure.

**In Other States.** Some states welcome ideas from outside the confines of their statehouse. They hire highly paid staff and consultants to develop public policy. For many years, New York state governors could turn to a private "think tank" of staff to come up with new ideas to solve the never-ending problems that plague a large state, and which in a federal system, allowed it to assume a leadership role. Henry Kissinger was one of many notables occupying positions in that elite corps when Nelson Rockefeller was Governor of New York. Other states rely on sophisticated legislative policy development staffs formed around specific problem areas such as privatization, economic development, human services, and education.

**In Ohio.** Ohio uses none of these approaches. It has largely abandoned the use of its legislative research staff for policy development. As it has become full-time and professional, the Legislative Service Commission, the General Assembly's primary research arm, has become engaged nearly full time in the provision of bill-drafting services. They examine major issues periodically, but most often on a confidential basis and always from a strict policy-neutral stance. Higher education is often perceived as elitist, and consequently its research seldom reaches legislative or gubernatorial ears, and on the rare occasions that it does, its recommendations are rarely followed. One of the few regular, ongoing state-funded research entities in the executive branch is located in the Ohio Department of Taxation. This research unit has become the major driver of state tax policy, despite the employment of outside tax policy consultants over the years whose recommendations are judiciously ignored. Most executive public policy development emerges through the state budget process, with legislators relying primarily on interest groups and their advocates to provide them with the information they feel is necessary for policy development.

Ohio is not known as an innovative state in the public policy arena. In a state with issueless politics, there is little to be gained politically by being innovative or in advancing costly new proposals. To the extent that innovation does occur, it is in reaction to external forces rather than proactive public policy. Much of the state's conservatism in public policy is a result of Ohio's underlying fiscal conservatism and an unwillingness to raise taxes to pay for innovations. One relatively recent innovation, the Local Government Innovation Fund that was initially included in the FY 2012–2013 budget, actually developed out of a perceived need to balance the much more substantial cuts made in the budget to the Local Government Fund. Once the immediate crisis past, funding for the program was discontinued effective with the FY 2018–2019 budget. The lack of innovative policy is also related to the public's relative inattention to state government, because all of the state's education, health, and human services functions, except for the provision of state institutions as required by the Ohio Constitution, are performed by local units of government.

## Fiscal and Social Conservatism

Ohio is a fiscally and socially conservative state. Government is slow to adopt new ways of solving old problems or to take on new problems for a solution. Ohio is a low-tax, low-service state. In this regard, it is somewhat more like southern states than northern industrial states of more similar size and wealth.

## Statehouse Shifts to the Right

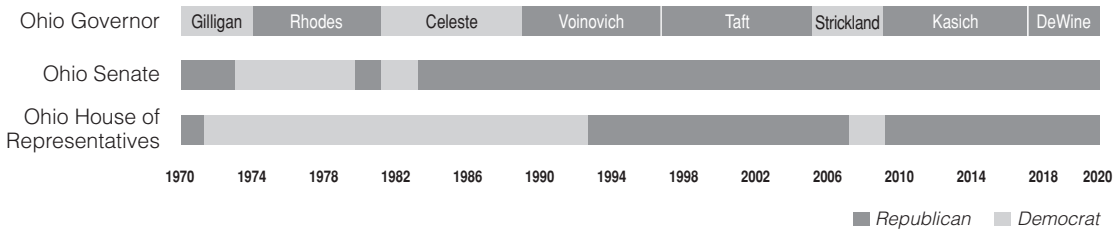
While the state is neither consistently Republican nor Democrat and has been considered a bellwether in national politics, at least until recently, it has gradually drifted to the right in state politics in the modern era. Voters have tended to alternate between Republicans and Democrats when it comes to gubernatorial races involving an "open seat." However, Republicans have won 7 of the last 8 gubernatorial elections overall, having had notably more success when seeking re-election to the state's highest office. On five separate occasions, a Republican governor has been re-elected to the office since the 1960s, while Governor Celeste is the only Democrat to be re-elected during that same timeframe. Three other Democrat governors served but a single term of office.

The Ohio legislature had been firmly in Republican hands from 1961 to 1973, when the Democrats won the House of Representatives. In 1975, when Democrats won control of the Senate, the legislature remained in Democrat hands until 1981. At that time, Republicans took control of the Senate, but subsequently lost it back to Democrats in 1983 before returning to reclaim it in 1985. The Republicans have held the majority in the Senate since that time. The legislature remained split until 1995, when Republicans successfully captured the House for the first time in 22 years. Democrats recaptured the House in 2009 but lost it again just two years later in 2011. As a result of more technologically sophisticated apportionment techniques, few seats have been competitive. Given the large Republican majorities that exist in both houses, it is unlikely that a party change will occur any time soon in either chamber until at least the next decennial legislative reapportionment. By that time, we will likely be looking at nearly four decades of uninterrupted Republican power in the upper chamber. A fairer reapportionment system requiring more "compact" districts that was adopted by constitutional amendment in 2015 may improve Democrat chances in the next decade. A similar constitutional amendment regarding the apportionment of congressional districts was approved by Ohio voters in 2018.

The rightward drift of Ohio state politics over the last two decades has had a significant impact on financial and social policy areas. Mandatory sentences for drug abuse and other felonies has been largely responsible for large increases in prison populations. Since FY 1990, justice and corrections funding has increased from just 1.2 percent of state-source expenditures in FY 1990 to 9.8 percent in the FY 2018–2019 biennium, although federal court action mandated some of this growth. Perhaps, not surprisingly, there have been recent efforts to reverse this trend through the recodification of criminal penalties. Other areas indicative of the rightward shift in Ohio politics are the weakening of gun control regulations and increased restrictions on abortion.

Figure 6-1 depicts the partisan control of the Statehouse in the modern era.

**Figure 6-1: Partisan Control of Ohio Government**



# Executive-Legislative Contrasts

Of equal importance to the development of the state's budget policy is the political process within which budget decisions are made. Underlying the politics of budgeting are the distinguishing institutional characteristics of the executive and legislative branches of government that develop, negotiate, and promulgate the state's fiscal policies.

The dynamics of policymaking in Ohio are shaped by the different perspectives of these two very different branches of government which collaborate in its development. Understanding these differences is vital to understanding the budget as policy. The executive and legislative branches of government can best be understood by examining their contrasting features.

The characteristics attributed to the executive branch are those of the entrenched bureaucracy. The governor's office staff and other senior leadership in an administration share many of the same attributes as representatives of the legislative branch. Thus, often considerable tension can exist between executive leadership and the rank-and-file of an administrative agency, as well as between the chief executive and the legislative branch.

## Repetitive vs. Creative

While the executive branch of government tends to be repetitive, the legislative branch thrives on creativity and the generation of new ideas. Much of bureaucracy is concerned with repeating processes and activities handed down by others, while legislators are oriented toward change. To a legislator, nothing is static; everything has the potential for improvement. To a bureaucrat, the most disruptive event may be a change to a regulation or form. This dynamic tends to make budgetary politics especially confrontational. Agencies tend to resist legislative tampering with their programs, the institution of new proposals, or the substitution of a new approach to one advocated by the governor or one of his agencies.

## Permanent vs. Temporary

The executive bureaucracy views itself as permanent and continuing. It can outlast any administration or legislature. The legislature, on the other hand, has a two-year life, essentially existing in a constant state of flux. As long as the bureaucracy views the legislature as only temporary, it knows it need not be overly concerned with legislative intent about agency spending in a biennial budget. A new legislature will review that spending to help make decisions on the ensuing budget. Experience has shown that agencies can be successful simply by exercising institutional patience. The existence of a permanent, experienced, and continuous legislative fiscal staff tends to dampen this effect, as does the fact that membership on legislative finance committees always includes a number of the most senior legislators who themselves have an institutional memory. Much of the concern about the effects of term limits involves the loss of legislative institutional memory and its balancing effect on the sense of transience in the legislative branch.

## Lateral vs. Scalar

The legislative branch functions on the basis of lateral relationships, while the bureaucracy has a highly formalized scalar hierarchy. The 132 men and women legislators are peers who interact in

a very loose symbiotic relationship. There are constant shifts of allegiances, as new coalitions are formed on each issue. Under term limits, the legislative leadership has only the most rudimentary powers of compulsion to move rank-and-file members. The leadership of one party has almost no influence over the legislators of the other party, and senators and representatives have little or no real influence over each other.

In contrast, the bureaucracy is comforted by its reliance on a well-established hierarchy, enabling it to defer inquiries "up the ladder," often to the frustration of legislators. The executive hierarchy requires both lower-echelon technical experts and higher-echelon political appointees in order to provide information needed by legislators in their decision-making.

## Unilateral vs. Collective

There is only one executive position on any issue on which the governor has taken a stand. Deviance from that stance occurs at the peril of the affected state agency. Thus, any attempt to influence the executive must be exerted before a stand is taken. The exception is when an independent elected official, agency, board, or commission is involved, or when, for political strategy reasons, the executive has approved agency deviance from the announced position. While a collective body tends to waiver, and pressures can be brought to bear on individual legislators to adopt an agency position, the single-mindedness and steadfastness of the executive tends to surround an issue with an aura of truth and righteousness. In a collective body, almost everyone has his or her own priority, where once the governor submits a balanced budget, the executive can steadfastly insist that it is sacrosanct without much risk of agency contradiction.

## Political vs. Process

The legislative branch is a completely political branch of government, whereas the bulk of the executive branch is made up of process-oriented bureaucrats. The administrative process, with its formal and informal rules, becomes a bulwark to defend against the onslaught of "politicians." For a bureaucrat, the organization itself is worth protecting, with its participants bound together toward achieving a common mission. There is nothing similar binding the collective body of legislators.

Political and administrative solutions to problems are usually quite different. It is not unusual to find administrators laboring over budgetary calculations to bring the desired amount down to the exact dollar, only to find the legislature rounding off their request to the nearest hundred thousand when making appropriations. To administrators, it can appear that all of their labors have been for naught, while for politicians, reaching an appropriate compromise number is usually a process of balancing whole numbers with concerns such as what the share of the pie will be for each major function of government. Or, in another example, the legislature may decide it is politically sound to set a ceiling on state spending and return excess tax collections to the taxpayers in the form of an income tax credit. The tax department's bureaucracy might fight that decision solely because of the administrative headaches such a policy would present to them.

## Planning vs. Procrastination

While legislators focus their thoughts on finding short-term solutions or "putting out fires," the executive branch concerns itself with the long-term effects of policy decisions and plans for long-range

outcomes. This difference is often reflected in legislative fiscal decisions not to embark on a new program or activity but to instead institute a pilot or demonstration project.

### Individual vs. Organizational Loyalty

Legislative loyalty is geared more toward the legislative leadership and one's political party than toward the institution of the legislature, except when the executive or judicial branches attempt to interfere with how the legislature manages its business. State employees are instead more loyal to the organization than to their political superiors, including the governor. The interests of the agency and its mission are of foremost importance to bureaucrats, who can be regularly observed to report on the dire consequences that will befall their agency, and also to their customers, not their director or the governor, if their budget is cut. Legislators, with their individual loyalty bias, may favor one agency over another, not because of agreement with its mission and operations, but because of a relationship with the agency head or his or her ability to interact favorably with the legislature. Or, in another example, the chair of the finance committee may very well be persuaded by the chair of another standing committee as to what an agency's appropriation should be, and that may override other organizational considerations.

### Public Opinion vs. Agency Opinion

Legislators are generally more concerned with public opinion than the administrative branch. They often rely on public opinion polls, the news media, and constituent surveys in decision-making, including decisions about the allocation of resources. Legislators are concerned that the government serves the public. This concern naturally leads to an interest in the public will, although discovering this will in a pluralistic society is not an easy task. To some extent, this attentiveness is a manifestation of the desire to be re-elected. Governors do not stand for re-election every two years, as House members do, giving them greater freedom, and because of the protection offered by the civil service system, executive staff can become quite insulated from the public they serve.

## Executive-Legislative Politics

The institutional contrasts between the branches are a critical ingredient in executive-legislative budget politics. Until the mid-1960s, when the state's part-time "citizen" legislature turned toward becoming a full-time "professional" legislature, the executive branch dominated Ohio politics. The legislature enhanced its relative power significantly through judicious use of the appropriations power and was also aided by the fragmentation of the executive branch where large spending areas are outside of the governor's direct control. In 1973, it created its own independent and professional bipartisan fiscal staff, which was later made a part of the Legislative Service Commission, and eliminated its reliance on the governor for all data related to appropriations decisions. From that point forward, legislators have used the state budget as the primary instrument of legislative policy development.

The budget has provided the vehicle for achieving what the writers of the state's constitution envisioned in equal branches of government. However, there remains a continuous struggle for supremacy in the budget arena as well as in public policy, which is as much determined by executive-legislative politics as by the public policy debate. Critical to understanding the budget process is an understanding of executive-legislative budget politics.

## The Games Agencies Play

Appointed agency directors and the bureaucracy that supports them are committed to the services and programs their agencies provide. To be successful in achieving their goals, they must have an adequate budget to support them. Thus, agencies must compete with one another for limited funds. They use a variety of strategies to increase their budgets. First, they must gain the support of the Office of Budget and Management and the governor's office; then they must argue their case to ensure that the governor's budget request on their behalf is not cut; and, finally, they must cajole the legislature to increase their appropriations either indirectly through constituent groups or directly in the case of independent agencies not bound to support the governor's budget request. The politics of agency budgeting can be brutal and, at times, devious.

The mind of a bureaucrat is nothing if it is not ingenious. Each budget session offers fiscal analysts and decisionmakers the challenge of exposing new strategies devised by avid agency promoters. While it would be impossible to provide an exhaustive listing of all of the strategies used during agency budget presentations, the following examples of strategies actually used in prior budget sessions in Ohio are illustrative and underline the importance of carefully questioning and analyzing each request.

## Strategy 1: Disguising the Purpose of Expenditure

Obtaining all of the detailed information needed to make studied, rational budget allocation decisions during the crunch of budget preparation and adoption is very difficult. Sometimes the accounting system does not readily provide that information. For example, "public relations" does not have an accounting code. That is why finding out what an agency spends for this purpose requires a separate report and then complete reliance on that report. Verifying outside the state's accounting system is next to impossible. Skillful agencies can use this fact to disguise certain kinds of spending. It has been widely reported that the federal budget for the covert operations of the Central Intelligence Agency has for many years been hidden in the appropriations acts of several large federal agencies.

In one case, the governor hid an entire agency, the Organized Crime Prevention Council, from the legislature by not requesting a separate appropriation for it. Non-appropriated federal moneys financed it. Its existence accidentally came to the attention of the legislature when, as required by law, it was forced to ask the Controlling Board to approve a consulting contract that exceeded $10,000 annually. The Controlling Board so strenuously disapproved of the agency's existence without specific legislative authorization that during the subsequent biennium they would not approve the contract to hire its director. Even so, the agency continued to exist into the following biennium, which probably illustrates the futility of legislative oversight if the executive is strongly committed.

## Strategy 2: A Foot in the Door

When the Ohio Fire Academy was first approved for construction, written testimony from the administering agency assured the legislature that operating costs would be borne by tuition charges on the localities whose firemen used the facility. Relying on this promise, legislators authorized construction. However, even before the facility was completed, the administering agency began to complain that its budget was not large enough to support its operation. Although the state statute required payment of tuition, advocates argued that since they did not participate in that legislative decision, the state should assume all operating costs. Had they been party to the statutory discussions, they

argued, they would never have agreed to the charging of tuition. The legislature succumbed and repealed the tuition charge.

## Strategy 3: Replacing Lost Federal Funds

Since budgeting is prospective, and since Ohio's biennial budget spans three federal fiscal years, it is often difficult to predict federal funding. Thus, an agency that fears its federal funds are threatened can argue for state replacement funding for a popular federal program. However, what happens when the federal funds are not later cut? In 1973, the state's economic development department made the case for state funds to replace lost federal funds for community action programs. When the federal funds continued to flow, the agency tried to convince the Controlling Board that the state funds were always intended to supplement, not supplant, federal funds. Since there is no judicially binding record of legislative intent kept on appropriations matters, proving otherwise was difficult.

## Strategy 4: Hold Your Tongue

An agency proposing a questionable expenditure or programmatic change is wise not to call undue attention to it. The scriptural adage, "seek and ye shall find" is true as far as it goes, but how can an analyst know what questions to ask if no information or data is available to raise the question? When legislators accidentally discovered that after several hearings on the budget requests of independent state occupational licensing boards the governor planned to move those agencies from rent-free housing in a state-owned building and force them to raise their fees to pay rent, the legislators were furious. They claimed that the governor deliberately withheld this information from them while assuring them that there would be no additional operating costs associated with the new state building. Openness often requires volunteering information, but at the same time, it is often difficult to determine just what to share.

## Strategy 5: Eat Humble Pie

Admitting one's mistakes can often salvage an appropriations request, but the lengths to which an agency might have to go are often quite surprising. At one budget hearing, a state agency humbly announced that it had unfortunately wasted taxpayer resources on the preparation of a useless statewide plan, but, with equal humility and a lot of bravado, added that by spending another million dollars evaluating the plan, most of the money wasted could be "salvaged." The agency received its extra million dollars.

## Strategy 6: Mix Apples and Oranges

Changing the way that expenditures or revenues are reported from fiscal period to fiscal period distorts the historical picture. Since decisionmakers tend to be concerned about the percentage of spending growth, a change in how moneys are accounted for in an ensuing budget period can make an otherwise large increase appear smaller. This discrepancy can occur with respect to some items when an appropriation is made to the Controlling Board but later redistributed to state agencies. When this has occurred on several occasions with regard to a compensation adjustment, the real growth in salaries and wages in an individual agency is never shown. However, there are other ways that expenditure increases can be disguised within the framework of the state's accounting system.

## Strategy 7: Expose the Fat

Legislators are always reluctant to reach into an agency's specific line items to cut appropriations for fear that they do not know how the consequences of doing so may turn back to bite them. That reluctance is why they often ask the agency to help by preparing lists of areas it would cut if its budget were reduced by a given dollar amount or percent. The Office of Budget and Management typically makes the same types of requests. However, a skillful agency will offer up the most politically desirable programs for reduction, recognizing that they will later be able to muster strong clientele group support to reverse the decision.

The development department proposed a major funding increase during the FY 1990–1991 budget for its community development and housing programs. To support this increase, the department recommended a significant reduction in its popular Industrial Plant Inducement Fund account. The General Assembly went along with this change in priority, albeit somewhat reluctantly, but just a few months later, the department complained that it was already oversubscribed with requests from businesses for support from the Industrial Plant Inducement Fund. Under pressure from the Ohio Manufacturers' Association, the legislature rode to the rescue by supplying the department with the needed funding increase for this popular program.

## Strategy 8: Fixed Costs

Decisionmakers are often presented with an interesting dilemma. When enrollment-driven programs are expanding, more money is requested to fund the expansion. At the same time, when enrollments go down, lawmakers are presented with the argument that costs will not go down, because there are fixed expenses that must be maintained no matter what the caseload size. This argument has succeeded in support of both primary and secondary education and higher education spending as well as human services administration costs.

## Strategy 9: Use a Catchy Name

Naming programs and subsidy or special purpose appropriation line items can themselves be an advantageous budget strategy. Ohio has a program called "War Orphans Scholarships" to which far more money is appropriated each biennium than can be spent. For many years, when the legislature was looking for budget cuts, this appropriation was regularly identified as having surplus funds but never cut, because no one wanted to be accused of cutting scholarships that benefit war orphans. In fact, most "orphans" benefitting from this program are not really orphans of wars in the traditional sense. They include children of certain disabled or deceased veterans and the Ohio National Guard, as well as some national guard members themselves. If the program were more aptly named something like "tuition replacement," it might have been funded more appropriately. Instead, the program proved so sacrosanct that in 2013 a War Orphans Scholarship Reserve Fund was created to protect any unused appropriations for use in meeting scholarship obligations in excess of appropriations made in a future fiscal year.

## Strategy 10: Games with the Bottom Line

The legislature cuts non-General Revenue Fund (non-GRF) line items during the operating budget debate to bring down the all funds' bottom line. This maneuver gives the legislature a chance to ap-

pear tough on spending during the heat of budget consideration. Months later, those non-GRF funds can be quietly restored through a Controlling Board request to increase appropriation authority. Because few people scrutinize total adjusted appropriations after the fact, no one's feet are held to the fire for wasteful spending.

## Miscellaneous Agency Strategies

Other strategies have been used with varying success in the politics of agency budgeting. Agencies sometimes:

- Request that money not spent in the previous biennium, and thus "saved," be appropriated in the ensuing biennium as a reward for efficiency.
- Show growth compared to prior appropriations rather than prior expenditures when the latter is lower.
- Discredit or demonstrate irrelevance of unfavorable data about agency performance.
- Suggest that how the outcome was approached is far more important than whether it was actually achieved.
- Request a study to determine why an agency did not achieve a promised outcome.
- Stall in providing information or answering questions in the hope that the issue will be forgotten during the press of other business.
- Flood decisionmakers with more data than they will ever be able to analyze or absorb.
- Provide requested data in raw form in the hope that time and resources will not allow for proper organization and analysis.
- Be overly optimistic about enrollment growth or other factors that will result in larger formula-driven appropriations.
- Shift the blame to poor information, to inadequate data, to another state agency, or to the federal government.
- If funding for a particular program is rejected, the request for it can be repackaged and retitled in the hope that it will then elicit a favorable response.
- When a full-blown program will not be approved, either a "one-time, non-recurring" project, a study leading to the development of a program, planning funds, or "phase-one" funds may be sought in the hope that the initial expenditure can be expanded later. This strategy, which is a variation of the "foot-in-the-door strategy," is sometimes referred to as the "camel's nose in the tent."

Agency budget strategies are important in the budget process because, despite continuous process improvements, it is still basically a political process. There are still very few objective standards against which fiscal analysts can measure budget requests. The central budget agency and the legislature are, for the most part, captive to the information sources of the agencies seeking funds. Yet, difficult decisions about the allocation of funds must somehow be made. In this regard, legislative politics plays an important role.

# Legislative Budget Politics

## Legislative Functions

Legislative politics is best understood in the context of the functions of legislators. Not necessarily in order of importance, these include: the making of public policy, including fiscal policy; serving their constituencies; overseeing the results of past legislation; overseeing the executive branch of government; and seeking re-election. All of these functions come together in the appropriations process. Also, the legislature serves as a training ground for those seeking higher office. Virtually, every successful candidate for governor, other statewide office in Ohio, or the U.S. Senate or House of Representatives has a background that includes service in the state legislature.

During budget deliberations, legislators have the opportunity to express themselves on both fiscal and non-fiscal issues. Through the review of existing policies as well as agencies and their programs, legislators exercise their most effective oversight of the executive branch.

A legislator's vote on appropriations matters is almost always one of the items opponents review during election campaigns. During the appropriations process, legislators are beset with conflicting stories from agencies and advocates, and are themselves tested by the governor's representatives, the bureaucracy, and pressure groups that will do their utmost to see that their own interests are served. Legislators must undertake all this within the context of a very complex budget process that requires skillful negotiation in order to reach the consensus necessary to enact a budget. Achieving consensus on the state budget means reconciling urban, rural, and suburban interests, and the interests of vocal minority caucuses. Only the skills of the legislative leadership can muster the necessary coalition to pass a budget. Even this task has been made increasingly difficult by legislative term limits.

## Partisan Influences

It had long been the practice in Ohio for the majority party to insist on a reasonable number of minority party votes before it will bring an appropriations bill to the floor of either chamber for a vote. This custom was partially because the majority party did not want to be accused of using its political muscle to overrun the minority in a politically evenly divided state, where elections are often won through cross-over voting, that is, when voters of one political party vote for a candidate in the opposite party. However, both political parties also have sufficiently large minority caucuses, or unified subgroups, that often make it difficult to obtain the necessary 50 votes in the House and 17 votes in the Senate required to enact a state budget by relying only on their members. Therefore, the minority party has sometimes been able to obtain a few of its fiscal priorities incorporated into the state budget as it was being developed in the finance committees. This pattern changed when the majority party chose to use its own clout to enact the state budgets for the FY 2004–2005 and FY 2006–2007 biennia. Republicans did not curry Democratic votes and limited effective participation in the development of both those budgets. The FY 2006–2007 budget was passed without Democratic votes. This deviance from historic patterns was reversed in the FY 2008–2009 budget, which was passed on a near unanimous vote, and to a significantly lesser extent in the FY 2010–2011 budget, but returned in the bitterly partisan FY 2012–2013 budget and in the three subsequent biennial budgets.

## Cultural Influences

There is no single dominating cultural influence in Ohio. The most striking social difference is probably between its urban and rural areas. Appalachia, which covers the southeastern portion of the state, is primarily rural with a population descended from migrants from Scotland and Ireland, characterized by a "sturdy yeoman's view of work, nature, justice, kinship, and fundamental religious belief."[5] The northern half of the state is more urban and industrial, originally settled by northern and western Europeans but with large numbers later arriving from Eastern Europe.

## Influence of Minority Populations

According to the 2018 U.S. Census estimates, non-Hispanic, African-Americans account for 12.5 percent of the Ohio's total population, up from 12.1 percent in 2010. The population is highly concentrated in urban metropolitan areas. The Cleveland metropolitan area is home to over one quarter of Ohio's African-American population. Four out of 10 African-Americans in Ohio live in the state's three largest cities of Cincinnati, Cleveland, and Columbus.

Hispanics only accounted for 3.8 percent of Ohio's population in 2018, but this was up significantly from 2010, when Hispanics comprised 3.1 percent of the state total. Ohio's Hispanic population has more than tripled since 1980. One out of every three Hispanic Ohioans lives in Cleveland, Columbus, Lorain, or Toledo.

Since 2010, Ohio's Asian population has grown by 38.1 percent, faster than any other demographic group, increasing from 1.7 percent of the state's total population to 2.3 percent in 2018. Most of the growth has occurred in Cuyahoga, Franklin, and Hamilton counties.[6]

Nine out of 10 Ohioans live in a metropolitan area. However, unlike other large states, Ohio is not dominated by one large major urban center. Half of all Ohioans live in the three largest metropolitan areas of Cincinnati, Cleveland, and Columbus. In the past 35 years, Ohio has become less urban and more suburban. Most major centers have become smaller and the population has become increasingly dispersed throughout and beyond metropolitan areas, although recent trends towards urban living appear to be emerging.

## Political Implications

Fiscal and other significant policy decisions tend to divide the legislature into coalitions within the political parties. In the budget area, political divisions are less along political lines and more according to coalitions around common interests:

- The Ohio Legislative Black Caucus develops its own list of budget priorities, which includes special support for Central State University, the state's historically black public university, in addition to critical health care needs and economic development concerns of the African-American community.
- The Ohio Democratic Women's Caucus has a comprehensive agenda that supports programs impacting economic justice as well as women's health and reproductive rights.
- Cleveland, Columbus, Cincinnati, and Toledo each develop budget priorities that will benefit their region, such as special appropriations for their regional universities and "community projects" in the capital appropriations bill.

It is the responsibility of the legislative leadership to balance all of these coalitions and their interests, as well as those of individual legislators, in order to enact a state budget.

## Legislative Leadership

The influence of the four legislative leaders, particularly the two majority party leaders, the Speaker in the House of Representatives and the President in the Senate, is greatest at three critical points in the budget process: (1) when it is necessary to report the budget bill out of the finance committee; (2) when it is necessary to win approval of a majority of legislators to vote for the bill on the floor of the chamber; and (3) when it is necessary to obtain at least four of the six members of the budget conference committee to sign the committee report. For legislative leaders, who hold their posts only so long as they continue to have the confidence of the members who elected them, achieving this confidence in a highly individualistic body comprising peers is no mean feat. How this is achieved was discussed in more detail in Chapter 5.[7]

The state legislature and its fiscal policy had historically been dominated by legislators representing the southern, rural half of the state. From 1973 until recently, most of the state's legislative leaders came from southern Ohio. This usually accrued to the benefit of rural versus urban interests. A Clevelander had not held the top House or Senate post in more than 25 years until Democrat Armond Budish became House Speaker in 2009. Republican Larry Obhof, from Medina County in the Cleveland suburbs, became Senate President in 2017. Term limits have changed the dominance of regional politics and of the legislative leadership.

## Term Limits

In 1992, Ohio followed a national trend and joined 14 other states whose voters have approved initiatives to limit the number of years a legislator may serve. All of these state legislative term limits were enacted between 1990 and 2000. In Ohio, legislators are limited to four House terms and two Senate terms, for a maximum of eight consecutive years in a legislative body. The motivation for the rapid spread of term limits has been the subject of considerable writing and speculation.[8] Regardless of whether it was the product of generalized frustration with political institutions, concern over the "professionalization" of politics and a desire to return to the concept of a "citizen legislature," or a direct attempt to "throw the bums out" who had controlled legislative politics for decades, Ohio had a virtually brand-new legislature consisting of about 50 percent new members in the year 2000.[9] High legislative turnover has continued every two years since then, although a number of term-limited representatives have successfully won Senate seats and vice-versa. The result is a more individualistic body without strong allegiances to legislative leadership.

## Effects of Term Limits

One unexpected effect of term limits has been that senior legislative staff sometimes leave along with their legislators, making the remaining legislators more dependent on the executive branch for information. Legislators with short institutional memories are less able to counter the influences of strong interest groups or a bureaucracy with a much longer memory and superior informational resources to support their positions. Term-limited legislators are not able to occupy their seats long enough to gain the kind of specialized knowledge about the budget needed to act as independently

of the executive branch as they had previously.

Another important impact of term limits is that seniority no longer guarantees power, thus opening up other avenues for achieving legislative power. This diversity opens up the possibility that freshmen legislators will band together to select leaders or that delegations from large cities will conjoin to the same end. Certainly, budgetary politics has changed to the extent that legislators recognizing the short time they have to obtain funding for special programs and activities fight fiercely to gain their incorporation into each budget bill.

### Last Term Behavior

As legislators approach their final term, two things occur that can impact the state's fiscal and nonfiscal policies. On the one hand, they can become more statesmanlike in their approach to issue development and voting, since they know they will not be returning to the legislature, unless they choose to run for a seat in the other chamber. On the other hand, they are also plotting their future. Many former lawmakers go on to work in executive agencies, institutions of higher education, local government political or administrative offices, interest groups, or in the public affairs offices of private companies.

## Ethics and the Politics of Budgeting

Many citizens consider politics to be an immoral, dirty business. The politics of budgeting can be brutal. There is gamesmanship involved, and there are always winners and losers. The negotiations leading to final agreement, operated under rules of public openness, can be disquieting. The temptation always exists to use the budget for personal motivations, or even personal gain. However, the politics of budgeting is conducted within a framework of standards of ethical conduct that apply not only to decisionmakers but to analysts, interest groups, and all those involved in budgeting.

### Standards for State Officials

The Ohio General Assembly has adopted standards of conduct for its members, particularly with respect to what is permissible conduct in relating to representatives of interest groups.[10] The Joint Legislative Ethics Committee (JLEC) advises the General Assembly on financial disclosure, conflicts of interest, and other ethics matters. Legislative candidates and legislative staff fall under the committee's jurisdiction in addition to members of the legislature. Those attempting to influence legislation must register with JLEC's administrative office, the Office of the Legislative Inspector General. It requires lobbyists and their employers to maintain contact information and information on current engagements and terminations, file tri-annual Activity and Expenditure Reports, and re-register their engagements for subsequent lobbying cycles.

Each governor has issued executive orders to govern the conduct of administrative appointees. As ethics in government continues to receive prominent public attention, the executive orders become more and more restrictive. Executive branch appointees also fall under the purview of the Ohio Ethics Commission. State officials are prohibited from participating in decisions in which they or their relatives have an interest. There are financial disclosure provisions that require outside interests to

provide annual reports that apply to anyone in a decision-making capacity. Gifts over a certain small amount must be reported as well as anything of value that is received. Travel paid for by a third party must be reported. Executive officials are prohibited from holding employment relations that would impair their impartiality and cannot use their offices for private gain or for gain of another.

### Universal Standards

Care must always be taken in the budget process to make certain that budget decisions are made on the basis of analysis, unbiased judgment, and the legitimate uses of political power. It is easy for budget analysts, executive officials, and those elected to public office to step over the line in their efforts to satisfy the multiple competing interests involved in the budget process. The National Association of State Budget Officers adopted the following standards of professional conduct in July 1992 to enhance the performance of everyone engaged in public budgeting:[11]

- Honesty, integrity, commitment, fairness, respect for others, loyalty, democratic leadership, and respectability and fitness for public office.
- Pursuit of excellence and independent objective judgment.
- Personal and public accountability, and public office as a public trust.

## The Importance of Advocacy[12]

Influencing the budget process is primarily a function of individuals acting through organized bodies alternatively known as interest or pressure groups. Since terms are limited to a maximum of eight years in a legislative body, capturing and processing information essential to making rational decisions on taxing and spending issues requires reliance on executive agencies, central budget agency staff, and legislative fiscal staff. The role interest groups play in budget development has increased significantly in recent years. It is important to understand how advocates employed by interest groups operate, and what strategies and techniques are commonly employed in successful lobbying.

In 1964, in an article written for *The Congress and America's Future*, Stephen Bailey wrote, "President James Madison would have contended that instead of being parasites on the body politic, interest groups are the benign viruses of vaccination. They itch a bit, but they preclude smallpox." Bailey itemized five services that interest groups perform in society:

> "*First*, interest groups articulate the demands, grievances, and creative ideas of the many publics which comprise a democratic order, and thereby often preclude festering pockets of social unrest and group frustration.
>
> *Second*, they frequently provide busy legislators with expert opinions on highly complex matters.
>
> *Third*, they are mutually suspicious watchdogs which sniff out each other's subtle importunities and make these visible to preoccupied congressmen, executive officials, and the public at large.
>
> *Fourth*, they serve as media for disseminating information about public issues to important segments of the community.

*Fifth*, they act as mediating devices within their own, often variegated membership, and help thereby to lower the temperature of social conflict."

It is difficult to imagine enacting a budget in Ohio, or any public policy for that matter, without the aid of interest groups and their hired lobbyists. In 2017, the Joint Legislative Ethics Committee registered 1,850 employers and 1,565 legislative agents under state law.

Lobbyists represent an array of public and private interests. Among the most influential are separate business lobbies representing retail merchants and manufacturers; separate local government lobbies representing counties, cities, and townships; education lobbies separately representing teachers, school administrators, and school boards; an array of health and human services interests; large labor unions; and the construction industry. There are also organizations that represent large constituencies with a variety of interests. For example, the League of Women Voters is interested in social issues, education, and tax matters. Organizations representing multiple interests will have a general interest in the state's budget, in tax issues, and also in numerous pieces of individual legislation affecting their members. These major interests develop their own agendas on either or both the revenue and spending side of the budget and are ever present should a proposal emerge that would be detrimental to their interests.

## What Advocates Do

Besides large organized interest groups, some members of an organization hire their own advocates to look out for their own special interest. Thus, each of the state's large counties has its own paid advocate, as do individual business firms, urban school districts, each separate state university, and several of the larger community colleges to name but a few. In addition, a number of major lobbying firms in Ohio represent clients across the spectrum of public policy issues and partisan concerns. They may have either Democrat or Republican leanings but are careful to serve both liberal and conservative causes. These independent "hired guns" are especially prominent in the state budget process, with significant resources to use in promoting their clients.

Clientele groups are a subset of interest groups, with the characteristic of representing clients of a particular state agency. Examples would be the Ohio Association of County Behavioral Health Authorities, the Ohio Association of County Boards Serving People with Development Disabilities, or the several associations representing hunting and fishing interests. Quite often, state agencies are bound to support the governor's budget, but they do not agree with its level of funding or other provisions. It is not unusual for the agency to use its clientele groups to advocate to legislators on behalf of its budget request.

Large interest groups prepare publications to keep their members abreast of legislation of interest to them, including provisions of the state's budget. These are a useful means of regularly informing members about activities in the General Assembly and also for developing grassroots support for positions taken by the organization.

Frequently, organizations develop legislative agendas and direct their attention toward gaining their passage while trying to block conflicting legislation or provisions in the budget. When an organization represents a diverse number of interests, the tendency is for the positions it takes to be moderate and endorse only those positions that can be supported by the vast majority of their members. This

pragmatism means that some members of an organized interest group may choose to do their own direct, or hired, advocacy for positions affecting them. For example, although the Association of County Commissioners represents all 88 counties, most large counties employ their own advocates to look out for their own special interests. Similarly, individual companies belonging to both the Ohio Manufacturers Association and the Ohio Chamber of Commerce may still employ their own advocate to watch out for their particular interests.

Advocacy can become quite complicated when considering the number of interests represented in the General Assembly. There have been occasions when the same advocate has represented parties interested in both furthering and defeating the same piece of legislation or the same budget provision. Members of associations can be in the position of opposing provisions supported by an association purporting to represent them. The pluralistic nature of society prompts the legislative process to become involved in resolving competitive interests and that the budget, or other legislative act, that emerges is always the result of a negotiated compromise.

## Advocacy Techniques

Legislative advocates attempt to exert their influence at every stage of the budget process, from the time the agency is assembling information to put in its budget request, through Office of Budget and Management review, gubernatorial review, legislative hearings and floor actions, conference committee, and, at the end, when the governor is reviewing the appropriations bill for possible line-item vetoes prior to signature. Advocates employ tactics and strategies that are not unlike those of executive agencies, but finding lobbyists and agency representatives at odds with one another is not unusual.

Some of the most proven strategies for effective advocacy include:

- Developing concrete proposals early enough to be used as marketing tools for policymakers, the media, and the public.
- Maintaining a continuing presence in the Statehouse, including meetings between the organization's head and individual legislators.
- Cultivating credibility by maintaining confidences and making certain that legislative supporters are not blindsided.
- Inviting lawmakers to meet and observe the people and places for which advocacy is taking place.
- Using every opportunity to testify and using constituents who know the situation firsthand as spokespersons.
- Enlisting known community leaders to make contact with their individual legislators.
- Maintaining focus on the organization's objectives and avoiding side debates on peripheral issues.
- Maintaining a constant information flow with colleagues to avoid missing a crucial timely detail.[13]

An especially interesting budget process advocacy technique involves the use of provisos or riders.

## Use of Provisos and Riders

When advocates are unable to accomplish their objectives directly through a specific appropriation or bill, they will seek the insertion of a proviso or rider into the budget bill. Provisos are temporary language provisions that follow appropriations amounts in budget bills making some condition or stipulation on the appropriation. Riders are similar in that they are temporary language provisions,

but they are not directly related to the general subject matter. Like appropriations, they have only a two-year life, unless a shorter life is specified, and they serve several different purposes.

**Provisos, Riders, and Legislative Intent.** One purpose of a proviso or rider is to define legislative intent. In the federal government, as well as in many states, a statement of legislative intent prefaces individual pieces of legislation. These statements are intended to help the judiciary understand what the legislature expected if a court is called upon to interpret a statute as applied to an individual circumstance. However, the Legislative Service Commission has taken the position that statements of legislative intent have no force of law and are thus unable to bind the judiciary. Therefore, they cannot be inserted into bills. However, they do not enforce this interpretation when it comes to appropriations bill. In budget bills, they are used to direct the agency administering a line item as to what the legislature expects of it. Much of what follows an appropriation is a clear statement of legislative intent. Here are two examples from appropriations bills:

- In an appropriation for the Ohio Supercomputer Center, there was a proviso stating that "it is also intended that the center be made accessible to private industry as appropriate."
- A proviso in an appropriation for Senior Community Services stated that the "service priority shall be given to low-income, frail, and cognitively impaired persons 60 years of age and over."

In these two instances, it is clear that the effect of the proviso is the same even though the term "legislative intent" is not used. It is instructing the agency on what the legislature expects it to do in administering the appropriation, a form of micro-management. The expectation is that if the Office of Budget and Management, in the pre-audit process, has any question about the propriety of issuing a warrant for a particular expenditure, the statement will guide the staff conducting the pre-audit. It will also serve as guidance in a post-audit by the Auditor of State or in a subsequent judicial proceeding.

In the FY 1975–1976 biennial budget, the legislature actually included specific statements of intent based on performance in the appropriations to each of the cabinet agencies. These were intended to be used later to hold the agency to the performance promises they made to support their appropriations requests during legislative budget hearings. If an agency said it would serve X number of clients at Y dollars per client, then that is what the legislature inserted in provisos in the appropriations bill. Governor James Rhodes vetoed every one of those provisos, stating they would unduly limit his administration. No legislature has since tried to hold an agency accountable for its performance promises as part of the appropriations process.

**Provisos to Restrict Spending.** Numerous provisos in appropriations bills are intended to delimit agency spending. For example, in the FY 2004–2005 biennium, in the appropriation for Maintenance and Equipment to the state Department of Education, there was a provision that "up to $25,000 may be expended in fiscal year 2004 for State Board of Education out-of-state travel." This proviso ensured that the Ohio Department of Education would make an allocation to the State Board of Education to attend conferences out-of-state and could have been inserted through their efforts. However, it also had the effect of setting an upper limit on how much the board could spend for that purpose.

**Provisos to Set-Aside Money.** A frequent use of appropriations provisos is to set aside a portion of an existing appropriation and specify it as "set aside" for a specific use. These kinds of provisos are most frequently inserted at the behest of lobbyists as a means of gaining appropriation authority for their program or activity without having to increase overall appropriations levels. Examples of these provisos have included set-asides in the Travel and Tourism Grants line item appropriation to the

development department for specifically named outdoor dramas, the Cincinnati Film Commission, the International Center for the Preservation of Wild Animals, commonly known as The Wilds, and even for the United States Senior Open in Toledo. All of these are private enterprises or nonprofit corporations that could not constitutionally receive direct appropriations. By using a proviso in an existing appropriation, the dollars set aside can avoid constitutional problems.

Provisos are also used to make appropriations without specifying amounts, establish commissions, abolish programs, require reports, add staffing, support another state agency, and to set-aside or "notwithstand" permanent law.

**Provisos and Advocacy.** Provisos afford advocates the opportunity to obtain appropriation authority without adding to the size of the state budget or coming up with additional revenues to support their spending proposals. For example, the Ohio Department of Education's budget is huge. If the case is made that there is a connection between an education department line item and another purpose, it is possible to seek a language provision carving out a portion of that line item for that other purpose. Historically, there have been a number of set-asides for university teaching programs in specific education department line items. Astute lobbyists know how to use provisos to their advantage not only through dollar set-asides but by judicious application of the other ways provisos are used for their causes.

# Rules of the Game

Unlike advocacy to influence budget outcomes in the executive branch, lobbying the appropriations process effectively requires an understanding of the legislative rules of the game. These are some of the legislative norms that help make the chaos of the legislative process work.

## Performance of Obligations

Legislators rely upon the fulfillment of obligations, their own and those promised them by others including staff, other legislators, advocates, and administrators. If someone promises to do something, they will be expected to perform.

## Impersonal

The legislative process attempts to be impersonal. Members try not to attack each other's personal integrity or refer to unfortunate incidents in their lives, to bad press, or the biases and prejudices of other members. This code is carried through in their relationships with others as well.

## Respect for Member Rights

Each legislator recognizes that he or she is equal to every other member and, therefore, will respect the rights of colleagues. If a member has become established as a champion of a given cause, other legislators will not try to overthrow that stance. If a member is the first to introduce a subject, it will usually be given priority should there be several bills on the same subject.

## Openness in Opposition

If a member opposes the stance of another, it will usually be done openly rather than covertly. This transparency will afford the other member the opportunity to try to convince the opponent to change his mind.

## Restraint in Opposition

Members know that legislation emerges only from compromise and, therefore, will seldom be too vehement about their stances. They try not to get boxed into corners from which they cannot escape.

## Gracefulness in Defeat

In the legislature, there is always another day and another battle. Losing a skirmish or even a battle is part of the game, and there is always an adherence to the principle of graceful defeat.

## Interpersonal Courtesy

In matters involving legislators as persons, there is a mutual distancing. While gossip is always rampant, it is not malicious, for each member knows of his or her own vulnerabilities. Anyone subject to frequent and continuous public scrutiny runs a risk, and thus members exhibit a good deal of interpersonal courtesy.

## Privacy

There is a good deal of respect for each member's privacy. This principle applies equally to the relationships that a legislator has with lobbyists, members of the administration, and other actors in the legislative process.

## Advance Notice

If members are going to change their stance, they respect the courtesy of providing other members with notice of this change.

## Checking with Leadership

Leaders expect members to let them know what they need to know. Members develop a sense of when, and for what purposes, legislative leadership should be informed of what kinds of items. Observers of the legislative process know how frequently members will suggest, "You'd better check with leadership" or "I'll check with leadership and get back to you." This is usually not a "cop-out" but a sincere expression of the principle of letting the leadership know what is going on.

## Seniority

Legislators with more seniority have more rights than junior members. They enjoy a host of advantages. They will get their telephone calls to agencies answered faster. They may have more experienced administrative and research staff. They will likely know how to get things done faster than members

with less seniority. Their views often receive more attention from leadership as well as from rank-and-file members. Term limits have had the effect of reducing the importance of seniority but to a much lesser degree than had been anticipated, especially when some members move from one chamber to the other.

### Apprenticeship

Even in the age of term limits, new members are expected to serve an apprenticeship, albeit a briefer one. They are expected to learn from their more senior colleagues. This apprenticeship model applies also to new members of committees, even though within the legislature they may hold seniority. The notion that one serves an apprenticeship before one is taken too seriously applies to others in the process as far as the legislature is concerned, including new advocates, new staff, and new agency directors.

### Institutional Patriotism

After party affiliation, each member's next loyalty is to their own chamber and then to the legislature as an institution in dealings with the executive branch of government. Each chamber will believe that its version of the budget, or other legislation, is superior to that of the other chamber.

## Influencing Fiscal Staff

Every treatise concerned with influencing public policy in the budgetary process will note the importance of developing a proactive agenda, as well as being prepared to react to proposals advanced during the process. To pursue a proactive agenda requires influencing both executive and legislative policymakers. Those wishing to influence the budget process will invest considerable time and effort in cultivating those staff persons who, in turn, are able to influence the decisionmakers. All successful advocates know the importance of staff, but the most successful ones have learned which staff to cultivate and the best ways to go about cultivating them.

### Kinds of Useful Staff

For someone wishing to influence state fiscal policy, the most important staff in the executive branch are those working directly with the budget, including agency and Office of Budget and Management budget analysts. They are also the least accessible. The same is true of legislative staff working in the Legislative Service Commission; they are even more difficult to approach. Easier to access, and also important, are the policy staff in the governor's office, the House Speaker's office, the Senate President's office, and the partisan fiscal staff of the two finance committee chairs and other individual legislators. They are much more accessible because their role is to help their principals develop a feel for how particular proposals will be received by constituent groups. For them, advocates are a vital link to those constituents. While they may or may not understand a complicated fiscal position, they can be useful in securing access to fiscal staff where the position can be explained. They are probably the best source of information about the timing of when decisions are going to be made and about whom the most important contacts are concerning those decisions.

Some legislators permit their staff greater leeway than others. For example, when Republican Senator Stanley Aronoff was chair of the Senate Finance Committee, he preferred to have his fiscal staff deal directly with those seeking changes in appropriations or special amendments, and then let his staff report to him on their meetings with advocates. The most successful advocates feel comfortable working with partisan fiscal staff, trusting them to carry their messages to their principals.

The most successful advocates also know the value of cultivating relationships with support staff. Support staff know what letters, memos or other materials came into the decisionmaker's office, and whether the material is from a department director, Office of Budget and Management, the governor's office, or the office of a legislator. They are also the gatekeepers to the decisionmaker. This access means that if several people call for appointments, or simply leave telephone messages, support staff have a good deal of influence on which messages are returned and who receives an early appointment. Support staff can also be of assistance by letting advocates know when they are "in trouble" with the decisionmaker and why and help to smooth the problem out. They are invaluable sources of information about who else has been to see the decisionmaker and even what they discussed. They can help in selecting the best time and the best approach an advocate should make.

## Staff-Advocate Relations

Fiscal staff can pave the way to influencing a decisionmaker. They can also pave the way to difficult-to-access legislative fiscal and Office of Budget and Management staff, who can provide valuable budget information before it becomes public. The virtue of gaining such information early is that (1) additional time is thus provided to develop data and analyses to counter or support one's position, (2) it affords one the opportunity to muster public support for or against a position, and (3) it lets one try to influence a decisionmaker before a position is formally taken or solidified. Being the first one to know what is going to be in the governor's budget, what is being planned for a substitute appropriations bill, or what kind of an amendment is going to be proposed is what separates the most successful advocates from the rest.

In addition to providing early information that can affect decision-making, fiscal staff can also be valuable in:

- Identifying who the opposition to an issue is and what arguments they are advancing.
- Describing the methodology they used in making estimates that could then be challenged.
- Providing help in determining the cost of proposals and in validating estimates.

## Lobbying Reform

The effect of lobbying on legislators and the legislative process is a matter of significant public concern and attention. The public perception is that when legislators and lobbyists come together, advocates have their way with legislators to the detriment of the public interest. Ohio and other states have enacted legislation to tighten restrictions on these interactions by governing entertainment, gifts, and travel. Lobbyists are required to register if they plan to influence legislation or administrative agencies, and they must disclose their expenditures. The results have been mixed, and certainly have not diminished suspicion on the part of the public. The solution to the problems posed by lobbying are most appropriately addressed through strong adherence to standards of ethics by both advocates and those being lobbied.

# Summary

The politics of budgeting is one component of the process, but it is not the only one. It cannot be overemphasized that political considerations are only one of three parts of a budget decision, with program and fiscal considerations weighing in on every decision. It is true that of the thousands of judgments to be made in finally adopting appropriations, one consideration may outweigh the others in individual cases but each case is considered separately, and all three elements weigh in on every decision to varying degrees. State budgeting in Ohio is policymaking in its highest form. All budget decision-making is governed by rules of ethical conduct and the personal integrity of those engaged in the process. Interest groups and their advocates play an important role in state budget making. Their influence is felt throughout the budget-development process in state agencies, the central budget agency, and the legislature. Nowhere is their influence more evident than during the appropriations process. Different advocates apply different approaches to influencing the process, and some are more successful than others. An increasingly critical issue is that their activities be conducted openly and in full view of the other participants in the budget process so that they do not exert undue influence over it.

## *Endnotes*

1 U.S. Department of Commerce, Bureau of the Census, *Census of Governments*, 2012, Finance Component, released December 16. 2014.

2 For example, a lengthy series of articles on "phantom employees" and another on the awarding of state contracts without competitive bidding by the *Akron Beacon-Journal* contributed to the defeat of Governor John Gilligan in his bid for a second term of office.

3 John H. Fenton, "Issueless Politics in Ohio," *Midwest Politics*, Holt, Reinhart and Winston, New York, 1966.

4 Richard G. Sheridan, *Governing Ohio: Administration & Judiciary*, Federation for Community Planning, Cleveland, Ohio, 1990, p. 53.

5 Kent Schwirian, "The Socio-Cultural Groups in Ohio," *Outlook on Ohio: Prospects and Priorities in Public Policy*, edited by William O. Reichert and Steven O. Ludd, Commonwealth Books, Palisades Park, NJ, 1983, p. 34.

6 Doug Caruso and Danae King, "Growing Diversity: Ohio Sees Increase in Hispanic, Asian Residents," *The Columbus Dispatch*, June 21, 2018.

7 See also Richard G. Sheridan, *Governing Ohio: The State Legislature*, Federation for Community Planning, Cleveland, Ohio, 1989, especially Chapter 3.

8 See for example, Gerald Benjamin and Michael J. Malgin, Center for Legislative Studies at the State University of New York, Limiting Legislative Terms, Congressional Quarterly Press, Washington, D.C., 1992.

9 The actual number of freshman legislators was less, but a large number of those listed as serving their second term only had a few months of prior legislative service, because they were appointed prior to the end of 2000 to fill out the terms of term-limited legislators who left the General Assembly before the official end of their terms. This enabled their replacements to run for election in the fall of 2000 as incumbents.

10 Chapter 102 of the Revised Code.

11 Robert T. Golembiewski and Jack Rabin, Editors, *Public Budgeting and Finance, 4th Edition*, Marcel Dekker, Inc., New York, New York, 1997.

[12] Materials on this subject were published previously in different form in Richard G. Sheridan, *Governing Ohio: The State Legislature*, Federation for Community Planning (now The Center for Community Solutions), Cleveland, Ohio, 1989; and in Richard G. Sheridan, *State Budgeting Matters*, The Center for Community Planning (now the Center for Community Solutions), Issue 4, January 27, 2003, Issue 13, March 31, 2003, and Issue 15, April 14, 2003. An excellent source for more detailed information on influencing public policy can be found in Judith C. Meredith and Catherine M. Dunham, *Real Clout*, The Access Project, Boston, Massachusetts, 1999.

[13] Nonprofit Sector Research Fund, *Effective Nonprofit Advocacy*, 1998.

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 northwest 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.

CHAPTER 8:

# Budgetary Reform[1]

The budget process is constantly evolving. Where it was once focused entirely on preventing overspending, it has since evolved into a primary executive management tool and a means of undertaking regularized strategic planning to achieve defined outcomes. Most analysts would consider this aspect of budgetary evolution to be commendable, but other evolutionary developments are less so. Both executive budget development and the legislative appropriations process in Ohio could be significantly enhanced from greater openness. While the state is a leader in government spending transparency, opportunities for further improvement remain.

## Improving Executive Budget Development

Two important aspects of executive budget development are its formatting and the estimation of revenues. Changes to both components could result in significant budget improvements. There is also a question of whether the public would be better served if there were more openness in the budget development process.

### Formatting the Budget

When it comes to public accountability for the expenditure of state funds in Ohio, little has changed over the last 50 years because the state's accounting, budgeting, and auditing systems are separate. This disjunction is reflected in the formatting of the state's financial system. One reason it is so difficult to understand state budgeting in Ohio is that three distinctly different formats are used:

- Agencies develop and present their budgets to the governor in a modified program format that is reflected in the Executive Budget Request, or "Blue Book."
- The legislature reviews and enacts appropriations in a line item format reflected in the appropriations bill.
- The state accounts for expenditures, and audits agencies, in an object of expenditure format reflected in annual audited financial reports, post-audits, and other supplementary accounting documents.

Many states, as well as the federal and local governments, have found ways to bring their financial systems into alignment. Hawaii is one of several states that seem to have "got it right."[2] Its financial system combines budgeting and fiscal planning into a single comprehensive and cohesive system that provides useful information for management decision-making as well as operational control. In Hawaii, anticipated receipts and disbursements are allocated by program cost centers. Funding, programmatic objectives, performance measurement, and variance reporting are based on this lowest building block, the sub-program cost center. This streamlining makes it possible to link funding to the level of services provided and is especially conducive to automation and analysis.

By contrast, Ohio's accounting is not linked to programmatic budgeting. The accounting system continues to be concerned with what is purchased by each dollar, for example personnel, health care, travel, and equipment. There is a separate accounting process that links those objects of expenditure back to the appropriation, but because the appropriation is by line item, not by program, the linkage falls apart. In Hawaii, appropriations are made neither by department nor by fund, but by program area, and sub-programs are each built up into higher programs.

In addition to making it difficult to understand Ohio budgeting, the disconnection of financial documents has made it impossible for Ohio to achieve the nationally recognized state budgeting goal of "budgeting for results."

## Budgeting for Results

Results-based budgeting is a relatively recent management and budgeting trend and is the application to governments of results-based management. The concept originated in the private sector where managers are typically rewarded based upon the results they achieve. The components of a results-based budgeting system as applied to government are:

- **Strategic planning**, by which governments establish their mission and performance goals.
- **Performance measurement**, in which an agency quantifies how efficiently and cost effectively it has used its resources in delivering services by using a baseline, whether it be a standard, norm, or criterion, against which to assess performance in a program or services.
- **Benchmarking**, which is used to identify, analyze, adopt, and adapt the high-performance processes of other organizations that excel at doing a particular activity.
- **Managerial accounting**, which consists of (1) accumulating and reporting costs of activities on a regular basis for management information purposes, (2) establishing responsibility segments to match costs with outputs, (3) determining full costs of government goods and services, (4) recognizing the costs of goods and services provided among governmental entities, and (5) using appropriate costing methodologies to accumulate and assign costs to outputs.
- **Accountability in budgeting**, which means using a budgeting system that allocates resources according to results and holds agencies responsible for budgetary outcomes.
- **Service efforts and accomplishments (SEA) reporting**, which recognizes that a critical component of performance measurement is to report to decisionmakers and the public on the status of goal achievement.
- **Performance auditing**, which is undertaken by an independent auditor to systematically and objectively assess the performance of an organization, program, function, or activity of government.[3]

An interesting variation on results-based management is "Budgeting for Outcomes," which produces results citizens value at a price they are willing to pay. Its basic steps involve:

- Setting the price of government.
- Setting the priorities of government.
- Setting the price of each priority.
- Developing a purchase plan for each priority.
- Soliciting offers to deliver the desired results.
- Negotiating performance agreements with the chosen priorities.

After some efforts in the 1990s, Ohio has not actively pursued results-based management, although the Auditor of State has recently undertaken performance auditing activities. This may indicate a movement in Ohio toward results-based management.[4]

## Revenue Estimating

The methodology that the governor's revenue estimators use is technically as good as is used in any other state, but during recent years the estimates in some states have been better than those of Ohio. Why? The answer lies not within the methodology, but in the assumptions made in the preparation of the estimates.

Revenue forecasters base their methodology on the assumption that the past can be used as a predictor of the future. The problem is that this process does not always work well in forecasting individual income, commercial activity, and sales taxes that are dependent on economic changes. Since those economically sensitive taxes constitute the bulk of Ohio's General Revenue Fund, they are the ones that are most important to predict accurately. This imperative means that a revenue forecaster has to examine what factors will affect collections from those taxes and use that knowledge to change the assumptions that a pure mathematical formula using historical data would generate.

When assumptions are erroneous, the consequences for revenue forecasting and those impacted by them can be severe. Budgeting on a biennial basis can further complicate the work of the revenue forecaster. During conference committee deliberations on the FY 2018–2019 budget, the state Budget Director requested that revenue estimates be adjusted downward by $949 million over the biennium in light of FY 2016 and 2017 trends. Significant underperformance of the individual income tax and the non-auto sales tax portion of the sales tax had become apparent as early as mid-FY 2016. This led to a significant diminution in FY 2017 revenues and the need to adjust forecasts for both that fiscal year and the following biennium. Among the factors cited for the reduction in anticipated FY 2018–2019 revenues was lower than national average wage and salary growth, retail deflation, and increased e-commerce sales that were depressing non-auto sales tax collections.

Accurate revenue forecasting proved particularly elusive during the Great Recession, when the Office of Budget and Management was forced to revise its revenue projections on an all too frequent basis. Economic forecasting models had consistently understated both the depth and duration of the downturn in Ohio and its impact on personal income and business and consumer activity. Legislative tensions escalated to the point that the House Minority Leader called for the resignation of the then-budget director in March 2009. This demand echoed a similar demand made several years

earlier. In 2003, when the recession was less steep but when revenue estimates were still off by $500 million, there were also partisan calls for the removal of the then-budget director.

During the 1990s, personal income grew disproportionately at the upper levels of the income distribution table. This uneven growth was because there were larger numbers of people investing in mutual funds making annual taxable distributions; exceptionally high capital gains resulting from insupportably high stock prices and lower federal capital gains tax rates; and huge bonuses paid to employees of the financial sector. Since the individual income tax is progressive, Ohio collected increased revenue from taxes from high-income taxpayers. This collection meant that the foundation for the high tax revenues rested with the strength in the financial markets. A dependence on this source of revenue proved extremely risky. The states that correctly assumed the stock market would collapse had more accurate individual income tax estimates than those that simply forecast the continuation of this aberration.

A similar forecasting miscalculation happened during the recession of the 1980s. The economy was buoyed by double-digit inflation during the 1970s, which resulted in huge gains in state revenues from sales taxes levied on goods with inflated values and in high individual income taxes levied on inflated wages. The assumption that this would continue indefinitely is what resulted in the poor revenue estimates during that economic downturn.

Until 1973, when the Legislative Budget Office of the Legislative Service Commission was created, economic forecasting and revenue estimation was the exclusive purview of the governor and executive staff. By controlling the estimation process, the governor was also able to control fiscal decision making. If there was a surplus, the governor would learn of it and propose to either spend it where he chose or choose which taxes to propose cutting. The governor would, in essence, be setting the legislative agenda. The same would hold true if revenue estimates were too high, but that never occurred until the state adopted the somewhat volatile individual and corporate income taxes in 1971. In 1973, the legislature decided to do its own revenue forecasting through the Legislative Budget Office. The state legislature intended these estimates to serve as a check on the reasonableness of the executive branch's forecasts. However, it never worked as originally planned.

The Legislative Budget Office should have used its independent forecasting ability to challenge the assumptions in the governor's forecast. Instead, the legislative estimates simply quibbled at the edges of the executive forecast, never departing from its underlying economic assumptions. Thus, Legislative Budget Office's estimates became simply a means for the legislature to pressure the executive to raise or lower its revenue forecasts to fit the spending needs defined by the General Assembly. The legislature has ultimately accepted the governor's forecast on most occasions, but it uses those of the Legislative Service Commission to push executive revisions. Under these circumstances, there is little reason to continue having the legislature make "independent" revenue forecasts. It would be more effective for the state to adopt the process of consensus forecasting, which most other states use.

Consensus Forecasting. The technical experts who prepare revenue forecasts are not necessarily proficient in formulating or revising core assumptions. This lack of expertise means that the revenue estimates prepared by the technical experts need to be evaluated to determine how realistic they are, how well they explain recent trends, and how insulated they are from political judgments. The best way to do that is through a process called "consensus forecasting," a process that is used in over half of the states.[5] The oldest and most institutionalized user of the process is Florida.

Since 1970, Florida has placed the responsibility for revenue forecasting in a committee specifically designed to perform this function. In 1982, the process was made statutory. The committee consists of one member each from the governor's office, the Senate, the House of Representatives, and the Legislative Office of Economic and Demographic Research, which is under the Joint Legislative Management Committee of the Florida Legislature. These four representatives, or their principals, must achieve consensus in order to issue an official revenue forecast, which is then used in all planning and budgeting actions in the state.

The committee's meetings are open to the public, and any of the principals can bring a forecast to the committee. They can also ask for outside parties to bring information or forecasts of their own in order to assist in formulating the official forecast. Because Florida adopts a budget annually, their revenue estimating committee meets in late autumn, and the forecast extends through the forthcoming year. The governor uses their forecast in preparing the executive budget request, and, in the spring, in determining the amount available for appropriation by the legislature. However, a meeting can be called by any principal whenever it is needed.

The most important takeaway from this process is that Florida uses the committee to select the appropriate scenario from all of the alternative scenarios presented by national economic forecasting services. The assumptions of the national forecast are then inserted into equations developed by the Legislative Office of Economic and Demographic Research. All principals have to agree about assumptions on such things as the level of employment, housing starts, population growth, personal income, personal consumption, and tourism. Then, revenue estimates are separately made for all taxes; each revenue source is then debated and agreed to at a subsequent committee meeting.

The product of the committee is a "Long-Range Financial Outlook" statement that identifies the official revenue forecasts not only as to amount but also whether they are recurring or nonrecurring. The nonrecurring revenues can be used only for one-time expenditures or placed in the state's reserve fund, thus helping to prevent the state from over committing to continuing programs or passing tax reductions with delayed effective dates.

This process has resulted in more accurate revenue forecasts. Moreover, it has the added advantage of not politicizing the process with lengthy and fruitless debates in House and Senate appropriations committees over whose revenue estimates to accept. Finally, this process creates a forum for challenging the assumptions used in the forecasts. Importantly, the committee sessions and discussions are open to the public, which can also offer useful information.

Ohio could improve its revenue estimating process and the budget process as well, if it were to eliminate the separate revenue estimating forecasts of the governor and the Legislative Service Commission and substitute consensus forecasting similar to that employed in Florida and most other states.

## Democratizing Budget Development

The preparation of the governor's Executive Budget Request is conceived in secrecy with no one knowing its contents until its official unveiling. The only reason there is an Executive Budget Request, formally consolidating the requests of individual state agencies, both independent and under the control of the governor, is because state statutes tell the governor exactly what the legislature wants in the budget request and how it should be prepared. Ohio has made appropriations since it became

a state more than 200 years ago, but it has had an Executive Budget Request for only half of that time. The statutes governing its content and development have been altered on several occasions.

The idea of an Executive Budget Request emerged as a substitute for a state budget system that, by the turn of the 20th century, had gone completely out of control. Agencies bargained directly with the state legislature for their appropriations, and the governor had no central control over the process. This free-for-all system meant there was much departmental logrolling, no central fiscal coordination to make expenditures meet anticipated revenues, and frequent deficits to be covered by the legislature in an ad hoc fashion. The intent of the Executive Budget Request was to remedy this chaotic system by making the governor responsible for presenting the legislature with an integrated, consolidated, single state budget with the executive's recommendations for the amounts to be given to each agency, as well as recommendations on how to pay for the budget in total. As it is, this goal has never truly been met.

The independently elected officials, the legislature, judiciary, Attorney General, Auditor of State, Secretary of State, and Treasurer of State, present their budget requests without executive alteration. Large areas of spending, notably primary and secondary education, present their budget requests through independent authorities. Nevertheless, all agency requests are integrated into a single balanced whole under an Executive Budget Request. The legislature then considers the package as presented by the governor rather than weighing the individual departmental budget requests that were submitted. Missing in the legislative analysis is the benefit of rigorously vetting the relative value of the budget requests of competing programs and activities.

Despite the fact that the Executive Budget Request is a significant improvement over the budget process it replaced does not mean that it must be conceived secretly without legislative or public input. The legislature could, in fact, require such input if it considered it to be desirable.

There are arguments both for and against opening up the executive budget development process. Dr. Howard Miller, a professor at Syracuse University and a political budget staff appointee of former New York Governor William Averill Harriman wrote a series of articles entitled "Behind the State Budget" for the *Albany Times Union*. In one article, he made a strong case for maintaining secrecy in the development of the state executive budget. In summary, his arguments were:

- Allowing separate releases of information from agencies before the formulation of a unified executive budget would distract the public and legislatures from the job of adopting a budget that balances all of the interests represented by it.
- Department heads appointed by the governor must demonstrate administrative loyalty and support the governor's final decisions, even if he recommends a lower level of program financing than they originally requested.
- Release of information about inflated departmental budget requests in advance of the release of the governor's budget would pit appointive department heads against the governor for leadership over public policy in the public eye.
- Advance public disclosure of agency budget requests would ensure a larger state budget than under a system of internal budget negotiations.
- Executive budget hearings need to be freewheeling; the presence of the public or legislators would hamper free and open discussions.
- If budget requests and executive budget hearings were made public, every administration would

develop ways of circumventing the process, and the budget requests and hearings would become simple window dressing.

One argument that Professor Miller did not make was the one usually advanced in favor of secrecy: the principle of separation of powers. He did not raise it because he recognized that, historically, none of the framers of the national or state constitutions envisioned complete separation of powers. Instead they sought a balance of powers. Thus, there are requirements for legislative confirmation of certain appointments and the executive veto. What the constitutional framers feared most was a strong executive, and thus they sought instead to lodge policymaking and appropriations powers in a representative legislative body. Therefore, the separation of powers argument used in the context of supporting secrecy in budget preparation is a specious one. A good case can be made for opening up the process to more public and legislative scrutiny, if not participation.

What might happen if representatives of the public and/or legislators and their staff were allowed to attend executive budget hearings is that sounder and more supportable public policy and budget decisions would result. Many good policy ideas work their way up through the agency budget development process, including ideas for changing the course of a program, eliminating it, or starting a new one. Many of these, perhaps most, are eventually abandoned for political or budgetary reasons, not because they are bad policy. Allowing the public to hear the details about these proposals would enable them to be resurrected during legislative consideration of the budget.

Although Ohio publishes information about the requests made by agencies not included in the Executive Budget Request, there is usually insufficient time during legislative budget hearings to dredge up the details needed to reconsider them. If there is no interested party to bring the issue to the attention of the legislature, including its own staff, then the matter simply will not be considered. A good deal of important public policy is never brought forth for legislative discussion because of this lack of information and time.

It is also the case that an executive budget hearing serves as the instrument for a thorough review of agency performance during the preceding biennium. This kind of review is generally much more complete than when it occurs during a legislative budget hearing, where it is in the interests of the executive branch to circle the wagons against outside attacks. Public and/or legislative participation in the performance review conducted by the executive branch could lead to important budgetary and policy changes with the final result being greater public accountability for the expenditure of public funds.

On balance, there is more to be gained from an open executive budget development process than the possible negative outcomes it may produce. Under the more secretive process, the governor has the upper hand because the executive controls access to vital policy development information that should be available to legislators in weighing the merits of new policies.

# Improving the Legislative Appropriations Process

The part of the budget process where the General Assembly reviews the Executive Budget Request in order to reach spending decisions formulated in an appropriations bill is the place where the public

has its greatest, and sometimes only, opportunity to influence spending decisions. Yet, as this process has evolved, it has become less open to public scrutiny and accountability.

## Openness in the Appropriations Process

Budget hearings on the several operating appropriations bills begin in the subcommittees of the House Finance Committee. The subcommittees hold public hearings with the agencies that explain and defend their budget requests. Then, separate hearings are held for testimony from other interested parties. The hearings are not recorded, and minutes are not transcribed in great detail. News reporters may attend budget hearings, but few report on them. Two paid subscription news services, Gongwer and Hannah, attend and regularly report on the hearings. Since they cover hearings in all committees, however, their coverage of budget hearings is necessarily limited and only available to its paid subscribers. Thus, the best and sometimes only way to find out what happened during a budget hearing is to be there. However, budget hearings are not public in the sense of offering an opportunity for ordinary citizens to express themselves on tax and spending matters.

Another important aspect of a legislative budget hearing is the lack of legislative attendance. Initially, in order to hold a hearing, there must be a quorum of members in attendance, defined under chamber rules as being a majority. However, once the roll is taken, legislators begin to drift out of the hearing room. It is not unusual to witness a hearing on a budget proposing to spend hundreds of millions of dollars with only the chair and ranking member of the subcommittee present to listen to the request.

**Public Involvement.** Most decisions about appropriations levels are made during the subcommittee hearings. The full House Finance Committee usually hears initial agency testimony on the large state agencies, but then decision-making is delegated to the subcommittee charged with responsibility for that agency's budget. Thus, for the public, the subcommittees of the House Finance Committee are especially critical. Senate Finance Committee and subcommittee deliberations follow a similar pattern. However, the Senate Finance Committee focus is given primarily to the largest state agencies and issues because the Senate committee has fewer members as well as less time than the House Finance Committee to conduct the hearings. Ideally, legislative budget hearings would give the public the opportunity to express opinions on spending priorities. Unfortunately, public input at this point is quite limited.

Anyone can, of course, attend a public budget hearing. However, when it comes to the participants, they are all paid to do their jobs resulting in a *pro forma* process. The hearings are conducted by legislators assisted by their staff. State employees testify in favor of their budget requests. Paid representatives of those constituents who are the subject of the budget hearing testify on behalf of those who benefit from the programs. It is rare that someone not paid to be at a hearing testifies, and when this testimony occurs it is usually meant to advance a strategy that a lobbyist believes will gain legislative attention. These dynamics mean that everyone has a personal stake in the outcome of the appropriations process that goes beyond the merits of individual budget proposals. Supporting a tax increase to support increased spending could cost a legislator their job. Failing to gain legislative approval for a spending item could result in a constituent representative losing their job, or losing prestige, a bonus, or a client in the case of advocates representing multiple interests. The general public has very little participation in decision-making involving the expenditure of billions of their tax dollars each year.

**Importance of Budget Hearings.** Despite the lack of general public involvement, legislative budget hearings could be made more citizen-friendly if minutes of meetings were more detailed. House

and Senate rules require that minutes of committee proceedings only need to include the barest of information: a record of member attendance, motions and votes, plus the names of persons speaking before the committee, and whether the persons are proponents, opponents, or interested parties, and the names of the persons' firms, associations, or corporations on whose behalf they appeared.

Another useful reform would be to actively solicit the opinions of the general public about spending priorities. States such as Oregon and Washington have pioneered processes where public opinion about spending priorities is not only sought, but later used in budget development, including the appropriations process.

**Lack of Openness in Budget Hearings.** Much of what goes into the appropriations decision-making process occurs outside of the open public budget hearings. Every participant in the process is somewhat jaded about the games that occur during the hearings. In every budget, there are winners and losers, regardless of budget restrictions. Even when a budget is cut many times, the legislature still increases some programs above the amount the governor requested, and new programs are still started that the governor did not request. The reality is that most of these decisions are made outside of the budget hearing process and outside of public view. Clearly, a great deal of the budget process is external to its formal process. A remedy is to restore total openness to the appropriations decision-making process and ban private meetings for the purpose of making those decisions, although this would be impossible to enforce.

**Lack of Openness in Conference Committee.** The conference committees for the state's main operating appropriations bills use an especially egregious process. Not only do the committees keep the public in the dark about their deliberations as they seek to resolve differences between the House and the Senate on every single appropriations line item, but they also exclude state agencies, advocates, and other paid budget process participants.

In theory, state budget conference committee meetings are open to the public. In reality, the conferees, and usually only those from the majority party, meet privately to decide their actions before convening a public meeting of the conference committee. The governor, generally through the Office of Budget and Management Director, often weighs in at this stage as well. At these "pre-meetings," actual decisions are made. Under these circumstances, the public meetings are nothing more than a staged presentation of predetermined, private decision-making. If legislators would follow their own rules, the process would be made more open and democratic.

Even legislators have difficulties accessing budget information about the conference committee's version of the budget. The state's main operating appropriations bill runs thousands of pages in length, and the conference committee typically makes hundreds of changes in its provisions. Yet, legislators are asked to vote on those changes with no opportunity to read its provisions. Votes are taken in the House and Senate without a new version of the appropriations bill even being available to read, assuming that the time between the conclusion of conference committee deliberations and the votes, usually a day, was sufficient to read the new bill. Instead of receiving a new version of the appropriations bill, legislators are given a list of amendments as adopted by the conference committee, usually to the latest version of the bill. To understand it, a legislator would have to lay that bill alongside the several hundred pages of amendments and read the two together to truly understand what the conferees had done. The actual revised bill on which legislators are to vote is not even prepared until weeks after it has been enacted.

Many states require a "cooling-off" period before a final vote is taken on legislation. In these states, legislators are only allowed to vote on a bill, including the budget bill, after they have had it in front of them for several days. Legislators are therefore hard pressed to deny knowledge of the contents of bills they vote upon, as has happened many times in Ohio after conference committee reports are reported and votes taken. Requiring a final copy of the appropriations bill, and a cooling-off period before a final vote is taken, would be a beneficial reform to the state's appropriations process.

## Biennial vs. Annual Budgeting

According to the National Conference of State Legislatures (NCSL), the trend among states during the last 50 years has been to switch from biennial to annual budgeting. Whereas 41 states had biennial budgets in 1940, only 20 have them now and, of these states, Ohio is the second largest. The NCSL cites as reasons for the switch to annual budgets the increased complexity of state finances, the importance of federal actions that occur annually on state budgets and, most importantly, the dependence of states on the individual income and sales taxes that are less stable revenue sources than was previously the case.

One of the main advantages of an annual budget is that the state would be able to forecast revenues and anticipate expenses with greater accuracy one year in advance rather than two years, as is the case currently. Annual budgets are also more flexible. Financial problems occur continuously, not once every two years. A biennial budget, based on a two-year revenue estimate and spending forecast, is more rigid and less suited to accommodating necessary change.

Furthermore, in addressing fiscal issues occurring after the biennial budget is adopted, the legislature does so in isolation of what is going on throughout state government and in all its programs. Supplemental budget requests for education or Medicaid are not placed in the correct context of a total budget as they should be, and as they are with annual budgeting when the need for supplemental budgets is reduced or eliminated. Moreover, consideration of supplemental budgets can be nearly as time consuming as a full annual budget request. More often, by continuing the practice of biennial budgeting, flexibility and decision-making is effectively transferred to a handful of legislators operating through the state's Controlling Board and the executive branch of government, raising serious constitutional questions.

An advantage of biennial budgeting is that it effectively removes the budget from the election cycle. An even bigger advantage cited for the use of biennial budgets is that it would seem to be conducive to long-term planning. However, a study of the subject by the Council of State Governments could neither confirm nor reject this argument. Subsequent studies by the faculty of Texas A&M University and the U.S. General Accounting Office reached the same conclusion.

Even if the only advantages were more accurate revenue and spending forecasts, changing to annual budgets would be a worthy recommendation for Ohio to undertake. The NCSL report concluded, "As one would expect, the consensus is that forecasting is more accurate in states with annual budgets. Accuracy in forecasting, in turn, reduces the need for special sessions of the legislature, supplemental appropriations, and reserves."[6]

Existing state law permits the state to switch to annual budgets; no statutory change would be needed. The reason Ohio has a biennial budget is historical. In the early 1900s, the state began to have biennial

legislative sessions because it was difficult to convene legislators more frequently, and also because legislative business was comparatively light. Today, the state has a very complex and diverse economy with legislators meeting annually and in session almost year-round. As a result of these changes, there is little reason to continue biennial budgets.

Governor John Kasich's Mid-Biennium Reviews contained a myriad of public policy changes as well as budget corrections. This new process may signal a de facto move, if not an actual one, by Ohio to annual budgeting.

# Improving Spending Transparency

Ohio is a leader in the area of government spending transparency. In December 2014, State Treasurer Josh Mandel instituted the "Ohio Checkbook" providing online detailed information on state government finances. With numerous charts and graphs, the online checkbook provides information on state expenditures in an extremely user-friendly format. Its database is searchable by agency, employee, and type of transaction. However, tax refunds, public assistance payments, and employee paychecks are not included in the online checkbook because of privacy restrictions.

Between 2014 and 2015, the Public Interest Research Group elevated Ohio's ranking among the states in spending transparency from 46th place to 1st because of the development of the online checkbook, a ranking that it retained the following year. No sooner had work been completed on the initial online checkbook when Treasurer Mandel began to encourage Ohio's local governments, school districts, and pension funds to add their financial information to the database. This effort, which was initiated in April 2015, has been partially successful, as more than 1,000 local governments and schools posted their financial information on the online checkbook by January 2017, with additional entities added since this time.

While progress with the online checkbook is commendable, the effort to bring Ohio local governments onboard is voluntary and still only includes barely one quarter of all such entities. A statutory change to require compliance is needed to ensure that the database is comprehensive in scope. It would allow data to be analyzed in a much more meaningful way than is possible under the current voluntary system. Legislation to this effect has passed the Ohio House of Representatives on two separate occasions but has fallen short in the Ohio Senate.

A similar effort, "Ohio's Interactive Checkbook," was launched by the Ohio Office of Budget and Management in June 2016. It also contains information on revenues and agency budgets and expenses, and has a searchable database, although it does not have a local government component. Developmental costs for the Office of Budget and Management product of approximately $150,000, exclusive of staff time, were significantly less than the online checkbook developed by the Treasurer's office, which cost $811,000 to set up plus staff time.[7] Ohio would be well served if these two projects could be integrated into a single product.

Auditor of State Dave Yost has developed a tool to help Ohio counties and cities avoid fiscal stress. The online tool, which mirrors similar efforts developed in the states of Michigan, New York, and Washington, twice annually provides information on 17 separate "financial health indicators." It categorizes all counties and cities on each of the indicators as having a "positive outlook," a "caution-

ary outlook," or a "critical outlook."

In the initial report released in January 2017, 82 percent of counties and 92 percent of cities were flagged as having at least one indicator noting either an area of caution or a critical shortcoming. Several areas of general concern were noted by Auditor Yost. Counties and cities have not spent sufficiently on capital assets in recent years, and year-end general fund balances have been on the decline. These developments are perhaps not surprising given recent cutbacks in state support of local government. However, it could be quite useful ammunition against those arguing for further cuts to local government. The tool could have increased value if it could include Ohio villages and townships as well as counties and cities in the future.

# Where Ohio Stands

Does Ohio have the ability to effectively and accurately chart its fiscal course and make the corrections needed to meet the challenges that it will inevitably face during the 2020s and beyond? This is a question without a simple answer, as it is dependent upon a number of factors, although many are interrelated. The Center on Budget and Policy Priorities has identified both strengths and weaknesses in state fiscal tool chests, ranking Ohio as only average in this regard at 24th. It cited as positives the presence of a legislative fiscal office and its preparation of fiscal notes, regular budget status reports, a well-designed rainy-day fund, and the oversight of tax expenditures and state pension systems. The state has few peers when it comes to system integrity, including digitalization and budget transparency.[8] The *U.S. News* "Best States" study ranked Ohio as first in the nation on measures of both of these items.

The Center on Budget and Public Policy mentioned the lack of consensus revenue forecasts and multi-year forecasts as negatives. The lack of consensus forecasting is of particular concern. More than half (28) of states employ consensus forecasting for revenue forecasting. Twenty-two states forecast revenues for three or more years beyond the upcoming fiscal year.[9]

The study did not examine state tax structures, but Ohio's increasing emphasis on sales transactions rather than income would also seem to be a shortcoming, one that will be exacerbated as the state's population continues to age. The lack of future focus is certainly not helped by term limits which serve to narrow the horizon of members of the General Assembly. Developing more of a future orientation is essential to Ohio's fiscal health, given the challenges that the state will likely confront on a whole host of policy dimensions.

# Budget Reform Realities

Despite the desirability of budget reforms, the reality is that Ohio's budgeting process remains reactionary. Modifications will be undertaken only when there are strong proponents for change and when there are political rewards for undertaking such changes. Students of politics and of the budget process understand that the end result of budgeting is to determine who gets what and why, and ultimately, these are political decisions. In an economic sense, political decisions are irrational. The economic notion of rationality proclaims that an expenditure decision will be rational if it equates the marginal cost with the marginal benefit. Placed in a governmental context, this would mean that

the final dollar allocated for, say, primary and secondary education purposes should provide equal benefits with the final dollar allocated for building highways. Unfortunately, in government there is really no way of adding up all of a community's satisfactions and dissatisfactions and then striking a marginal balance between them in an economically rational fashion. Since most government services are given away, not sold, there is no way of assigning them market values, and without assigned prices, values cannot be objectively compared.

Dividing up the budget pot is ultimately a political process. Therefore, budget reforms that attempt to add greater rationality to the process might meet a rationality test but not a political test, and there is little or no political gain from supporting process changes. Elected officials benefit from actions that result in more money for their home constituencies or from the passage of legislation improving living conditions or solving extant problems, and not from creating a single integrated financial system.

These challenges are not to suggest that change is impossible but rather to recognize that change is most likely to occur when there are political advantages to be had and when there is strong leadership supporting it.

## Summary

The state budget can be analyzed from both a theoretical and practical viewpoint. Budgeting is, of course, a process. There is a budget cycle, which has four stages, the executive budget request, the appropriations process, budget execution, and auditing and legislative oversight. Budgeting must operate within certain limits. The Ohio Constitution and the Ohio Revised Code have many provisions that direct how the budgeting process must be carried out. There are also political influences and formal and informal agency practices that shape the budgetary process in Ohio.

Yet, budgeting is more than a process; it is a means of controlling spending, and through controlling spending, the legislative branch can hold the executive branch accountable for carrying out its will and the will of the public. Through the processes of authorizing expenditures and exercising oversight of the executive's budget execution, Ohio's legislature exercises a good deal of control over the state's financial policies, even with their terms limited to eight years.

Budgeting is inherently political. Budgeting decisions are irrational in an economic sense, but they have their own rationality. The governor and the legislature begin with a basic commitment to continue existing governmental services and activities and then consider additional spending alternatives. These incremental budget decisions exert the greatest political influence on elected officials. The outcomes are political in the sense that they are the product of consensus and bargaining.

The legislature has the constitutional authority to raise and appropriate revenues, but the budgeting process is a cooperative venture between the executive and legislative branches. Both branches participate in various stages of the budget cycle, and far more is to be gained through cooperation than through its opposite. State fiscal staff can help foster this cooperation by serving as a communication link between the executive and legislative branches of government.

Even though budgeting requires executive-legislative cooperation, it also is highly competitive and can be compared to a game. The competition for the outcome of budgeting, best defined as a share of state revenues, has rules, strategies, and other competitive elements that make it not dissimilar to chess. Access to it is limited through the restriction of information. A player must know a great deal, including how to access needed information, to be successful in playing the budget game.

Success in the budgeting game influences the relative power of the executive and legislative branches. Each biennium, the General Assembly makes numerous changes to the Executive Budget Request, and these changes clearly leave the legislature's imprint on the biennial budget. The legislature has taken other steps to establish itself as a more equal partner with the executive in budget making. It makes its own revenue estimates, it prepares fiscal notes on the fiscal effects of legislation using its own resources, and it has extended its oversight of the executive branch. However, there are areas of the budget-making process that deserve improvement.

Both the executive and legislative branches are hampered by faulty revenue estimates and a revenue-estimating process that fosters antagonism between the executive and legislative branches. The state fails to integrate the accounting and budgeting aspects of its financial system, making it difficult for the budget players, much less the public, to understand and make informed spending decisions. The state still budgets on a biennial basis, requiring many budget corrections and supplemental appropriations as well as delegating undue legislative authority to the joint executive-legislative Controlling Board. Both executive budget development and the appropriations process unduly restrict public access to critical budget decision-making. Exploring and then addressing these problems would result in an improved state budget process along with greater accountability for the expenditure of state resources.

## *Endnotes*

1 Some material included in this chapter was presented in various essays in the series *State Budgeting Matters*, written by Richard G. Sheridan for The Center for Community Solutions during proceedings on the state's FY 2004–2005 and FY 2006–2007 budget. Those essays are available at www.communitysolutions.com.

2 Information about Hawaii's cohesive financial budgeting, reporting, and accounting system is derived from a report of the New York State Legislative Commission on Government Administration titled, "Reinventing Budgeting in New York State," dated October 1995. The report led to significant reforms of the New York budgeting, accounting, and fiscal information system.

3 *Managerial Cost Accounting Concepts and Standards for the Federal Government*, Statement of Recommended Accounting Standards #4, U.S. Office of Management and Budget. The word "government" is substituted for "federal" to suggest the most universal applicability of the statement to state and local governmental entities.

4 David Osbourne, "Reinventing Government: What a Difference Strategy Makes," January 2007.

5 Elizabeth McNichol, "Improving State Revenue Forecasting: Best Practices for a More Trusted and Reliable Revenue Estimate," Center on Budget and Policy Priorities, September 4, 2014.

6 Ronald K. Snell, "Annual and Biennial Budgeting: The Experience of State Governments," National Conference of State Legislatures, August 2002.

[7] Andrew J. Tobias, "In Swipe at Josh Mandel, Pat Tiberi Says It's Crazy that Ohio Pays for Two Different State Websites Tracking State Spending," cleveland.com, April 3, 2017.

[8] Elizabeth C. McNichol, Vincent Palacios, and Nicholas Johnson, "Budgeting for the Future: Fiscal Planning Tools Can Show the Way," The Center on Budget and Policy Priorities, February 2014.

[9] Elizabeth McNichol, Iris J. Lav, and Michael Leachman, "Better State Budget Planning Can Help Build Healthier Economies," The Center on Budget and Policy Priorities, October 15, 2015.

CHAPTER 9:

# The Evolution of Modern Budgeting, 1910-1974

The budget process in Ohio continues to evolve. From its origins in 1910 to the present, a number of procedural and substantive milestones have had a long-lasting impact on budget writing. These significant events in Ohio's history of state budgeting are highlighted in order to provide a better understanding of why things are done as they are and in recognition of the fact that the state budget is not only about numbers but it is also about people and power. Understanding this history provides the key to understanding state budgeting in Ohio.

Budgeting is about allocating and spending the revenues that governments receive in order to provide services that the citizenry would otherwise have to provide for itself. Budgeting has evolved into a highly formalized process designed to bring rationality to what would otherwise be an irrational process punctuated by backroom wheeling and dealing, exchanges of favors, and corruption. Indeed, these were the kinds of conditions that prevailed before the modern budget process was born.

## Before Modern Budgeting

Modern budgeting is a remarkably recent phenomenon, beginning in municipalities at the turn of the 20th century in response to Progressive Era reforms that exposed political machines and called for the elimination of governmental waste and corruption. A major tenet of the movement was the recognition of the need for improved financial management systems, particularly an executive budget, at all levels of government. Before modern budget systems were established, government spending was chaotic, without regard to the total amount of money available. Departmental requests for appropriations were not itemized and could not be compared to expenditures of the past. In New York City, appropriations were made without even checking to see if enough money was available in the treasury to cover them. If funds ran out, the Board of Estimate simply issued revenue bonds to make up the difference.

Budget reforms that began in municipalities culminated in the passage of the federal Budget and Accounting Act in 1921, credited with eliminating the practice of independent federal agency fiefdoms. Prior to this, agencies would present their budget requests directly to their Congressional oversight committee, without any review by the president or any effort to tie the request to national policy. Besides requiring that there be a single spending plan based on agency requests and submitted by the chief executive, the act addressed concerns that citizens needed a more direct and meaningful voice in determining expenditures and in shaping public policies. Thus, governments made public hearings a routine part of budget preparation and adoption after 1921.[1]

In 1910, Ohio, was the first state to enact a law empowering the governor to prepare and submit an executive budget. Other states more slowly accepted formal budgeting systems. By 1929, all states had established a central executive budget office. Since that time, the budget process has been continually evolving nationally and in Ohio, where significant milestones have shaped the current process and the state's fiscal policy.[2]

### The Evolution of State Budgeting, 1910–1970

| EARLY STATE FISCAL MILESTONES | | | | |
|---|---|---|---|---|
| **Early 1900s** | **1917** | **1935** | **1959** | **1963** |
| Institution of biennial budgeting | Creation of Controlling Board | • Enactment of state sales tax<br>• Creation of Local Government Fund | Governor's tenure established at two, four-year terms | • Enactment of revenue bonds<br>• Creation of Ohio Board of Regents |

**Timing of Appropriations.** Ohio appropriates operating moneys for the state in two-year periods beginning on July 1 and ending on June 30 of odd-numbered years. Appropriations for capital improvements are usually made for two-year periods in even-numbered years on the same calendar. Biennial legislative sessions began in the early 1900s, when it was difficult to convene the legislators and when the legislative workload was comparatively light. The General Assembly had a full year, though usually a limited number of working legislative days, to enact a budget. During the second year of the biennium, the legislators generally met only for a special session, and legislative responsibilities could easily be handled on a part-time basis.

Today, with a very complex and diverse economy, ease of travel, and more government involvement in the affairs of society, the responsibilities of the legislature have become full time. Most states, including Ohio, have now adopted annual legislative sessions. Accordingly, most states have also adopted annual budgets, although Ohio continues to budget biennially.

There is no constitutional or statutory requirement that Ohio budget biennially. Other than changing a handful of statutory references to "biennium," only a policy decision would be needed to adopt a 12-month budget. Advantages of switching to an annual budget would include providing legislators with greater flexibility to address emerging fiscal problems, more legislative oversight, and perhaps most importantly, greater accuracy in forecasting. The fast-paced changes in today's economy make forecasting a dynamic art. Small variances in trend lines at the outset of a biennium can yield major differences from the original expectations 24 months later.

With the exception of Texas, Ohio is the largest government to continue using a biennial budget. Advantages of staying with a biennial budget are that it allows more time to study complex fiscal matters as well as address the many important issues facing state government that are outside the fiscal domain.

Governor John Kasich's Mid-Biennium Review process effectively split the difference between annual and biennial budgeting. It maintained budgeting on a biennial basis for most purposes, while formalizing the annual review of important policy matters.

From time to time, the federal government has considered proposals to move from annual to biennial budgeting, largely because of its continued inability to make timely appropriations. Presumably, Congress could begin the process of considering a budget earlier if it only had to do so once every two years. The difficulties that Congress faces annually in adopting, or more often than not failing to adopt, a budget should give Ohio pause in considering a similar path.

What enables Ohio to function effectively with a biennial budget are the powers the state has granted to a joint executive-legislative entity called the Controlling Board.

**Controlling Board.** The Controlling Board is composed of six legislative leaders and a designee of the director of the governor's Office of Budget and Management, who acts as president of the board. Recreated through temporary law in each biennial budget since 1917, the board was made permanent in 1975.[3]

The Controlling Board was originally created to deal with fiscal matters that needed legislative attention when the part-time legislature, which met for only a few months each year, was not in session. However, when the legislature became a full-time body, the Controlling Board's powers were expanded, not contracted. The legislative leadership realized it had more influence over the few legislative members of the board than over the entire body. For this reason, as well as the force of tradition, the board continues to operate with far-reaching powers that have caused many to consider it a "super-legislature."[4] Its current powers include approving General Revenue Fund (GRF) transfers between fiscal years and between appropriated line items, increasing appropriation authority in non-GRF funds, authorizing contracts without competitive bidding under certain circumstances, and releasing funds appropriated to it for special and general purposes.

The Controlling Board's vast powers ensures that it touches virtually all major state agencies and critical issues. Notably, it was used in 2013 to circumvent the legislature in order to authorize funding authority necessary to expand Medicaid under the provisions of the federal Affordable Care Act. This action foreshadowed a veto override in 2017 by a later General Assembly to limit the Controlling Board's authority by placing a dollar limit on what it can approve. Ironically, another veto override in 2017 granted the Controlling Board an additional power by requiring the administration to obtain board approval before spending the state share of Medicaid expansion funding.

Because it does interface with most important state policy concerns, the Controlling Board acts less formally as the legislature's primary fiscal watchdog on executive spending. The legislative oversight function that it performs is at least as important as its more formal powers. The operation of the Controlling Board in Ohio's fiscal processes is unique among all 50 states.

**Sales Tax and Revenue Sharing.** The Great Depression of 1929 left many homeowners unable to pay

their real property taxes. That year, the General Assembly proposed a constitutional amendment to impose a 15-mill limit on unvoted property taxes, and the voters approved the amendment. As the depression worsened, an initiative petition in 1933 rolled the limit back further to the present-day 10 mills.[5] However, the resultant loss in revenues, particularly to local governments, made it impossible for them to maintain essential services and also to provide for requisite "poor relief," as income maintenance was then called. After having proposed and defeated it five times between January and November 1934, the General Assembly, on December 6, 1934, enacted the Ohio Retail Sales Tax law, becoming the 16th state to adopt a general sales tax. It became effective on January 1, 1935, and was levied at a rate of 3 percent. The Use Tax was enacted one year later. The Sales Tax was raised to 4 percent in 1967, to five percent in 1981, to 5.5 percent in 2005, and to 5.75 percent in 2013. A constitutional amendment in 1936 exempted all carryout food from the sales tax.[6]

The original purpose of the sales tax was spelled out in legislation that provided that after administrative costs and specific appropriations for emergency poor relief and other purposes 60 percent of the remainder was to be distributed to the state public school fund and the remaining 40 percent to a newly created "local government fund." The moneys in this fund were allocated to county auditors who provided them to a County Budget Commission in each county that then distributed the funds by formula to county and other local governments.

Until 2008, the Local Government Fund (LGF) was comprised in statute as 4.2 percent of the state sales, and use, individual income, public utility, and corporate franchise tax collections. An additional fund, the State and Local Government Revenue Assistance Fund, was created in 1989 to distribute another 0.6 percent of the collections of the same taxes to each county based on the county's population compared to the total population of the state. As a result of the initial agreement to share the proceeds of the state sales tax with local governments, which enabled the General Assembly to muster the votes necessary to enact it, the state has had one of the largest general revenue-sharing programs in the nation, and it has significantly impacted state fiscal policy and the budget process. Accordingly, beginning in FY 2001, the legislature found it necessary to freeze or reduce the amounts that were distributed to local governments over the next several biennial budgets because of ongoing fiscal crises.

Effective in 2008, the State and Local Government Revenue Assistance Fund was consolidated into the LGF, and distributions ceased. At this time, a new funding mechanism was instituted for the LGF in which the fund received 3.68 percent of total GRF tax receipts. The FY 2012–2013 budget subsequently replaced this "percentage of revenue" methodology with a "base year" funding methodology. The LGF received a designated percentage of fixed FY 2011 total GRF revenues, the "base year." This change dramatically reduced LGF revenues from that which was received in FY 2011, by 25 percent in FY 2012 and 50 percent in FY 2013. The "percentage of revenue" methodology returned in the FY 2014–2015 budget and thereafter at a fixed 1.66 percent. The FY 2018–2019 budget further redirected $17.65 million annually in LGF funds to address the opioid crisis confronting the state.

**Gubernatorial Term Limits.** Until 1959, when Governor Michael DiSalle took office, a governor was elected for unlimited two-year terms in even-numbered years. At that time, a 1954 amendment took effect, mandating that a governor could not serve more than two consecutive four-year terms. The ability to affect two state budgets, without facing re-election, had as much of a positive effect on strengthening the Office of Governor as did the establishment of the executive budget. Since 1959, every governor except Michael DiSalle, John Gilligan, and Ted Strickland, all Democrats, has served for eight years. Governor James Rhodes twice served two consecutive four-year terms, one before and

one after Governor Gilligan's single four-year term. This continuity has permitted governors to exercise strong budget leadership and allowed them sufficient time to affect the direction of state fiscal policy, regarding spending, taxing, and borrowing.

**Capital Construction.** Upon taking office in 1963, Governor James Rhodes worked to gain legislative and voter approval for a plan to issue revenue bonds to pay for a massive state building program to support the state's economic development effort. Primarily, these took the form of a good transportation system to take advantage of Ohio's favorable geographical position for moving manufactured goods, and a system of community colleges and career-technical education centers easily accessible to businesses in need of a good labor supply.

The Ohio Constitution restricts the issuance of debt to $750,000, an insignificant amount in terms of the state's multibillion budget.[7] Thus, in order to undertake the kind of building program he sought, Governor Rhodes proposed a constitutional amendment, which voters approved in 1963.[8] The amendment allowed the issuance of general obligations bonds, but only for projects that would create jobs, enhance employment opportunities, and improve the economic welfare of the people of the state. Issuance of revenue bonds was also authorized for capital improvements for mental health and developmental disabilities, parks and recreation, and institutions of higher education.

To this day, this bond authority, reinterpreted to permit the state to construct prisons and state office buildings with revenue bonds, even though they generate no real revenues to support the repayment of the bonds, has served as the foundation for the capital budget in Ohio. Without the artifice of bonds supported by either non-existent or inadequate revenues generated by the facilities built, Ohio would have no state capital building program, because Ohio voters have repeatedly rejected, as recently as 1998, constitutional amendments to give the state the authority to issue general obligation bonds for construction beyond those authorized in 1963.[9] However, in 2005, voters did approve a 10-year, $650 million general obligation bond issue to finance the Ohio Third Frontier program to nurture high technology business development. A four-year, $700 million program extension was approved in 2010.

The lack of authority to issue general obligation bonds did not deter the state's economic efforts for long. Just two years after the 1963 Constitutional amendment, Governor Rhodes proposed an additional amendment to the Constitution to further spur the state's economic development effort. Ohio voters approved Section 13 of Article VIII, which provided for the guarantee of loans for industrial development without requiring the use of tax revenue. The use of revenue bonds effectively circumvented the 1851 constitutional provision that prohibited the state and its political subdivisions from lending aid and credit to private enterprises.[10]

**Ohio Board of Regents.** The Ohio Board of Regents has been responsible for overseeing higher education in Ohio since its creation in 1963. Prior to this time, each individual institution sought its appropriations independently through currying the favor of its local legislators. This approach, though certainly not ideal, was nevertheless manageable, as there were only six public institutions of higher education in Ohio before 1963.[11] The method would have inevitably broken down without a state higher education board, given the explosion in the number of public universities and community colleges in Ohio in the 1960s and 1970s. With the creation of the Ohio Board of Regents, individual two- and four-year institutions presented unified operating and capital appropriations requests to the General Assembly. The abolition of the former practice permitted the creation of a more objective formula approach to funding higher education instruction.

The establishment of the nine-member Board of Regents had the somewhat perverse effect of removing the budget for higher education, accounting for more than 10 percent of the state's General Revenue Fund, out of effective executive control. The Board of Regents actively lobbied for their original budget request to the governor, regardless of what the governor proposed for them in the Executive Budget Request. Members of the Board of Regents could do so because, although initially appointed by the governor, they were not under direct control of the executive, since they served for fixed, overlapping terms of nine years. Because the terms were overlapping, it took a new governor a full four-year term before he was able to appoint sufficient new members, even indirectly, to have some control by having a majority of the members as his appointees. This system existed until 2007, when Governor Ted Strickland sought and obtained legislation establishing the Ohio Board of Regents, subsequently renamed the Ohio Department of Higher Education, as a Cabinet-level agency with a gubernatorial-appointed Chancellor. The Board itself became advisory in function.

## John Gilligan, 1971-1975

| FISCAL MILESTONES OF THE GILLIGAN ADMINISTRATION | |
|---|---|
| **1971** | **1973** |
| Enactment of individual income and corporate franchise taxes | • Enactment of Budget and Accounting Act<br>• Establishment of Legislative Budget Office<br>• Creation of State Lottery |

**State Income Tax.** By 1970, Ohio's tax structure was clearly inadequate to support burgeoning higher education enrollments that resulted from the Baby Boom generation moving through the school system, federal mandates such as the Medicaid program established in 1965, and other non-discretionary commitments. It fell to Democrat Governor John Gilligan to convince a conservative Republican legislature to institute the state's first individual and corporate income tax.

After unsuccessfully attempting to force the issue by closing state parks in the middle of the summer, threatening school closures, and proposing other heavy-handed assertive tactics, Governor Gilligan was able to gain approval of the tax increase by a majority of the Republican-controlled House. He did so by forging an alliance with Charles Kurfess, the powerful, long-time Speaker of the Ohio House of Representatives. Speaker Kurfess managed to obtain House approval of a budget bill that was $1.5 billion higher than the previous one, an increase that could not be supported with a simple one-cent sales tax increase. The Senate would not agree and the state approved an interim budget.

On July 14, 1971, the House passed a tax package that included a graduated state income tax.[12] Two months later, the Senate passed a budget cutting $500 million of the House-approved budget increase and providing for a one-and-a-half-cent increase in the sales tax to finance it. Continued interim budgets threatened public assistance payments and state employees' paychecks and, finally, when legislators' paychecks went unissued, on December 9, the fourth conference committee reported a budget bill that included the imposition of an income tax.

The rancor in the General Assembly leading to the enactment of the state's first income tax had further repercussions. Voter ill will as a result of that action was a big contributor to Governor Gilligan's defeat in his bid for re-election three years later. However, the institution of the income tax created

a progressive tax structure for the state, and a decade later would replace the sales tax as the major source of state General Revenue Fund (GRF) receipts. In FY 1973, the first full year of collections, the income tax generated $1.3 billion. Thirty-five years later, FY 2008, it generated $9.8 billion. However, after years of rapid growth, the combined impact of 2005 rate reductions and the Great Recession saw income tax revenues dip significantly to $7.9 billion in FY 2010. By FY 2014, the less progressive, consumption-based sales tax had once again eclipsed the income tax as the largest source of GRF receipts as a result of additional income tax reductions coupled with a modest sales tax increase.

**Legislative Budget Office.** Until FY 1973, the preparation and execution of the state budget was in the hands of the Ohio Department of Finance, which managed all state purchasing, accounting, data processing, and budgeting. The legislature was totally dependent on the governor and the Department of Finance for fiscal information to use in appropriating state funds. The Department of Finance even provided staff to the House and Senate Finance Committees. This dependence changed when the legislature created its own Legislative Budget Office in 1973. Although nominally part of the Legislative Service Commission at the time, the Legislative Budget Office was, for many purposes, a separate entity.

In the mid-1960s, the Legislative Service Commission, the research and bill-drafting arm of the General Assembly, issued a report identifying the need for its own legislative fiscal staff. The report noted that neither the Executive Budget Request nor the information derived during legislative budget hearings was adequate for well-informed legislative decision-making. The pressures of the session and the demands of other legislative activities made it virtually impossible for legislators to familiarize themselves with the detailed fiscal information presented to them by agencies and outside interests in support of their appropriations requests. The report recommended that full-time legislative fiscal staff should be hired to work directly with legislators. As a result, two fiscal positions were created in the Legislative Service Commission, one to serve the majority party and another to serve the minority.

In 1972, another report, this one prepared by an outside body, the Ohio Citizens' Committee on the State Legislature, recommended that the General Assembly establish four partisan, full-time fiscal officer positions, one each for the majority and minority members of each house. These were to supplant the partisan fiscal staff (the Legislative Service Commission provided) that, the committee felt, "somewhat dilutes the strict nonpartisan position which the Service Commission staff arm rightly should reflect." In addition, two nonpartisan fiscal staff members were to be retained in the Legislative Service Commission to provide technical assistance to individual legislators and to other standing committees.

One year later, a newly Democrat-controlled General Assembly, distrustful of the Legislative Service Commission, which had been under the control of Republicans for 13 years, and also distrustful of the governor's fiscal advisors, decided to create its own fully staffed Legislative Budget Office under the supervision of a 12-member bipartisan Legislative Budget Committee. The four partisan fiscal staff and the two Legislative Service Commission fiscal staff were transferred to the newly created Legislative Budget Office and placed under the direction of Richard G. Sheridan, who recently held a similar position in Washington state.[13] Additional staff was authorized to be hired as needed.

The creation of the Legislative Budget Office signaled the beginning of the legislature's fiscal independence from the executive branch and made it a more equal partner in the budgetary process. However, in 2000, for reasons that have never been fully explained, the Legislative Budget Office was wholly subsumed under the Legislative Service Commission. Today, legislative budget and fiscal functions

remain organizationally under the control of the Legislative Service Commission.

**The Budget and Accounting Act of 1973.** While the legislature was reorganizing its fiscal operations, Governor John Gilligan chose to reorganize those of the executive branch. In order to strengthen the budgeting function, it was removed from the Ohio Department of Finance in 1973 and transferred to a new, separate Ohio Office of Budget and Management created within the Office of the Governor. All other fiscal functions, except data processing and accounting, which were later also transferred, were lodged in a new cabinet-level Ohio Department of Administrative Services. Warrant writing, the process of paying the state's bills, was transferred to the independently elected Auditor of State. In 2007, this function was transferred to the Office of Budget and Management.

Along with this reorganization came a change in the way the budget was viewed. Until 1973, the state used line-item budgeting with its emphasis on strict budgetary control of each separate line item of expenditure, such as personal services, telephones, postage, stationery, and travel. During both executive and legislative budget hearings, agencies provided detailed justifications for the amounts of money they wished to spend on each object of expenditure. When the legislature was satisfied with the explanations, appropriations were enacted, and the executive officials then kept strict account of spending from each object to ensure that the authorized amounts were not exceeded.

Governor Gilligan argued that these kinds of controls hampered his ability to manage government. He suggested that if the legislature was unhappy with how its policies were translated into action, it would have to free his hands from the bonds of accounting for line-item appropriations. Thus, under Governor Gilligan, Ohio moved to the lump-sum method of appropriations, emphasizing the organizational unit instead of the expenditure object. Little by little, restrictions on spending for individual items were removed. Statutes were changed to allow funds to move between expenditure items and between divisions within executive agencies. The executive power over the budget was enhanced, since the legislature did not have to be consulted for these changes, and movement away from line-item budgeting had begun.

**State Lottery.** In 1973, Ohio joined the movement toward state-sponsored lotteries that was sweeping the nation during the 1960s and 1970s through the passage of a constitutional amendment authorizing certain kinds of gambling.[14] During the campaign for passage of the amendment, public school authorities and teacher organizations, who strongly advocated its passage, were led to believe that its profits would be used to support primary and secondary education and teacher salaries. This same argument was used in obtaining public support for the state's first income tax. In actuality, lottery proceeds were originally deposited into the General Revenue Fund, along with income tax, sales tax, and other receipts, and from these pooled resources appropriations were made.

Each time a local school district sought voter approval for a property tax levy, opponents argued that the state lottery was supposed to pay for education. It was difficult for legislators to explain how those proceeds did, in fact, support schools when they were pooled with other revenues. Finally, in 1988, voters, by an initiative sponsored and endorsed by the same public education authorities that advocated for the original proposal, approved a constitutional amendment requiring that lottery profits, which are expected to total $1.04 billion in FY 2019, be used only for education.[15] A separate State Lottery Fund was created to receive and disburse the proceeds of lottery ticket sales.

For the purposes of state budgeting and fiscal policy, the passage of the lottery launched a fifth major

source of revenue, the first four being the sales, income, corporate franchise, and cigarette and other tobacco taxes, to support state programs and services.

## Summary

Ohio was the first state to adopt legislation empowering its governor to prepare and submit an executive budget. However, it can be said that modern budgeting did not really commence until more than 60 years later when a Republican legislature would reluctantly enact the state's first individual and business income taxes after a nearly year-long struggle with Democrat Governor John Gilligan. Greater rationality and professionalism was introduced into the process in both the executive and legislative branches at this time, replacing the legislative wheeling and dealing and the exchange of favors that characterized the earlier era. However, the long struggle to enact the income tax brought with it a partisan rancor that would only grow over the next decades as the Ohio economy experienced a veritable roller coaster of ups and downs.

## *Endnotes*

1 Irene Rubin, "Who Invented Budgeting in the United States?" *Public Administration Review* 53 (September/October 1993).

2 There is room for disagreement on which events have had the greatest impact on state budgeting and fiscal policy. The choice of which events are milestones is subjective and based on the judgment and experience of the authors and editor.

3 Ohio Revised Code Section 127.11 ff.

4 Richard G. Sheridan, *Governing Ohio: The State Legislature*, Federation for Community Planning, Cleveland, Ohio, 1989.

5 Ohio Constitution, Article XII, Section 2.

6 Ohio Constitution, Article XII, Section 3.

7 Ohio Constitution, Article VIII, Section 1.

8 Ohio Constitution, Article VIII, Section 2i.

9 In 1999, the voters approved a constitutional amendment, Article VIII, Sections 2(n) and 17, permitting the state to issue general obligations bonds to finance public school construction and state-supported and state-assisted institutions of higher education. The same amendment limited the total amount of revenue that can be used for debt service for all obligations to a ceiling of 5 percent of total estimated revenues for the General Revenue Fund and net lottery proceeds during the fiscal year in which the particular obligations are to be issued, but this limitation can be waived by a vote of three-fifths of each house of the General Assembly.

10 Policy Matters Ohio, "Exploring the Third Frontier: Constitutional and Fiscal Limitations of Issue 1," Cleveland, Ohio, October 2003.

11 The state's only six public universities prior to 1963 were Bowling Green State University, Central State University, Kent State University, Miami University, The Ohio State University, and Ohio University.

12 In 1912, Ohio's Constitution was amended to authorize levying a state income tax, which was considered in 1933 and rejected in favor of a state sales tax.

13 Richard G. Sheridan was the founding director of the Legislative Budget Office of the Ohio Legislative Service Commission and remained in that post until 1982.

14 Ohio Constitution Article XV, Section 6.

15 Ohio Constitution Article XV, Section 6.

# PART II
# An Ohio Budget History

The industrial Midwest has witnessed great economic upheaval and demographic changes during the past half century. Ohio government has responded to the fiscal crises resulting from these challenges through a series of tax hikes and executive cutbacks, and tax reductions when the economy inevitably rebounded.

Part II of *Follow the Money* details the history of state budgeting in Ohio from its origins in the early part of the 20th century. Modern budgeting can perhaps be traced to only 1971, when the state, under the leadership of Governor John Gilligan, enacted its first individual and business income taxes. Section 1 provides an overview on how the Gilligan, Rhodes, Celeste, Voinovich, Taft, and Strickland administrations responded to the various fiscal challenges that arose during their respective terms of office. Section 2 examines the Kasich Administration in greater detail, including the transformative new policy actions it put forward in Medicaid, health and human services, and education. An Afterword ponders Ohio's budgetary future.

Chapter 9 focuses on the early history of state budgeting and the enactment of Ohio's first individual and business income taxes in 1971, a defining date in the advent of modern budgeting.

Chapter 10 describes the ups and downs of the Ohio economy in the last quarter of the 20th century and the state's response to meeting these challenges.

Chapter 11 discusses the impact of legislative term limits and the Great Recession during the first decade of the 21st century. A series of individual income tax reductions enacted during this period complicated an already difficult fiscal picture.

Chapters 12, 13, and 14 focus on major initiatives of the Kasich Administration in Medicaid, health and human services, and education, respectively. These policy areas account for more than 70 percent of state-source spending and four out of every five state dollars expended when federal funds are considered.

The Afterword examines the economic and demographic trends that will impact future Ohio budgets.

# Section 1: The First Century of State Budgeting, 1910 to 2010

Contemporary Ohio budgeting practice can be traced to the year 1971. At that time, a number of related influences came to bear that inexorably increased pressures on Ohio and its state government. New spending demands were quickly outstripping a constrained resource base. These pressures grew steadily over time, spreading to local government, and have become increasingly untenable.

The late 1960s had witnessed enormous growth in higher education enrollments from the Baby Boom generation that was just then coming of age. This growth severely pressured budgets of the time. Concurrently, new federal entitlements, like Medicaid, were beginning to drive important resource allocation decisions. Ohio's regressive tax structure was falling short of meeting these new competing demands. After acting on several threats, such as closing the state parks, and passing a number of interim budgets, individual income and corporate franchise taxes were enacted in 1971 under the persistent, if not always popular, leadership of Governor John Gilligan. This new tax structure brought Ohio into a more progressive age and solved the immediate funding crisis. However, the resulting fallout and political bitterness between the executive and legislative branches of government as well as between the two political parties would foreshadow a new, if not wholly appealing, era in both state budgeting and politics. This partisanship and tension between the branches of government increased over time.

Chapter 9 traces the evolution of modern budgeting in Ohio from its earliest days through the defining period of the early 1970s.

Despite the revenue infusion of 1971, the challenges confronting Ohio's resource base would accelerate and continue nearly unabated until current times. The 1970s witnessed new popular movements to limit property taxation driven by Proposition 13 in California. Ohio's own version of Proposition 13, House Bill 920, enacted in 1976 during Governor James Rhodes' second eight-year stint in the Statehouse, had far reaching consequences on budgeting for the state and its public school districts, as well as for its many other local governmental entities.

Moreover, the impact of manufacturing on Ohio's economy, while undeniably still quite substantial, decreased steadily over the next four decades. In many areas, the biggest economic driver became the community hospital or a public university, and not the local factory, if that factory still existed at all. While providing substantial benefits, these contemporary community assets lacked manufacturing's multiplier effect on the local economy. An increase in manufacturing activity, unlike that in other economic sectors, starts a chain reaction that generates much more activity.

At the same time, while Ohio's population grew very slowly in terms of its overall size, its composition changed steadily. It was graying, if not yet at an alarming rate, with decreased numbers in the active workforce and increased numbers in need of social services, such as skilled nursing care. These forces were certain to accelerate in the future.

These were powerful economic realities that severely and permanently constrained Ohio's revenue base and expanded its demand for public service expenditures. With revenues and expenditures growing at vastly different rates, a permanent structural imbalance resulted. Ohio had, and will likely continue to have, a permanent, sustained fiscal crisis. Through the early 2000s, Ohio government answered the call by raising taxes to meet the increased service demands. More recently, however, political strife has grown more elevated. General tax increases are off the table. Rather, income tax cuts and a shift to consumption-based taxes are in vogue. Members of a term-limited General Assembly, serving ever more homogeneous constituencies because of increasingly sophisticated approaches to redistricting, have become more insular and focused on the narrow interests of their constituency. In 2015, a new methodology designed to provide for more balanced state legislative districts was approved through an amendment to the Ohio Constitution. However, it will not take effect until new redistricting maps are implemented for the 2022 election following the 2020 Census.

Caught in a "box of responsibility," governors, unlike these state legislators, have had no choice but to balance their budgets, regardless of the political or economic hand they were dealt. What emerged in the state, regardless of the party affiliation of the governor, was a movement to redesign systems to slow governmental growth, increase productivity, and achieve better outcomes for Ohioans. This redesign was not always just an effort to do things more efficiently, but to question who should do them, or even whether they should be done at all. It brought to life the often-ignored management side of budget and management.

However, when improved productivity was insufficient to balance the budget and the tax option was off the table politically, the executive response to fiscal crises was often quite ironic. Policy choices did not always meet what our expectations might have been from a purely left-right view of the political spectrum. Indeed, under different Ohio governors from different political parties, relatively radical solutions, such as the Tobacco Master Settlement securitization and other debt restructuring schemes, were proposed to sustain existing services at what were essentially current funding levels. State cuts to the Local Government Fund and the Public Library Fund were additional examples of this behavior, as were changes in the schedule for reimbursements from losses of Tangible Property Tax revenue and the franchise fees that were placed on certain provider institutions to leverage federal Medicaid funds. It became a never-ending quest for one-time, non-tax revenues.

Chapters 10 and 11 examine the budgetary crises that faced Ohio from the mid-1970s through the first decade of the 21st century and the state's varied responses to these challenges.

# Enduring Budget Fundamentals

Regardless of the era, certain tenets of state fiscal policy have remained relatively unchanged. These include fiscal conservatism, an emphasis on local governance, an avoidance of general tax increases, and executive budget dominance broken by short periods when the legislature has reasserted its influence.

## State Fiscal Policy

As it has evolved since the advent of modern budgeting, the fiscal policy of the State of Ohio is to do all things that the federal government and the Ohio Constitution require of it. It relies heavily upon local governments to perform these services, providing them with state financial assistance, albeit increasingly less over time, including sharing state-generated taxes, and the capacity to raise additional revenues locally, while requiring voter approval above certain defined levels. Services not mandated will be provided to the extent that there are fiscal resources available to pay for them, and it can be demonstrated that there is strong public support for providing them, either directly by the state or through local units of government with state assistance. To the greatest extent possible, government services will be financed through assessments directly upon the consumers of those services, and these assessments will be dedicated exclusively to pay for them. If general taxes must be levied to pay for some services, both individuals and businesses will share the tax burden, although taxes have shifted toward individuals over time. The level of taxes will be set sufficiently low so as not to impede the state's economic development, and especially to keep the state competitive with neighboring states.

## Fiscal Conservatism

Evident in this general formulation, and in historical perspective, is the state's fiscal conservatism. Ohio is reluctant to initiate new government services. It is reluctant to raise general taxes, even to pay for constitutionally required services, such as public education, or federally mandated programs, such as health care for designated populations.

Ohioans spend nearly the same proportion of their personal income on government services as people do in most other states. Per capita state and local taxes for FY 2011 were $3,907, which ranked Ohio 27th among the 50 states and the District of Columbia. Ohio's state and local taxes constituted 10.4 percent of personal income, ranking Ohio 18th among states.[1] If only state taxes were considered, Ohio's tax burden would rank much lower. Despite what seems to be a popular belief that Ohio is a high-tax state, reliable data refutes this assertion.

## Local Governance

The emphasis that Ohio places on local governance has enabled the state to force local governments to take greater responsibility for administering programs that are required by state law. Local governments administer programs such as the prevention and treatment of chemical dependency, mental health and developmental disability services, law enforcement, and human services. The state's budget struggles over the last decade have significantly altered the relationship between the state and its local units of government with regard to the financing of these services. This new dynamic

has been particularly the case for counties, municipalities, townships, and school districts, but it is also true for mental health, developmental disability, and alcohol and substance abuse special districts. This change has taken place over several budgets and administrations, but Governor John Kasich's FY 2012–2013 budget brought dramatic and permanent alteration to this relationship. As Ohio communities with revenue enhancements or service reductions addressed resultant funding gaps, invariably local disparities and competition increased. Dependence on the local property tax, already a long-standing problem, also grew.

## Tax Policy

From the perspective of tax policy, both Democrats and Republicans have been reluctant to advocate for the adoption of permanent, general tax increases, especially since the loss of the governorship and legislative seats usually results when taxes are raised. Therefore, historically, Ohio has been ill prepared to deal with runaway expenditures or recessions.

Runaway expenditures — such as higher education in the 1960s, Medicaid in the 1970s, human services in the 1980s, and primary and secondary education and adult corrections in the 1990s — combined with decennial recessions forced the state to significantly increase general taxes.

In 2001, the state's budget began to fall apart partially because of faulty revenue estimates and, more significantly, because of a downturn in the economy. After a series of budget cuts, depletion of the state's Budget Stabilization Fund, the use of budget gimmicks, and modest revenue increases, clearly a tax increase was needed to keep the state operating in the black. For the FY 2004–2005 biennium, the legislature enacted a one-cent increase in the state's sales tax. For the FY 2006–2007 budget, this one-cent tax, billed as "temporary," was replaced with a permanent one-half-cent increase. Other tax changes involved a five-year phase-in of a new Commercial Activity Tax, phased-in elimination of the tangible personal property tax, and a phased-in 21 percent reduction in the individual income tax.

Beginning with the Tobacco Master Agreement securitization in 2007, both political parties turned away from tax increases to risky debt restructuring schemes and other budgetary gimmicks to raise the revenues necessary to meet state obligations. These gimmicks brought short-term gains, but usually at the expense of future, large-scale revenue losses. Republican Governor John Kasich cemented this trend, started under his predecessor Democrat Governor Ted Strickland, and kept his 2010 campaign promise to balance a large structural budget deficit with such one-time, non-tax approaches and sizable budget cuts.

## Executive Budget Cutting

What has enabled the state to keep its biennial budget in balance, despite overly optimistic revenue forecasts, has been the judicious use of a power whose constitutionality has never been tested.[2] The legislature granted the governor the power to issue orders to prevent the expenditure of appropriated funds if the executive determines that failure to do so would exceed the amount of revenue available.[3] That power was exercised in FY 1976 and again in FY 1977 by Governor James Rhodes when across-the-board cuts were instituted. No legal challenge ensued; consequently, when Governor George Voinovich made his cuts, a precedent had already been established. However, Governor Voinovich abandoned the notion of across-the-board cuts and actually eliminated some programs, while selectively cutting others by upwards of 50 percent, threatening their continued viability. His

cuts also extended, for the first time, to independently elected state officials and the independent judiciary. In essence, Governor Voinovich established the power of the governor to selectively rewrite the state's appropriations act, at least when facing a revenue shortfall. Governor Bob Taft used this power during his first three budgets to maintain a balance between declining revenues and overly generous appropriations. Governor Ted Strickland also cut selectively during his first budget, when resources rapidly declined as Ohio reeled under the impact of the Great Recession.

## Balance of Fiscal Power

Fiscal power has moved back and forth between the executive and legislative branches. Originally, agencies of the executive branch went directly to their favorite legislators to seek spending authority for their programs. The advent of the executive budget and the development of professional budget staff, with control over state accounting, purchasing, and information technology, shifted power to the executive who maintained a close hold on financial information, the source of all fiscal power. The legislature responded by creating its own Legislative Budget Office in 1973 and staffed it with professional nonpartisan staff. Much legislative power was abdicated when Governor George Voinovich was permitted to adjust appropriations as he saw fit. The advent of legislative term limits should have permanently tipped the balance of power back to the executive, where budget innovations that had previously come from the legislature became dependent upon executive leadership. However, during the Taft Administration, strong legislative leaders from his own political party wrested budget dominance from the governor and re-established their leadership in state fiscal policy. Governor Ted Strickland largely maintained the thrust of many of the Taft Administration's most important policies and did not significantly test legislative leadership. Governor John Kasich, on the other hand, attempted to exercise bold executive leadership early in his term. However, the pushback from voters on Governor Kasich's agenda to end collective bargaining for public workers quickly ended the honeymoon and made legislative leaders somewhat less inclined to acquiesce to strong gubernatorial leadership moving forward. The legislature's difficult reception of the governor's proposal in his 2012 Mid-Biennium Review to raise the tax on drilling was an indicator that this change in relationship was beginning to take place. Legislative action to override six of the 47 vetoes in the FY 2018–2019 budget was confirmation that the power pendulum had swung back to the legislature. However, this is not likely a permanent shift in power. The stage in a governor's term has as much to do with the executive-legislative power dynamic as the personalities involved.

## *Endnotes*

1 Ohio Department of Taxation, *Ohio's Taxes 2013: A Brief Summary of Major State and Local Taxes*, 2013.

2 The only case dealing with the question of whether the statute authorizing the governor to cut appropriations is an unlawful delegation of legislative power involved an order in August 1971, in which Governor John Gilligan reduced payments under the school foundation program by 3 percent for September and October 1971. The Court of Appeals, in *Cleveland Board of Education v. Gilligan*, 360 App.2d 15 (Franklin City), 301 N.E. 2d. 911 (1973), ruled that the delegation under Section 126.08 of the Ohio Revised Code fell into a limited category of exceptions to the constitutional rule that conferring discretion without standards is unconstitutional. On appeal, the Ohio Supreme Court reversed and ordered the state to pay the school districts the withheld amounts. However, the Supreme Court refused to address the constitutional issue of delegation of legislative authority.

3 Section 126.08 of the Ohio Revised Code.

CHAPTER 10:

# Adapting to the New Normal, 1975-1998

A troubling pattern began to emerge in Ohio in the 1970s that would plague state finances for decades to come. An economic downturn would create a fiscal crisis that would be resolved through a combination of executive budget cuts, either across-the-board and selective, and tax hikes, either temporary or permanent. As normalcy returned and state coffers filled, calls for reductions in major tax rates would inevitably occur. While Governor John Gilligan's enactment of Ohio's first income and business income taxes resolved a failing state budget in the early 1970s, fiscal instability inevitably would return to state finances in the years to come.

## James Rhodes, 1975-1983

| FISCAL MILESTONES OF THE SECOND RHODES ADMINISTRATION | | | |
|---|---|---|---|
| **1975** | **1976** | **1978** | **1981** |
| Enactment of School Foundation formula | • Property tax relief – House Bill 920 of the 111th General Assembly<br>• Creation of Total Operating Fund | Prohibition on school closure and creation of Emergency School Advancement Loan Fund | • Cutback management, budget summits, and budget gimmickry<br>• Creation of Budget Stabilization Fund |

Returning to the Statehouse for a third term of office, Republican James Rhodes confronted a recalcitrant Democrat legislature that had, in his absence, converted itself from a citizen legislature into a full-time, permanent professional body. The governor and the executive branch dominated state fiscal policy development in the 1960s. However, during the Gilligan Administration, the legislature learned that through their constitutional power to appropriate funds, and their obligation to set state tax policy, they could exercise a more equal hand in formulating state fiscal policy. They were not willing to cede this power, so recently won, easily. For two years, the executive and legislative leadership battled for supremacy in this arena.

Governor Rhodes attempted to expand on the building program of the 1960s, which was supported by revenue bonds but limited to only the specified uses. He attempted to gain legislative support for a broader bond package to cover infrastructure construction and reconstruction that went beyond the 1963 bond issues. The Democrat legislature refused to put his proposition on the ballot. Meanwhile, they enacted a state budget for the FY 1976–1977 biennium that was formulated by former Governor John Gilligan and left as his legacy, rather than the one submitted by Governor Rhodes. Suffering these two defeats at the hands of the legislature, Governor Rhodes forged an alliance with a fellow Southern Ohioan, Speaker of the House Vern Riffe, who was to serve as Speaker for 20 years, the longest tenure in such a position in United States history. Governor Rhodes capitalized on the similar upbringing, personality, and attitude toward politics and government of his colleague, and together they made many changes that would affect state budgeting, beginning with three major changes impacting budgeting for public schools.

**The School Foundation Formula.** Nearly one-half of the moneys for public school districts is derived from local sources, with most of the local money coming from wealth-based real property taxes.[1] The amount of money that can be raised from a single mill, or one-tenth of one cent, of taxes depends on the value of real property in the school district's jurisdiction. This equation means that to obtain the same yield, school districts with lower property wealth have to expend greater effort to raise the same amount of money as more affluent school districts. Voters have to vote for higher property taxes in poorer districts to compete for available local dollars with districts with high property values. This reality is politically difficult and even economically impossible in the poorest parts of the state, particularly since they usually include a high proportion of elderly persons without children of school age who are unwilling to vote in favor of higher property taxes for schools.

In the 1930s, the legislature undertook the task of finding a way to equalize the disparities between rich and poor school districts by creating a School Foundation Program to provide state funds to support basic education. The legislature revised the program's formula in 1975 when it created the Equal Yield Formula, based on recommendations made in 1974 by the legislature's Education Review Committee.

For budgeting purposes, the significance of the 1975 formula was that it attempted to do for primary and secondary education what had previously been done for higher education, removing spending decisions from purely political considerations.[2] It remained in effect until 2006 when the legislature adopted a new "building blocks" formula for use in distributing state aid. In 2009, an "evidence-based" formula was introduced, but subsequently abandoned just two years later. Yet, a new funding model was put forward by the Kasich Administration in 2013. This model is described in Chapter 14.

**House Bill 920.** The movement to limit taxation, particularly the local property tax, came early to Ohio. The General Assembly enacted the 10 percent property tax rollback for all residential property in 1971. In 1979, the legislature enacted an additional 2.5 percent tax rollback for owner-occupied residential property. In addition, in 1970, a constitutional amendment created a "homestead exemption" for low-income seniors that was extended to disabled homeowners in 1974 through another constitutional amendment.

Despite these early actions, it is California's "Proposition 13" that is most associated with this movement in government budgeting circles. In 1978, voters in California imposed spending limits on local government that was hailed as a way of establishing populist control over out-of-control government spending. A number of other states quickly adopted similar referendums, and there was widespread

fear how the movement would impact Ohio. Even before passage of California's spending limits, the Ohio legislature adopted HB 920 in 1976, fearing an irrational lid being placed on spending by initiative. This law placed a lid on the growth in local property taxes.[3] Four years later, in 1980, voters would put key parts of the law into the Ohio Constitution.

Until the enactment of HB 920, property tax levies voted to support local governments, about 70 percent of which are to support local schools, increased as inflation raised the value of real property. HB 920 froze locally approved levies at the value of residential property at the time of the levy. With the exception of new construction, a lid was thus placed on locally generated property taxes. Schools have felt the adverse effects of this provision for decades. It has required them to seek new and more frequent levies at the local level. Meanwhile, the legislature has had to raise state aid to schools to help make up for the lost revenue needed to improve the quality of schools, pay for salary and benefit increases, pay for other inflationary costs, and meet enrollment growth.

Ironically, the converse scenario occurred during the Great Recession, an unintended consequence of HB 920. As property values plummeted in some hard-hit Ohio cities at this time, taxes were frozen at the higher rate at which they were enacted and not allowed to drift down in keeping with the decreased valuation.

In the FY 2014–2015 budget bill, limits were finally placed on HB 920. Its impact would now be limited to only those levies that were in effect prior to September 2013, and to the subsequent renewal of these levies. New and replacement levies would be allowed to grow with the value of residential property over time, although this may make it more difficult to pass such levies in some communities. The same legislation, House Bill 59 of the 130th General Assembly, restored means testing to the Homestead Exemption for homeowners not receiving the exemption in 2013, reversing a dramatic expansion of the program to all senior and disabled homeowners that took place in 2007.

**Emergency School Advancement Loan Program.** Partially because of HB 920, and partially because of inadequate state funding and an inability to gain voter approval for new property taxes, many school districts resorted to the "gimmick" of closing their schools before the end of the school year. Since school budgets were on a January to December fiscal year at that time, and state funds for a new year were not received until July 1, districts could end the school year when their money ran out and begin earlier in August after new, higher state revenues were received. This calendar made for poor educational planning, but children still received the mandatory 180 days of school each year. In 1986, the school calendar was changed to a June 30–July 1 fiscal year.

This convoluted approach to running Ohio's public schools was difficult to explain. When the Cleveland City School District announced it was going to close and send 700,000 students home because it ran out of money, it received national attention, and was a major embarrassment for the state. A federal court ordered the district to remain open, forcing the state to take action. The result was the passage of legislation in 1978 forbidding schools to close because of a lack of money and forcing them to borrow from the newly created state Emergency School Advancement Loan Fund.[4] The borrowing district was placed under state oversight until the loans were repaid. It provided some troubled school districts with the needed outside expertise and fiscal discipline to bring their expenditures in line with revenues. For other districts, however, instead of solving the problem, it led them to become indebted beyond their capacity to repay. Along with HB 920, it was a major contributing factor in the Ohio Supreme Court's 1996 declaration in *DeRolph v. Ohio* that the state's system of funding sc

hools was unconstitutional. The Emergency School Advancement Loan Fund was abolished by the legislature after this court decision.

**Total Operating Fund.** According to generally accepted government accounting principles, each separate government fund must maintain its own integrity. This philosophy means that the state must maintain a sufficient cash balance to meet all anticipated obligations. Until the mid-1970s, this process is how the state operated. However, in 1976, a lack of cash meant the state was unable to meet its obligations to its vendors, and state workers faced payless paydays. Thus, the idea of pooling the cash from a number of separate state funds arose. The legislature created the state Total Operating Fund, pooling the cash of several funds for cash accounting purposes, but not for budget purposes.[5] In essence, then, the state was able to disburse all General Revenue Fund moneys, holding none back from appropriations to meet cash flow needs because it could draw on the cash in other state funds. Until then, the state always withheld from appropriations about 5 percent of expected receipts. From now on, the state would be able to appropriate 100 percent of expected receipts plus carryover balances. This fund has permitted the state, when needed, to appropriate all anticipated revenues without having to worry about running out of cash.

**Cutback Management and Budget Summits.** Perhaps the greatest contribution to fiscal management and budgeting during Governor James Rhodes' second two terms was in the application of cutback management. In 1980, the nation was thrown into a major recession. Monetary policies of Chairman Paul Volcker and the Board of Governors of the Federal Reserve System, commonly known as "The Fed," had curbed the double-digit inflation of the 1970s, but at the expense of widespread unemployment. Ohio was especially hard hit. Population and personal income had already been eroding since the 1960s, but the recession of the early 1980s accelerated this trend. The manufacturing base on which the state's tax structure was grounded was reeling. Moreover, Ohio lost the benefit of inflation-driven revenues. It had used up the excess revenues generated by the new income taxes on expensive ongoing programs and tax relief. This spending undermined the state's ability to raise enough revenues within its existing tax structure to pay for the increased costs of human services programs for the unemployed, an ingrained component of the state's spending policy.

Unwilling to support a major tax increase, perhaps in recognition of the treatment the voters afforded Governor John Gilligan after the income tax was enacted through his leadership, Governor Rhodes established the precedent of calling for a series of budget "summit" meetings attended by the governor, his chief political and fiscal advisors, the legislative leaders of all four caucuses, and their fiscal advisor. The importance of these sessions was that the fiscal policies of the state were debated by the executive and legislative branches, including both political parties, and then settled by general consensus. Differences over revenue estimates were resolved in the same setting. The outcome was a series of temporary tax increases and budget reductions based on prior agreement. As a result, the state "muddled through" the recession and the completion of Governor Rhodes' second consecutive and fourth term of office. Governor George Voinovich later used the budget summit under similar economic circumstances. His successor, Bob Taft, chose instead to only work with Republican legislative leaders.

**Budget Gimmickry.** In order to keep the state budget in balance, a number of changes were made in the budget and accounting systems to allow state government to operate without having to cut spending further or raise more taxes. In addition to raising taxes temporarily to the end of the biennium, Medicaid payments to nursing homes and hospitals were put off. Instead of cutting state aid to schools, the state permitted local school districts to borrow from the banks up to the amount of

authorized state aid with the state paying the cost of interest. Encumbrances for planned expenditures were not established in some instances, the payment schedules for the collection of some taxes were accelerated, and state liquor store inventories were depleted and the state claimed a higher share of profits than it would have otherwise. Still, without further budget cuts or more taxes, the state simply did not have enough cash in its General Revenue Fund to meet ongoing obligations. Despite the recent advent of the Total Operating Fund, the state was spending every penny that was coming in during the last year of Governor James Rhodes' final term. A temporary 25 percent across-the-board income tax hike was imposed in 1982 with an additional temporary 12.5 percent tax imposed the following year. However, these measures still fell short of bridging the state's budget shortfall.

**Budget Stabilization Fund.** The state's Budget Stabilization Fund, most commonly known as the "Rainy Day Fund," was created in the FY 1982–1983 biennial operating appropriations act, which also raised the state sales tax from 4 to 5 percent. The intent was to prevent a recurrence of the previous budget cutting by banking "excess" revenues for release during economic downturns or "rainy days." As a matter of fiscal policy, the Voinovich Administration would later choose 5 percent of the preceding year's General Revenue Fund as the goal for the size of the fund. This number was raised to 8.5 percent in 2015, even though it has yet to achieve this level. The significance of this fund to state budgeting has been to provide the state with a cushion against faulty revenue estimates or economic assumptions. However, expenditures from the Budget Stabilization Fund in one year may well lead to a structural imbalance the next year from use of these one-time revenues.

## Richard Celeste, 1983-1991

| FISCAL MILESTONES OF THE CELESTE ADMINISTRATION | | |
|---|---|---|
| **1983** | **1987** | **1989** |
| • 90 percent permanent income tax increase<br>• Enactment of Collective Bargaining Act<br>• Dedicated funding for libraries | Repayment of Unemployment Compensation debt | Abolition of Emergency Board |

**Rebalancing the State Budget.** In mid-1982, just before Governor James Rhodes left office, it was clear that the state had not truly resolved its budget problems with all of its temporary measures. Gubernatorial and legislative fiscal staff informed budget summit participants that the state still had a half billion-dollar deficit. They chose to ignore this advice, arguing that it should be the responsibility of the next governor and General Assembly.

When Democrat Governor Richard Celeste assumed office in January 1983, his first task was to rebalance the current state budget that would be in effect for six more months. If nothing were done, the state would have ended with a negative balance and become the first state in the nation to go into default and fail to pay its obligations. Instead of settling for the cut-and-patch approach that had signified the rebalancing that took place over the preceding two years, he pledged to restore fiscal stability to the state by proposing a major permanent income tax increase. He proposed making permanent the temporary tax hikes enacted during the previous administration and adding additional rate changes for a total permanent increase of 90 percent. With this change, the income tax eclipsed the sales tax as the largest generator of state revenues, a position it would retain for the next 30 years. Although just a 27 percent increase over the temporary rates, the media indeed branded the tax hike as a 90 percent increase, generating pushback among voters.

The new General Assembly, though still peopled primarily with holdover legislative leaders and members, was by now sick of hearing its official revenue forecasters revise their estimates downward on a month-by-month basis and quickly approved Governor Celeste's tax proposal with some modifications. The result was a new state tax structure that adjusted the balance between individuals and businesses, with individuals paying a larger share, along with numerous other changes.[6] After successfully defeating a voter initiative to reverse this action, Governor Celeste was able to successfully advance his fiscal agenda with new, higher revenues to pay for it.

**Collective Bargaining Act.** Until 1983, when the legislature passed a collective bargaining bill for public employees, determining what salary increases to provide to state employees was a legislative matter.[7] Until 1977, agencies either "padded" their budgets to accommodate their expectation of what the legislature would approve for salaries, or were forced to institute economies to pay for raises approved in a specific kind of appropriations bill, the pay bill. During the FY 1976-1977 budget session, the legislature made a single lump sum appropriation for compensation adjustments to the Controlling Board to later distribute to individual agencies. This method continued to be used for some time when collective bargaining eliminated the need for pay bills and also the contentious legislative debates that accompanied those bills in the past.[8] Although the collective bargaining act was effectively gutted in 2011 by the General Assembly, the action was subsequently overturned by the voters later that same year.

**Dedicated Funding for Libraries.** Until 1986, investments and savings accounts were taxed locally with the proceeds going to support local libraries. To substitute for the loss of local revenue when this intangibles tax was repealed, the legislature allocated 6.3 percent, later changed to 5.7 percent, of all individual income tax collections to go to local libraries distributed according to a formula established in law, thereby creating a budget anomaly. General revenue sharing to local governments is justified on the grounds that the benefiting local governments provide services to the state and administer state-mandated programs without reimbursement. The general revenue sharing of state taxes helps compensate for those services and also, historically, for removal of a part of their tax base when the state sales tax and, later, the state income tax was enacted. However, libraries are different.

All state agencies have to submit budgets that are reviewed and analyzed by the executive and legislative branches before appropriations are made. Libraries are not state agencies and they submit their budgets for approval only to their local governing boards despite the fact that much of their funding comes from the state. Local school districts receive state funds based on a formula that is dependent on enrollment and principles of resource equalization. Higher education institutions receive funds based on formulas dependent on student outcomes and other performance measurements. Libraries, on the other hand, have received their state funds without regard to any formula based on need. Their appropriations grew so long as total state revenues grew, and they were not subject to executive budget cutting. As a result, libraries occupied a preferred status in state budgeting not enjoyed by any other governmental activity.

Despite this historic privileged status, libraries have not been immune to feeling the impact of state budget conditions in more recent times. Funding freezes occurred during the FY 1992–1993 biennium as well as between FY 2002 and FY 2007. As with the Local Government Fund, a new funding mechanism was instituted for libraries in 2008 in which the fund received 2.22 percent of total General Revenue Fund (GRF) tax receipts. This number was subsequently reduced to 1.97 percent in the FY 2010–2011 budget, when Governor Strickland was calling for even much deeper cuts. The FY

2012–2013 budget funded libraries at 95 percent of their already reduced FY 2011 level. The "percentage of revenue" methodology returned again in the FY 2014–2015 budget, and library deposits are now set at 1.68 percent of total GRF tax receipts.

**Repayment of Unemployment Compensation Debt.** In addition to the state budget issues it generated, the recession of the early 1980s placed a considerable strain on Ohio's unemployment compensation system. Like several other states, Ohio addressed the problem by obtaining and subsequently repaying advances from the federal government, which totaled $2.8 billion for the state. An improved state economy and budget allowed for the repayment of the debt by 1987.

While solvency was again threatened in the late 1980s and early 1990s, the Unemployment Compensation Trust Fund did not go into the "red" again until the Great Recession of 2008–2010, in part because of changes made to the Unemployment Compensation Law that increased revenues and reduced benefits.[9] The state borrowed more than $2 billion from the federal government in 2009 alone to meet its obligations. The debt, which would grow to $3.4 billion, was fully repaid by 2016. Discussions continue on strategies to increase revenues and reduce benefits in a manner that would minimize or, perhaps, even avoid the future need to borrow from the federal government, while still providing needed income support to unemployed Ohioans and not unduly burdening the state's businesses.

**Demise of the Emergency Board.** Until 1985, all out-of-state travel by any state employee was scrutinized by a high-powered "Emergency Board" consisting of the governor, the Auditor of State, the Attorney General, or their designees, and the chairpersons of the Senate and House Finance Committees. They met every two weeks for no other purpose than to question whether an out-of-state travel request was justified.

Largely because of the time consumed in such a review, in 1985, it was statutorily directed to establish policies and procedures governing out-of-state travel and set an annual travel expense ceiling for each agency, within which each agency could authorize individual travel, simply reporting who traveled and why on a quarterly basis. This change was the beginning of the end of the board, and it was formally abolished four years later.

Such high-level scrutiny of a single object of expenditure was typical of the institutionalization of budgeting for control purposes and epitomizes line-item budgeting. When the board, and the provision of law prohibiting all out-of-state travel unless approved by the board, was repealed, it removed an impediment to more goal- and performance-oriented budgeting in Ohio.

## George Voinovich, 1991-1998[10]

| FISCAL MILESTONES OF THE VOINOVICH ADMINISTRATION | | | | | | |
|---|---|---|---|---|---|---|
| **1991** | **1992** | **1993** | **1995** | **1996** | **1997** | **1998** |
| Recession keeps budget out of balance | Term limits for state elected officials | Corrections system growth | • Abolition of General Assistance<br>• Gubernatorial control of school governance | Mandatory personal income tax deduction | *DeRolph v. Ohio* declaring state school funding unconstitutional | Voter rejection of sales tax increase for schools |

**Rebalancing the State Budget.** By the beginning of FY 1990 in July 1989, Ohio enjoyed one of the healthiest fund balances in the nation and ranked in the bottom third of the states in terms of appropriation growth.[11] It was tenth in the nation in terms of its end-year balance. Based on rosy economic forecasts, Governor Richard Celeste proposed, and the legislature adopted, as his final budget one that called for hefty increases in authorized state spending. Much of the spending was concentrated in FY 1991, the second year of the biennium, of which surpluses accumulated during his terms of office would be spent down.

However, by November 1990, the nation was again in an economic recession. The state had significantly overestimated expected state revenues and also grossly underestimated how much would be needed for the state's Medicaid program. After the November election, but before Governor George Voinovich took office, the General Assembly enacted a supplemental appropriations bill, seeking to shore up what was then a projected $270 million budget shortfall. The expectation had been that Governor Celeste would leave a balanced budget and a $300 million surplus in the state's Budget Stabilization Fund.

When Republican Governor Voinovich took office, he immediately undertook the task of rebalancing the state's FY 1991 budget. In order to end FY 1991 with a positive General Revenue Fund balance, he ordered significant spending cuts without seeking legislative approval of them. After the legislature adopted the next biennial budget, it soon became apparent that it too was based on overly optimistic revenue forecasts and underestimates of Medicaid spending needs. Governor Voinovich unilaterally cut appropriations again. This time he included primary and secondary education in the cuts, which had been exempted in his earlier cuts and in reductions made by Governor Celeste.

**Budget Summits and Budget Gimmicks.** After quarreling with the legislature over what other steps needed to be taken, and after rejection of many of his proposals when the budget was still hemorrhaging, Governor George Voinovich chose to use the budget device of summits originated by Governor James Rhodes. A Joint Senate-House Budget Deficit Committee was formed to work with the governor and his budget chief to reach consensus over how to resolve the continuing budget problem. One of the joint determinations was to dip into the second year of Medicaid and other human services program appropriations in order to escape FY 1992 without a deficit. This action was taken by the Controlling Board, consisting of the governor's representative and a small group of legislators secure in their legislative positions. Thus, the full legislature did not have to vote on an action that simply pushed the problem into FY 1993, although it risked criticism of fiscal deceit at primary election time.

**Cutback Management.** The fiscal problems did indeed continue into FY 1993. Governor George Voinovich still refused to propose a general tax increase and ordered further, more Draconian, budget cuts to balance the FY 1993 budget. However, because of adverse criticism from the public for his earlier cuts to primary and secondary education, he exempted schools. Since part of the problem was to obtain more money to support human services programs, and primary and secondary education was exempted, the next largest spending area, higher education, bore the brunt of the cuts. Governor Voinovich understood the relatively low value of higher education as a bargaining wedge versus more powerful interests; students have extremely low voter participation rates. Governor John Kasich likewise cut funding disproportionately from higher education in the FY 2012–2013 biennial budget.

Legislative leaders next agreed with Governor Voinovich's request to three budgetary "summits" in keeping with Governor James Rhodes' model. To gain advantage at the summits, a list of selective

budget cuts, rather than the across-the-board cuts with exceptions that had been ordered previously, was leaked to the press. On the list were many pet projects of Democrat legislators. Meanwhile, public pressure for a major increase in the state's individual income tax was gaining support to stop the continued budget hemorrhaging. However, the governor proposed only to increase so-called "sin taxes" on alcohol and cigarettes and to privatize the state's liquor monopoly in order to raise more revenues. While not insignificant, these proposals provided only temporary relief to the state budget woes. Although it did not solve the immediate crisis, one change adopted by the General Assembly at this time that did have a significant and long-term impact on revenues was the creation of a new bracket for income in excess of $200,000 in the individual income tax, starting in 1993.

As the battle raged on, the legislature took the unusual step of not enacting a capital appropriations bill. The legislature felt that the public would not understand how the state could spend money on new construction, especially at institutions of higher education, which typically receive half of all new construction moneys, while operating budgets were being severely and repeatedly cut. Once again, Governor Voinovich ordered budget cuts and the state eked its way through FY 1993, whittling down the Budget Stabilization Fund to nothing, reducing appropriations, and postponing the payment of bills rather than enacting a general tax increase.

By FY 1994, the recession had ended and state revenues began to grow. Spending on human services programs began to subside and, as a result of all of the severe budget cuts, new spending proceeded from a lower base. Democrats had argued that increasing sin taxes would rest more heavily on low-income persons and that this was why they refused to adopt the governor's proposals. They argued that the entire state tax structure needed review. For many people, based on what has happened in other states that "restructured" their taxes, this was considered a euphemism for a tax increase. At the recommendation of the governor, the legislature appropriated $750,000 for an academic study of the state's tax structure and then ignored all of its major recommendations.[12]

**Term Limits.**[13] The time to increase taxes would have been 1991, a non-election year, before new legislative boundaries were established. Many states did so, but the consequence of these actions was that popular governors in California, Connecticut, New Jersey, and elsewhere lost their popularity, and seats, as a direct result of being "out front" on the tax issue. Simultaneously throughout the country, voter initiatives were placed on the ballots in 1991 to limit the terms of office of statewide elected officials and state legislators. In 1992, an initiative limiting these officeholders to a total of eight years in office passed overwhelmingly. After "grandfathering" in incumbents, the full effect of the provision would not be felt until 2000. Based on the experience in other states, term limits were expected to shift dominance of the budget process to the executive branch. Interestingly, while it has had that impact in Ohio, the shift has been less than originally anticipated. One reason is that more members have moved back and forth between legislative chambers in order to extend their political careers.

**Strategic Planning.** The federal government, and state and local governments throughout the country, have responded to negative citizen attitudes about government gridlock, bureaucracy, and waste by developing and using new financial management tools to help to reengineer operations. There is general agreement that in order to implement principles of continuous change, establish results-oriented operations, reengineer business practices, and improve management, an organizational entity must begin with a strategic plan. Governor George Voinovich introduced strategic planning in Ohio in 1992 when he obtained legislative approval and funding for a cabinet-level state Office of Quality. Although the office was later abolished by Governor Bob Taft, the state has continued to

move toward performance budgeting, replacing line-item, control-oriented budgeting practices with outcome-based funding. This type of budgeting was more fully described in Chapter 1.

**Prison Population Soars.** The 1990s were times when law and order and mandatory sentencing were particularly important state issues. This focus was especially the case in Ohio, which witnessed the 1993 Southern Ohio Correctional Facility riot in Lucasville. During Governor George Voinovich's tenure, Ohio's prison population grew dramatically from 31,862 in 1990 to 49,029 in 1998, a 53.9 percent increase.[14] Corrections spending soared in the 1990s, growing by 185.5 percent during the decade. This increase was easily the largest of any major state spending category. Prison population since this time has grown but at a greatly reduced rate; the population in 2017 was just over 50,000.

**General Assistance.** General Assistance was a state- and county-funded program providing cash assistance and medical care to indigent single adults without children. The state/federal/county Aid to Families with Dependent Children program was available only to poor families with children. In 1995, Governor George Voinovich successfully convinced the legislature to abolish the General Assistance program, which at that time cost the state about $300 million per year.

The budgetary significance of abolishing General Assistance was that, for the first time, the state, in its budget process, completely eliminated a major state program. Common budget wisdom was that it is next to impossible to eliminate any government program once it has been begun. The abolition of General Assistance disproved this adage in Ohio budgeting.

**Automatic Tax Reductions.** Another milestone during the Voinovich years was the legislative provision mandating automatic tax reductions. A temporary law provision included in the FY 1996–1997 budget act directed that if revenues exceeded estimates or spending was below estimates, the amount of the excess collected would be used to automatically reduce individual income tax rates, provided that the Budget Stabilization Fund was first filled. In the next budget, the provision was made statutory. Customarily, budget balances remaining at the end of a biennium were used to offset spending proposed in the succeeding biennium. In 1982, Ohio changed this principle by creating the Budget Stabilization Fund, in which these balances were deposited for possible future appropriation. The 1996 provision was a fiscal policy change, whereby taxes can be automatically reduced when forecasters err. However, no tax reductions have been made as a result of this provision in many years.

**State School Governance.** The Ohio Constitution requires the Ohio General Assembly to "make such provisions, by taxation, or otherwise, as...will secure a thorough and efficient system of common schools throughout the state...."[15] Under this provision, the General Assembly has created more than 600 local school districts and empowered them to provide and supervise a system of free public schools covering kindergarten through twelfth grade. They also created a separately elected State Board of Education that selects a state Superintendent of Instruction and establishes various statewide standards of curriculum, teaching, physical facilities, student conduct, and teacher competency. The budgeting problems created by such a situation are numerous.

A separate, 11-member independently elected school board, with its own Superintendent of Instruction and large bureaucracy, was free to lobby the legislature. In 1995, the State Board of Education was expanded at the request of Governor George Voinovich to 19 members to include eight members appointed by the executive.[16] This change in composition of the board, permitted under the state Constitution, gives the governor important leverage over the selection of the state superintendent,

but education continues to lobby for more money than the governor requests.[17] For each budget debate since 1975, a primary budget driver has been the desire of each legislative chamber to add more money to primary and secondary education, often at the expense of gubernatorial priorities in other budget spending areas.

***DeRolph v. Ohio***. Another budget problem is that even though since 1975 the state ostensibly funded local schools through a funding formula intended to equalize their abilities to raise revenues, individual legislators continued to be mindful of the needs of the individual school districts in their legislative district. Thus, the basic school foundation formula was altered each biennium to achieve predetermined benefits to selected school districts. By 1994, the year in which the landmark case of *DeRolph v. Ohio* was first tried in rural Perry County, not one of the principles on which the 1975 foundation funding formula was based was being met.

The initial *DeRolph* decision in trial court declared Ohio's school funding system unconstitutional, but this ruling was overturned the following year on appeal.[18] In 1997, the Ohio Supreme Court subsequently overturned the appeals court decision and declared Ohio's system of financing education to be in violation of the constitutional mandate to "secure a thorough and efficient system of common schools."[19] Specifically, the court found the state's school funding mechanism to have produced inadequate school facilities, undue reliance on voter-approved property taxes, an unconstitutional loan fund, and inadequate and inequitable funding.

Ohio's inadequate school facilities were the subject of a 1996 Public Broadcasting Service documentary "Children in America's Schools with Bill Moyers." It cast the state in a very unflattering light and elicited a legislative response to this part of the court's ruling. Since *DeRolph*, substantial progress has been made on the adequacy of Ohio's school facilities, most especially during the later administrations of governors Bob Taft and Ted Strickland. On the other hand, funding availability for school operations has neither been adequate to meet the court's directive, nor has the distribution of those resources been altered sufficiently to address the equity issues the court raised. The General Assembly did put forward an issue to the voters in 1998 that would have done much to remedy these aspects of the court's decision, but the voters rejected this effort.

In 2002, the Supreme Court essentially threw up its hands when it ended the *DeRolph* case some 11 years after its initial filing, but not before again instructing the General Assembly to enact a school funding system that is both thorough and efficient per its original decision. See Chapter 14 for more on the DeRolph decision and its aftermath.

**Tax Increase Subject to Referendum.** To remedy this inadequacy and address the Supreme Court ruling, the legislature requested, by referendum, voter approval of an issue, which was overwhelmingly rejected in 1998. It would have raised the state sales tax by one cent and dedicated its proceeds to primary and secondary education. As discussed in Chapter 1, the Ohio Constitution specifically prohibits the General Assembly from submitting tax increases to a vote of the people by referendum.[20] However, the General Assembly obtained a legal opinion from the Legislative Service Commission, concluding that this did not apply to taxes to support education.[21] This interpretation is likely to have future budgetary implications because governors and legislators have consistently resisted taking responsibility for a tax increase after witnessing the political fallout from previous tax increases. Now they can potentially submit any general tax increase to referendum and argue that its proceeds are to be used for primary and secondary education.

**Performance Audit of Schools.** Another fiscal offshoot of the *DeRolph* decision was the General Assembly's authorization for the Auditor of State to conduct performance audits of the state's 21 largest school districts. Performance audits, unlike the financial audits that are regularly undertaken of all units of government in Ohio, review how well a governmental entity is being managed. Until this provision was included in the FY 1998–1999 appropriations act, the independently elected Auditor of State had no authority to conduct such reviews. Based on this new authority, a separate division was created, and performance auditing was expanded to include other units of local government, on request, and state programs, as more fully described in Chapter 7.

### Nancy Hollister, 1998-1999

| MILESTONES OF THE HOLLISTER ADMINISTRATION | |
|---|---|
| **1998** | **1999** |
| Inauguration of Ohio's first female governor | Work continued on FY 2000-2001 Executive Budget Request |

Governor George Voinovich was elected to the U.S. Senate in 1998. In order to assume his new responsibilities in a timely fashion, he found it necessary to resign his position of governor at the end of 1998. His Lieutenant Governor, Nancy Hollister, became Ohio's 66th governor and its first female chief executive.

## Summary

The revenue increases that followed the recessions that occurred early in each of the last three decades of the 20th century resulted in large budgetary growth in the 1970s and 1980s and a smaller level of growth in the 1990s. While this trend would persist into the early 2000s, a growing unwillingness to look at the revenue side of the budget equation, at least in terms of permanent tax increases, and an increased partisan environment at the Statehouse, portended the more difficult revenue struggles that would lie ahead. With an expenditure picture that included an aging population and rising health care costs, the consequences for the state budget beyond Medicaid were likely to be quite significant.

## Endnotes

1 Ohio Department of Taxation, "Property Taxation and School Foundation," February 2010.

2 Two years after the formula was established, the Ohio Supreme Court found it to be constitutional, only to change its mind in 1997.

3 In 1980, a constitutional amendment was enacted as Article XII, Section 2(a) that authorizes the use of a classified tax reduction factor, commonly referred to as the H.B. 920 credit, subject to specific conditions.

4 Section 3313.483 of the Ohio Revised Code. Effective October 1, 1989, the Emergency School Advancement Loan Fund ceased to exist and school districts as of that date began to borrow from lending institutions with approval of the Controlling Board.

5 Section 126.06 of the Ohio Revised Code.

6 On June 25, 1982, the legislature established two new temporary income tax brackets, $80,000–$100,000 and over $100,000, to the six that had existed topping out at $40,000, and placed a 25% increase on base rates for six months. This was subsequently increased by an additional 12.5 percent. Then, effective January 1,1984, a 90 percent permanent increase from the 1982 rates was imposed. The permanent tax increase continued to be erroneously categorized as the "90 percent income tax increase," despite executive and legislative public relations attempts at the time to explain that the income tax was raised only 50 percent over the "temporary tax increase" then in effect and balanced by a series of reductions in other taxes.

7 Chapter 4117 of the Ohio Revised Code.

8 For an interesting historical perspective on pay bills see Richard G. Sheridan, *State Budgeting in Ohio*, op.cit., pp. 244-251.

9 Ohio Legislative Service Commission, "Financing Unemployment Benefits—Federal Loans to Cover Shortfalls," *Members Only*, Volume, 128, Issue 6, April 10. 2009.

10 Governor George Voinovich did not fill out his entire term, as he resigned on December 31, 1998 to assume a U.S. Senate seat that he was elected to in November 1998. Lt. Governor Nancy Hollister assumed the office, serving as Ohio's 66th governor and its first female chief executive from December 31, 1998 to January 11, 1999. Development of the FY 2000–2001 Executive Budget Request continued during this brief 11-day period. Lt. Governor John Brown served as Ohio's 57th governor in 1957 for an 11-day period under similar circumstances when Governor Frank Lausche assumed a U.S. Senate seat he had been elected to the previous November.

11 National Conference of State Legislatures, State Budget Actions in 1989, The Conference, Denver, 1990.

12 See Chapter 2.

13 The implications of term limits are discussed in Chapter 6.

14 Ohio Legislative Service Commission, "Ohio Facts 2010," 2011.

15 Ohio Constitution, Article VI, Section 2.

16 Section 3301.011 of the Ohio Revised Code.

17 Ohio Constitution, Article VI, Section 4 provides that "there shall be a state board of education which shall be selected in such manner and for such terms as shall be provided by law."

18 Ohio Constitution, Article II, Section 2.

19 Ohio Constitution, Article VI, Section 2.

20 Ohio Constitution, Article II, 1d.

21 See Chapter 1.

CHAPTER 11:

# Term Limits and Tax Cuts, 1999-2010

Ohioans joined a national movement in 1992 in passing a constitutional amendment to limit the term of legislators to eight consecutive years in the same office.[1] However, its real impact did not emerge until the 2000 election, as the amendment "grandfathered" current office-holders.

Term limits have not had the dramatic impact that its proponents hoped that they would, or that many other observers feared. While term limits have not significantly weakened legislative power, or that of legislative leadership, as many had predicted, they did bring to Columbus a new crop of legislators who were unwilling to bide their time in order to make a difference. They also brought legislators who were increasingly focused on the short term rather than on a longer-term perspective of what would be best for Ohio.

## Bob Taft, 1999–2007[2]

| FISCAL MILESTONES OF THE TAFT ADMINISTRATION | | |
|---|---|---|
| **1999** | **2005** | **2006** |
| • Separate appropriations for schools<br>• Single subject rule | • Legislative budget dominance<br>• Tax Reform<br>• Medicaid Reform<br>• School Funding Reform<br>• The Third Frontier | State Appropriation Limit enacted |

**Taft's First Year.** During his first year as governor, Republican Bob Taft selected the long-term chair of the House Finance Committee, Tom Johnson, as his budget director. Initially, this selection prevented the political infighting over the budget that characterized relations between the legislative and executive branch during the first budget presentations of the Gilligan, Rhodes, Celeste, and Voinovich administrations. It helped to continue executive budget dominance that had been re-established by his immediate

predecessor, and it resulted in legislative acceptance of his fiscal priorities. This harmony was greatly aided by an economy of unprecedented richness and a state treasury bursting with surplus funds.

One note of executive-legislative discord concerned a policy established by the legislature under Governor George Voinovich that called for automatic personal income tax cuts whenever revenues exceeded estimates. Governor Taft proposed that what was estimated to be a budget surplus during the last year of the Voinovich budget, FY 1999, be used for school construction, before it became subject to the automatic provision requiring it be returned to taxpayers. Acceptance of his proposal demonstrated executive power over the budget process at the very outset of his term. However, by the end of his term of office, it was clear that the legislature would once again be a dominant player in the budget process.

**Legislative Budget Dominance.** Much of what Governor Bob Taft requested in his first budget submission was approved by the General Assembly, which was led by fellow Republicans. The economy was booming and double-digit spending increases were authorized for many programs; how different a time from that would soon follow. After the enactment of that budget, the economy began to slow, and the Ohio Supreme Court, reviewing its 1997 decision declaring the state's method of funding schools unconstitutional, concluded that, despite additional state support, the educational funding formula remained unconstitutional. What followed were a series of downward revisions in revenue forecasts coupled by demands for more money for schools. Legislators wearied of having to rebalance appropriations they approved for FY 2000–2001, and also for FY 2002–2003.

When Governor Taft introduced his FY 2004–2005 budget, legislators took the lead and cut his proposed spending increase for primary and secondary education in half, discarded his proposals for various tax increases, and, instead, added a temporary one cent to the state sales tax. The state legislature had established itself as the predominant player in budgetary politics. Even after this assertion of legislative fiscal leadership, further cuts were needed to keep that budget in balance.

With new majority party leadership in both houses of the General Assembly for the FY 2006–2007 budget, Governor Taft was able to reestablish his own leadership and be on a more equal footing with the legislature. Although the major initiatives he proposed in his final budget were ultimately reformulated by the legislature, Governor Taft was able to achieve major reforms in the state's tax structure, the delivery of Medicaid services to aged, blind and disabled persons, and school funding. However, the legislature did reduce the Taft spending proposals to adopt a budget with the slowest growth in decades. Despite differences between the branches, the agreement achieved on the FY 2006–2007 would bring significant and lasting change to Ohio.

**Budget Presentation Format.** The contents of the Executive Budget Request are prescribed, to some extent, by law.[3] The result has been a budget document containing detailed line-item information for six years on each agency's budget. The format of the "Blue Book," the informal term applied to the document containing the details of the Executive Budget Request, had remained fairly constant since 1975, when Governor John Gilligan attempted to put it in a program format. However, legislators who were comfortable with the old format strongly resisted this change.

With the presentation of the FY 2000–2001 Executive Budget Request, Governor Bob Taft simplified the budget document to make it more readable and usable by legislators and the public alike. Making it more "user-friendly" had the advantage of increasing its accessibility to persons not well

acquainted with state budget terminology and practices. Central to enhancing the usability of the document was a renewed emphasis on program budgeting, although line-item detail continued to be part of the presentation.

Then, with the introduction of his FY 2006–2007 budget, Governor Taft abandoned the production of a hard copy "Blue Book," limiting access to the document to Internet users. However, the move to an electronic publication has enabled the addition of more detailed information and made data searchable. Historical information has been more easily obtained as well.

**Separate Budget for Education.** In *DeRolph*, the court found that primary and secondary education was receiving its moneys "residually." That is, it was funded after the needs of all other state programs and agencies were addressed. To remedy this, the legislature enacted a law requiring education, interpreted to include higher education, appropriations to be made in a separate budget bill to be passed prior to all other general operating appropriations.

The Ohio Supreme Court expected to have education spending considered on its merits, first, and as the highest funding priority of the legislature. Instead of allocating residual funding, the legislature would provide enough money to meet its constitutional obligation and then divide up whatever is left to the remaining residual programs. What happened in the first budget bill enacted after this new requirement, the first budget presented by the Taft Administration, is that the education budget was passed by each chamber before the rest of the operating appropriations and enacted early, but only by a few days. The separation of education from general operations appropriations made no difference from when they were combined, and for all intents and purposes, House Bills 282 and 283 of the 123rd General Assembly, the education and general operating appropriations bills for the FY 2000–2001 biennium, respectively, might as well have been one bill. The experiment of having a separate budget bill for education was abandoned after this. It could thus be argued that primary and secondary education is still residually funded.

**Single Subject Rule.** It has been a long-standing practice of the Ohio General Assembly to enact numerous provisions of permanent law, some only slightly related to appropriations, and others completely unrelated, as part of the final main operating appropriations bill. In 1999, the Ohio Supreme Court ruled that practice unconstitutional,[4] violating the Ohio constitutional provision that requires bills to contain only a single subject.[5] The Supreme Court found that the FY 1996–1997 appropriations act, the one under review, contained 383 amendments in 25 different titles of the Ohio Revised Code, 10 amendments to renumber sections of the Revised Code, and 81 new sections in 16 different titles of the Revised Code. In its opinion, the Supreme Court suggested that many of these provisions were included as a matter of "logrolling," that is, exchanging budget votes for provisions of personal interest or political significance to legislators. Legislators continue to enact appropriations bills with multiple subjects despite the court's ruling.

**Tax Reform.** Because of the frustration experienced by legislators who had to balance and rebalance Governor Bob Taft's first three biennial budgets, reforming the state's tax structure was part of the enactment of the state's FY 2006–2007 budget. In 2003, The Center for Community Solutions undertook a major study of Ohio's state and local tax structure, culminating in a series of research reports prepared by staffers Richard G. Sheridan, David Ellis, Ph.D., and Rich Marountas. The 11 reports in this *Taxing Issues* series set forth a number of recommendations for change. Shortly after their publication, a House select committee was appointed to study the problems of state and local

tax structures, and there were further studies undertaken separately by the House of Representatives, the Senate, and the Taft Administration. Based on these studies, Governor Taft proposed a significant number of important tax reform measures in his FY 2004–2005 budget. The legislature ignored them and, instead, increased the state sales tax by one percent to raise some, although not all, of the money they thought was needed to balance their budget.

Once again, in his final Executive Budget Request, for the FY 2006–2007 budget, Governor Taft made a new set of tax reform proposals that were enacted after many legislative changes. While the specifics of tax reform were modified by the legislature, it was the governor's leadership that was paramount in making the most significant changes in the state's tax structure since the enactment of corporate and individual income taxes under Governor John Gilligan.

The major components of tax reform included phasing out the state's corporate franchise tax and phasing in a new commercial activity tax over a five-year period. The effect of this change, along with the gradual phase-out of the tangible personal property tax, was to shift much of the tax burden away from manufacturing industries and on to retail businesses. The intent of this policy shift was to reenergize Ohio's lagging manufacturing employment sector. It did more than broaden the base and reduce the rates. It changed the focus of business taxation to better align it with the strengths of the Ohio economy. Prior to the adoption of the tax reform package, Ohio had a high "advertised" corporate tax rate, a marketing nightmare. Yet, with all the exemptions that had been carved out of the law over time, the revenue yield to the state from the corporate franchise tax was less than impressive.

Unfortunately, enactment of the sweeping business tax changes was soon followed by the Great Recession and its devastating effects on the Ohio economy, making an assessment of the impact of the reform difficult. Although the jury may still be out, the impact appears significantly less than proponents had originally thought. A 2017 study by the Tax Foundation, a nonpartisan tax research group based in Washington D.C., indicated that Ohio has one of the highest tax burdens in the nation for business.[6] According to this report, Ohio had the sixth worst tax climate for business. This contrasted markedly from a 2012 study by the same organization. The 2012 study credited the commercial activities tax enacted in 2005, stating that "this low-rate, broad-base tax helped the state score well" in its rankings. It noted that the Ohio business climate was particularly attractive to corporate headquarters, retail operations, and capital-intensive manufacturing.

Tax reform was not limited to the business sector. The individual income tax was reduced by 21 percent across the board over five years. The revenue loss was partially balanced out through making one-half cent of the previous one cent temporary sales tax permanent. The changes served to make Ohio's tax structure significantly more regressive. The income tax reduction was to have significant consequences on future state budgets, further complicated by the impact of the Great Recession.

**Medicaid Reform.** During Governor Bob Taft's two terms of office, the state's Medicaid program expanded significantly. The number of children enrolled under the State Children's Health Insurance Program, or CHIP, tripled between FY 1999 and FY 2007. Enrollment in PASSPORT, a state alternative program to nursing home care for elderly persons, doubled during that time period. Medicaid spending on mental health increased by 125 percent in those eight years and Medicaid spending on programs for persons with developmental disabilities rose by 146 percent. Overall, state spending on Medicaid took $1 out of every $5.50 the state spent when Governor Taft took office in 1999. At the end of his term, the figure was $1 out of every $4, and total Medicaid spending increased by 107 percent

by FY 2007 even after cuts authorized in his final budget. The fact that Medicaid became the largest state program during Taft's terms of office led him to consider reforming the program.

In 2004, Governor Taft created the Ohio Commission to Reform Medicaid to find ways of reducing Medicaid growth. The commission produced a report that made a number of significant recommendations, many of which were subsequently adopted as part of the state's FY 2006–2007 budget. One of the most significant changes resulting from the report was legislative direction to create a separate cabinet-level Ohio Department of Medicaid, although the Office of Health Transformation did not fully take shape until 2011 during the administration of Governor John Kasich. See Chapter 12 for a detailed discussion of the Medicaid policy innovations undertaken by the Kasich Administration. In addition, the state finally tackled the issue of finding ways to deinstitutionalize Ohio's nursing home population, including a reduction in the state reimbursement to those homes by moving from a cost-based nursing home formula to a price-based formula. It also took ambitious steps towards the creation of new and expanded alternatives to nursing home care. These and other cost control initiatives, especially the initiation of managed care for senior Medicaid beneficiaries, reduced Medicaid spending growth by $1.4 billion in FY 2007. Managed care plans arrange physician and other needed health care for members through a network of system providers. Savings are yielded through required pre-approval of services, which allows for agreement on pricing and procedures. Other notable health care initiatives in the FY 2006–2007 budget were more Draconian, including the elimination of Medicaid dental and vision services for adults and curtailing new applications for the Disability Medical Assistance for people who, although not Medicaid eligible, were medication dependent.

Shortly after the passage of Ohio's FY 2006–2007 biennial budget, the U.S. Congress enacted the Deficit Reform Act of 2005, which similarly affected Medicaid beneficiaries. It limited health care coverage and access to services for low-income beneficiaries.[7]

**School Funding Reform.** As was the case with tax reform and Medicaid reform, Governor Bob Taft sought the assistance of a blue-ribbon committee to find ways of reforming the way Ohio funds its public schools. Although the state's school foundation program continued to form the basis for state aid, major changes in its operation resulted in a shift in state resources away from urban schools and toward poor Appalachian school districts in southeastern Ohio and fast-growing suburban school districts. In addition, during Governor Taft's term of office, the state expanded its student voucher program, enabling public school district students to elect to attend private, usually parochial, schools with state assistance. In addition, the state authorized the development of community, or charter, schools as an alternative to public education. These schools, which drew their resources from the school districts of their pupils, were greatly expanded during the Taft Administration.

**The Third Frontier.** Ohio's economic development policy, from its inception during the first administration of Governor James Rhodes, has been characterized as "smokestack chasing." Ohio's public policy and financial resources had been directed toward actively pursuing existing manufacturing industries to move their operations to Ohio. Tax incentives served as the major inducements supplemented by job training programs, direct grants, and loan guarantees. Governor Bob Taft altered this approach during his term of office.

Without abandoning the traditional business attraction strategy, Governor Taft initiated programs to target assistance to specific industries and businesses. Under a program called "The Third Frontier," the state undertook a 10-year program to invest more than $1 billion to expand high-tech research

capabilities and to promote the creation of quality job opportunities in technology-driven sectors of the economy. While much of the funding came from re-bundling existing programs, including the use of Tobacco Settlement moneys, a large chunk came from a $650 million, 10-year bond issue approved by Ohio voters in November 2005. The program, which was renewed and expanded through a $700 million 2010 ballot initiative, has been used for an ever-expanding number of purposes. Notably, in 2017, an $8 million award was made to a Cuyahoga County firm, NineSigma Inc., to manage the Ohio Opioid Technology Challenge as part of Governor John Kasich's $20 million approach to advance new technology in the battle against drug abuse and addiction.

Although the Third Frontier undoubtedly has great promise, it has yielded relatively little direct job creation given the scope of the investment. Data from the Ohio Development Services Agency indicated that the state awarded more than $1.4 billion in Third Frontier grants as of December 2015, with $1.3 billion expended. A total of 17,356 direct jobs were created or retained through these awards. The creation or retention of 17,356 jobs through the award of $1.3 billion represented a rather unimpressive return on investment.[8]

**State Appropriation Limit.** In keeping with voter-led initiatives to control expenditures in other states, particularly in Colorado, an issue was placed on the November 2006 ballot to constitutionally limit state and local spending growth based on changes in inflation and population. The idea was quickly met with strong opposition by a wide coalition of interest groups and local governmental entities. The General Assembly responded by enacting a similar law that only affected state government once a promise was secured from the backers of the initiative to withdraw the more comprehensive amendment. This history is described more fully in Chapter 1. The State Appropriation Limit has not yet impacted Ohio budgeting, since state spending growth has been limited by other factors, chiefly the 2005 tax reforms and subsequent income tax cuts as well as the impact of the Great Recession.

## Ted Strickland, 2007-2011

| FISCAL MILESTONES OF THE STRICKLAND ADMINISTRATION | | |
|---|---|---|
| **2007** | **2008** | **2009** |
| • Creation of University System of Ohio<br>• Tobacco Master Settlement securitization<br>• Property tax relief for seniors<br>• Continuation of the Taft legacy<br>• TANF surplus and spend down | The Great Recession | • Federal Stimulus preserves services and jobs but creates structural deficit<br>• Casino gambling approved by voters |

**University System of Ohio.** Just two days after his inauguration, Democrat Governor Ted Strickland put forward a bold proposal, together with Republican House Speaker Jon Husted, to create a University System of Ohio. This change stripped the Ohio Board of Regents of its governing and oversight functions and transformed it into an advisory board. The Chancellor became a cabinet-level appointment reporting directly to the Governor. One of the largest agencies of state government with regard to total appropriations had now come under the direction and control of the executive branch rather than being vested in an independent agency as had previously been the case. The change was intended to provide greater cohesiveness to Ohio's diverse system of 14 public universities and 23 community colleges. The new University System of Ohio also included other important elements of adult education including adult career-technical education and Adult and Basic Literacy Education, or

ABLE. Both functions had previously been housed in the Ohio Department of Education.

**The First Strickland Budget.** When Governor Ted Strickland introduced his first budget in March 2007, he proudly announced that it provided the lowest budget growth in 42 years. Until the time of budget introduction, there had been widespread speculation that the State Appropriation Limit (SAL), included as part of Governor Bob Taft's last budget, would unduly restrict the ability of the new governor to present a balanced budget. In fact, the SAL had no impact whatsoever on his budget, since it permitted appropriation increases of 3.5 percent for FY 2008 and FY 2009, or 7.1 percent over the biennium. In Governor Strickland's budget proposal, aggregate General Revenue Fund (GRF) appropriations to which the SAL would have applied were to decrease by 0.9 percent in FY 2008 and increase by 4.2 percent in FY 2009 for a biennial increase of only 3.2 percent over FY 2007 spending levels, well below statutory limits. Governor Strickland's budget request was more conservative than any of those enacted under the administrations of Republican governors James Rhodes, George Voinovich, or Bob Taft.

Several remarkable conclusions resulted from examining the FY 2008–2009 budget. One was how the legislature departed from their long-standing practice of applying "incrementalism" to their budget making. The idea of an incremental budget is that movement progresses in small amounts. Typically, the legislature chooses to add small amounts throughout the state budget, thereby satisfying lots of constituents but not really concentrating resources on any one state priority. What the legislature did to Governor Strickland's budget was to make two big changes by adding $122 million to the amount that he requested for higher education in FY 2008 and subtracting $379 million from what he proposed to spend on the Ohio Department of Job and Family Services. This shift of funds to higher education represented a major difference between what the governor proposed for the next biennium and what the legislature chose to do instead. For the second year of the biennium, FY 2009, the legislature gave higher education almost twice as much of an increase as it did in FY 2008 and reduced spending for the Department of Job and Family Services by more than one half billion dollars.

These numbers, however, do not reflect a provision that the legislature added to create a Medicaid Reserve Fund consisting of up to $120 million in FY 2008 and $205 million in FY 2009, to be transferred out of the GRF and later used to generate a biennial total of about another $489 million in federal matching moneys. The state GRF included federal Medicaid matching moneys, so if the Medical Reserve Fund dollars were added to the appropriations for the Department of Job and Family Services, the total appropriated closely approximated the original request of the governor. However, the increase provided to higher education was very real and substantial.

**Securitization and Property Tax Relief.** Since Governor Ted Strickland did not seek to alter the process of reducing state tax receipts begun during the last Taft budget, finding large sums of money to support a major spending initiative was difficult. However, Governor Strickland was able to find a way to fund a plan to accelerate the state's school construction program and to provide a property tax break for all Ohioans over age 65 or who were permanently or totally disabled. The plan, called securitization, essentially called for selling off the rights to future Tobacco Master Settlement moneys due to the state. With securitization, the state received only a fraction of the money to which it was legally entitled, in order to realize funds sooner and in one lump sum. Yet, the plan was used to finance a new obligation that was intended to continue long after the securitized funds have been expended. The plan was never seriously challenged by legislators and was approved virtually as proposed. However, just six years later, this dramatic expansion of the Homestead Exemption was eliminated, although all existing beneficiaries as of 2013 were "grandfathered."

## Case Study: **The Tobacco Master Settlement** [i]

Ohio historically recognized the value of public health and disease prevention through increased financial support. Following the 1998 settlement of the landmark lawsuit between tobacco manufacturers and the states, known as the Tobacco Master Settlement (MSA), Ohio created the Governor's Tobacco Task Force to develop a plan for the allocation of revenues that the state would receive in perpetuity from the tobacco manufacturers.[ii] Among other purposes, the task force recommended the creation of two trust funds, one for public health priorities charged with mitigating the effects of smoking on health and another for tobacco use prevention and cessation charged with reducing tobacco use. In response, the Ohio General Assembly codified this plan. Other trust funds created by the legislature included the Biomedical Research and Technology Transfer Trust Fund, the Education Technology Trust Fund, and the Southern Ohio Agricultural and Community Development Trust Fund.

The law specified the full allocation of annual revenues through FY 2012, and partially allocated revenues that would be received between FY 2012 and FY 2015. Based on estimates at the time, it was expected that the Public Health Priorities Trust Fund would receive $1 billion in total funding over the first 13 years, which would be allocated through appropriations to the departments of Health, Public Safety, and Alcohol and Drug Addiction Services, while the Tobacco Use Prevention and Cessation Trust Fund (TUPCF) would receive a total of about $1.5 billion over the same period. Instead of being held in the state treasury and appropriated by the General Assembly, payments to the TUPCF fund were placed in a custodial account, such as those used for the state's Workers' Compensation and Unemployment Trust funds and managed by a board whose diverse membership was specified in statute.

No sooner had the ink dried on the first tobacco budget than the national economy plunged into recession and state revenues began to fall. To stave off tax increases or spending cuts, allocations planned for the TUPCF were diverted into the state's General Revenue Fund (GRF) with a promise of repayment in FY 2012. Planned allocations for the TUPCF continued to be diverted through FY 2006, when they were scheduled to stop until FY 2012. The FY 2008–2009 budget called for the securitization of Ohio's MSA funds to free up dollars for other purposes, which ended any revenues for public health or tobacco use prevention and cessation from this source for the next 45 years.

The TUPCF received a total of about $350 million before Ohio securitized its tobacco revenues in FY 2008. Securitizing its future tobacco proceeds generated a lump sum of $5.0 billion for Ohio. As if this action was not enough, the state drained the funds remaining in the TUPCF custodial account as well. These funds were first planned to be used for a state jobs program and then, to appease the courts but still spend the money, was redirected to human services programs. A 2010 Ohio Supreme Court decision eventually validated the state position.

Even though the state legislature made a strong long-term financial commitment to reducing tobacco use, it was unable to be sustained. Increased accountability was not enough to maintain the financial commitment. The TUCPF maintained higher standards than most other state agencies, using evidence-based processes and performance metrics that showed definitive results, but this still was not enough to maintain the support of policymakers. Perhaps the lesson to be learned is that the dynamics of the state budget process are too contentious, and the trust fund should have been transferred to a private entity from the start.

Notes: [i] This case study was prepared by Susan Ackerman, The Center for Community Solutions, Cleveland, Ohio.

[ii] Final Report of the Governor's Tobacco Task Force to Governor Bob Taft and the Leadership and Members of the Ohio General Assembly, October 6, 1999 and Senate Bill 192 of the 123rd General Assembly.

**Other Approved Proposals.** Governor Ted Strickland put forward several early childhood initiatives that met a receptive audience in the legislature, as did his proposal to increase the use of alternative home care through the Medicaid-waiver program, PASSPORT. A higher education tuition freeze was approved, as was a proposed freeze on the Local Government Fund with only a minor change.

**Proposed Community School Moratorium.** The first community, or charter, school opened in Ohio during the administration of Governor George Voinovich in 1998, a year after enabling legislation was passed. By 2007, the law that began as a "pilot" program in Lucas County had expanded to more than 300 community schools with a combined enrollment of 87,000 students. By 2016, community school attendance totaled 117,126, accounting for 7 percent of total public school enrollment in the state.

Governor Ted Strickland wanted to stop construction of new community schools, but the legislature, instead, permitted new start-ups under certain conditions. The conference committee even added a new provision that permitted an existing early college high school that had partnered with a private university to begin operating as a start-up community school. The legislature also rejected the governor's proposal that would have required community schools to provide students with 180 days, instead of 920 hours, of learning opportunities each school year. The legislature even added a new provision that permitted a community school to transport students with or without entering into an agreement with the students' resident school district.

**Other Rejected Proposals.** Governor Ted Strickland's proposals regarding the extension of E-Check inspections and making scholarship grants for independent college and university students need based were rejected. Other gubernatorial initiatives were significantly modified, such as his higher education contract proposal, which was met with great skepticism and confusion. Instead, the legislature merely added appropriations to fund a tuition freeze that was somewhat more restrictive than what the governor had originally proposed.

**STEM, a New Legislative Initiative.** In recent years, the legislature had shown a keen interest in finding ways of encouraging students to improve skills in Science, Technology, Engineering, and Mathematics, or STEM. It has sometimes been referred to as STEMM in Ohio, to include medicine and allied health, which have a powerful presence in Ohio higher education at all levels. In the FY 2008–2009 budget, the legislature provided significant sums of money to advance that cause. One new grant program within the Ohio Department of Education authorized a newly created executive-legislative-public committee to establish up to five STEM schools to serve any of grades six through 12 and to begin instruction in FY 2009. Another was the creation of the Choose Ohio First program to increase the number of postsecondary students pursuing science and math teaching as a profession.

**Other Legislative Initiatives.** The legislature made a significant commitment of additional dollars in the FY 2008–2009 budget to increase provider payments to nursing homes. Rate increases were also granted for PASSPORT services.

**Whose Budget?**[9] Despite a Republican-controlled Senate, newly sworn-in Democrat Governor Ted Strickland secured timely passage of the FY 2008–2009 budget with all sides congratulating themselves on the cooperative process that resulted in its near-unanimous approval. Only one member of the House and no Senator disapproved the final budget.

How was Ohio able to accomplish this feat, especially given the rancor that typified executive-legis-

lative relationships in states around the region facing similar fiscal circumstances? While much of the result undoubtedly rests with the personalities of the state's executive and legislative leadership, and a healthy respect for the legislative branch of government that former Congressman Ted Strickland brought to the Statehouse, a great deal also had to do with the fact that the new governor chose not to advance major new spending initiatives that would cost taxpayer dollars and, instead, opted for a continuation of the several major policy directions that his Republican predecessor, Governor Bob Taft, left as his legacy.

Governor Strickland's most expensive initiative was to recommend that property owners either aged 65 and over or disabled receive an exemption from the payment of local property taxes, regardless of income. This was costly but did not require any taxpayer dollars. While it was intended to become a major new General Revenue Fund (GRF) obligation in future years, in the short term, it was to be paid for by selling off the state's rights to future revenues from a 1998 lawsuit settlement in which tobacco companies agreed to pay states large annual amounts in order to avoid prosecution for a variety of charges. It would be difficult for a politician of any political stripe to vote against giving seniors a break in their property tax payments, so this initiative sailed through the legislature untouched. Many of the governor's lesser initiatives met a different fate.

In the FY 2008–2009 budget, Governor Strickland continued the direction that former Governor Taft set for the state's tax policy. Governor Strickland was responsible for expanding early childhood education and for extending the state's Homestead Exemption program to all seniors and disabled homeowners, as well as expanding the number of persons eligible to receive Medicaid. The legislature took his proposal to freeze tuition at the state's public colleges and universities from one year to two years but limited it to in-state undergraduates. They accepted the idea of expanded alternatives to long-term nursing home care for frail elderly persons but, at the same time, provided an incentive to maintain existing nursing homes, substantially increasing their reimbursements. They continued their plan to divert public school funds to parochial and other private schools, including for-profit schools. They advanced the idea that Ohio should encourage enrollment in STEM disciplines. To encourage enrollment in both public and private colleges and universities, they provided significant new money for new scholarship programs.

Democrat Governor Ted Strickland, replacing Republican Governor Bob Taft, chose not to antagonize the legislature by promoting additional state spending on new and innovative programs and, instead, took a much more conservative course of requesting the lowest increase in state spending in more than 50 years. As a result of that choice, the legislature was able to craft a budget that built on the policy changes of the previous governor, making few major modifications.

During Governor Taft's eight years in office, spending on primary and secondary education, as a percentage of both overall and GRF spending, hardly changed at all. What did happen was that the state spent considerably more total money on programs categorized as health and human services, especially through using federally matched Medicaid moneys to supplant state moneys spent on mental health, developmental disabilities, and drug and alcohol addiction programming. The increase in this category of spending, rising from 32 percent of the state's budget to 39 percent during Governor Taft's tenure, came at the expense of higher education, which declined by 2 percent as a share of total spending and 3 percent as a share of GRF spending.[10] It is this that the legislature sought to redress, as they put their imprint on Governor Strickland's first budget proposal.

**TANF Surplus and Spend Down.** During the Taft Administration, Ohio built up a large surplus in the Temporary Assistance for Needy Families program (TANF) that peaked at $913 million in 2005. The surplus was due to a number of factors, including under spending by counties. Programmatic changes made in 2005 corrected the problems, and the spend down of these resources began. As surplus TANF dollars were used for cash assistance under the Ohio Works First program, current-year TANF dollars were allocated for child care, short-term support services, public assistance diversion programs, and other forms of assistance for TANF-eligible individuals.[11] By 2009, the once impressive, if somewhat embarrassingly large, TANF balance was exhausted. In the meantime, however, the availability of the resource allowed for needed program services and enhancements without the need to pursue additional outside revenue support. This issue would emerge a decade later when the state again developed a large TANF surplus.

**The Great Recession.** The national and Ohio economies quickly went from bad to worse during the FY 2008–2009 biennium. Just six months after passage of the FY 2008–2009 budget, new forecasts from the Office of Budget and Management demonstrated that state revenues would fall at least $733 million short of estimates for the remainder of the biennium. The problem consisted of two parts: less revenues coming in than projected and Medicaid spending exceeding estimates. In response, Governor Ted Strickland issued an executive order in January 2008, followed by a number of budget directives announcing specific spending controls.

This shortfall was just the beginning of the state's fiscal troubles. Ohio's employment actually peaked in December 2007, even as signs of looming trouble were all around. Before the Great Recession would end, Ohio would experience 28 consecutive months of job loss. For the two-year period through December 2009, Ohio would lose an astonishing 418,200 jobs, many of them in manufacturing.[12] The accompanying rapid deterioration in state revenues meant that the budget shortfall would grow by an additional $1.5 billion for FY 2009, this time necessitating significant and painful cuts. While the 2005 tax reforms could not be effective in spurring economic development in this environment, it did add to the deterioration in revenues. The receipt of an initial amount of American Recovery and Relief Act, or federal stimulus, funding assistance would ameliorate the scope of the cuts. As with governors in recent years, the budget reductions were selective in their implementation, exempting a number of state and gubernatorial priorities.

**The "No Growth" Budget.** The FY 2010–2011 budget, Governor Ted Strickland's second, was both similar and yet quite different from his first. It was again shaped by both the plunging national and Ohio economies, but even more so, for the Great Recession was to hit bottom in 2009, the year the budget was enacted. The constraining effect of the 2005 tax reform initiated by Governor Bob Taft also contributed in large measure to the decline in state revenues. The FY 2010–2011 budget was similar in that it did not raise taxes on Ohio families or businesses. With Republicans still controlling the Ohio Senate, there would have been no prospect for a tax hike even if the governor had been so inclined, which he was not. In separate legislation, the budget did, however, defer the final year of the five-year phase-in of the 21 percent reduction in the individual income tax from 2009 to 2011. The deferral was unfrozen in January 2011, in what turned out to be Governor Strickland's final days in office. No other significant tax changes were proposed or enacted, although nursing home franchise fees were increased as was the Medicaid hospital fee to fund a new supplemental upper payment program for hospitals. It was also similar in that with some notable exceptions, it did not propose major new initiatives. What new initiatives that there were did not either receive or require significant new funding.

The FY 2010–2011 budget was quite different from Governor Strickland's initial budget in that it was enacted on party-line votes, now that the "honeymoon" was over and that partisan control of the legislature was no longer split between the chambers. With a rapidly declining Ohio economy, revenue forecasts were constantly in flux. To close a large budget shortfall announced in June, the Governor proposed several options that he would have preferred not to pursue, and that the legislature ultimately would choose not to adopt. These included huge cuts to the subsidy for public libraries, although smaller reductions were included in the final budget, and not funding the retirement obligation to the state's public employees for a two-year period. The budget did authorize video lottery terminals at Ohio's horse race tracks, but an Ohio Supreme Court ruling stating that such authorization could only be made with voter approval soon negated this action. For the first time in many biennia, the budget was not enacted in time to meet the June 30th statutory deadline. The governor eventually signed the budget on July 17, 2009, after three, short interim budgets were first enacted, as well as the aforementioned one-year deferral of the individual income tax reduction. The tax reduction deferral was only proposed after it was determined that the video lottery terminal option could not come to quick fruition.

The FY 2010–2011 budget was built on a very significant amount of one-time funding. Of particular note was the anticipated infusion of $3.39 billion in funding from the American Recovery and Relief Act, also known as federal stimulus, and the $948 million from the state's Budget Stabilization Fund, draining the "Rainy Day Fund" of all but 89 cents. Without these one-time revenue sources and numerous others, most notably the aforementioned imposition of Medicaid franchise fees to draw down federal matching funds, state government spending would have been reduced well below FY 2008–2009 levels, even after the executive cuts.[13] The federal stimulus and Budget Stabilization Fund dollars preserved a significant number of services and jobs but came at the cost of creating a large structural deficit in the out years. In addition, draining the "Rainy Day Fund" further exposed the state to possible future fiscal crises. Even with the infusion of these one-time resources, as well as others from "rotary raids" and an unclaimed funds transfer, the budget could accurately be characterized as a "no growth" budget. However, as always, there were some "winners" relative to the Executive Budget Request put forward by Governor Strickland several months earlier. Especially notable were the legislative increases provided for nursing homes, hospitals, and private institutions of higher learning.

**New Budget Initiatives.** New initiatives were necessarily limited by fiscal realities, as well as by Governor Ted Strickland's own conservative approach to budgeting. Even fewer initiatives received a favorable reception in the legislature. Amid much fanfare, Governor Strickland put forward an "Evidence-based Model" for funding primary and secondary education to replace the previous foundation funding system. In keeping with the expectations set forth in *DeRolph v. Ohio*, the new model centered on identifying all the various components associated with educating a student. The model looked at evidence from best practices across these elements of an education as seen in the highest performing schools and districts, examining how their resources were most effectively spent. Program funds were then earmarked based on their demonstrated effectiveness in improving accountability, transparency, and results. A key element of the "Evidenced-based Model" was all-day kindergarten, which was made an optional requirement in the FY 2010–2011 budget given the associated costs. This had also been an element of Governor Bob Taft's "Building Blocks for Student Success" model. Other signature elements included a focus on teacher quality through evaluations and professional ladders for teachers, an increase in the length of the school year, and the replacement of the Ohio Graduation Test with the ACT. Several of the hallmarks of the new model ended up in President Barack Obama's

"Race to the Top" initiative. The "Evidence-based Model" was to be phased in over a full decade because of its substantial $5 billion per year price tag.

Although the FY 2012–2013 budget did not contain a revision to the "Evidence-based Model," neither was it supported or funded by Governor John Kasich. Instead, the new governor began work on the development of his own education funding plan. Governor Strickland was not the first governor to announce a comprehensive plan to revamp Ohio's primary and secondary education funding model to comply with the 1996 *DeRolph* Ohio Supreme Court decision, and neither will he be the last.

The education policies of the Kasich Administration are described in Chapter 14.

Less noticeable, but perhaps more lasting, were the important changes to the University System of Ohio's (USO) State Share of Instruction proposed by Governor Strickland and supported by the higher education community. The higher education funding formula was updated to reflect performance and accountability provisions of the USO Strategic Plan. Each sector of higher education was evaluated on criteria aligned more closely to how effectively it met its unique mission through a set of specific outcomes. Emphasis was given to science, technology, engineering, mathematics, and medical, or STEMM, programs, as well as to student success and degree completion. Previously, the formula was primarily based on only two metrics, enrollments and the average cost of instruction. Three years later, in 2012, Governor Kasich would request the higher education community to develop additional revisions to the formula to encourage improved student retention and timely graduation.

The FY 2010–2011 budget also included a major reform to the Ohio College Opportunity Grant (OCOG), the state's primary need-based financial aid program, implementing a "Pell First" strategy. This policy change, which effectively eliminated access for students at community colleges and university regional campuses, was accompanied by a corresponding funding reduction of 57 percent to OCOG. Many of these students had used this need-based financial aid to cover living expenses while they were in college.

In addition, initial steps were taken towards a Unified Long-Term Care Budget to condense the state's five Medicaid waiver programs into one. The goal was to streamline and improve home and community-based care options and to allow more individuals to access those options.

Finally, "cost savings" furlough days and other payroll savings initiatives, such as pay and hiring freezes and step and personal-leave-day eliminations, were instituted to show that government was "doing its part" in difficult fiscal times. Another short-term cost savings initiative involved the restructuring of state debt, an idea that was to be repeated by Governor John Kasich in the following budget.

**Gambling.** Ohio's budget woes were not helped when the Ohio Supreme Court ruled the installation of 17,500 video lottery terminals at Ohio horse race tracks unconstitutional in September 2009. Governor Ted Strickland had added the measure to the budget, despite his long opposition to gambling, because of the difficult fiscal circumstances involved with securing enactment of the FY 2010–2011 budget. Just two months later, Ohioans approved casino gambling in its four largest cities, Cincinnati, Cleveland, Columbus, and Toledo, after several previous failures. However, significant revenue would not be realized from this new venture until well after Governor John Kasich took office.

# Summary

The familiar pattern of a recession followed by cutback management and a tax increase to balance the budget continued early in the first decade of the 2000s. As in the 1990s, the budget gap was closed with a fairly minor tax change, a one-cent temporary increase in the state sales tax that was later converted to a one-half cent permanent increase. However, when the Great Recession would hit with force later in the decade, state revenues suffered greatly and Ohio's term-limited legislature did not, or could not, respond with a revenue measure to meet the state's urgent needs and priorities. Indeed, the opposite was true. The state's dire fiscal situation was compounded by the comprehensive tax reforms that were enacted a few years earlier in 2005 that, among other changes, reduced the individual income tax annually over a five-year period. Even with the infusion of federal stimulus funding, state spending levels, with the notable exception of the Medicaid budget, plummeted.


## *Endnotes*

1 Ohio is one of 15 states with legislative term limits. All but one of these limitations were initiated between 1990 and 1993. In addition to the amendment to the Ohio Constitution that limited members of the Ohio House of Representatives to four two-year terms and members of the Ohio Senate to two four-year terms, a separate 1992 constitutional amendment limited the terms of statewide elected officials in Ohio to two four-year terms in the same office. Yet another constitutional amendment sought to limit the terms of members of Ohio's Congressional delegation, but this amendment was subsequently nullified by the U.S. Supreme Court in 1995 in *U.S. Term Limits, Inc. v. Thornton*.

2 A detailed analysis of Governor Bob Taft's legacy can be found in Richard Sheridan's book, *The Taft Record: What It Means for Ohio's Future*, The Center for Community Solutions, Cleveland, Ohio, 2006.

3 Section 126.02 of the Ohio Revised Code.

4 *Simmons-Harris v. Goff*, 86 Ohio St. 3d 1 1999.

5 Ohio Constitution, Article II, Section 15(d).

6 Tax Foundation, "2017 State Business Index Climate Index," and "Location Matters: A Comparative Analysis of State Tax Costs on Business," Washington, D.C., 2012.

7 The Kaiser Commission on Medicaid and the Uninsured, "Deficit Reduction Act of 2005: Implications for Medicaid," Washington, D.C., February, 2006.

8 Ohio Development Services Agency, 2016 Annual Report.

9 Some of the material included in this section was presented in the essay "A Different Perspective on H.B. 119," *State Budgeting Matters*, Volume 3, Issue 25, written by Richard Sheridan for The Center for Community Solutions, Cleveland Ohio, 2007.

10 For a more complete discussion of these issues, see Richard G. Sheridan, *The Taft Record: What It Means for Ohio's Future*, The Center for Community Solutions, Cleveland, Ohio, 2006.

11 Ohio Legislative Service Commission, "Ohio Facts," 2011.

12 "Job Watch – October 2011, Policy Matters Ohio, Cleveland, Ohio.

13 For a listing of some of the one-time revenue sources in the FY 2010–2011 budget, see Richard G. Sheridan, "FY 2010–FY 2011 State Budget: A Plethora of Sticky Wickets," *State Budgeting Matters*, Volume 5, Issue 5, March 1, 2009.

# Section 2: The Kasich Administration, 2011-2019

Whatever one thinks of John Kasich, he was undoubtedly a consequential governor. Nowhere was this more evident than in Medicaid, where, through his strong leadership, he expanded health care services to nearly 700,000 Ohioans under The Patient Protection and Affordable Care Act (ACA). Medicaid expansion proved particularly impactful in dealing with mental health and addiction issues, notably the opioid crisis. Even beyond this hallmark achievement, Governor Kasich's legacy in health care policy was substantial. The governor was also a national leader in the effort to preserve and improve the ACA, despite facing intense pressures from his own political party, which had sought to "repeal and replace" the law since its enactment in 2010.

Chapter 12 details how Governor Kasich dramatically reshaped Medicaid policy in Ohio during the course of his administration. The balance of this section, Chapters 13 and 14, covers the work of the Kasich Administration in two other major public policy arenas: health and human services and primary and secondary education. Together with Medicaid, these items account for more than 70 percent of all state-source expenditures and more than 80 percent of total state expenditures when federal funds are included. Corrections and higher education account for most of the remainder of the state budget. Chapters 13 and 14, respectively, briefly describe the recent history of these two items. Ohio spends comparatively little on other policy areas or on general government functions.

Although a consequential governor, John Kasich's administration saw some notable contradictions. His Medicaid policies were both visionary and expansive. Of course, Medicaid, and especially the Medicaid expansion, was largely funded through federal resources. The governor made vast changes in other policy areas as well, but these too were often supported through non-traditional resources. He created a privatized economic development apparatus, JobsOhio, that was financed by state liquor profits. In addition, he used Ohio Turnpike receipts to leverage dollars for road projects across the state. However, his budgetary policies impacting most state General Revenue Fund and local government spending proved to be quite restrictive. This was particularly the case in regard to local government finances.

## Conservative Budget Management

Governor Kasich inherited a budget deficit that was estimated at $8 billion from his predecessor, Ted

Strickland. Governor Strickland had found it necessary to use both federal stimulus moneys and the Budget Stabilization Fund in order to balance the state budget during the Great Recession. Both of these supplemental sources of revenue were gone when John Kasich became governor and, although it had recently begun to show some promise of new life, the Ohio economy was still largely stalled. The Ohio unemployment rate was 9.2 percent when Governor Kasich took office in January 2011, down from a peak of 10.6 percent in July 2009.

Governor Kasich was successful in balancing the FY 2012–2013 budget, erasing a multi-billion-dollar deficit. He accomplished this feat despite implementing the final installment of the 2005 individual income tax cut. This tax reduction had been delayed one year by Governor Strickland because of the perilous condition of state finances at the time. However, the state's balanced budget was not achieved without taking a significant toll on government finances, most particularly at the local level. Notable was the near halving of the Local Government Fund (LGF), which had been largely viewed as an entitlement since its creation in 1935 when the Sales Tax was enacted. The LGF was reduced by more than $500 million over the course of the FY 2012–2013 biennium from the level provided during the prior two-year period. LGF payments dropped from $661.9 million in FY 2011 to $356.4 million by FY 2013. The other significant cut to local government was the continued phaseout of tangible personal property tax reimbursements and the termination of public utility personal property tax reimbursements. These items resulted in reductions of $582.5 million from the levels provided in the prior biennium.[1] In addition to these cutbacks, the Estate Tax was eliminated effective January 1, 2013. It generated $285.3 million in FY 2012 for Ohio local governments, although amounts varied considerably locally. More than 70 Ohio cities lost more than $1 million per year as a consequence of these budgeting and tax decisions.[2]

State finances remained tight during the FY 2012–2013 biennium, if not nearly as constrained as those of local government. While state-source expenditures for the biennium grew when compared to the FY 2010–2011 budget, which was enacted at the depths of the Great Recession, they still trailed the levels seen two biennia earlier. When federal funds are included, the picture was even more bleak because of the ending of the federal stimulus. Total spending growth was limited to 0.6 percent in FY 2012 over the level provided in FY 2011. As in past recessions, higher education felt the greatest impact. Total funding for higher education fell by 12.5 percent in FY 2012 versus FY 2011; it fell 21.8 percent from the level provided as recently as FY 2009.

As Ohio emerged from the Great Recession, state expenditures regained some strength but did not flourish to the extent they could have during the second and third Kasich budgets. State expenditures grew only modestly and local governments saw some further reductions, if not nearly as Draconian as those in the FY 2012–2013 budget. Priority was placed on restoring the Budget Stabilization Fund, which would reach $2 billion by FY 2015. Ohio job growth began to dip by the governor's third budget, further impacting available resources. Additional individual income tax cuts enacted during this period also precluded any windfall for either state or local government. These income tax cuts were significant; the FY 20142015 budget included a 10 percent rate reduction that was followed in the FY 2016–2017 budget by an additional 6.3 percent cut. In the latter budget, a separate tax base was created for business income with a taxable rate of 3 percent on amounts over $250,000 with income below this level being fully deductible. This item costs the state approximately $1.1 billion per year.[3] The governor proposed a further individual income tax reduction in his final budget in exchange for an increase and a broadening of the sales tax, but the idea was rejected by the legislature.

Because of the steep tax reductions, there was little investment in critical government services when the window of opportunity presented itself. More austere times would soon arrive, as the state economy began to struggle once more in the latter part of the Kasich Administration. The governor's final budget witnessed an actual decline in total state-source expenditures in FY 2018 from the prior year before rebounding slightly in FY 2019. Local governments were impacted when $35.3 million in anticipated LGF funds for municipalities was redirected to combat the opioid crisis. In addition, counties and regional transit authorities received only transitional funding from the elimination of the Medicaid managed care sales tax, even as the state made itself whole from this loss with the addition of a new broad-based fee on all Medicaid managed care organizations (MCOs) and non-Medicaid MCOs.

While it came at a cost, it is nonetheless notable that Governor Kasich was able to restore structural balance to the state budget, increase the Budget Stabilization Fund from a mere 89 cents to a level near its statutory maximum of $2.7 billion, and maintain state bond ratings at AA+ and AA1 after receiving negative outlook warnings at the outset of the administration. A number of improvements in the budget management process were made during John Kasich's term of office. These included realigning and consistently tracking fund groups, allowing meaningful consideration of the all funds budget rather than just the historic focus on the General Revenue Fund. Improvements were also made in budget transparency through the online Interactive Budget, although this detailed tracking of revenue and expenditure patterns was largely duplicative of the prior system operated by the Office of the State Treasurer. See Chapter 8 for a description of the state treasurer's "Ohio Checkbook."

## The Executive-Legislative Power Fulcrum

The relationship between the General Assembly and the governor followed the familiar historic pattern of ebb and flow over the course of the Kasich Administration. In his initial budgets, the governor enjoyed broad success with his legislative agenda to balance the state budget while reducing individual income tax rates. In separate legislation, public employee collective bargaining rights were rolled back in 2011, but the action was repealed by the voters later that same year. The governor initiated a Mid-Biennium Review process, or MBR, in 2012 that introduced new policy initiatives in addition to the usual simple corrective actions commonplace in non-budget years. In this way, he was able to control the legislative agenda throughout the course of the term of the General Assembly. The governor was not without a few notable legislative failures, however, particularly his repeated attempts to increase the severance tax to take advantage of the fracking boom in Eastern Ohio.

The power fulcrum began to shift during Governor Kasich's last two years in office. For the first time in 40 years, six gubernatorial vetoes to the state budget were overridden by the legislature in the summer of 2017. The legislature reserved the right to veto further items if the administration could not reach a suitable compromise with it. In this way, the General Assembly regained some power in the executive-legislative dynamic.

# Summary

Governor Kasich left office in 2019 with a mixed legacy. He was an ardent supporter of meeting the needs of the poorest amongst us. His reforms to the health care system and its funding were particularly transformative. Yet, when it came to meeting other responsibilities of state, he seemed to show a preference for tax reductions and conservative fiscal management over a more expansive view of the role of government. Of particular concern was his lack of support for the state's local government partners, the units responsible for administering most state-funded programs in Ohio. While many wealthy communities were able to fill the gap with increased local revenues, other areas of the state lacked the capacity to do so and fell further behind their counterparts.

A 2018 *U.S. News & World Report* study on "Best States" ranked Ohio only 40th among its peers, a drop of five places from the previous year. The state received high ratings on measures of health care access, housing affordability and cost of living, transportation infrastructure, public safety and corrections, and fiscal liquidity and credit rating, but fared poorly in marks for public health, education (especially higher education), employment and business environment (especially entrepreneurship), economic opportunity, and energy and the natural environment. A 2018 *Business Insider* review of state economies, focusing on measures of unemployment rate, job growth, average weekly wage growth, per capita Gross Domestic Product (GDP), and GDP growth, placed Ohio similarly with a 37th ranking.[4] The governor moved the state forward during his tenure in office in many regards, but how much progress was made remains a matter of debate.

## *Endnotes*

1 Wendy Patton, "Intensifying Impact: State Budget Cuts Deepen Pain for Ohio Communities," Policy Matters Ohio, November 13, 2012.

2 Rich Exner, "Ohio Tax Changes under Gov. John Kasich Leave Villages, Cities Scrambling to Cope with Less," Cleveland.com, March 9, 2016.

3 Jim Siegel, "New Analysis Says Much of Ohio's Business Tax Cut Goes to the Rich," *The Columbus Dispatch*, June 22, 2017.

4 Scott Suttell, "Cleveland Struggles Economically More than Most Cities, but Ohio Is Not a Standout Performer, Either," *Crain's Cleveland Business*, June 25, 2018.

CHAPTER 12:

# Medicaid Funding and Policy

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> "Now, when you die and get to the meeting with St. Peter, he's probably not going to ask you much about what you did about keeping government small. But he is going to ask you what you did for the poor. You better have a good answer."

*—Governor John R. Kasich, June 18, 2013*

On July 30, 1965, President Lyndon Johnson signed into law a bill that led to the creation of Medicare and Medicaid through amendments to the Social Security Act (SSA). In his speech, while sitting alongside former President Harry Truman, President Johnson quoted another President, Franklin Delano Roosevelt, who signed the original SSA legislation, stating the bill represented "a cornerstone in a structure which is being built but is by no means complete."[1] And, where the initial cost of the Medicaid program was just a little over $1 billion, costs now amount to almost $500 billion annually,[2] covering nearly one in four Americans[3] and one out of every two births.[4]

A partnership between states and the federal government, Medicaid does not make state participation mandatory. In fact, it was not until 1982, when Arizona decided to implement Medicaid, that all states had a program. Since then, there have been a number of federal level policy changes, most notably the Patient Protection and Affordable Care Act (ACA) in 2010, as well as myriad state regulatory developments that make up the current Medicaid policy context in Ohio. This state and federal partnership is both legal and financial, which often leads to the common adage "if you've seen one state's Medicaid program, you've seen one state's Medicaid program."

In the 50 years since its inception, Medicaid has served a dual role as a source of insurance coverage and as a conduit for health policy reform. An anti-poverty program initially designed to cover children, the disabled, and the elderly, Medicaid is a diverse amalgam of incremental enhancements or cutbacks, often financing state government activities as they seek to enhance their human services delivery systems or offset state spending. In recent years, because of its large role in state and federal budgets, Medicaid has become subject to the politics of health reform in Ohio and nationally, acting as a platform for ideological battles surrounding health access.

Medicaid is also a public health and payment transformation tool. Medicaid plays an outsized role

in some of Ohio's most pressing public health issues, including the opioid crisis and infant mortality. It is the predominant source of health coverage in areas of concentrated poverty, namely Appalachia and urban centers, which also means it is a major source of economic input for rural counties grappling with the impact of a globalizing economy. Beyond this, Medicaid's purchasing power has been leveraged by the state to enact reforms both in the program and in the private market, allowing the state to execute its strategy to improve quality and lower costs as it pursues value-based reform.

In Ohio, Medicaid, both in terms of a program and an executive function of state government, has changed significantly over the course of the Kasich Administration. Since Kasich's election to office, Medicaid has become a stand-alone department, covered nearly 700,000 more Ohioans than it had previously, moved further toward privatization, and renegotiated many essential elements of payment. This chapter later describes many of these changes in detail, but first it delves into a basic explanation of the program and its policy underpinnings in Ohio.

# Basic Program Design

The federal government requires Medicaid beneficiaries to be either United States citizens or permanent residents and live in the state in which they receive benefits. Eligibility is also the byproduct of federal minimums and state policy decisions in regards to income and categorical definition of need. Being a means-tested program for low-income individuals, Medicaid requires the consideration of income thresholds when determining eligibility. Since the enactment of the Affordable Care Act, most income eligibility is determined through the Modified Adjusted Gross Income (MAGI) standard, which is based on taxable income and tax filing relationships,[5] using the federal poverty line to make the final determination. Table 12-1 provides the poverty thresholds for varying sized households for 2018.

**Table 12-1: Annual Poverty Guidelines for the 48 Contiguous States and D.C. for 2018**

| | POVERTY LEVELS* | | | | | |
|---|---|---|---|---|---|---|
| PERSONS IN HOUSEHOLD | 100% | 133% | 138% | 150% | 200% | 250% |
| 1 | $12,140 | $16,146 | $16,753 | $18,210 | $24,280 | $30,350 |
| 2 | $16,460 | $21,892 | $22,715 | $24,690 | $32,920 | $41,150 |
| 3 | $20,780 | $27,637 | $28,676 | $31,170 | $41,560 | $51,950 |
| 4 | $25,100 | $33,383 | $34,638 | $37,650 | $50,200 | $62,750 |
| 5 | $29,420 | $39,129 | $40,600 | $44,130 | $58,840 | $73,550 |
| 6 | $33,740 | $44,874 | $46,561 | $50,610 | $67,480 | $84,350 |
| 7 | $38,060 | $50,620 | $52,523 | $57,090 | $76,120 | $95,150 |
| 8* | $42,380 | $56,365 | $58,484 | $63,570 | $84,760 | $105,950 |

** Updated annually. ** Add $4,320 for each additional person in household.*
*Source: Office of the Assistant Secretary for Planning and Evaluation, the U.S. Department of Health and Human Services.*

## Eligibility

Initially, Medicaid's definition of categorical eligibility was defined within one of a few assistance groups including the aged, blind, disabled (ABD) and families with dependent children.[6] The program also closely linked to Aid to Families with Dependent Children (AFDC, or cash assistance)

and Supplemental Social Security Income (SSI). During the 1980s and 1990s, there were expansions for pregnant women and children, including the creation of the State Children's Health Insurance Program, or CHIP, and the connection to AFDC was severed though welfare reform. States have always had additional flexibility in designing eligibility, something which was increased during these decades to include coverage for adults over the age of 65, people with disabilities, and a number of other mandatory or optional coverage groups.[7]

In Ohio, depending on a combination of your income, expressed as a percentage of the Federal Poverty Level (FPL), and your categorical eligibility, you may qualify for coverage in any of several ways with different associated benefits as listed in Table 12-2.

### Table 12-2: Medicaid Coverage Categories

| | CATEGORY | DESCRIPTION | FPL LEVEL |
|---|---|---|---|
| **Covered Families and Children (CFC)** | Children | This group includes children, including those receiving subsidies for adoption or foster care. | Up to 156% |
| | State Children's Health Insurance Program (SCHIP) | Same as children. | Between 156% and 206% |
| | Pregnant Women | Receive expedited eligibility processing and have coverage beyond 60 days of delivery. | Up to 200% |
| | Families | Parents and children receiving cash assistance. | Up to 90% |
| **Aged, Blind and Disabled (ABD)** | Aged, Blind and Disabled (ABD) | Must be 65 or older, significantly visually impaired, or have a disabling condition that meets SSI requirements, including an asset limit of $2,000. Some individuals may also qualify for Medicare. | Up to 75% |
| | Medicaid Buy-In for Workers with Disabilities (MBIWD) | Employed individuals between 16 and 65 who have a disability. Also, must not have assets totaling more than $11,473 and must pay an annual premium if income is above 150% of FPL. | Up to 250% |
| **Medicare Premium Assistance** | Qualified Medicare Beneficiary (QMB) | Medicare beneficiary who received Medicaid for Medicare Part A and B premiums. | Up to 100% |
| | Specified Low-Income Medicare Beneficiary (SLMB) | Medicare beneficiary who received Medicaid for Medicare Part B premiums. | Between 100-120% |
| | Qualified Individual (QI) | Medicare beneficiary who received Medicaid for Medicare Part B premiums, subject to annual cap. | Between 120%-135% |
| | Qualified Disabled and Working Individual (QDWI) | Must have lost Medicare Part A coverage after losing disability coverage but is able to purchase Part A coverage through premiums. Must also not have assets that exceed the SSI asset limit. | Up to 200% |
| **Other** | Breast and Cervical Cancer Project (BCCP) | Uninsured women between 21 and 64 (depending on condition and physician involvement). | Up to 250% |
| | Medicaid Expansion (Group VIII) | Non-disabled, childless adults under 65 years of age. | Up to 138% |

*Source: The Ohio Legislative Service Commission.*

The ABD group, however, does not use the MAGI standard for eligibility. Instead, this group is subject to asset tests and income limits established in the eligibility process for SSI.

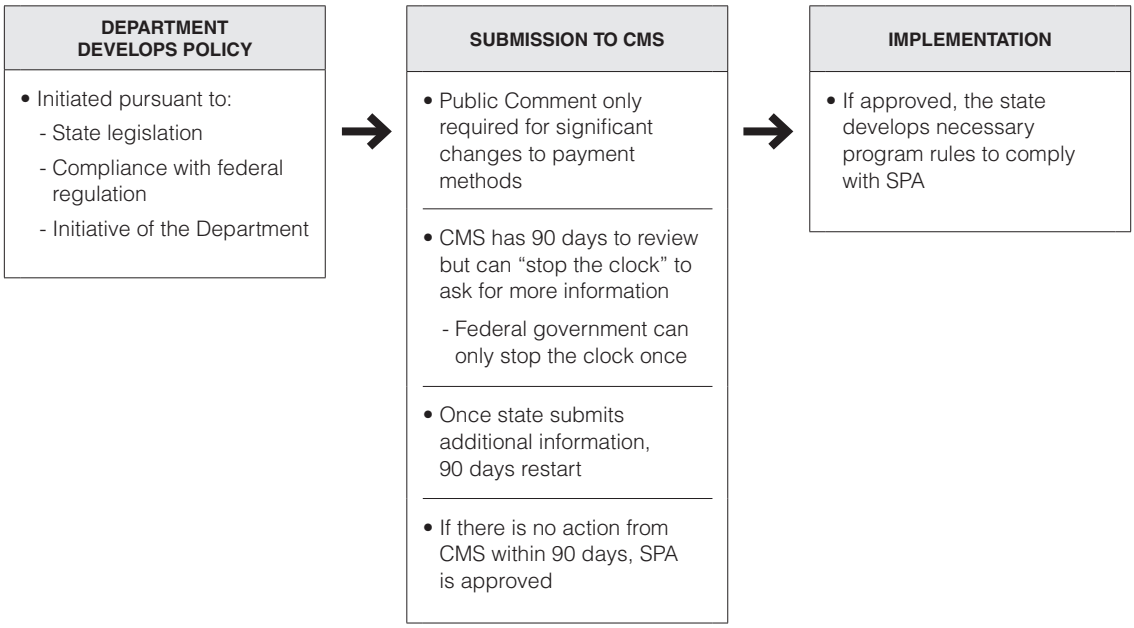
## Benefits

As a joint federal and state partnership, the federal government has baseline standards, and states have the flexibility to design their programs in a number of ways. To ensure the operational fidelity to federal regulation, and to provide the partnership clarity around the scope of the Medicaid benefit in any given state, each state develops a "state plan." This document is a formal, written agreement between the state and federal government that must be submitted by a single state agency, and ensures that the state will abide by federal rules in terms of receiving dollars, outline which optional groups and services are being offered, as well as the standards being used to determine eligibility.[8] This document is not a static contract and is often changed with State Plan Amendments (SPAs) which, like the state plan generally, are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The basic requirements for a state in maintaining a Medicaid program include reasonable promptness, or the ability to access care without delay as a result of agency procedures, ensuring payments are adequate to ensure equal access to services, freedom of choice, statewide coverage, and the coverage of mandatory benefits. The process for amending a state plan is outlined in Figure 12-1.

**Figure 12-1: State Plan Amendment Process**

**Must meet federal standards**

1. Statewideness: Throughout the whole state
2. Comparability: Services must be available to everyone regardless of eligibility category
3. Choice of Providers: Enrollees must be able to choose among providers




*Source: Medicaid and CHIP Payment and Access Commission.*

As with eligibility, there are mandatory benefits and optional benefits. These benefits must be outlined in amount, duration, and scope. Benefits offered in Ohio are listed in Table 12-3:

**Table 12-3: Mandatory and Optional Medicaid Benefits**

| MANDATORY SERVICES | OPTIONAL SERVICES |
|---|---|
| - Early and Periodic screening, diagnosis, and treatment (EPSDT) for children<br>- Inpatient hospital<br>- Physician<br>- Lab and X-ray<br>- Outpatient, including services provided by hospitals, rural health clinics, and Federally Qualified Health Centers<br>- Medical and surgical vision<br>- Medical and surgical dental<br>- Transportation of Medicaid services<br>- Nurse midwife, certified family nurse, and pediatric nurse practitioner<br>- Home Health<br>- Nursing facility<br>- Medicare premium assistance<br>- Family planning | - Prescription drugs<br>- Durable medical equipment and supplies<br>- Vision, including eyeglasses<br>- Home and community-based alternatives<br>- Dental<br>- Physical therapy<br>- Occupational therapy<br>- Speech therapy<br>- Podiatry<br>- Chiropractic services<br>- Mental health services<br>- Alcohol and drug addiction services<br>- Intermediate Care Facilities (ICF)/IID<br>- Hospice<br>- Ambulance/ambulette transportation |

*Source: Health Policy Institute of Ohio.*

Benefit administration is complex and involves tens of thousands of billing codes. Depending on the service and the individual in question, the state acts as a fiscal agent, ensuring eligible individuals are receiving the services for which they are entitled and that payment is made to eligible providers in a timely fashion. For the majority of the Medicaid population, these benefits are overseen by private insurance companies contracted by the state. These companies, referred to as managed care, are responsible for administering the benefit to Medicaid-eligible individuals and much of their operation and design will be covered in a later section of this chapter.

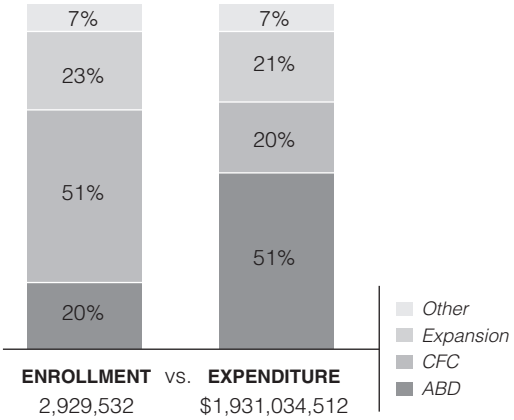
Typically, benefit construction regarding optional services is a combination of policy choice made by the Ohio Department of Medicaid and that which is required through an action by the General Assembly. For the department, many of the benefit expansions are for items that may increase the value of service being delivered, such as home- and community-based care, which is often preferred by the long-term care population and can be delivered at lower cost than the mandatorily required nursing facility benefit.[9]

## Financing

Although Ohio has a number of categories of individuals eligible for Medicaid, their needs and the costs associated with delivering the benefit are not distributed evenly. What's more, depending on the program in question, Medicaid dollars may flow through the Ohio Department of Medicaid (ODM),

the Ohio Department of Mental Health and Addiction Services, the Ohio Department of Developmental Disabilities, the Department of Aging, the Ohio Department of Health, or the Ohio Department of Job and Family Services. Individuals with more complex needs like the aged, blind, and disabled tend to require the most in terms of resources. Often, you see these high-cost populations as areas of focus for ODM in terms of policy development. Table 12-4 depicts the number of Medicaid recipients and the varying costs associated for each major program component as of December 2017.

**Table 12-4: Medicaid Program Enrollments and Associated Costs**




*Source: Ohio Department of Medicaid, "Eligibles and Expenditures Report, December 2017," January 2018.*

*ABD: Aged, Blind and Disabled; CFC: Covered Families and Children; Expansion: Medicaid Expansion*

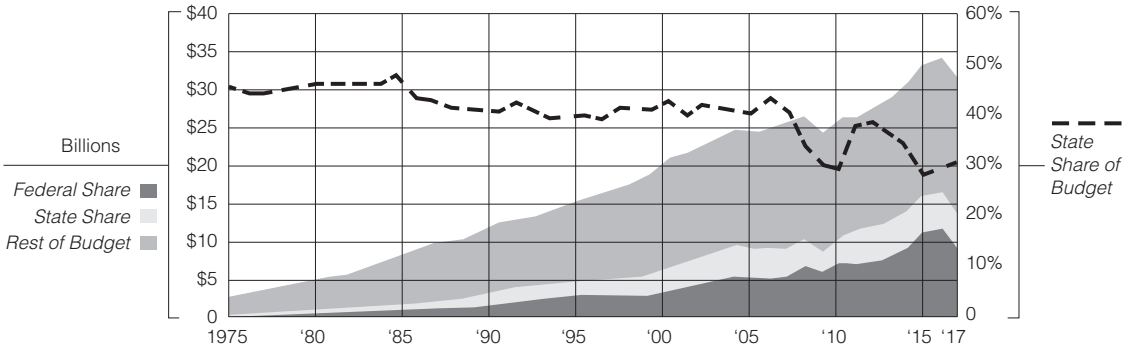
For example, in the first biennial budget of the Kasich Administration, the state submitted an SPA to the CMS to create "health homes" for individuals with a severe and persistent mental illness, or SPMI. This population, while a small minority in total numbers (10 percent) of Medicaid recipients represented a high area of cost to the program (26 percent).[10] To understand how reforms like these are financed, it is important to understand the financial relationship between Ohio and the federal government, and the Federal Medical Assistance Percentage (FMAP).

FMAP is the calculation that represents how much money is split between the state and the federal government. First, the state must spend its own dollars for the Medicaid program. Then, the amount the state spends is "matched" by the federal government at a percentage that is driven by a formula that takes into account the average per capita income for each state relative to the national average. Given this formula design, the decennial census plays a significant role in the final attribution of the dollars the state receives from the federal government. This means Ohio, which has not gained in population relative to other states nationally, will continue to see reductions in this source of federal funding.[11]

The Social Security Administration limits this "regular FMAP" match to be not less than 50 percent nor more than 83 percent. The calculation of FMAP changes every year, although it can vary depending on the program being implemented, sometimes with the added benefit of a higher federal match.[12] FMAP rates also tend to lag the economy, meaning the adjustment of these rates often does not keep pace with major economic events, which can make the fiscal administration of the program more difficult. As of Federal FY 2019, Ohio's regular FMAP is 22nd nationally, at 63.09 percent, meaning moneys for Ohio's regular Medicaid benefits are funded 63.09 percent by the federal government, and 36.91 percent by the state.[13]

It is important to understand FMAP in order to understand Medicaid's long-term influence on Ohio's budget. Where Ohio Medicaid had once represented a small portion of Ohio's all-funds budget in 1975, that amount has increased considerably. That said, the state share of that funding has decreased significantly over time:

**Figure 12-2: Medicaid as a Share of Ohio's Budget**

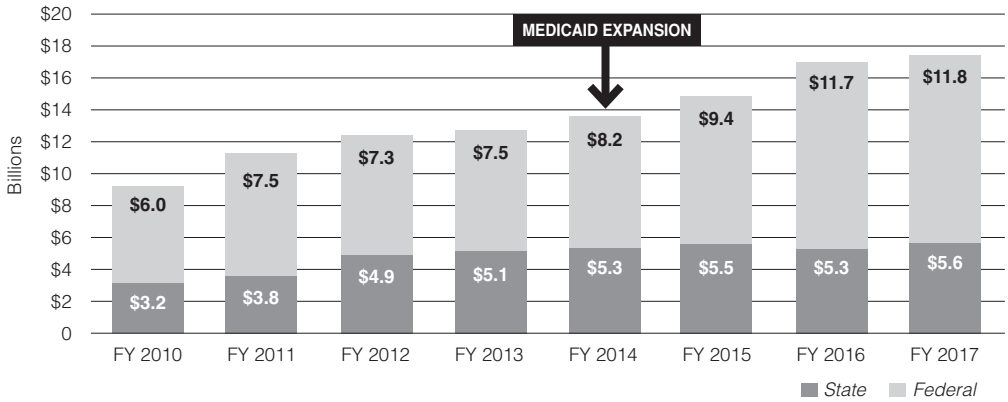



*Source: Ohio Legislative Service Commission.*

Ohio is unique as a state in that it counts the majority of the funding it receives from the federal government as General Revenue Funds (GRF). This means that the percentage of program growth, while significant in terms of all funds, is mostly due to the increase of federal financing associated with programmatic changes and expansions.

This trend is particularly notable of the Kasich Administration, which has taken advantage of a number of Affordable Care Act initiatives that included enhanced FMAP. The most recent drops of state share were due to, in large part, enhanced funding associated with the Medicaid expansion population.

**Figure 12-3: Kasich Administration - GRF Medicaid Financing**




*Source: Ohio Legislative Service Commission.*

Often, policy choices to leverage higher FMAP rates for specific Medicaid groups plays out in the state budget. For example, the Kasich Administration used the state budget to move individuals previously covered by the "family planning" eligibility group — which received a 90 percent FMAP — into the new expansion coverage eligibility category — which has an FMAP above 90 percent until 2020 — thereby allowing the state to access a higher federal match and commit fewer state resources to that population while enhanced funding is available. Conversely, if the state developed policies that removed coverage under the expansion for this group, that match would be lost, not only preventing the state from accessing the economic benefit of more dollars coming into Ohio, but also that of a

decreased state obligation.

Medicaid can also be used to offset state dollars in other health-related programs. In the budget bill for the FY 2012–2013 biennium, "Help Me Grow," a home visitation case management program for pregnant women, leveraged Medicaid in this way. Where the program had previously relied on state and federal funding under the auspices of the Ohio Department of Health (ODH) singularly, the bill required ODH to work with the Ohio Department of Job and Family Services on an SPA so that Medicaid funds, which include the federal funding from FMAP, could be used to pay for services.[14] That change allowed state GRF appropriations to be allocated elsewhere, and for additional federal moneys to come into state coffers.

## Managed Care

Under Title 42 of United States Code §1396-1, the purpose of Medicaid is to furnish medical assistance to populations whose income and resources are insufficient to meet the costs of necessary medical services.[15] The Ohio Department of Medicaid, in fulfilling this duty, acts as a publicly subsidized insurer and does not provide any medical services directly. Instead, it is responsible for ensuring reimbursement is made to medical providers delivering services to beneficiaries.

To furnish services, there are two basic modalities of delivery. First, and historically the most common, is the fee for service system (FFS). In FFS, the rates are developed by the agency and providers are reimbursed based on a fee schedule. Simply put, when an eligible provider renders a qualifying service to a legal Medicaid recipient, the provider charges a fee for that service, and they are reimbursed directly by the Ohio Department of Medicaid. The second modality is managed care. Managed care organizations (MCOs), are private insurance companies which act as a contracted fiscal agent on the part of the state. Managed care is made possible through the use of State Plan 1932(a) authority, though is also made available to special populations through a 1915(b) waiver, which is explained in more detail in the subsequent section of this chapter. For MCOs, per-member-per-month payment rates are developed by an actuary. Providers must contract directly with the MCOs, and the rates are bound by a principal known as actuarial soundness. Actuarial soundness essentially ensures the same beneficiary protections as those in the state plan by requiring that all rates paid to the MCO be "reasonable, appropriate, and attainable" in order to cover the population in question.[16] These rates are built from encounter data and may differ depending on the region in which an MCO is operating.

MCOs are a tool for the state to control costs and increase desired outcomes through a contract. As private entities, MCOs have incentives and tools available to them that a traditional FFS arrangement does not. MCOs have utilization management powers which allow them to deny a service or review a claim they think may be high cost or unnecessary. An example of this is prior authorization, where the plan requires a provider to seek permission before the delivery of a service. In additional to utilization control powers, MCOs are also operating in competition with one another, with the state applying market share and other financial incentives as a reward for accomplishing identified metrics, typically based on standardized measures related to care and service. Last, and perhaps most critically, the MCOs have the ability to work with providers and hire staff in ways that coordinate care and, in some cases, finance non-traditional benefits (like transportation, for example) to control costs. This case management function of MCOs is the primary argument in favor of this model of delivery.

## Waivers

Beyond the state plan, the Social Security Act gives the Secretary of Health and Human Services authority to approve experimental, pilot, or demonstration projects that "promote the objectives of Medicaid." "Waivers," as they are called, literally remove federal requirements of the program as long as certain standards are met. Nationally, waivers have been used in a number of contexts to develop experimental programs or advance policy priorities of the state and federal governments. Ohio has several waivers in place, including a 1915(b) Freedom of Choice waiver which enables the state to implement managed care for specific populations, and 1915(c) Home and Community-based Services waivers. There are also 1115 waivers that have garnered more attention in recent years as mechanisms for advancing or rebuking policies associated with the Affordable Care Act. In all cases, waivers have to be approved and monitored by the federal government and often have more specific requirements in terms of reporting and financing than the traditional program.

# Strategic Direction of Medicaid during the Kasich Administration

| MEDICAID MILESTONES OF THE KASICH ADMINISTRATION | | | |
|---|---|---|---|
| **2011** | **2013** | **2014** | **2018** |
| • Office of Health Transformation created<br>• Medicaid Information Technology System (MITS) | • State Innovation Model initiated<br>• Medicaid program restructured; Ohio Department of Medicaid created<br>• Medicaid expansion under the Affordable Care Act | • MyCare Ohio | • Behavioral Health Redesign |

## The Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (ACA) is the most recent federal legislation to have a significant impact on Medicaid. This impact can be measured in terms of reforms in regards to eligibility, financing, and experimentation. Prior to the passage of the ACA in 2010, nearly one in five Americans were historically uninsured, which is why one of the major planks of the ACA was expanded coverage.[17] To accomplish this, Congress enacted two key policies that were designed to reduce the number of uninsured in the United States. First, Congress established the Health Insurance Exchanges, later called "Marketplaces," which would provide subsidized private insurance on a sliding scale between 100 and 400 percent of the FPL. It would ensure that this coverage was attained, in part, by creating an "Individual Mandate" that required people to maintain a minimum level of insurance coverage by 2014. Second, it mandated the expansion of coverage to a newly created group in the Social Security Act called "Group VIII," which is a reference to its *Federal Register* definition in Title 42, commonly referred to as the "Medicaid expansion." In June 2012, however, the U.S. Supreme Court ruled that, while the Individual Mandate was constitutional, the Medicaid expansion requirement was unconstitutionally coercive of states and thus optional for states to implement.[18]

The ACA also created a number of other changes in regards to the operation of state Medicaid programs, including significant investments in information technology systems, electronic health record development, and value-based care.[19] As mentioned previously, the new standard of MAGI was one

example of the way in which the ACA impacted Ohio's Medicaid program, but in many ways, the Kasich Administration has been defined by its acceptance and embracement of ACA policies, which will be described in the next and terminal section of this chapter.

Governor Kasich came into office in the midst of a slow economic recovery and less than one year after the passage of the ACA. His administration would be defined by a structural reorganization of Medicaid, a greater reliance on privatization through managed care, the Medicaid expansion, and experiments with value-based design. As a result of these endeavors, and the political landscape associated with the ACA, the political environment surrounding Medicaid policymaking has also been made more acutely ideological. This included a number of initiatives by the General Assembly that, despite sharing a party affiliation with Governor Kasich, created formal oversight of the program and advanced policy positions that sought to degrade the authority of the executive branch's control over Medicaid.

## Restructuring Medicaid

At the beginning of his first term, Governor Kasich created the Office of Health Transformation. This cabinet-level agency served a role as the lead strategic organization for the rest of health and human services in the executive branch. Structurally, this strategic direction included the consolidation of the Mental Health and Addiction departments into a single agency, now called the Ohio Department of Mental Health and Addiction Services,[20] as well as transitioning Medicaid from an agency within the Ohio Department of Job and Family Services to a stand-alone department, amove which had been previously recommended and allowed for the Medicaid director's greater control of the program.[21] Additionally, in the FY 2012–2013 budget, the Kasich Administration realigned the appropriations line items across all agencies that receive Medicaid funding, making clearer the financing obligations by department, as well as reducing the number of appropriations line items in total.[22]

Significant investments have been made by the Ohio Department of Medicaid over this time, including two of its most important benefit management systems that manage claims payment, the Medicaid Information Technology System, or MITS, and eligibility determination, the Ohio Integrated Eligibility System called OIES, or "Ohio Benefits." It is important to note that Ohio Benefits is still under development, and while it had been the system for Medicaid, it does not yet integrate other programs. The intent behind the new system, as outlined by the Office of Health Transformation, is to ultimately integrate the eligibility systems for Medicaid, the Supplemental Nutrition Assistance Program, and the Temporary Assistance for Needy Families program, and to ensure a more efficient, simplistic system of determination across all programs for the benefit of enrollees and the county governments largely responsible for managing the eligibility across all systems. For both of these efforts, the state received a temporary increase in the FMAP for the design, development, and installation of these systems, having 9 out of every 10 dollars of investment shouldered by the federal government.

## A Move towards Privatization

The Kasich Administration has relied heavily on managed care to implement many of its policy initiatives, with the Ohio Department of Medicaid issuing a request for proposals outlining a new contract for which the plans would have to bid in 2011. After the resolution of a lawsuit regarding the awarded contracts, the state shifted from a regional model to a statewide model of MCO delivery, requiring all five MCOs to operate across Ohio, covering both the Covered Families and Children (CFC) and ABD categories, and operating in regions that had been consolidated from five to three. Beyond the

geographic and operational footprint, Ohio's Medicaid program also included additional populations, such as foster children, in managed care through a process known as "carve in." Since 2008, the total Medicaid population enrolled in a plan has increased from about 70 percent to more than 80 percent.[23]

When looking at the populations historically covered by managed care, many of the more complex, costly, and needy populations have been left out. The Kasich Administration has shown a preference for managed care as a tool in controlling costs and increasing outcomes by including these populations as a part of the MCO benefit. Included in these efforts are the privatization of benefits for individuals simultaneously enrolled in Medicaid and Medicare, individuals with behavioral health diagnoses, and the long-term care population.

## MyCare Ohio

The MyCare Ohio demonstration project, implemented in 2014, sought to consolidate the benefit administration of individuals covered by Medicaid and Medicare, otherwise known as "dual eligibles." Currently, this program, which is a 1915(c) waiver, is set to expire in February 2019.[24] When looking at national data, dual eligibles account for just 15 percent of Medicaid beneficiaries but 36 percent of the cost. This disproportionate share of the cost is driven by a number of factors including the duplicative nature of the two sources of coverage and the complexity of care for these individuals who tend to have higher needs.[25] This program, which has its own independently contracted plans, is operated in geographically limited regions across the state and provides coverage to more than 107,000 Ohioans. Ultimately, the intent behind this demonstration is to provide a single source of care management to individuals enrolled in the plans, with the hope that better coordination can lead to better outcomes and greater efficiency. While the state has made claims of cost and quality benefits through its regular reporting on the project,[26] some in the long-term care industry, notably nursing homes, have pushed back against this narrative, citing billing problems and a lack of evidence to support the Kasich Administration's claims.[27]

Regarding long-term care, another target of Kasich's managed care reform has been the long-term care benefit. This includes, but is not limited to, services provided to individuals with developmental disabilities and to low-income seniors. While people with developmental disabilities may now choose to enroll in an MCO product, individuals receiving services in a nursing home or through a home and community-based services waiver (HCBS) do not currently have regular access to an MCO. Through budget policy, the Kasich Administration has pushed to remove the special protection nursing facilities have in Ohio Revised Code, especially given the reported low quality of service provision in many Ohio facilities[28] and the fact that nursing facilities account for more than one out of every six FFS dollars spent.[29] Despite this effort, they have been routinely unsuccessful and managed Long-term Services and Supports, or MLTSS, has not yet been implemented.

In June 2013, the Ohio Department of Medicaid applied for, and was awarded, $169 million in additional FMAP for its efforts to direct half of all Medicaid long-term care funding to HCBS waiver programs by 2015. This program, known as the Balancing Incentive Program, or BIP, is a national initiative established under the ACA. As a part of this effort, the state was required to make sure that eligibility and enrollment was accessible, that the case management system was free of conflicts, and that there was a core standardized assessment in place. By September 2014, a year before the deadline, Ohio had surpassed its 50 percent spending target.[30]

In addition to long-term care, behavioral health is also an area of benefits the state has sought to privatize. Nearly one out of every eight dollars spent in FFS[31] is related to behavioral health. Additionally, persons with severe mental illness have a life-span that is 25 years shorter than the general population[32] and opioid-related overdoses have become Ohio's number one cause of accidental death.[33] Given this combination of high cost and poor outcomes, the Kasich Administration grappled with reforming the behavioral health delivery system since its inauguration. In its primary incarnation, reform included the development of a "health home" service, wherein behavioral health providers would have established medical homes for individuals with SPMI. Medical homes, also known as Patient Centered Medical Homes, or PCMH, are models of care which align specific populations around a model of care to be managed by a central case manager, typically represented by a certain clinical position. Ohio's effort would have provided a capitated payment to the primary community behavioral health provider of the medical home for managing the totality of the person's care. Unfortunately, the scale and scope of the project led to wide cost and capacity variability amongst the providers who would deliver this benefit, and after some efforts to launch the project, the state decided to unwind the effort and seek a managed care model.[34]

### Behavioral Health Redesign

As noted earlier, persons with serious mental illness make up 10 percent of the eligible in Medicaid, but they account for 26 percent of the total program cost. In 2011, the Ohio Department of Medicaid submitted an SPA to create "health homes" for this population as a way to address this issue. Health homes are a model of care delivery where case management is organized around a specific disease, population, and/or a health condition.[35] These models were enabled by Section 2703 of the ACA and are intended to drive down costs while improving outcomes. While the state did receive approval, enhanced FMAP, and made significant efforts to roll out the health homes, the project was formally discontinued in 2015 because of a lack of financial sustainability, though some payments were still being made as late as July 2018.[36]

In 2015, the Office of Health Transformation announced it would re-launch its efforts in behavioral health reform, this time through managed care privatization. Labeled "Behavioral Health Redesign," the administration sought to implement a two-fold effort of reform focusing on a restructuring of the coding methodologies and services for community behavioral health providers as well as the carving-in of the benefit into managed care. Over the course of the subsequent years, some providers, their trade associations, the General Assembly, and the administration have publicly debated the implementation of redesign, including multiple hearings, rate negotiations, and program delays.[37] While some providers were concerned with the potential harm this may cause in terms of resources long term, other providers were welcoming of the changes. Regardless of the perspective, it will remain to be seen how these changes will affect the continuity of care for the portion of the population diagnosed with a behavioral health issue.

## Value-Based Design

Another hallmark of the Kasich Administration has been its focus on developing value-based reimbursement. These efforts, however, are not limited to Medicaid, but they often rely on Medicaid as an economic force by which reform is made possible. Included in this work are two main areas of focus

in advancing the State Innovation Model and increasing the expectations of performance in regards to Ohio Medicaid managed care programs.

## The State Innovation Model

The State Innovation Model (SIM) initiative was made possible through the ACA and is governed by an ACA-created governmental agency called the Center for Medicare and Medicaid Innovation (CMMI). According to law, the mission of CMMI is to test "innovative payment and service delivery models to reduce program expenditures."[38] The SIM project has been one of the ways in which the federal government has partnered with states to develop models of transformation, with dollars flowing from two rounds of funding in 2013 and 2014, respectively. In Ohio, SIM is represented by two main policy initiatives: 1) Comprehensive Primary Care (CPC) and 2) Episode-based Payments.

In CPC, payment encourages primary care at the center of the delivery model through the utilization of a patient-centered medical home. Conceptually, the state is trying to incentivize primary care to encourage better health and improve population health outcomes. To do this, practices that enroll in the program become eligible for a monthly fee to support activities required by CPC, and they become eligible for shared savings. Given the potential to reduce the overall cost of care, the latter policy lever is intended to incent better coordination by making the provider a shareholder in the state's success. In order to become eligible for this program, providers must meet requirements in regards to clinical activity, quality, and efficiency. Additionally, through regular reporting by the state and its contracted MCOs, providers can see how they rank relative to their peers in regards to their performance in a number of areas including pediatric and women's health, chronic conditions, and average spending.[39] CPC has evolved to align with the national CPC+ program, which is operationally very similar to CPC and also seeks to engage private payers in driving toward quality and efficiency through primary care.

Beyond the individual practice level through CPC, the state has also sought to create comparative performance incentives and reporting as it relates to common conditions and procedures. Implemented in a series of three waves, Episode-based Payments seek to consolidate seemingly disparate service codes into a set of common, comparable payments.[40] Each wave involves the definition of an episode built on common code sets for any particular condition or service, such as asthma or total joint replacement. Providers submit their claims in the same way they had, though this time payers, including the FFS and MCOs, review the claims, risk adjust them, and the payment is affected positively or negatively depending on performance in cost and quality. Basically, when a provider submits their claims, they are compared to their peers for the same service and if they perform well in terms of keeping costs low and quality high, they earn an incentive. If, on the other hand, their costs are high relative to their peers and their quality is not good, they will be penalized. What is more, providers, who are able to access this information through the Medicaid Information Technology System, or MITS, will now be able to compare and align information between the two programs between the CPC and Episode programs, creating incentives for providers who connect patients to high-quality environments in both settings.

Through both of these initiatives, the state has convened providers and payers as advisors in design. Importantly, these initiatives are not limited to Medicaid and do include private insurers who operate in the individual and employer sponsored markets.[41] While the results have not yet moved the needle in terms of overall value, the foundation of these initiatives represents a major shift from traditional forms of Medicaid payment into value-based arrangements. Where Medicaid had once been mostly agnostic to the issues of quality and price on a comparative level, SIM has established a new model

of payment that puts these issues at the forefront of reimbursement.

## P4P

Outside of the State Innovation Model (SIM), the Ohio Department of Medicaid has also created incentives through its contractual process with managed care to incent better quality. Under Pay for Performance, or "P4P," MCOs are subject to comparative performance on specific clinical measures established in the Healthcare Effectiveness Data and Information Set (HEDIS). HEDIS is used by more than 90 percent of the United States' health plans and compares performance across seven "domains" of care, including 94 total measures for things such as postpartum care and control for chronic diseases such as hypertension and diabetes.

In 2013, the state designed P4P as a bonus program, making a percentage of the total payment made to plans eligible as an incentive. Depending on an MCO's comparative performance in any given measure, they were able to earn this bonus payment.[42] Historically, MCOs have not achieved the total potential allowed, with only $49 million of the $142 million available being awarded in 2016.[43] As of the FY 2018–2019 budget, this program has shifted from a bonus payment to a withhold payment, meaning that a percentage of the total paid to managed care will be kept by the state until the MCO has achieved a specific outcome. This withhold amount increases over time, with a current cap of 2 percent. In addition to using HEDIS as a measurement tool, the state also added quality indices to the P4P program, focusing on cardiovascular disease, diabetes, behavioral health, and children.

As is the case with SIM, Ohio's P4P program is intended to create incentives that align quality and outcomes with payment. Where P4P had once been a bonus payment, it is now a withhold arrangement with the state, exposing MCOs to financial risk. In theory, this should motivate the MCOs to establish measures within their contracts with providers to mitigate this risk by aligning their P4P measurements with contractual expectations.

## Medicaid Expansion and Greater General Assembly Oversight

Beyond these more nuanced and policy-heavy decisions, the Kasich Administration's relationship to Medicaid will most likely be tied to the decision to implement the Medicaid expansion. As has been mentioned, the Medicaid expansion became an optional choice for states after the U.S. Supreme Court's decision in 2012. Before expanding Medicaid across the state, the Ohio Department of Medicaid, Cuyahoga County and the MetroHealth System, a county-owned safety-net hospital in Cleveland, developed an early version of the expansion through an 1115 demonstration waiver in 2013. This waiver, known as "MetroHealth Care Plus." expanded coverage to nearly 28,945 poor, uninsured patients. Through this increased access and source of coverage to the hospital, patients were better able to address their chronic health needs, and notably, the program came in nearly 30 percent under budget.[44]

In the subsequent year, coalition forces across the state representing the faith community, providers, insurers, and others advocated to have Medicaid expanded as a part of the state's FY 2012-2013 budget. While not included in the final budget, the Kasich Administration asserted its ability to expand Medicaid through a SPA, even though there was no additional state appropriation authority associated. After some political back and forth, the state created the ability for the administration to accept federal funds through the Controlling Board, a seven-member executive-legislative oversight body.[45] See Chapter 7 for a description of the Controlling Board and its functions.

In the subsequent years following expansion, the politics of Medicaid as a state policy issue have grown more complex. This includes the creation of the Joint Medicaid Oversight Committee (JMOC), which acts as a legislative oversight body of the state Medicaid department. This body meets regularly to review state Medicaid policy and, notably, to establish a target growth rate for the director when they formulate the administration's budget request to the General Assembly.[46] This effort includes a review by an independently contracted actuary who gets access to Medicaid claims information for the purposes of analysis.

In addition to the creation of JMOC, the General Assembly has also sought to impose policies that put greater control over the direction of the program. These efforts have included, but are not limited to, the use of 1115 waivers and creation of laws that provide the General Assembly more input over covered populations and provider rates. Many of the waivers sought to align with efforts in other entitlements to impose greater requirements for eligibility on Medicaid recipients, particularly those enrolled through the expansion. This has included efforts to impose cost sharing and work requirements, policies that had been discouraged by the Obama Administration but have been encouraged by the Trump Administration.[47] While legally questionable, policies such as these can be seen as a political response to the ACA.[48] While Medicaid expansion has been a financial boon to the State of Ohio's finances and played a vital role during the opioid crisis as a main source of coverage for individuals with substance use disorders, conservative lawmakers in Ohio and in Congress will likely continue to look at ways to restrict the program's growth in terms of spending and enrollment long term.

## Summary

The Kasich Administration has relied on a combination of structural and policy maneuvers to fundamentally change the scope of Ohio's Medicaid program. Operationally, the Medicaid program is now governed by a single state agency, and the line items associated with its operation have been consolidated and simplified amongst all the agencies that rely on its funding. Supplementary activities include the design and development of two new systems of benefit administration, including the creation of new claims and eligibility determination systems.

Beyond the operational design, Kasich has advanced policies that have expanded coverage significantly, reoriented payment towards value, and relied on privatization as the main vehicle through which reform is made possible. During this time, too, the United States has been in the midst of one of the longest periods of economic expansion it has ever had.[49] While good news, Medicaid's relatively constrained growth is in part attributable to its nature as a countercyclical program, meaning its utility has not been as challenged as it may be in times of economic downturn. Additionally, with a renewed focus by Congress to terminate Medicaid as an entitlement, policy surrounding the single largest source of coverage for Ohioans will continue to be a key lever in future state budgets.

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CHAPTER 13:

# Health and Human Services Funding and Policy

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> "The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little."

*—President Franklin D. Roosevelt*

The beginning of each odd-numbered year in Ohio means everyone dives into the state budget deliberations. During the Kasich Administration, when the governor introduced his budget recommendations at this time, everyone around Capitol Square knew to expect weighty policy and funding proposals. This was no exception in health and human services. This chapter explores the major changes across the Ohio departments of Job and Family Services, Mental Health and Addiction Services, Health, Developmental Disabilities, Aging, and Rehabilitation and Correction starting in 2011 through 2018.

| HEALTH AND HUMAN SERVICES MILESTONES OF THE KASICH ADMINISTRATION | | | | |
|---|---|---|---|---|
| **2011** | **2013** | **2015** | **2016** | **2018** |
| • Office of Health Transformation created<br>• Establishment of the Governor's Cabinet Opiate Action Team (GCOAT) | • Merger of the departments of Mental Health and Alcohol and Drug Addiction Services into Department of Mental Health and Addiction Services<br>• Public Health Accreditation requirements | • Increase in Department of Developmental Disabilities (DODD) Waiver Slots | • Comprehensive Case Management and Employment Program | • Behavioral Health Redesign |

## Ohio Department of Job and Family Services

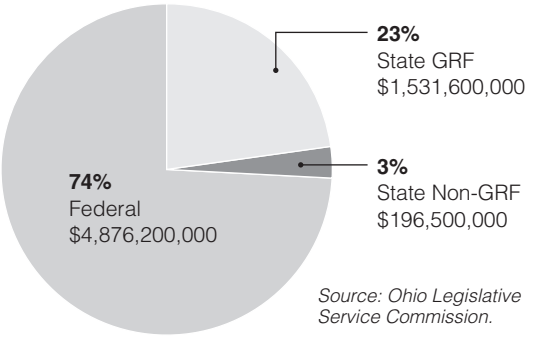
Many of the programs that provide health care, employment, economic assistance, and services to families and children are developed and overseen by the Ohio Department of Job and Family Services (ODJFS). The service goals of the agency are met through programs in public assistance, child welfare services, child support, workforce development programs, and unemployment compensation.[2] Ohio

is what is commonly referred to as a "state-supervised, county-administered" system as it relates to health and human services programs. The state supervises and distributes some funds for programs, but the day-to-day operation, administration, and interpretation of the programs happens at the county level through local departments of job and family services and county administration (Board of County Commissioners in most counties). These entities design their own delivery system, ranging from one agency for health and human services at the county level to multiple agencies with jurisdiction over just one program (for example, a standalone child welfare agency).

As can be seen in Figure 13-1, nearly three quarters of ODJFS funding is derived from the federal government.

**Figure 13-1: Source of Funding for ODJFS**

**Department of Job and Family Services**
SFY 2018-2019 Funding by Source




*Source: Ohio Legislative Service Commission.*

While many programs are housed within ODJFS, there are several primary programs that this chapter will focus on in terms of funding and people affected during the Kasich Administration. These include the Temporary Assistance for Needy Families (TANF) program, Supplemental Nutrition Assistance Program (SNAP), child care, child welfare (or child protective services), and adult protective services. Additionally, the federal Title XX funding, also known as the Social Services Block Grant, flows primarily through ODJFS and is divided across state agencies and programming. This source of funding is described later in this chapter.

## TANF

The Temporary Assistance for Needy Families (TANF) program was created in 1996 in a move to reform welfare at the federal level from the former Aid to Families with Dependent Children (AFDC) program. The change from AFDC to TANF fundamentally changed the safety net and shifted the entire nature of the program. Aid to Dependent Children (ADC) originated in the wake of the Great Depression with the intention of supporting single mothers with cash assistance. There was no requirement in the program to complete work or skills training. In the 1960s, this program evolved to become the Aid to Families with Dependent Children (AFDC) and was expanded to two-parent families with one unemployed or incapacitated parent. The TANF program was created in the mid-1990s as a part of the Personal Responsibility and Work Opportunity Act (PWROA), better known as federal welfare reform. The major changes that PRWOA made included mandatory work requirements and time limits for cash assistance. Under TANF, states' cash-assistance recipients are required to work a set amount of hours per week and at least 50 percent of the total adult caseload must meet the work requirement. TANF also limits enrollment in the program to no more than five years; Ohio has set its time limit at three years. The federal government provides the State of Ohio with a block grant based on funding levels from the time of the program's inception, and in return, the state pays an annual "maintenance of effort" (MOE) set by those initial funding levels. The amount of the block grant has not increased since welfare reform. TANF's statutory purpose is to increase states' flexibility in achieving four goals.[3] The goals of TANF are to:

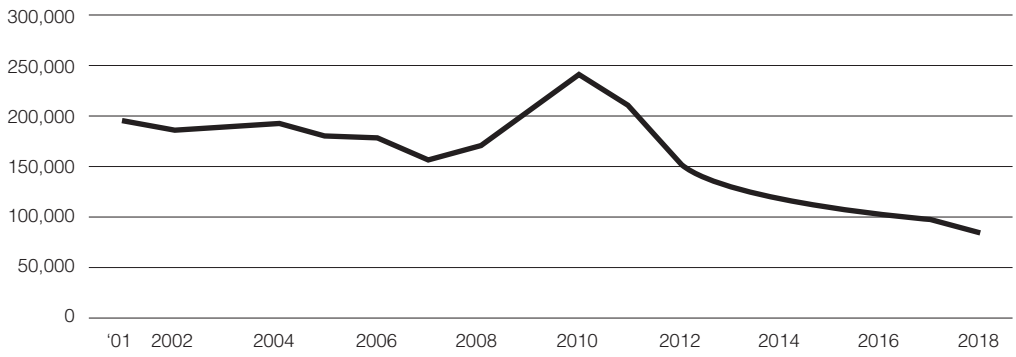
- Provide assistance to needy families so that children can be cared for in their own homes or homes of relatives.
- Reduce the dependency of needy parents by promoting job preparation, work, and marriage.
- Prevent and reduce the incidence of out-of-wedlock pregnancies.
- Encourage the formation and maintenance of two-parent families.[4]

While the first two goals are focused on needy families (that is, income-eligible families), the second two goals have no such limitation and can be achieved through spending on programs that help individuals and families who have higher income.

## *Cash Assistance*

Recent spending in the state's TANF budget has been a frequent focus as it pertains to ODJFS' overall budget. While the annual TANF block grant amount is $727.2 million per year, TANF block grant spending appropriations were $836.4 million for FY 2017 and remained the same for FY 2018, with a 1.5 percent increase in FY 2019 to $848.9 million. This is due to carryover/underspending that is then budgeted into future years. This masks what has been happening with program spending though, because each year these budgeted amounts anticipate spending down all of the dollars, both current and carryover funds. In recent years, that has not happened, and the program is left with significant, accumulated underspending. The projected amount of underspending in FY 2018 is more than $570 million. Part of this overall underspending and inaccurate expectation of spending down funds is due to declining caseloads in a core TANF program, cash assistance, otherwise known as Ohio Works First (OWF). Ohio sets the income eligibility limit for OWF at 50 percent of the federal poverty level (FPL), and only families with children are eligible. Refer to Table 12-1 for more information on federal poverty levels. Federal policy requires 90 percent of two-parent families, and 50 percent of one-parent families, receiving cash assistance work 30 hours per week.[5] In December 2005, ahead of the Great Recession, there were over 180,000 cash assistance recipients.[6] In the middle of the Great Recession (July 2008), there were over 173,000 individuals receiving cash assistance. Nearly 10 years later in April, 2018, this number declined to just over 93,000, the vast majority of the current recipients being children (90 percent), who have no work requirement to meet. Figure 13-2 depicts changes in the OWF caseload since 2001.

**Figure 13-2: Ohio Works First Caseload**




*Source: Ohio Department of Job and Family Services, Public Monthly Assistance Statistics.*

### *Other TANF Funded Programming*

Aside from cash assistance, TANF funds are used to support myriad programs that meet one of the purposes of the program listed above. The nature of a block grant is that states do have flexibility in how they spend the program dollars. The majority of Ohio's TANF funds are spent on child care assistance for low-income Ohioans. Additionally, TANF has been used to support programs that address issues faced by this population. Such programs include the Comprehensive Case Management and Employment Program (CCMEP), a key ODJFS initiative of the Kasich Administration.

### *Comprehensive Case Management and Employment Program*

On July 1, 2016, Ohio rolled out its Comprehensive Case Management and Employment Program (CCMEP). CCMEP was enacted as part of the FY 2016–2017 budget and is a program that was established as a collaboration between funds from two federal programs: the Workforce Innovation and Opportunity Act (WIOA) and TANF. CCMEP targets the at-risk population of 14–24 year olds. The increased case management the program offers is intended to be a vital asset to this population in obtaining and maintaining employment. Data that speaks to the results of this program have been mixed and hard to interpret thus far.

## SNAP

The Supplemental Nutrition Assistance Program (SNAP), commonly known as food stamps, provides nutrition assistance to nearly 1.4 million eligible, low-income Ohioans and is entirely federally funded.[7] In general, families with incomes at or below 130 percent FPL are eligible for SNAP. SNAP is intended to supplement a family's food budget. During the recession that began in 2007, Ohio, among other states, applied for a waiver of SNAP rules that required able-bodied adults without dependents (ADAWDs) to meet a work requirement. In 2013, as the economy began to improve, the Kasich Administration requested that this waiver be extended only for counties with higher-than-average unemployment. As a result, ABAWDs in the majority of Ohio counties were subject to a work requirement of 20 hours per week after three months of SNAP enrollment. Five years later, partially as a result of this change, there are nearly 370,000 fewer SNAP enrollees.[8]

## Child Care

For many families in Ohio on the path to economic stability, child care is a necessity. Publicly funded child care is regulated by ODJFS. Federal and state funding for this purpose also flows through ODJFS. In the last budget, Governor Kasich and the state legislature expanded income eligibility limits for child care programs by waiving co-pays for families at or below the federal poverty level (FPL). Initial eligibility for publicly funded child care was increased from 125 to 130 percent of the FPL. Families now have the ability to gradually phase out of the program with continued eligibility shifting from 200 to 300 percent of the FPL.

### *Early Childhood Care and Education*

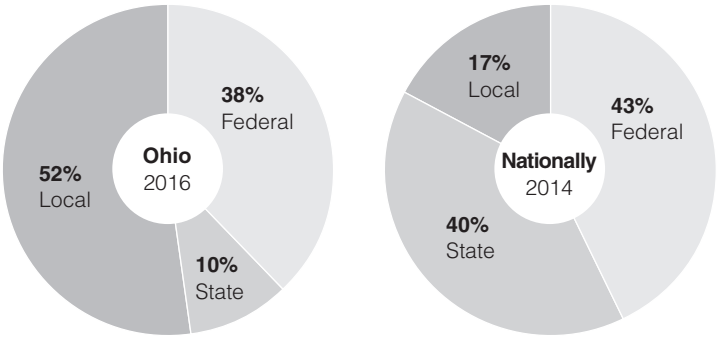
The FY 2016–2017 budget required the Ohio Department of Education, in consultation with the Governor's Early Childhood Education and Development Office and ODJFS, to establish guidelines for the future advancement of Ohio's Early Childhood System. These guidelines include benchmark per-

formance criteria, evaluation design and implementation, and steps based on outcomes, and were required to be completed by January 1, 2016. The quality rating system that has been established allows parents and families to make informed decisions on the child care setting they choose to place their child in. By 2020, it will be mandatory that all child care centers funded by the Department of Education be a part of the Step Up to Quality ratings system. Centers that receive high quality ratings, which are determined by ODJFS and the Ohio Department of Education, may receive more funding to maintain their ratings in the future. Funding for Early Childhood Education programs through the Department of Education tripled during the course of the Kasich Administration as described in Chapter 14.

## Child Protective Services

Public children services agencies (PCSAs) are required to investigate every suspected case of child abuse or neglect. This is a role played by local PCSAs across Ohio. In 2016, there were 97,602 cases of abuse and neglect screened in, resulting in 15,561 transferred into ongoing cases.[9] PCSAs are locally governed by the Boards of Commissioners implementing the laws, procedures, and rules, and are governed by the state and federal laws to protect abused and neglected children. PCSAs provide screening and assessment, and whenever possible, supportive services to keep families together. However, if it is determined the safety and health of the child or youth is at risk, then alternative placements must be found with either kinship caregivers or relatives, licensed foster homes, and in some cases, in residential placements. The regulations, and 10 percent of total funding, for child protective services comes from the state. Figure 13-3 depicts the sources of funding for child protective services in Ohio compared to the sources nationally.

**Figure 13-3: Sources of Funding for Child Welfare in Ohio vs. Nationally**




*Source: Public Children's Services Association of Ohio.*

The opioid epidemic in Ohio has impacted Ohio communities in more ways than one. The child welfare system has seen a 9 percent increase in the number of children entering the child protective system because of a parent or parents' drug addiction, accounting for more than 1,100 children.[10] Primarily as a result of this crisis, the FY 2018–2019 budget included increased funding in the amount of $13.5 million each year, for child welfare.

### *Foster Care*

In 2016, the state expanded foster care and adoption services for individuals up to the age of 21,

rather than the age of 18. The state is working through implementation, and the FY 2018–2019 budget included funding to accommodate this expansion.

## Adult Protective Services

Adult protective services (APS) are provided by county departments of job and family services (CDJFS) to local older adults who are in danger of harm or are unable to protect themselves from harm. CDJFS agencies are required under law to investigate and assess all reports of suspected abuse, neglect, and exploitation of adults age 60 and over. The Adult Protective Services line item (600534) within the ODJFS budget is the only dedicated source of state funding for APS in Ohio. It funds a substantial portion of the APS program for many counties in the state, although additional allocations to APS and supportive services can be found in other state agencies and in county levies.

There have been numerous policy changes to APS during the Kasich Administration. Legislative changes in the FY 2016–2017 budget required ODJFS to create and maintain a statewide adult protective services information system. This information system allows for more unity and awareness in counties across the state that are assisting individuals on a case-by-case basis. This information system went live in October 2017. As a result of numerous changes in the APS system, a charter was written to create the Ohio APS Advisory Council.[11] The council is organized and operated under ODJFS and is used as a platform to advance better APS practices statewide.

Additional changes included in the FY 2016–2017 state budget required ODJFS to provide training on the implementation of the adult protective services statutes and required all protective services caseworkers and their managers to complete the training on procedures to be followed when local officials are handling allegations of abuse. The training has been fully developed and implemented.

House Bill 49, the FY 2018–2019 state budget, increased APS funding by $100,000 in each fiscal year. This change provided much needed services to counties as they worked to ensure the safety and security of Ohio's aging population. Included in the enacted version of the budget were provisions that codified the Attorney General's Elder Abuse Commission, allowing the commission to continue through changes in administration. Requirements were added for ODJFS to create, and make available, educational materials for individuals within the department and mandated reporters. In total, the key provisions of the bill included:

- Notifies an adult's closest relative of a report in the event of a court order.
- Codifies the Elder Abuse Commission.[12]
- Permits county prosecutors to petition the courts for orders involving APS.
- Requires APS to notify law enforcement if they feel an individual may be criminally exploited.
- Modifies information being released to the state APS information technology (IT) system.
- Exploitation definition change, from "caregiver" to "person."

## Social Services Block Grant

The Social Services Block Grant (SSBG) or Title XX, named for the governing section of the Social Security Act, is a source of federal funding that provides states some flexibility in meeting the social service needs of its population and is aimed at five goals:

- To prevent, reduce, or eliminate dependence on public assistance.

- To maintain self-sufficiency once it is achieved.
- To prevent or remedy the neglect, abuse, or exploitation of children and vulnerable adults.
- To reduce inappropriate institutionalization by providing community-based care.
- To provide quality institutional care when other forms of care are insufficient.

The majority of the Ohio's SSBG award, 72.5 percent or $42 million per year, flows through ODJFS. The departments of Developmental Disabilities and Mental Health and Addiction Services receive 14.57 percent and 12.93 percent, respectively. SSBG funds flow through ODJFS to local JFS agencies and are utilized for a variety of programs including child and adult protective services.

## On the Horizon

### *Unemployment Compensation*

While solvency of the state's unemployment compensation (UC) system has been a major focus of both the 131st and 132nd General Assembly, interested parties have yet to reach an agreement on how to bring the program into balance. Over the course of the Great Recession, the state relied heavily on loans from the federal government to sustain the unemployment system. Ohio was not alone in this, but Ohio remained in debt to the federal government until 2016.[13] If the state were to face another economic downturn, the UC system would likely face the same issues because the structural underfunding of the state's system has not been addressed.

### *Multi-System Youth*

The Joint Legislative Committee on Multi-System Youth (MSY) was created in the FY 2016–2017 state budget bill. The Committee was tasked with examining issues facing youth who are in need of services from or are involved with two or more of the following:

- The child welfare system
- The mental health and addiction services system
- The developmental disabilities services system
- The juvenile court system[14]

Children served by two or more of these agencies have complex needs. Addressing these needs is often very costly for families and the agencies that serve these children. The overall goal of the legislative committee was to understand the issues facing these children and their families and how to address them holistically. The Committee made recommendations after seven public hearings. These recommendations were released publicly in June 2016 and include:

- Improving data collection and sharing related to multi-system youth to inform state and local decision-making capabilities.
- Ensuring that youth and families have access to peer support and peer mentor programs with a consistent funding source.
- Establishing a safety net of state-level funding for multi-system youth.
- Ensuring that youth with moderate to severe needs have access to a High Fidelity Wraparound service.
- Modernizing Family and Children First Councils.
- Creating a Children's Congregate Care Study Committee.[15]

While the legislative committee made recommendations, they were not implemented through legislation. These changes were sought during the FY 2018–2019 state budget, but only one major change was made. The budget included an appropriation of $5 million in TANF funding per year for children with complex care needs whose parents or legal guardians are at risk of relinquishing custody solely to obtain access to needed services. State agencies and stakeholders developed a process by which these funds could be expended, but this is only one element of the MSY work. These funds have been restricted to helping families at 200 percent of the federal poverty level and below, which has created a challenge in reaching the families above this threshold who need assistance.

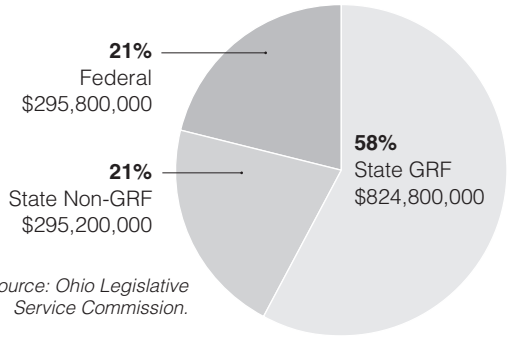
# Ohio Department of Mental Health and Addiction Services

The Ohio Department of Mental Health and Addiction Services (MHAS) is the state agency charged with management of the mental health system and alcohol, drug, and gambling addiction services, as well as prevention efforts in Ohio. The state also maintains and operates six psychiatric hospitals. Mental health and addiction services are delivered by a network of community providers often connected with a local alcohol, drug addiction, and mental health (ADAMH) services board. MHAS oversees the network of 51 ADAMH boards in the state. Federal and state dollars in the MHAS budget flow to the ADAMH boards to provide services in communities, in addition to local dollars that are often provided in each community through levies or other general operating funds.

Much has changed for mental health and addiction services during the years of the Kasich Administration. At the close of the Strickland Administration, state funding for community treatment and related services drastically declined in part as a result of the Great Recession, but the funding picture has shifted in recent years. In the FY 2012–2013 budget, the responsibility of making the nonfederal share of Medicaid payments for covered mental health services was "elevated" from the local mental health boards to the state Department of Job and Family Services (now made by the since-created Ohio Department of Medicaid). With elevation, the state took over this responsibility completely, freeing up local dollars to fill in gaps and cover services that are not covered by Medicaid (non-Medicaid services). Figure 13-4 shows that more than half of funding in MHAS is derived from state funding.

**Figure 13-4: Source of Funding for MHAS**

**Department of Mental Health and Addiction Services**
SFY 2018-2019 Funding by Source




*Source: Ohio Legislative Service Commission.*

The fact that Medicaid was elevated to the state-level prior to Medicaid expansion in 2014, as explained in Chapter 12, laid the financing groundwork for increasing access to health coverage for people with behavioral health care needs. It is important to acknowledge the impact that access to health coverage has made for people with behavioral health care needs. Prior to Medicaid expansion, uninsured individuals in need of mental health and/or addiction services sought care via their local ADAMH boards, and these services would be funded by the board when non-

Medicaid funding was available. With Medicaid expansion, individuals under 138 percent of the federal poverty level gained access to health coverage, and thus a statewide, uniform payer source for both physical and behavioral health care services was created. This new dynamic meant that ADAMH boards could shift toward paying for services that, by-and-large, are not covered by Medicaid or other forms of insurance but are vital to keeping people as healthy as possible, such as housing and other recovery supports.

## Agency Merger

The FY 2014–2015 biennium began with the merger of the Department of Mental Health (ODMH) and the Department of Alcohol and Drug Addiction Services (ODADAS) into the Ohio Department of Mental Health and Addiction Services (MHAS). The agencies that address mental health and alcohol and drug addiction are also merged at the national level and at most of the local boards in Ohio. Combining these agencies also helped to align fiscal reporting and policy changes that are required of the local boards by the state.

## Continuum of Care

In 2014, the Mid-Biennium Review (MBR) incorporated language requiring local ADAMH boards to provide a full array of services defined as a continuum of care. The services must include at least ambulatory and sub-acute detoxification, non-intensive and intensive outpatient services, medication-assisted treatment, peer mentoring, residential treatment services, recovery housing, and 12-step approaches. The continuum of care includes specific treatment services for all levels of opioid and co-occurring drug addiction. The implementation of the continuum of care requirements and establishment of a waiting list for services began in 2017 after revisions to make the policy more workable for providers and ADAMH boards.

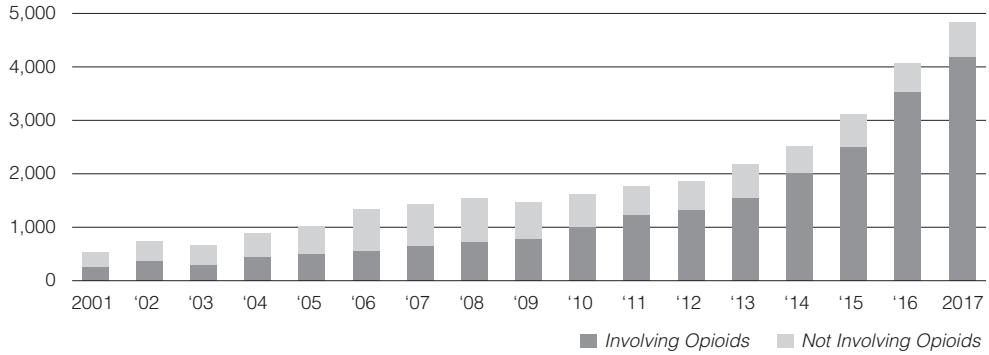
## Opioid Crisis

A major challenge facing the state as a whole, but acutely MHAS and the local system of ADAMH boards is opioid addiction. Opioids are a class of drugs including heroin and powerful pain relievers such as morphine, oxycodone (e.g., OxyContin), hydrocodone (e.g., Vicodin), and codeine. Deaths in Ohio from unintentional overdoses have continued to increase each year since 2010. This corresponds to the implementation of HB 93 (129th General Assembly) in 2011, which shut down pill mills by tightening the regulation of prescribing pain medications. Deaths involving all opioids continued to grow in that year, however, indicating an apparent shift from prescription opioids to heroin. In recent years, there has been an increased number of deaths associated with the powerful painkiller fentanyl. Fentanyl is estimated to be 30 to 50 times more potent than heroin and 50 to 100 times more potent than morphine.[16] Overdoses involving fentanyl and related drugs increased from 84 in 2013 to 2,357 in 2016.[17]

The Kasich Administration and General Assembly implemented a series of initiatives and legislation to address the ongoing opiate crisis. Early in his tenure, the governor launched the Governor's Cabinet Opiate Action Team (GCOAT), which works across cabinet-level agencies and with stakeholders to fight opiate abuse. The legislature has passed numerous pieces of legislation seeking to tackle different aspects that contribute to opiate abuse, including prescribing practices, access to naloxone (an

opiate antidote), abuse deterrent formulas of prescription opiates, drug abuse education in schools, and increasing access to treatment, to name just a few.[18] Figure 13-5 shows the increasing rates of overdose deaths that Ohio has been experiencing since the early 2000s.

**Figure 13-5: Unintentional Drug Overdose Deaths-Ohio**




*Source: Ohio Department of Health.*

## Trauma-Informed Care

The state developed an initiative to expand the use of trauma-informed care across Ohio. Trauma-informed care acknowledges the impact that trauma has on people's lives and how care may need to be tailored as a result. Through six regional collaboratives the state launched this initiative, which has expanded the opportunity for Ohioans to receive trauma-informed care.[19] This effort is done in collaboration with the Ohio Department of Developmental Disabilities.

## Recovery Housing and Supports

For the first time in its history, the state dedicated a line item in the MHAS budget to recovery housing in the FY 2016–2017 budget. This was followed by an appropriation of $5 million in the state's capital budget, which is on a different cycle than the operating budget.[20] Funding for recovery housing continued at $1 million in FY 2018 and $2.5 million in FY 2019. Recovery housing is described "as a safe and healthy living environment that promotes abstinence from alcohol and other drugs and enhances participation and retention in traditional clinical treatment."[21] This funding was intended to support access to safe, stable housing in communities. Funding has been allocated to recovery housing providers across the state.[22]

## MHAS-DRC Partnership

In order to meet the needs of inmates and to reduce recidivism, the Department of Rehabilitation and Correction's (DRC) Bureau of Recovery Services was transferred to MHAS in the FY 2016–2017 budget to provide more addiction treatment services within Ohio's prison system. Before release, eligible inmates enroll in Medicaid and are connected to community behavioral health treatment providers. Medicaid will pay for medication-assisted treatment (MAT) and counseling to help reduce recidivism.

## Court Services

Ohio's drug courts are specialized docket programs certified by the state Supreme Court. They operate within existing municipal, common pleas, juvenile, and family courts. Drug courts began when judges realized that repeat drug offenders needed treatment rather than time behind bars to recover and reduce recidivism.[23] With the growing impact that drug use is having on the state, drug courts have seen increased attention and resources directed their way. The state dedicated funding to drug court operations and to the addiction treatment pilot project, which helped drug courts, in certain counties, provide medication-assisted treatment in their programs.

## Behavioral Health Redesign

The Behavioral Health Redesign (Redesign) is made up of a four-step strategic plan by the state that began in 2012.[24] The Redesign is the process of modernizing the publicly funded behavioral health system. The first phase changed responsibility for the Medicaid match reimbursement for behavioral health treatment services from the local ADAMHS boards to the state. The second phase expanded Medicaid in 2014 to provide coverage to approximately 670,000 low-income adults. Since its inception, 500,000 people in the expansion group have received care for mental health needs, and many have also accessed substance use disorder (SUD) treatment services. Ohio began the third phase, modernization, in January 2018. The key components include:

- Aligning billing codes with the National Correct Coding Initiative
- Re-pricing Medicaid reimbursement rates for treatment services
- Updating the menu of Medicaid-covered services

The final phase, integration, began July 1, 2018. The final phase of Redesign is the integration of behavioral and physical health care. All providers that bill Medicaid must contract with at least one of Ohio's five Medicaid managed care plans for payment of services.

This is a major shift for the behavioral health system. A significant amount of time and discussion has gone into the changes required in order to carve-in behavioral health services. The state set up a Website to share information, as the redesign is developed and implemented. See Chapter 12 for more information on this topic.

## On the Horizon

### *Addressing the Impact of Mental Illness and Substance Use Disorders*

While progress has been made, Ohio is nowhere near out of the woods as it relates to the opioid crisis. And the state is not just dealing with opioids. While opioids have drawn the most attention, issues related to both mental illness and substance use disorders are impacting the state. Ohio has seen increased rates of suicide and overdose deaths involving drugs other than opioids, and alcohol. Since 1999, Ohio's suicide rate has increased 36 percent, according to the U.S. Centers for Disease Control and Prevention. The most recent data on overdose deaths in Ohio shows that deaths involving drugs have increased in nearly every category, except for those resulting from prescription opioids, which have been on the decline since Ohio introduced additional regulations, effectively shutting pill mills and limiting prescription quantities, among other policy changes. Data from the Ohio Department of Health shows that deaths involving alcohol, for example, increased by 42 percent from 2015 to 2016.

### *Substance Use Prevention*

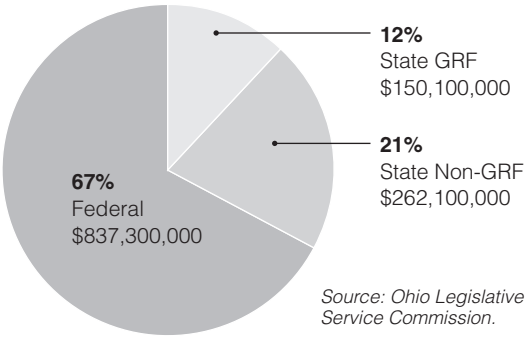
As the opiate crisis has taken an unrelenting toll on the state, the Kasich Administration and legislators began focusing on going upstream and preventing addiction before it started. Governor Kasich launched Start Talking! to encourage parents and teachers to talk with children about the dangers of drugs, both legal and illegal. The Ohio Attorney General and the General Assembly formed a joint task force to examine drug prevention education in the state and learn from other places across the county. Efforts to increase prevention activities continued into the FY 2018–2019 state budget, but there remains a lack of consistency and comprehensiveness as it relates to the provision of prevention services and activities across the state.

# Ohio Department of Health

The Ohio Department of Health (ODH) is the state's public health agency. ODH works with local health departments (LHDs) in order to address public health needs. In addition to state funds dedicated to ODH, the agency is the recipient of many federal grants to address public health. Figure 13-6 shows that the majority of funding through ODH comes from the federal government.

**Figure 13-6: Source of Funding for ODH**

**Department of Health**
SFY 2018-2019 Funding by Source




*Source: Ohio Legislative Service Commission.*

## Recent Policy Highlights

### *Public Health Accreditation*

Over the course of the Kasich Administration, there has been a drive for ODH and, subsequently, local health departments to be more strategic in their programming and spending. In 2012, HB 487 created the Legislative Committee on Public Health Futures, which was charged with developing recommendations for legislative and fiscal policies related to public health that could be considered for inclusion in the FY 2014–2015 biennial operating budget bill. This committee was re-established in the FY 2016–2017 state budget and tasked with reviewing previous work and making policy and fiscal recommendations to improve public health going forward.

The committee's work was followed by legislative language in HB 59 (the state budget bill for FY 2014–2015) that required local health districts (LHDs) to achieve accreditation through the Public Health Accreditation Board (PHAB). Eventually the state funding and federal pass-through dollars that are directed to LHDs will be tied to applying for accreditation by 2018 and achieving accreditation by 2020. This work was the foundation for a holistic look and plan for population health planning through the State Health Assessment and State Health Improvement Plan. Going into the FY 2018–2019 budget deliberations, 14 out of 118 local health departments were accredited.[25]

### *State Health Assessment and Improvement Plan*

In 2016, the state, by contracting with the Health Policy Institute of Ohio (HPIO), embarked on a state

health assessment (SHA) and state health improvement plan (SHIP). The SHA is "a comprehensive and actionable picture of health and wellbeing in Ohio," and the SHIP is "an actionable plan to improve health and control healthcare costs." Development of the SHA and SHIP has involved a large group of stakeholders meeting on a regular basis, in addition to regional meetings to identify issues impacting different areas of Ohio. In early 2017, the state released its SHIP for 2017–2019 and identified maternal and infant health, mental health and addiction, and chronic disease as the priorities. Each priority area has identified outcome objectives and evidence-based strategies. Each of these priorities fits squarely into much of the work that has been done over the last several years, and the SHIP identifies additional specific strategies to improve health in each of these areas. This plan is the lens through which the administration's health priorities are viewed for the entire FY 2018–2019 budget.

## *Infant Mortality*

Ohio's infant mortality rate is one of the worst in the nation. Over the last several years, Ohio has committed to broad-based efforts and has dedicated resources to addressing the state's high rate of infant mortality, which in 2016 was 7.4 infant deaths per 1,000 live births (a total of 1,024 deaths).[26] Ohio has made progress since the beginning of the Kasich Administration, although small increases in the rates have occurred during this time. Governor Kasich highlighted Ohio's high rate of infant mortality in his first State of the State in 2011 when the rate was 7.9 infant deaths per 1,000 live births.[27] Ohio is still working toward reducing this rate. This rate is significantly worse for African-American babies in Ohio. Infant mortality is defined as the death of a baby before his or her first birthday. Table 13-1 shows the rate of infant mortality, by race and ethnicity, in Ohio from 2014–2016.

**Table 13-1: Ohio Infant Mortality Rate (2014–2016), Number of Deaths per 1,000 Live Births**

| | 2014 | 2015 | 2016 |
|---|---|---|---|
| All Races | 6.8 | 7.2 | 7.4 |
| Race | | | |
| White | 5.3 | 5.5 | 5.8 |
| African-American | 14.3 | 15.1 | 15.2 |
| Asian/Pacific Islander | 3.6* | 3.7* | 3.8* |
| Ethnicity | | | |
| Hispanic | 6.2 | 6.0 | 7.3 |
| Non-Hispanic** | 6.9 | 7.3 | 7.4 |

*Source: Ohio Department of Health, Bureau of Vital Statistics.*

** Rates based on fewer than 20 infant deaths should be interpreted with caution.*

*** Non-Hispanic births and deaths include those of unknown ethnicity.*

Over the last several years, both the administration and the General Assembly have focused intensely on addressing this dire situation, making infant mortality reduction a priority. The Ohio Collaborative to Prevent Infant Mortality formed in 2010 and is housed at ODH. The Collaborative is the successor to the Ohio Infant Mortality Task Force, which released a report in 2009 outlining the problem of infant mortality and ways to address it. The Collaborative is led by an executive/steering committee, and the full Collaborative meets quarterly.[28]

SB 276 (130th General Assembly) created the 15-member Commission on Infant Mortality with the task of completing an inventory of programs provided by the state that address infant mortality. In March 2016, the Commission on Infant Mortality released its report after months of hearings and information-gathering about how to address infant mortality in Ohio. Most of the report's recommendations were incorporated into SB 332 (131st General Assembly).

In the FY 2016–2017 state budget, there were additional initiatives aimed at reducing infant mortality. The ODH director, in coordination with the Ohio Department of Medicaid (ODM), was tasked with identifying the areas of the state with the highest infant mortality rates, referred to as infant mortality "hot spots." These areas were then targeted for enhanced care management, under Medicaid managed care, of pregnant women and women of child-bearing age to reduce infant mortality. A portion of the tobacco prevention and cessation line item in the ODH budget was targeted to the Moms Quit for Two Grant Program. Maternal smoking is a known risk factor for pre-term or complicated births, which can lead to infant death.

Efforts to reduce infant mortality were continued into the FY 2018–2019 budget. Dedicated state funding in ODH's budget was $6.9 million each fiscal year, a $3 million per year increase. This line item was dedicated "to be used to fund a multipronged population health approach to address infant mortality."[29] Funding within the Ohio Department of Medicaid's budget was also dedicated to reducing infant mortality.

## *Tobacco Cessation*

While the smoking rate nationwide continues to decline, Ohio's is frustratingly stagnant. Nationally, the adult smoking rate declined from approximately 16 percent in 2016 to about 14 percent in 2017. Ohio's remained unchanged at 22.5 percent.[30] In Ohio's Medicaid program, 23 percent of adults (19 and over) smoke.[31] Tobacco use is an enormous contributor to acute and chronic disease. The Kasich Administration made investments in tobacco cessation throughout the course of its tenure. In the FY 2014-2015 budget, a dedicated line item was created for Tobacco Prevention and Cessation. The addition of dedicated funding to address the issue of tobacco use showed recognition of the impact tobacco use has on public health. This was a long-awaited return of dedicated funding.[32] While the 1998 Tobacco Master Settlement had made a major long-term commitment for this purpose, it was undone 10 years later when the revenues were securitized for other purposes. See Chapter 11. This line item was funded at $1.05 million per year in both FY 2014 and FY 2015 (actual spending for 2014 was $705,543 and $ 1,335,036 in 2015). In the very next budget, this line item was increased to $5.05 million in FY 2016 (actual spending in 2016 was $3.4 million) and $7.05 million in FY 2017, showing a greater commitment to prevention, cessation of tobacco use and enforcement of laws related to tobacco use.

Also, in the FY 2016–2017 budget, the per-pack cigarette tax was raised by $0.35, from $1.25 per package to the new $1.60 per package.[33] While the revenue from this increase is not entirely directed to tobacco use reduction efforts, increasing the tax can have an impact on consumption.[34]

The FY 2018–2019 budget dedicated $12.5 million per year to tobacco prevention, cessation, and enforcement. These funds support a tobacco Quit Line, counseling services and cessation supplements, community grants, and surveillance and evaluation services. The funds are targeted to the most at-risk populations, youth, minority and regional populations, pregnant women, and others disproportionately impacted by tobacco use.[35]

## *Syringe Exchange Programs*

As the opiate crisis continues to impact Ohio, on many levels, the FY 2016–2017 budget bill ushered in a change to the state's statute on syringe exchange programs. Up until 2015, a city health district, under home rule authority granted by Ohio's Constitution, could declare a public health emergency

related to bloodborne pathogens in order to create a syringe exchange program.

The budget bill changed Ohio law to allow local boards of health to establish a bloodborne infectious disease prevention program to reduce the transmission of infectious diseases without declaring a public health emergency. A local board of health must consult with entities and stakeholders in the community, and local zoning laws that apply to the establishment of program sites. The provision in the state budget also required that the program identify health and supportive services providers and substance abuse treatment programs, develop and enter into referral agreements with those providers and programs, and refer program participants to them. The law change provided legal protection for program staff or volunteers who distribute hypodermic needles as part of the program as long as they are distributing needles to someone who is within 1,000 feet of a program facility and who has documentation identifying the individual as a program participant. Program participants are also provided this protection within 1,000 feet of where a program is operating as a mobile unit.

## On the Horizon

### *Opiate Crisis*

The opiate crisis continues to take a drastic toll on Ohioans. Efforts to address this crisis span across state agencies. The data related to overdose deaths are compiled and released by ODH. One trend to watch is whether the data can be organized in different ways, perhaps by so-called "hot spots," in order to track overdoses on a more local level. This data is also released annually, and having closer to real-time data may allow prevention, treatment, and enforcement efforts to be more targeted.

### *Infant Mortality and Maternal Mortality and Morbidity*

For several years, there has been a push to have more timely data related to infant mortality. This data could allow more immediate and strategic decisions when addressing the causes of infant mortality, similar to how data about drug overdoses can inform a strategy to reduce the burden of illegal drugs. ODH has moved toward releasing more information, and on a quicker timeline, as it relates to infant mortality. Recognizing the importance of data in making decisions, SB 332 (131st General Assembly) continues this push of ODH, in terms of coordinated, timely data. It will be important to continue to watch as data related to infant mortality are gathered and reported over the next few years.

One effective upstream strategy that can result in safer birth spacing, thus decreasing the likelihood of pre-term births, is the use of long-acting reversible contraception (LARC). LARC, which includes implants and intrauterine devices (IUDs), is the most effective form of birth control. The use of LARC is becoming more widespread as a result of successful studies in St. Louis and Colorado that showed that, when given an option of any form of birth control and regardless of cost, women preferred LARC, and that LARC reduced unplanned pregnancies. Several states, including Ohio, are discussing and adopting Medicaid policies that make access to LARC easier in both outpatient and inpatient settings. Access to LARC is a component of the State Health Improvement Plan to address maternal and infant health.

In the United States, women are dying from complications related to pregnancy and childbirth at a higher rate than other industrialized nations, and the rate is increasing. Approximately 700 women die each year in the U.S., and thousands more experience complications.[36] Non-Hispanic African-American women are dying at a rate three to four times that of non-Hispanic white women.[37] The

most recent data available shows that between 2008 and 2014, there were 408 pregnancy-associated deaths in Ohio.[38] Severe maternal morbidity is defined as "a physical or psychological condition that either results from, or is aggravated by, pregnancy and has an adverse effect on a woman's health."[39] There has been an increase in severe maternal morbidity (SMM) of 75 percent, nationally, over the last decade.[40] In 2014, more than 50,000 women were affected by SMM.[41] In Ohio, the SMM rate per 10,000 deliveries in 2013 was 143.[42] There is a similar racial disparity for SMM, with the incidence in Ohio for Non-Hispanic African-American women at 210 per 10,000 deliveries and 215 per 10,000 deliveries for Hispanic women. Rates for African-American and Hispanic women are around 50 percent higher than the overall rate and around 70 percent higher than the rate for non-Hispanic white women. These are worrisome trends that will need to be addressed by public policy decisions in the future, similar to how there has been a focus on infant mortality.

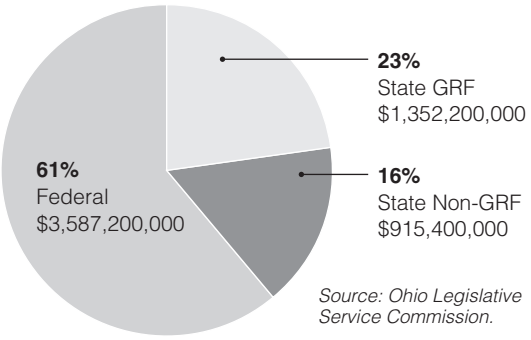
### *Integrated HIV Prevention and Care Plan for 2017–2021*

The Integrated HIV Prevention and Care Plan was developed in 2016 to look holistically at HIV care and prevention in the state and develop goals and strategies to improve both. The plan was required by the federal agencies that grant dollars for HIV care (the Health Resources and Services Administration, HRSA) and prevention (the Centers for Disease Control and Prevention, CDC), so the state took the opportunity to bring a diverse group of stakeholders together to develop a comprehensive plan to improve HIV prevention and access to care. This plan comes at a time when the state is facing additional challenges related to the opioid crisis. The Ohio Department of Health data from 2017 shows that state HIV rates are increasing (in addition to increases in Hepatitis C rates), at least partially driven by the opioid crisis. In 2017, HIV infections associated with injection drug use (IDU) were up for the third straight year in Ohio, and now represent 12 percent of new HIV infections diagnosed each year — compared to 5 percent of new infections just a few years ago.[43] New Hepatitis C infections in Ohio have more than doubled since 2015. Given this startling information and the collaboration happening between HIV treatment and prevention, there may be opportunities ahead to incorporate pieces of the five-year plan to improve HIV and Hepatitis prevention and care moving forward.

## Ohio Department of Developmental Disabilities

**Figure 13-7: Source of Funding for DODD**

**Department of Developmental Disabilities**
SFY 2018-2019 Funding by Source




*Source: Ohio Legislative Service Commission.*

The Ohio Department of Developmental Disabilities (DODD) seeks to provide comprehensive statewide programs and services including public education, prevention, diagnosis, treatment, training, and care for individuals with developmental disabilities and their families, wherever they reside in the state. The department offers various programs in partnership with other state agencies and county boards of developmental disabilities to reach these service goals.[44] Figure 13-7 shows that the majority of funding through DODD comes from the federal government.

Many of the department's goals are met through four developmental disability (DD) waiver programs that serve individuals with an array of needs. Those waivers are Individual Options (IO) Waivers, the SELF (Self-Empowered Life Funding) Waiver, Transition (TDD) Waiver, and the Level One (LV1) Waiver. The Center for Community Solutions examined this system extensively in its report, *Ohio at a Crossroads*. Table 13-2 displays waiver enrollment starting in 2011.

**Table 13-2: DODD Waiver Enrollment, 2011–2017**

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|---|---|
| IO | 16,474 | 16,886 | 17,347 | 17,592 | 17,943 | 19,145 | 21,312 |
| LV1 | 9,942 | 11,191 | 12,420 | 12,998 | 13,918 | 14,374 | 14,584 |
| SELF | 0 | 0 | 129 | 224 | 381 | 579 | 1,104 |
| TDD | 2,754 | 3,081 | 3,026 | 2,960 | 2,878 | 2,004 | 631 |
| **Total** | **29,170** | **31,158** | **32,922** | **33,774** | **35,120** | **36,102** | **37,631** |

*Source: Ohio Department of Developmental Disabilities.*

Note: The TDD waiver was administered by Ohio Medicaid before FY 2013.

Table 13-2 shows that since 2011, total waiver average monthly enrollment has increased from 29,170 to 37,250, marking an increased trend in services offered throughout the counties and the state from the time Governor Kasich took office.

## Changes During the Kasich Administration

Since the end of the 2015 fiscal year, DODD has been focused on providing employment for individuals with disabilities, expanding waiver accessibility for individuals, and increasing opportunities for individuals with disabilities in their community. There have been major changes made in the developmental disabilities system.

### *Waiting List Changes*

In recent years, the department has been examining the long-standing waiting list of individuals who are waiting to receive the limited amount of waivers that are available in the state. The Fix the List Initiative has proposed new rules designed to address problems with the Medicaid Waiver Home and Community Based Services (HCBS) Waiting List. These changes will likely lead to a shorter list, which more accurately reflects those currently in need of services. Critics argue the change may create challenges for families seeking to plan for the future and may remove some individuals from the list unnecessarily or without the supports they need.[45] Through the use of surveys and robust stakeholder engagement, the department is evaluating the severity of needs for individuals waiting for a waiver slot. In addition to waiver services, survey data will target services in addition to, or other than a waiver, that an individual may utilize right away.

### *Move Away from Sheltered Employment*

The state has continued to move individuals away from sheltered employment with renewed investment in the Employment First program. This partnership between DODD and Opportunities for Ohioans with Disabilities seeks to connect more individuals with disabilities to employment through significant case management and employment services. A focus of the partnership has been transitioning individuals out of sheltered workshops and into community employment.

Recent Center for Medicaid and Medicare Services rules[46] prohibit county boards from providing direct services and emphasize community options for both employment and housing. These rules have increased pressure on the state to move individuals out of county-run sheltered workshops and into integrated employment.

Adding to the need for policy change in Ohio was a 2016 lawsuit[47] that ruled against a local board-run employment facility. It was determined that U.S. Department of Labor standards were not being met. This case shed further light on the need for many similarly run local board-sheltered workshops to move out of the business of providing isolated employment at sub-minimum wage to individuals with disabilities.

With these recent policy highlights, work will likely continue in the next state budget to transition individuals with disabilities into integrated employment.

### *Increase in State Dollars*

With the passing of the FY 2016–2017 budget, DODD received its largest increase in new state dollars in the history of the department. This allowed for nearly 3,000 new waivers to be added to transition individuals into the community-based setting of their choosing and provide for an increase in wages for direct support staff. Additional funding has allowed DODD to actively try to "buy back" beds in large intermediate care facilities (ICFs) so they do not continue to be used.

In the FY 2018–2019 state budget, the state continued in these efforts and further increased funding.[48] This increase will account for additional home and community-based waivers for individuals who desire to live and work in the community, in addition to an increase in wages for direct-care staff who play an integral part in making transitions into the community a reality.

Funding through the capital budget[49] has provided additional state investments to be made in housing and rental assistance. The federal government does not allow waivers to cover housing;[50] thus capital funds are used to increase the availability of community housing for individuals wishing to live in the community. This is done through home purchasing, repairs, and remodeling, as well as assistance with rent.

These funds have started the state towards the slow-moving process of transitioning individuals to community-based settings.

## On the Horizon

The department will move ahead with the completed and in-progress changes. Transitioning individuals into community-based settings both for employment and residential living will likely continue to be on the radar of both the General Assembly and Governor Mike DeWine.

### *Transitioning Individuals into Community-based Settings*

After the passage of major legislative changes in the Kasich Administration, a lawsuit was filed against the state by Disability Rights Ohio. The suit was initiated on behalf of individuals with developmental disabilities who are currently in institutions or are at risk of institutionalization because of the current

waiver waiting lists and large institutional-based settings known as Intermediate Care Facilities (ICF).

A significant amount of legislative progress has been made, but this progress has yet to be fully realized by the addition of waivers and supports. In the meantime, the state will continue with its efforts to increase funding for waivers with priorities for this at-risk population as the legislature and the governor try to come together and strike the proper balance between individuals, families, and advocacy groups.

Legislative changes were also made to encourage intermediate care facilities to downsize and more supports to be provided for individuals to leave these types of settings. Language was included to provide individuals with information on options and supports they are eligible for in the community.

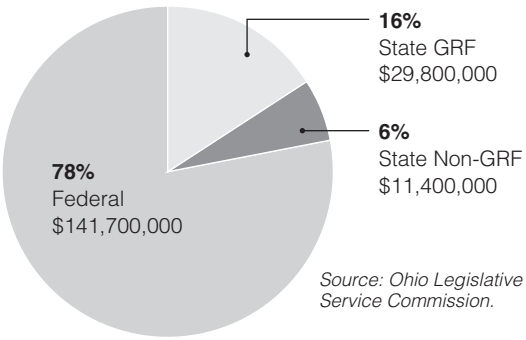
### *Community Employment*

Community employment remained a goal for the Kasich Administration, and with the additional federal rules, expanding the Employment First partnership with Opportunities for Ohioans with Disabilities is something that Governor DeWine may seek to do in the upcoming state budget. Additional supports and possible expansion of the program would assist in providing a significant change in the employment landscape in Ohio. With many of the individuals served by the Employment First Partnership waiting for job placements, an increased relationship with businesses and communities would allow more individuals a path to integrate into the community.

# Ohio Department of Aging

**Figure 13-8: Source of Funding for ODA**

**Department of Aging**
SFY 2018-2019 Funding by Source




*Source: Ohio Legislative Service Commission.*

The Ohio Department of Aging (ODA) provides funding for home and community-based services that help aging Ohioans remain in their own homes and communities as well as supports individuals in long-term care. ODA strives to change the way many Ohioans view aging by promoting positive attitudes toward aging and older Ohioans. The department accomplishes this in multiple ways through outreach, volunteer programs, and other community and statewide efforts. Figure 13-8 shows that, by far, the majority of funding for ODA comes from the federal government.

## Recent Policy Highlights

As Ohio examines the challenges that come with an increasing aging population, Governor Kasich and the General Assembly looked at ways to improve state policy for older Ohioans. The Scripps Gerontology Center at Miami University projects that by 2030, 3,371,907 individuals age 60 and over will reside in Ohio, totaling nearly 28.7 percent of the entire state population.[51] With a growing population that is living longer, community-based programming is important as the state moves forward with other future efforts. These programs are a reminder that the state will soon have greater demands

on its budget, as the aging population expands and policies shift to accommodate this large group of Ohioans.

### *Community Outreach*

Falls are the number one cause of injury that lead to emergency room visits for the elderly in Ohio.[52] The Department of Aging has worked with other state entities, the business community, and state agencies to bring about new initiatives that draw awareness to this issue and help improve stability and balance in Ohio's aging population. The agency kicked off 2016 with the Steady U initiative and fall prevention education campaign.

The Steady U initiative had strong winter and fall social media campaigns, coupled with an extremely successful "10 Million Steps to Reduce Falls" initiative that reached more than 3,500 Ohioans walking more than 17 million steps.[53]

The "Aging is Everybody's Business" campaign is a continuation of work the Department of Aging, other state agencies, and local community partners have done "to fundamentally change the way that society thinks about aging."[54]

These initiatives have focused on social media campaigns and the Department of Aging providing more of a visible role in area communities. They have been implemented as part of an effort to expand resources and awareness to Ohio's aging population.

### *Ombudsman*

The Ombudsman program provides advocacy on behalf of residents in home and community-based services and in long-term care such as nursing facilities, residential facilities, and assisted living. Suspected cases of abuse, neglect, or exploitation that occur in these settings are handled through the Ombudsman. The Ombudsman provides these services regardless of the age of the resident. The State Ombudsman coordinates with 12 regional Ombudsman agencies in Ohio. In the FY 2018–2019 biennium, the Ombudsman program was funded at $1.5 million each year.[55]

## On the Horizon

As large amounts of the budget for the Department of Aging were transitioned to the Department of Medicaid in past budget cycles, the budget requests of the agency have been smaller. However, as chronic disease becomes a growing issue, the state seeks to address more in the coming budget, and we can expect to see more done at the Department of Aging to combat this growing problem.

In 1965, Congress passed the Older Americans Act (OAA) to help older Americans stay safe and healthy in their homes and communities.[56] Funding through the OAA supports services such as meal delivery, job training, senior centers, support for caregivers, transportation, and public awareness programs. In the FY 2018–2019 biennium, Ohio received about $58.7 million each year and matched it with about $8.1 million in state funds.

Over the past several years, federal funding for OAA programs have been subject to budget reductions, reaching nearly 5 percent in cuts.[57] Funding for these programs have also remained stagnant

with inflation, resulting in fewer funds for a growing aging population. Today, the federal government invests $29.75 for every senior, a drastic decrease from the $53.73, as adjusted for inflation that OAA provided in 1993.[58] State government will need to reexamine in this state budget and future budgets the amount of funding it invests in the growing population of aging Ohioans.

### *Transitioning Role of the Agency*

The role of the Department of Aging has changed as a result of the transfer of large portions of its budget to the Ohio Department of Medicaid. The Ohio Department of Health also garnered a small portion of Aging's budget involving nursing homes.

These changes led the department to have more of an outreach/public safety role with little legislation directly impacting the agency itself. This may seem surprising as the state sees greater movement towards addressing the needs of aging adults through grant funding, local dollars, and other state agencies.

### *Chronic Disease*

As the state moves to better align its health goals under a unified state health improvement plan, the impact of chronic disease has risen as a universal issue across many agencies and demographics in Ohio.

Chronic disease impacts a large portion of the growing aging population in the state. "According to the Centers for Disease Control and Prevention, nationally about 80 percent of people age 65 and over struggle with at least one chronic disease."[59] Understanding what these issues are and how they can be prevented can save the state future dollars in emergency room visits, allow for individuals to stay in the community longer, and improve overall quality of life for many Ohioans.

The state's commitment to the state health improvement plan and its role in addressing this issue in all populations will allow for greater emphasis on expanding programs that address chronic disease in the aging population in the upcoming budget and state policy initiatives.

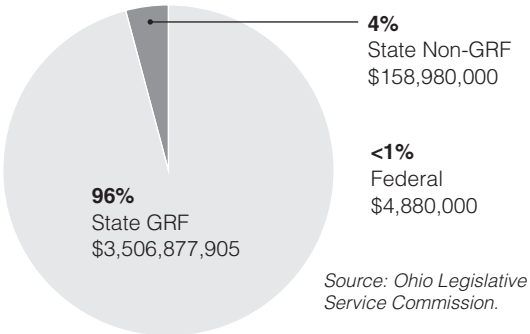
## Ohio Department of Rehabilitation and Correction

The Ohio Department of Rehabilitation and Correction (ODRC) is the agency responsible for all adult felony sanctioning ranging from state prison facilities to community control sanctions.[60] All adults in Ohio who are convicted of felonies with a statutory minimum sentence of at least six months come through ODRC, although this does not necessarily mean they will be in a prison setting. This sentence can also include supervision in the community through probation or other community corrections alternatives.[61] ODRC has 28 institutions; three of these institutions are operated by private companies under contract with the state.[62] The Kasich Administration sought ways to connect the work of ODRC through partnership with other agencies. An example of this is the partnership between ODRC and MHAS to provide substance use disorder treatment to incarcerated individuals.

Figure 13-9 shows nearly the entire budget of ODRC comes from state sources.

**Figure 13-9: Source of Funding for ODRC**

**Department of Rehabilitation and Correction**
SFY 2018-2019 Funding by Source



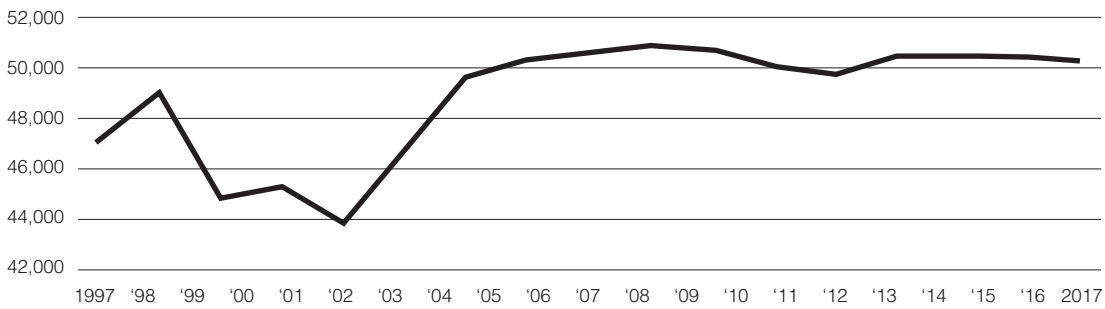

*Source: Ohio Legislative Service Commission.*

## *Funding*

ODRC is primarily funded through state sources, meaning that major shifts in policy and/or funding make an impact on the state's bottom line. In the FY 2018–2019 budget cycle, 96 percent of the department's budget was comprised of state GRF, while federal dollars were expected to cover just 3 percent.[63]

Throughout the course of the Kasich Administration, a trend was evident in the Governor's policies, as well as from much of the legislature, to reduce the prison population through sentencing reform. Driven in part by the Great Recession beginning in 2007, and the fact that ODRC's budget is primarily composed of state funding, policymakers sought ways to reduce the state's share of funding for prisons. This trend was seen across the country. Ohio leaders looked at what strategies they could employ to safely reduce the prison population.[64] This review led many Ohio legislators to look at the large increase in state spending, coinciding with an increasing prison population in recent decades. Figure 13-10 shows that the prison population increased and then essentially has stagnated for several years.

**Figure 13-10: Ohio Prison Population 1997–2017**




*Source: Ohio Department of Rehabilitation and Correction.*

Ohio's prison population reached its peak of 51,273 in November, 2008.[65] Despite efforts to safely divert people from prison settings, ODRC saw near record numbers of people coming into the prison system during the Kasich Administration, due in part to the opioid crisis covered earlier in this chapter.

In 2011, the 129th General Assembly passed HB 86, the "Justice Reinvestment Act," which averted prison growth by 2,900 people by encouraging judges to place first-time offenders of felony levels four and five[66] on probation.[67] As of early 2018, Ohio had its lowest rate of entry into state prisons in 27 years.[68] Governor John Kasich and General Assemblies serving during his terms in office have worked to dismantle legislation, like SB 199 (115th G.A.), that created mandatory longer sentence lengths for aggravated and repeat offenders.[69] The state mid-biennium budget review in the 130th

General Assembly, HB 483, incorporated a provision that created the Criminal Justice Recodification Committee. The committee was tasked with reviewing the expanded criminal code in Ohio, targeting ways the state can better "prosecute, sentence, and rehabilitate criminal offenders in this state."[70]

### *Partnership with Mental Health and Addiction Services*

In order to meet the needs of inmates and to reduce recidivism, the Department of Rehabilitation and Correction's Bureau of Recovery Services was transferred to the Ohio Department of Mental Health and Addiction Services (MHAS) in the FY 2016–2017 budget to provide more addiction treatment services within Ohio's prison system. Before release, inmates enroll in Medicaid, if they are eligible, and are connected to community behavioral health treatment providers. Medicaid will pay for medication-assisted treatment (MAT) and counseling to help reduce recidivism.

### *Medicaid Pre-Release Enrollment Program*

Following Ohio's adoption of Medicaid expansion in 2014, the Ohio Department of Medicaid (ODM) and the Ohio Department of Rehabilitation and Correction, began to develop plans for Ohio's Medicaid Pre-Release Enrollment Program (MPRE), with the goal of connecting incarcerated individuals with Medicaid managed care coverage upon release. ODRC piloted the MPRE program in the Ohio Reformatory for Women in Marysville in October 2014, with the first participants enrolling the following month. Over the next two years, MPRE rolled out in all 28 ODRC facilities throughout the state, becoming fully operational in all facilities in March 2017.

Each ODRC facility begins a process of consultation with incarcerated individuals 120 days prior to an inmate's release. During enrollment, ODRC conducts a screening for care management, during which some program participants are identified as "critical risk," or having a serious need for ongoing health care services to manage chronic conditions. Critical-risk participants engage in an ODM-mandated videoconference with their managed care organizations (MCOs) prior to release, and MCOs report to ODM monthly and quarterly regarding their follow up with these individuals.

In the fall of 2017, ODM's Office of Health Innovation and Quality conducted an initial evaluation of the MPRE program:[71]

Key findings of the evaluation included the following:

- MPRE retention rate is comparable to other Medicaid populations.
- MPRE included a higher percentage of consumers with mental health and substance use disorder diagnoses as compared to the Group VIII (Medicaid expansion) population.
- MPRE enrollees accounted for a higher percentage of substance-use-disorder- and mental-health-related inpatient-admitting diagnoses as compared to other Medicaid populations.
- Consumers flagged with a critical-risk indicator (CRI) demonstrated an inpatient psych-utilization rate four times higher and other service-utilization rate twice as high in comparison with non-CRI consumers. CRIs indicate an infectious disease (HIV+ or Hepatitis C) or at least two of the following: a serious mental illness, engaged in recovery services for addiction, or have a chronic disease.

### *Community Transition Program*

An estimated 80 percent of offenders in Ohio's prison have documented histories of drug and alcohol

addiction.[72] Beginning July 1, 2016, the Ohio Department of Rehabilitation and Correction (ODRC) and the Ohio Department of Mental Health and Addiction Services (MHAS) began contracting with CareSource, one of Ohio's five MCOs, to provide the Community Transition Program (CTP). This program connects returning individuals with substance use disorders to treatment and recovery support services. Participants in this voluntary program have support accessing continued treatment, including Medication Assisted Treatment (MAT), housing assistance, vocational supports, life skills, transportation, and other supportive services.

Funded through the biennial budget, CTP financing is secured through June 2019. Within its first 18 months, the program enrolled over 3,000 returning citizens and expects to serve over 3,000 participants each year moving forward.

## Summary

Health and human services covers a broad range of issues, making it a challenge to sum up changes in these areas begun during the Kasich Administration. There were major transformations in the developmental disabilities and behavioral health systems as it relates to how people receive services. Child welfare and the substance use disorder treatment system are overwhelmed by the effects of the opioid crisis, and these will continue to be a challenge for Governor DeWine and the 133rd General Assembly. Funding available through underspending in the TANF program could be a major discussion point for the FY 2020–2021 budget and beyond. The Kasich Administration proposed lofty plans for health and human services and made significant progress on many of its proposals. The way agencies worked through and with the Office of Health Transformation was a major shift, but it certainly promoted cross-agency collaboration in a way that had not been done before.

## *Endnotes*

1 The chapter author would like to thank Brie Lusheck, Associate, Public Policy and External Affairs, The Center for Community Solutions, and Rose Frech, Consultant to The Center for Community Solutions, for their important contributions to Chapter 13, especially as it relates to descriptions of programs in the Ohio Departments of Job and Family Services, Aging, and Developmental Disabilities. The chapter author would also like to thank Loren Anthes, who provided much of the information about the connections between ODRC and Medicaid in this chapter.

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CHAPTER 14:

# Education Funding and Policy

> “Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”

*The Northwest Ordinance of 1787*

From its earliest days to the present, education would take center stage as a public policy priority in Ohio. The earliest reference to public education by our national government appeared in the Public Land Ordinance of 1785. In this legislation, the Congress of the Confederation stipulated that revenue from the sale of a portion of each township in the newly created Northwest Territory would go to fund public education. Specifically, the ordinance dedicated 5 of the 36 lots in each township to be divided for governmental use with lot number 16 reserved solely for public education purposes. This legislation would provide the foundations of American land policy until the enactment of the Homestead Act in 1862.

If the Public Land Ordinance of 1785 provided a vehicle for selling and settling the land in the Northwest Territory, the Northwest Ordinance of 1787 addressed the political organization and needs of the new territory that would eventually become the states of Ohio, Indiana, Illinois, Michigan, Wisconsin, and Minnesota. It set the basis for Ohio statehood 16 years later and indeed for all states that subsequently followed it into the Union. This landmark legislation was also significant for its emphasis on the importance of public education, in addition to outlawing slavery and involuntary servitude in the region.[1] In 1851, the Ohio Constitution formally obligated the state to provide an education to each of its citizens.

More than 230 years after enactment of the Public Land Ordinance and the Northwest Ordinance, Ohio’s public education system consists of 610 public school districts, 49 joint vocational school districts, and 370 public community schools enrolling approximately 1.7 million students in grades kindergarten through 12. The system also includes 52 educational service centers and 700 state-chartered nonpublic schools as well as several early learning programs and other regional educational providers. The governing board for Ohio’s complex primary and secondary education system is a 19-member State Board of Education with 11 publicly elected members and eight others appointed by the governor. The appointed members were added during the administration of Governor George Voinovich in order to exert a measure of executive influence into the independent state board.

The State Board of Education appoints a Superintendent of Public Instruction, who serves as secretary of the board. The Superintendent directs a staff of approximately 550 permanent employees. The functions of the Ohio Department of Education include developing academic standards, administering state achievement tests, collecting other fiscal and performance data to improve accountability, issuing report cards on school and district performance, licensing and providing professional development opportunities for teachers and other school professionals, and administering school choice programs. One of the most important responsibilities of the department is the administration of the funding system for public schools.

Despite the expansion of the State Board of Education to include gubernatorial appointments, Ohio governors have continued to express frustration over their inability to exert a more direct influence on education policy. No doubt this has been in part as a result of the link between a governor's job performance and the important function served by public education. This debate reached a peak in 2018 when Governor John Kasich and then House Speaker Cliff Rosenberger led an unsuccessful effort to consolidate the departments of Education and Higher Education, along with the Governor's Office of Workforce Transformation, into a single cabinet-level agency. The proposal, which is discussed at the end of this chapter, would have radically reduced the powers of the State Board of Education, a constitutionally protected entity.

## *DeRolph* and Its Aftermath

In the 1997 landmark case *DeRolph v. State of Ohio*, the Ohio Supreme Court mandated that the General Assembly "must create an entirely new financing system" to meet the state constitutional requirement of "securing a thorough and efficient system of common schools." However, more than two decades later, the underlying problem remains. Approximately 45 percent of all public school operating revenues comes from local sources, and about 94 percent of these moneys are derived from property taxes.[2] Lower property values in the state's poorer school districts yield an insufficient local funding base to provide their students with an adequate education. Accordingly, a significant disparity in educational quality continues to exist between the state's more affluent and low-wealth school districts. State efforts to equalize these differences in school district wealth have been notable since *DeRolph*, but they still fall short of providing the equitable results that were mandated in that case.

While the goal of developing and fully funding a "system of common schools" remains elusive, Ohio has made some measurable progress over the more than two decades since *DeRolph*. Progress has not come from a complete overhaul of the funding system to make it more adequate and equitable, as was the original intention of the court, but through simply infusing more funding into the broken system coupled with various attempts that tinkered with the funding models to the benefit of low-wealth districts. In the five years immediately following *DeRolph*, between FY 1997 through FY 2002, primary and secondary education operating funding from the state grew by an impressive $2.26 billion, an annual increase of nearly 8 percent per year. During this relatively short time period, primary and secondary education's share of all state-source funds increased significantly, from 34.9 percent to 38.3 percent.[3] The Ohio Supreme Court relinquished its jurisdiction of the *DeRolph* case in 2002 after determining that the state had made a good-faith effort to change the funding of its public schools.

Even more progress was being made in regard to educational facilities. A 1996 Public Broadcasting

System documentary hosted by Bill Moyers, "Children in America's Schools," focused on the old and dilapidated condition of Ohio school buildings to the considerable embarrassment of state officials. The 1998 Tobacco Master Settlement and the subsequent securitization of its resources in 2008 provided a rich source of support to address the pressing need for improved school facilities. In the 20 years since *DeRolph*, the state committed fully $11.5 billion to the building or renovation of some 1,120 school buildings serving 650,000 students. Funds have also been used for related facility purposes, such as for school security and the mitigation of lead in drinking fountains.[4] The 2019–2020 capital budget included an additional $625 million for repairs, renovations, and new primary and secondary education facilities. While a boon for education, it was argued by health and anti-smoking advocates that a more appropriate use of the Tobacco Master Settlement funds, or at least a substantial portion of them, would have been for smoking prevention and cessation programs in order to reduce health care outlays on smoking related illnesses.

While Ohio school facilities now rank among the very best in the nation, progress on the operating front slowed perceptibly after FY 2002. In the nine years leading up to the start of the Kasich Administration, primary and secondary education funding growth averaged barely 1 percent per year. This was not entirely the fault of the Taft and Strickland administrations or the General Assembly, but was more a function of difficult economic times, particularly during the Great Recession. However, the major changes to individual and business taxes that were phased in beginning in 2005 also bear part of the blame for the shortage of available resources during this period. Most areas of state government fared even worse than primary and secondary education. As a result, education's share of state-source funding actually increased from 38.3 percent to 40.7 percent between FY 2002 and FY 2011.

Under the leadership of Governor Ted Strickland, Ohio developed an "evidence-based" model for funding primary and secondary education centered on identifying the various components associated with educating a student. If fully implemented, this model would have addressed constitutional concerns regarding the provision of an adequately funded education system. This model is more fully described in Chapter 11. However, the fiscal realities of the Great Recession did not provide the resources necessary to even make a down payment to implement the new model, and it was quickly abandoned following Governor Strickland's failed 2010 reelection bid.

As Governor John Kasich took office in January 2011, primary and secondary education had endured a sustained period of stagnant funding. Despite some attention to funding equity over the course of three gubernatorial administrations, disparities in funding between individual school districts in the state varied widely. Where you resided in the state still too often determined the quality of the education received, and hence student outcomes.

# Education Funding under Governor Kasich

| EDUCATION MILESTONES OF THE KASICH ADMINISTRATION | | | | |
|---|---|---|---|---|
| **2012** | **2013** | **2015** | **2017** | **2018** |
| Cleveland Plan for Transforming Schools | • New Foundation Funding model adopted<br>• School choice made available to low-income families regardless of their local school district's performance | • Legislation enacted to reform Ohio's troubled school choice sector<br>• Academic Distress Commissions overhauled<br>• Funding and participation in state-supported early childhood programs tripled<br>• Ohio develops its own student assessments replacing those developed in cooperation with other states that were based on Common Core standards<br>• New graduation pathways created<br>• Program allowing high school students to attend college and university classes for credit is standardized and renamed College Credit Plus | • Funding and participation in state-supported early childhood programs tripled<br>• New graduation pathways created<br>• Program allowing high school students to attend college and university classes for credit is standardized and renamed College Credit Plus | • State's largest community school, the Electronic Classroom of Tomorrow (ECOT), closed<br>• Ohio's College Advantage 529 plan for tax-deductible college savings extended to private K-12 education<br>• Proposed consolidating the departments of Education and Higher Education and the Governor's Office of Workforce Transformation into a single cabinet-level agency |

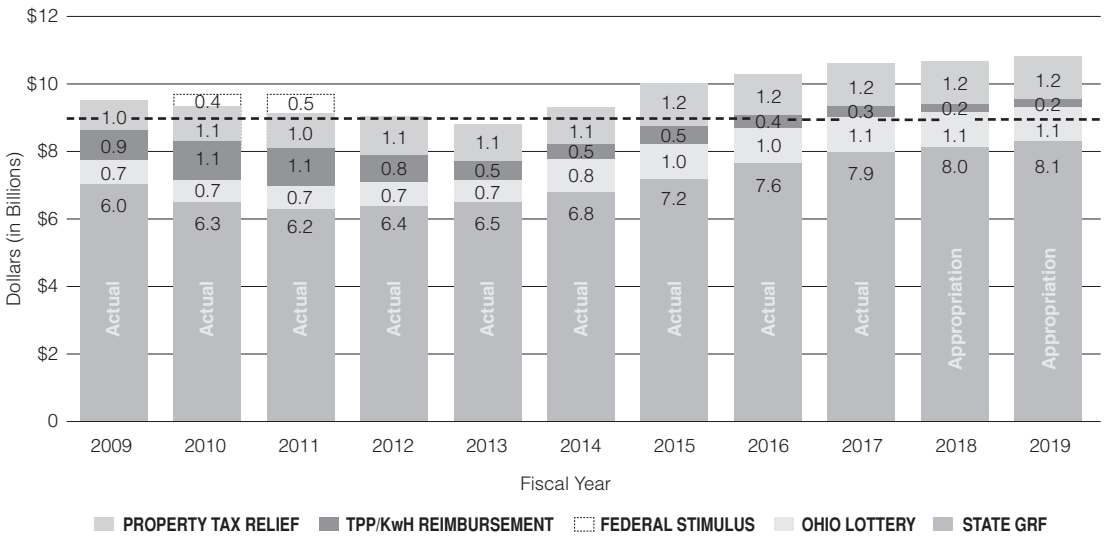
Primary and secondary funding steadily, if neither consistently nor dramatically, increased during the administration of Governor John Kasich. Despite a slight decline in statewide pupil enrollment, state-source funding increased by nearly one third (31.5 percent), or $2.49 billion, over the eight-year period ending in FY 2019. Support for education was particularly robust during the economic recovery experienced in FY 2014 and FY 2015, when funding grew on an annual basis at 5.2 percent and 7.8 percent, respectively. More recently, Governor Kasich's final budget provided a much different picture when annual growth slowed to only 1.7 percent in FY 2018 and less than 1.5 percent in FY 2019. More than three-fifths of all school districts, or 374 districts, either received no increase in support or saw a reduction in their state funding.[5] However, these reduced levels of support need to be juxtaposed against overall state-source "funding growth" of (2.1) percent in FY 2018 and 2.3 percent in FY 2019. By the end of Governor Kasich's term, education's share of state-source funding had increased slightly from 40.7 percent to 41.9 percent.

These funding gains for primary and secondary education were largely illusory, however, not even keeping up with inflation when considering the dramatic reductions that occurred in tangible personal property and public utility personal property tax replacement payments to school districts that occurred during John Kasich's term of office. These payments, which declined by $963.8 million between FY 2011 and FY 2019, were quite unevenly distributed across school districts depending on the size and location of the facilities that generated the tax revenues.[6]

Figure 14-1 depicts the major sources of primary and secondary education funding over the last de-

cade, including the General Revenue Fund (GRF), the State Lottery, tangible personal property and public utility personal property tax replacement payments (TPP/Kwh reimbursement), property tax relief, and federal stimulus. Although federal stimulus was not a state revenue source, it was available for more general spending than other federal funding that has been appropriated for education purposes.

**Figure 14-1: State Support for Primary and Secondary Education**




| | STATE GRF | LOTTERY | TPP/KwH REIM. | PROP. TAX RELIEF | FED. STIMULUS | TOTAL |
|---|---|---|---|---|---|---|
| Actual FY 2009 | 6,934,033,488 | 707,900,000 | 881,780,537 | 950,286,974 | – | 9,474,000,999 |
| Actual FY 2010 | 6,276,118,370 | 745,000,000 | 1,121,205,247 | 1,057,127,330 | 417,567,145 | 9,617,018,092 |
| Actual FY 2011 | 6,172,340,780 | 711,000,000 | 1,129,069,307 | 1,048,097,426 | 515,463,552 | 9,575,971,065 |
| Actual FY 2012 | 6,409,095,026 | 717,500,000 | 759,915,156 | 1,074,778,419 | (1,507) | 8,961,288,095 |
| Actual FY 2013 | 6,523,222,439 | 680,1500,000 | 510,073,809 | 1,110,399461 | – | 8,824,195,709 |
| Actual FY 2014 | 6,762,679,735 | 829,799,818 | 509,654,246 | 1,142,318,445 | – | 9,244,452,244 |
| Actual FY 2015 | 7,246,516,701 | 1,027,283,084 | 509,467,946 | 1,156,206,504 | – | 9,939,474,235 |
| Actual FY 2016 | 7,555,948,809 | 1,048,861,553 | 396,996,030 | 1,153,889,717 | – | 10,155,696,109 |
| Actual FY 2017 | 7,873,631,736 | 1,077,203,689 | 289,681,570 | 1,151,777,062 | – | 10,392,294,057 |
| FY 2018 Appropriation | 7,988,711,535 | 1,106,630,000 | 207,311,667 | 1,180,084,800 | – | 10,482,738,002 |
| FY 2019 Appropriation | 8,117,425,393 | 1,107,630,000 | 165,229,141 | 1,199,315,000 | – | 10,589,599,534 |

*Source: Ohio Department of Education Website, 2018.*

While informative of spending priorities in the broadest sense, this global view of state education funding tells only a small part of the story. Breaking down the various components of the education funding formula is important in order to better understand how traditional school districts in Ohio were funded and supported during the Kasich Administration. Having a grasp of the education funding picture beyond the traditional school district is also important, as this is where much public policy has developed and evolved in recent years.

## Traditional School Districts

State support constitutes nearly half, or 48.9 percent, of all public school operating revenues in Ohio. More than four out of every five of these state-source dollars come from Foundation Funding. The goal of Foundation Funding is to equalize resources among school districts by providing increased state support to districts with lower capacities to generate local revenue. Local revenues, which constitute 45.5 percent of public school operating revenues, are largely a function of a district's taxable property value and effective property tax rates, although income has become an increasingly important factor in the 190 districts that had a school district income tax in 2018, most of which were in rural areas. Federal funds account for only 5.6 percent of all public school operating revenues. They are dedicated primarily for special education and economically disadvantaged students.[7]

In FY 2019, more than $8 billion in Foundation Funding was distributed to Ohio's 610 public school districts, of which $6.9 billion was from the General Revenue Fund (GRF) and $1.1 billion was from the State Lottery Fund. The latter amount was contingent upon lottery profits reaching this level, which was increased by nearly $37 million over the original Executive Budget projection. Lottery profits were earmarked on a permanent basis for education through a 1987 constitutional amendment, although they have been designated for that purpose since the Lottery's creation in 1973. Since 2012, profits from video lottery terminals (at Ohio horse racetracks, or "racinos," have likewise been provided to schools. When both GRF and lottery sources are considered, FY 2019 funding represented an increase of 1.7 percent over the FY 2018 level and was 4.5 percent greater than primary and secondary education expenditures in FY 2017.

Governor John Kasich's first education budget was largely a continuation budget. The governor did not put his first important stamp on Foundation Funding until his second budget. The model, dubbed "Achievement Everywhere," was revised somewhat in the final two budgets of his administration, but it remained largely unchanged. The focus was on improving system equity without creating major disruptions in support for any given district.

The capacity to raise revenue at the local level was a major driver in outcomes under the new formula. Local capacity is largely dependent on the taxable value per pupil of the district. The purpose of the formula was to partially offset the results of variations in the district's taxable value per pupil.[8] However, movement toward greater equity was limited by temporary transitional aid, which guaranteed district funding at a percentage of the previous year, and gain caps, which limited funding growth for other districts.

Devising a formula that works for 610 school districts is admittedly no simple task. In some cases, local capacity can vary tremendously over even a short time frame, as when some school districts in Eastern Ohio benefitted from quickly rising property values stemming from the fracking boom in that part of the state. An opposite scenario occurred with districts impacted by power plant devaluations. In this instance, an amendment was inserted into the FY 2018–2019 budget to provide an alternative calculation of the valuation index for impacted districts.

Unlike the "evidence-based" model of Governor Ted Strickland, no attempt was made to determine the support level necessary to adequately fund the cost of educating a student. The largest component of the Kasich Administration model, the "opportunity grant," addressed this factor to some degree by providing a uniform per-pupil formula amount, although this amount was not based on empirical evidence. It is changed each biennium by the General Assembly, depending on resource availability.

The opportunity grant, which was set at $6,020 for FY 2019, accounted for nearly 60 percent of all state foundation aid. This level represented an increase of only $10 over FY 2018, the same amount that it was increased that year over the previous level in FY 2017 and significantly less than the 2.2 percent inflation rate for 2017.

Two elements designed to equalize funding among school districts, targeted assistance and capacity aid, accounted for about one eighth of total formula funding. Targeted assistance supplemented funding for districts with lesser capacity to raise revenues locally. Capacity aid provided additional assistance to a subset of largely rural districts that had comparatively few students and low property values.

Categorical add-ons accounted for more than one quarter of all state foundation aid. Special education, transportation, and economically disadvantaged funding accounted for most of the categorical funding, although also included were funding for K–3 literacy, gifted education, career-technical education, and students with limited English proficiency.

Pupil Transportation was funded in a separate line item, although it can be considered as categorical aid since district size and road conditions vary greatly across the state. The item was funded at $527.1 million in FY 2019, a reduction of 11 percent from the amount provided just two years earlier. Approximately 150 school districts lost transportation funding as a result of a change in the minimum state share for base transportation aid. There has been no state bus purchase program to replace aging district fleets in more than a decade.

The formula also included performance bonuses to incentivize district performance regarding four-year graduation rates and third grade reading proficiency. Together, these bonuses accounted for only about .05 percent of all formula aid.

After these factors are calculated, final district allocations were adjusted more often than not, and sometimes quite dramatically, by temporary transitional aid and gain caps. Temporary transitional aid guaranteed that a district would receive a given percentage of its prior year's allocation. In the FY 2016–2017 biennium, the General Assembly guaranteed districts 100 percent of their FY 2015 aid. In the FY 2018–2019 budget, the legislature reduced the share of temporary transitional aid to districts so that it varied on a scale between 95 and 100 percent of the prior year's support for districts with enrollment declines between 5 and 10 percent from FY 2014 and FY 2016. Districts with enrollment declines during this period exceeding 10 percent were guaranteed funding at a level of 95 percent of the previous year's aid.

During the FY 2016–2017 biennium, district aid could not exceed 7.5 percent of the level provided in FY 2015. By contrast, the gain cap for most districts in FY 2018 and FY 2019 limited growth to only 3 percent over the FY 2017 level. The gain cap could be set as high as 6 percent for districts that experienced significant enrollment growth between FY 2014 and FY 2016.

Four of five school districts were impacted by either temporary transitional aid or the gain cap during the FY 2018–2019 biennium. School districts were effectively limited to a funding level between 95 percent and 106 percent of the previous year's state aid. In the FY 2016–2017 biennium, this range was even less, when language limited district funding to a level between 100 percent and 107.5 percent of the prior year's funding.

Foundation Funding was not the only major appropriation item impacting state aid to individual school districts. In addition to Pupil Transportation being funded separately, school districts and joint vocational school districts (JVSDs) continue to be fully reimbursed for the reductions in property tax stemming from the 10 percent and 2.5 percent rollback on all levies initially approved before August 2013 as well as the Homestead Exemption for certain senior citizens and the disabled. This is not a small item, as it was funded at nearly $1.2 billion in each year of the FY 2018–2019 biennium.[9] Since the rollbacks no longer apply to new levies, growth in this item has begun to slow. Over 96 percent of these funds were provided to traditional school districts with the balance to JVSDs. High-wealth districts have benefitted disproportionately from this funding, since it is based on the amount of property tax paid in the district.

In addition, school districts continue to receive partial reimbursement for the revenue that they lost through the elimination of the tangible personal property tax. This funding, however, is being phased out. The $165.2 million appropriated for this purpose in FY 2019 represented a decrease of nearly one third from the level provided for this purpose just two years earlier. An amendment was included in the FY 2018–2019 budget bill that would have limited district losses through the phase out to 3.5 percent of their state funding, but Governor Kasich vetoed it. However, a similar provision restoring $7.4 million was included in a separate budget corrections bill, Senate Bill 8 of the 132nd General Assembly, several months later. As reimbursements from the tangible personal property tax and the public utility tangible property tax had totaled nearly $1.13 billion at the start of the Kasich Administration in FY 2011, the loss of support for school districts from these sources totaled $963.8 million during his term of office.

Ohio's foundation formula for traditional schools is incredibly complex, both in terms of the number of its components and in how these individual components are calculated. Only a few legislators and education insiders really understand how formula dollars are distributed; it is far from a transparent process to most observers. Moreover, much of the funding is determined not fully on the results of the formula, but through either the provision of temporary transitional aid or the imposition of a gain cap. When this occurs, state aid is no longer based on the capacity of the school district to raise local resources as is its intent.

For FY 2018, more than half, 317, of all school districts received guaranteed money through temporary transitional aid of $205 million. Most, but not all of these districts, received temporary transitional aid in FY 2019 as well. In total, 320 districts received temporary transitional aid in FY 2019 at a cost of $216.8 million. Fluctuations in local property values and the nominal increases in per-pupil funding provided through the opportunity grant of only $10 per year likely accounted for the large number of districts on this guarantee.

While the gain cap impacted fewer school districts, it denied these districts significant funding that they would have received through the Foundation Funding model if it were allowed to fully operate. For FY 2018, 173 districts lost approximately $522.3 million through the imposition of the gain cap. The gain cap impacted 131 districts in FY 2019, denying them approximately $428.1 million in resources that they would have received through the funding model.

A case can be made for some temporary transitional aid to protect school districts from what might otherwise be an overly large reduction in state funding. Reconciling education funding with declining numbers of school-age children will remain a challenge for the foreseeable future. No such case

can be made for gain caps, whose purpose would seem to be less altruistic. It simply saved the state resources by not fully funding the model and providing districts what was due them. Ironically, if the current model was fully funded, disparities between high-wealth and low-wealth districts would grow rather than shrink. Perhaps, this should tell us that the model was fundamentally flawed.

The intent of a funding model should be to allocate state resources on the characteristics and needs of the students in a school district rather than on the characteristics of the district. Certain elements of the current formula are already calculated in this manner, including funding for special education, career-technical education, and students with limited English language proficiency. Such an approach would be in keeping with *DeRolph* and would also likely improve the transparency of the funding model.

## Joint Vocational School Districts

Joint vocational school districts (JVSDs) are public school districts providing career-technical education through hands-on labs and workforce development for students from member school districts in their region. Programs are offered in a wide array of career fields. Approximately 39,000 students were enrolled in Ohio's JVSDs during the 2016–2017 school year, a decline of 2,300 from the level experienced five years earlier. Public high schools can provide these services "in-house" as an alternative to membership in a JVSD.

A new funding model for JVSDs was developed for the FY 2014–2015 biennium at the same time that the Kasich Administration unveiled its new formula for traditional school districts. The formula used to determine a JVSD's state operating funding was quite similar in concept to the one used for traditional school districts. Formula components included an opportunity grant, career-technical education funds, special education aid, economically disadvantaged funds, limited English proficiency funds, and a graduation bonus. The formula also included temporary transitional aid and a gain cap, but only for basic pupil funding.

Funding for the FY 2018–2019 biennium for most JVSDs was reduced because of declining enrollments in 34 of the 49 schools. As all JVSDs have taxing authority, their local revenue base was no less dependent on property values than traditional school districts.

## The Increasing Privatization of Ohio Public Education

Minnesota became the first state to authorize public charter schools in 1991. As of the 2017–2018 school year, 45 states and the District of Columbia had authorized the creation of public charter schools. However, the majority of the nation's 6,800 public charter schools were located in just five states: Arizona, California, Florida, Ohio, and Texas.

Public charter schools in Ohio, known as community schools, are public, nonprofit, nonsectarian schools that operate independent of traditional school districts under a contractual arrangement with the Ohio Department of Education. Community schools differ from other public schools in that they do not have taxing powers and are exempt from certain state requirements.

The community school movement in Ohio grew from just 15 schools with 2,245 students in FY 1999 to 355 schools with 108,124 reported students in FY 2012 at the start of the Kasich Administration.

This rapid growth then cooled and even began to decline slightly by FY 2015. In FY 2017, Ohio had 362 community schools reporting 111,272 students, constituting nearly 7 percent of all public school enrollments.

In 2007, a new category of public, nonprofit, nonsectarian schools, called science, technology, engineering, and mathematics, or STEM, schools, was authorized. By FY 2016, there were seven independent STEM schools operating in Ohio, educating 1,989 students. An additional category of schools, science, technology, engineering, arts, and mathematics, or STEAM, schools, was authorized in the FY 2018–2019 budget.

With five separate school voucher programs, perhaps no state has more public school choice options than Ohio. The oldest existing voucher program, the Cleveland Scholarship and Tutoring Program, was created in 1995. The program provides scholarships to students residing in the Cleveland Metropolitan School District that can be used at either public or private schools of their choice within the district's boundaries. In 2003 and 2011, new scholarship programs were added for students with autism and for special-needs students, respectively. Collectively, they are known as the Jon Peterson Special Needs Scholarship Program.

The largest voucher program to date, the Educational Choice Scholarship Program, or EdChoice, was created in 2005. It is available to students outside the Cleveland Metropolitan School District from underperforming public school districts as measured by the state report card. As part of the transition to new state testing described later in this chapter, no new public schools will be added to the EdChoice Scholarship program until the 2019–2020 school year.[10]

The FY 2014–2015 budget represented a major victory for school choice proponents with the creation of a new component of EdChoice for families with incomes less than 200 percent of the federal poverty level. Once qualifying, students remain eligible to receive a voucher even if their family income surpasses this threshold, provided that it does not exceed 400 percent of the poverty level. Importantly, eligibility was not dependent on whether the traditional public school that the student would have otherwise attended was low-performing. For the first time, scholarships were awarded to students without disabilities, even if they resided in communities with high-performing public schools. The scholarship was limited to kindergartners during the 2013–2014 school year and to kindergartners and first graders during the 2014–2015 school year. One additional grade level has been added to the program each year. During the 2018–2019 school year, students in kindergarten through fifth grade were eligible to receive scholarships provided that their families met the means test. The income-based voucher program provided up to 60,000 scholarships to eligible students, although only about half that number were used.

Community schools can be either conversion or startup schools. Conversion schools operate in existing traditional buildings that have been transformed by public school districts, joint vocational school districts, or educational service centers into a community school independent of the district and authorized by a sponsor. Startup schools are located in school districts classified as "challenged" at the time the community school developer enters into a sponsor agreement. More than four in five of all community schools, or 82 percent, fit into the startup versus the conversion category in FY 2016.

Community schools include both schools offering traditional classroom settings and e-schools that provide their educational services electronically. Only six percent of all community schools were

classified as e-schools in FY 2017, although they included some of the largest. E-schools accounted for fully 30 percent of all reported enrollments.

A third classification differentiating community school types is whether their focus is on general education, dropout prevention and recovery, or special education. Two thirds, or 66 percent, of all community schools focused on general education in FY 2017. Twenty-four percent of all community schools focused on dropout recovery. The smallest group of schools, 10 percent, focused on special education. Eighty-five percent of all reported students were enrolled in a general education curriculum.[11]

For funding purposes, community school students of all types, as well as STEM and STEAM school students, are counted in the school districts in which they reside. Community schools and STEM and STEAM schools are funded through a per pupil transfer from their home school district. As with joint vocational school districts, the funding model for community schools is similar in concept to the one employed for traditional school districts. However, temporary transitional aid and the gain cap do not apply to community schools. Moreover, since community schools lack taxing authority, there is no local share of funding.

Components of the funding model again include the opportunity grant, targeted assistance, special education, career-technical education, limited English proficiency funds, economically disadvantaged funds, and K–3 literacy funds. Community schools also can receive transportation funding if they opt to provide this service, although most students are transported by their traditional school district. In FY 2017, the state spent $937.4 million through the funding model for community schools and STEM schools. The largest amounts of funding were for the opportunity grant, $702.9 million, special education, $136.3 million, and economic disadvantaged funds, $52.5 million. Community schools and STEM schools, and now STEAM schools, are also eligible to receive facilities funding and performance bonuses. An additional $16.8 million was provided in facilities funding, although no dollars were allocated for performance bonuses. Community schools are provided $200 per pupil to spend on their facilities, including rental facilities. In total, $954.2 million was provided to community schools and STEM schools in FY 2017.

The largest amount of funding was provided to the Electronic Classroom of Tomorrow, or ECOT, which received $110.5 million, of which $110.1 million came from the funding components with an additional $382,000 in facilities funding. However, ECOT was subsequently ordered to pay back $19 million of their allotment, when it was discovered by the Ohio Department of Education that the school had overbilled it for enrollments that were claimed but not realized.[12] In the previous year, FY 2016, ECOT was ordered to pay back fully $60 million of the $108 million it received during the 2015–2016 school year when the Department of Education was able to verify about 40 percent of its reported 15,322 enrollments, or 6,313 students, rather than the 15,322 students claimed by the school. Unable to make the repayments, and having exhausted nearly all legal recourse, ECOT closed its operations abruptly in January 2018.

A subsequent audit by the Auditor of State issued in May 2018 found that ECOT may have committed fraud by withholding data that would have indicated that students spent less time working on their online courses than that for which the state was billed. Auditor Dave Yost referred the audit and related work papers to both federal and local authorities for possible criminal prosecution. In an attempt to recover lost funds from ECOT and its founder, Bill Lager, Ohio Attorney General Mike DeWine filed an

argument in court in July 2018 claiming that the online school's agreements with its management and service companies, which were also operated by Mr. Lager, constituted a pattern of corrupt activity.

Ohio has led the nation in the number of charter schools that have failed. An average of 18 community schools have closed their doors each year in Ohio.[13] Although there are a number of success stories, most remaining community schools perform poorly compared to traditional public schools as measured across all components of the state report card. Fully two thirds of Ohio community schools received an overall grade of "D" or "F" on their 2017–2018 report card. This was also borne out in a 2016 study by the Thomas B. Fordham Institute, a proponent of school choice, when it found Ohio charter school students fared worse academically than their closely matched peers at traditional public schools.[14] Moreover, it was an embarrassment to the state in 2017 when the state revealed that it could not use all of a $71 million federal grant for newly opened effective or exemplary schools because not enough schools qualified under the performance criteria. A number of restrictions were placed on the federal grant for qualifying community schools, given that Ohio was labeled as a "high-risk" state, as many schools could not meet the federal reporting requirements of "accurate, current, and complete disclosure."

Ohio launched a reform effort in 2015 to begin to address some of these issues, although many still linger. This legislation, House Bill 2 of the 131st General Assembly, prohibited poorly performing schools from hopping from sponsor to sponsor and eliminated several conflict-of-interest concerns involving sponsors and the schools they operate.[15] In addition, management companies that received more than 20 percent of their annual revenues from state sources were required to provide an accounting of expenses by category.

The National Alliance for Public Charter Schools ranked Ohio in the middle of the pack, 23rd out of 45 states, in meeting what it considered the "essential components" of a strong charter school law.[16] It is thus debatable if the HB 2 reforms went far enough. State funding for community schools needs to be accounted for in the same manner and with the same audit procedures as is required for public school districts. Every taxpayer dollar should be verifiable.

Despite the problematic record of community and private charter schools in Ohio, additional efforts to enhance opportunities for these schools are routinely undertaken in the General Assembly. This included a 2018 law permitting Ohio's College Advantage 529 plan for tax-deductible college savings to be used for private K–12 education, a $20 million per year tax break. Spending is capped at $10,000 per year per student.

Legislation was also enacted in 2018 to provide a "safe harbor" for any school absorbing a large number of transfer students resulting from the closure of ECOT. It protects these schools, many of which were other e-schools, from adverse sponsorship ratings resulting from transfer students through the 2019–2020 school year.

On a positive note, the General Assembly did agree to create a legislative committee to study whether the funding of online schools should be changed to a competency-based payment structure. The committee is to also examine the expense categories for which an e-school operator is required to provide detailed accounting records.

# Program Expansions and New Initiatives

Making EdChoice scholarships available to low-income families regardless of their local school district's performance represented a major policy departure in state education policy. It fundamentally changed the historic purported purpose of the school voucher program. So too did the extension of the Ohio College Advantage 529 plan to private K-12 education.

A number of other important policy changes were initiated during the Kasich Administration. Some of these ideas met resistance in either the General Assembly or in the education community, or in some cases, with both.

## Early Childhood Education[17]

Early childhood programs in school districts were supported with $68.1 million in General Revenue Fund (GRF) dollars in both FY 2018 and FY 2019. Of this amount, $1.4 million was set aside each year to administer the programs and to provide technical assistance to school districts. The balance was used for grant funding to early childhood education providers, which could either be operated directly by districts or through contract with a Head Start agency, a chartered nonpublic school, or a licensed child care provider. An additional $5 million per year of Casino Operator Settlement Funds was appropriated to the Ohio Department of Job and Family Services (ODJFS) for this same purpose. With an allocation of $4,000 per child, an amount based on 2.5 hours, or one-half day of preschool, the combined funding was sufficient to fund 17,938 preschool slots for children who were at least four-years old but not yet eligible for kindergarten from families with income below 200 percent of the federal poverty level. Eligible three-year old children could be considered for funding if the budget permitted.

Early childhood programs were a major priority during the Kasich Administration. In the FY 2012–2013 budget, only 5,700 economically disadvantaged children participated in early childhood education programs. Just five years later, this number had more than tripled as did the corresponding funding support for early childhood education.

Beyond this support, federal funds totaling $12.6 million per year were appropriated during the FY 2018–2019 biennium for special education services for children between ages three and five with disabilities. In addition, $1.9 million in GRF dollars was appropriated each year for the inspection and licensing of child care programs.

As part of the FY 2016–2017 budget, a quality rating system of child care centers was established in conjunction with the Governor's Early Childhood Education and Development Office and ODJFS. All childhood education centers funded by the Ohio Department of Education must be part of the Step Up to Quality ratings system by 2020 in order to receive state funding. Chapter 13 included information on the new system.

## Third Grade Reading Guarantee

The Third Grade Reading Guarantee identifies students from kindergarten through grade 3 that lag in reading skills and supports the goal of reading success by the conclusion of third grade. Districts are provided a bonus in the Foundation Funding formula for student success towards this end. Stu-

dents not achieving a passing score on the state reading diagnostic test are retained in third grade for an additional year. Supplemental intervention services are offered to these students, including the requirement that at least 90 minutes of reading instruction be provided daily.

## Graduation Pathways

Three additional graduation pathways were created in the FY 2016–2017 budget for students entering ninth grade prior to July 1, 2014. The new pathways replaced the Ohio Graduation Test. The change was in response to concerns raised about the one-third of Ohio high school graduates who required remediation upon entering an Ohio public college or university. Students were made eligible for graduation if they met one of the following standards: scored at "remediation-free" levels in English, math, and reading on a nationally standardized assessment, such as the ACT or SAT; attained a cumulative passing score on end-of-course examinations; or attained a passing score on a nationally recognized job skills assessment and obtained either an industry-recognized credential or a board-issued license for practice in a specific vocation. Students with disabilities and those with limited English proficiency were exempted from the testing requirement.

At this time, the state began to pay for the cost of administering the ACT or SAT to all high school juniors. There was some pushback on the appropriateness of the examinations, as they are not intended for those students who are not college bound. Nevertheless, the tests can potentially do much to equalize educational opportunities for students who may not have considered attending college following graduation until performing satisfactorily on the exam.

Despite this broadening of graduation pathways in the previous budget, the General Assembly found it necessary in the FY 2018–2019 budget to create yet two more alternatives to graduation that were to be applicable to just the class of 2018. It was originally estimated that at least 30 percent of the members of this class would not have graduated under the new system enacted in the previous budget. However, a few months later, the Ohio Department of Education reported that only 23 percent of high school seniors were not on course to earn a diploma based on their test scores.[18] Both of these pathways required the taking of all applicable state tests and completing the school's curriculum. One of the pathways also required retaking certain low-score, end-of-course exams and satisfying two of a number of other conditions, including completing a capstone project and having a 93 percent attendance rate. The second pathway required completion of an approved career-technical training program and satisfying one of a number of other conditions, including obtaining an industry recognized credential.

The State Board of Education recommended that these two alternative pathways be extended to the graduating classes of 2019 and 2020, while it develops permanent adjustments to the graduation requirements to be effective for the class of 2021. However, the General Assembly has been increasingly reluctant to extend what it perceives to be a reduction in graduation requirements.

While such changes are undoubtedly well intended, they represent a serious, if perhaps temporary, diminishing of graduation requirements. Traditionally, a state goal has been a uniform standard for graduation for all. It might be better to have different diploma designations for students meeting bare-minimum standards and one reflecting college and career readiness, as was suggested by the Thomas B. Fordham Institute.

## College Credit Plus

College Credit Plus allows high school students to attend classes at Ohio public and participating private colleges and universities to earn both high school and college credit. The program is open to both public and nonpublic high school students at no cost to them. College Credit Plus (CCP) replaced the Post-Secondary Enrollment Options (PSEO) program in the 20152016 school year. It provides standardization to both funding and the awarding of credit that was not present under PSEO, which was more ad hoc as it was dependent on the relationship between the affected school district and the participating postsecondary institution. It also covers the cost of textbooks, which was not mandated under PSEO.

During the 2016–2017 school year, 68,365 high school students participated in the CCP program. Of this number, 72 percent were either seniors or juniors. Students were primarily enrolled in the five core content disciplines of English, social sciences, science, math, and arts and humanities.[19]

Public high school students count in their resident district for funding purposes with college tuition amounts deducted from the district's state aid. Default floor and default ceiling amounts are established to correspond to the course delivery and instruction methods employed. In FY 2016, approximately $39 million was paid to colleges and universities through the CCP program. The FY 2018–2019 budget appropriated $2.6 million per year in General Revenue Fund (GRF) moneys to pay program costs for students at nonpublic schools. In addition, a portion of the funding provided for Auxiliary Services Reimbursement could be used for program costs incurred for chartered nonpublic school students.

The FY 2018–2019 budget added new eligibility requirements to the CCP program to provide even more standardization and rigor. It required participants to be either remediation-free as determined by student assessments or score no more than one standard deviation from the remediation-free threshold if they either had a grade point average of at least 3.0 or received a recommendation from their school counselor or principal.

In 2018, the General Assembly tasked the Ohio Department of Education to study the results and effectiveness of the CCP program.

## Adult Education Programs

Fully 724,500 Ohio adults did not hold either a high school diploma or its equivalent in 2017.[20] Earning a diploma can be a real game changer for individuals and their families.

The 2014 Mid-Biennium Review funded five community colleges and Ohio technical centers to help adults older than 22 years of age to earn credits toward a high school diploma while pursuing job training tied to credential or certificate acquisition in an in-demand field. The Adult Diploma Pilot Program was funded at $3.75 million in FY 2016 and $5 million in FY 2017, half the amounts recommended by Governor John Kasich, to support participating community colleges and technical centers. An earmark from the Alternative Education Programs item of $2.5 million per year was provided for similar purposes for high school diploma programs for those aged 22 and older. Payments were made to participating school districts, dropout recovery community schools, joint vocational school districts with adult education programs, and community colleges.[21] The FY 2018–2019 budget consolidated these two programs into a single General Revenue Fund line item for Adult Education Programs.

It was funded at $7.5 million in FY 2018 and $8.7 million in FY 2019.

## Community Connectors[22]

The Community Connectors initiative brings together families, businesses, and community organizations, including faith-based organizations, to mentor students in low-performing, high poverty schools. The program was funded at $10 million per year in both the FY 2014–2015 and FY 2016–2017 budgets. This same level was recommended by Governor John Kasich for the FY 2018–2019 biennium, but support was reduced to $4 million per year in the final approved budget. The program, which matches $3 for every $1 provided in local support, was supported with lottery profits funds. Funding was prioritized for experiential learning opportunities in classroom settings that foster financial literacy, career readiness, and entrepreneurship skills.

## Student Assessment and School District Report Cards

Tension exists between the importance of developing a meaningful assessment system and the need to limit testing to a reasonable level. Despite the frustrations educators and parents felt on the subject, testing takes up less than two percent of classroom activity. This frustration came to a head in 2015 when the General Assembly banned the further use of Partnership for Readiness for College and Careers, or PARCC, tests effective for the 2016–2017 school year. These tests, which utilized Common Core standards, had been developed in conjunction with 11 other states.

Ohio developed its own set of end-of-course tests in conjunction with the American Institute for Research, or AIR, which are used to measure districts against a defined set of expectations. In addition to testing for this purpose, the federal government requires several assessments as a basis for receipt of federal funds. In FY 2019, $53.3 million in General Revenue Fund (GRF) moneys and $11.5 million in federal funds were appropriated for the development, printing, distribution, collection, scoring, and reporting of the assessments. An additional $2.8 million in GRF funds was appropriated for diagnostic assessments for kindergarten readiness.

Ohio's accountability system for school buildings and districts is based on student scores on academic achievement assessment tests. Beginning with the FY 2015–2016 school year, "A" to "F" letter grades were assigned for six components: gap closing, achievement, progress, graduation rate, K–3 literacy, and prepared for success. Because of changes in testing as the state abandoned the use of PARCC assessments, the system was phased in, and overall letter grades were not issued until September 2018 based on performance during the 2017–2018 school year. The accountability system was funded at $5.9 million in FY 2019, which was largely supported from transfers from the State Board of Education Licensure Fund, although some GRF support was also provided.

While performance scores improved by 2.5 percent for the 2016–2017 school year over the previous year, the achievement gap between students from economically disadvantaged households and those from higher income families remained stark. Of the 124 school districts scoring an "A" or "B" on the performance index, only two had an economically disadvantaged population higher than the state average. Districts with "A" or "B" scores had more than double the median household income than those receiving an "F" grade.[23]

The 2017–2018 report card yielded similar results. While there was a 2.6 percent increase in the per-

formance index and 1 percent increases in K–3 literacy and graduation rates over the previous school year, economically disadvantaged students continued to perform substantially worse when compared to other students on every measure, and most notably on the performance index, which accounts for 75 percent of the achievement component. A new feature in the 2017–2018 report card was the addition of a chronic absenteeism improvement indicator to the achievement component.[24]

The overall district letter grade distribution was: "A" – 28 districts (4.6 percent); "B" – 191 districts (31.4 percent); "C" – 253 districts (41.6 percent); "D" – 122 districts (20.1 percent); "F" – 14 districts (2.3 percent). Several large urban districts received an overall "F" grade, including the state's largest district, the Columbus City School District. An "F" grade for the East Cleveland City School District, whose income and socioeconomic challenges rank among the most significant of any district in Ohio, meant that it would fall under state control as described later in this chapter.

Low-wealth school districts dislike the report card because of direct comparisons with wealthy districts, which they view as unfair given the variances in local resource bases. Wealthy districts dislike the report card because even a small dip in scores from year-to-year can result in a low grade on its progress component. All districts dislike the report card methodology for its complexity. The lack of transparency is not helpful to the district-community relationship. The addition of a single overall letter grade simplifies analysis, yet it can mask important detailed information which might provide a more nuanced perspective. When grades are low and districts appear to be failing, passing levies — never easy under the best of circumstances — becomes much more difficult. With districts again receiving overall letter grades, calls for reform will likely reach an even higher level moving forward.

## Teacher Evaluation

Ohio developed its initial statewide teacher evaluation system between 2009 and 2011 as a part of its proposal for the second round of federal Race to the Top funding. The effort involved a wide range of stakeholders including teachers, administrators, higher education representatives, and national experts. The system had two components of equal value, a teacher performance rating and a student academic growth rating. However, support from the education community for the system was far from unanimous. While other states had used performance on student standardized tests as part of teacher assessment, few have relied upon this factor for so much of an overall teacher's evaluation.

In 2014, an alternative evaluation framework was adopted to partially address this concern. School districts were given the flexibility to choose between the new system and the original framework. The alternative framework continued to base half of the overall evaluation on teacher performance. Student academic growth, however, accounted for a lesser part of the evaluation at 35 percent. The balance, 15 percent, could be any of a combination of student surveys, teacher self-evaluations, peer-review evaluations, student portfolios, or other component as determined by the local school board.

An additional change in 2014 was that less frequent observations were required for teachers determined to be accomplished or skilled. Teachers receiving an ineffective rating were required to complete content knowledge exams in order to determine their expertise. School districts could only use failure on these exams to terminate a teacher contract if it was not the sole factor in making that determination, or if a teacher failed to pass the exam on three consecutive attempts.

Reform efforts continued in 2018 to provide for a more teacher-driven and student-focused evalua-

tion system. The stand-alone student academic growth measure was eliminated as was the alternative evaluation framework. Yet, another change prohibited the use of shared attribution of student performance data among teachers in a district, building, grade or content area. In their place, and in keeping with recommendations of the Educator Standards Board, multiple measures of "high-quality student data" will be used to provide evidence of student learning that can be attributable to the teacher being evaluated. High-quality student data may be used as evidence in components of the evaluation related to any of the following: knowledge of the students to whom the teacher provides instruction; the teacher's use of differentiated instructional practices relative to the needs and abilities of students; assessment of student learning; the teacher's use of assessment data; or professional responsibility and growth. The new evaluation rubric, to be effective with the 2020–2021 school year, should provide more informative feedback than the previous system and help teachers use data to improve instruction and enhance their professional development.[25]

In 2011, the state developed an Ohio Resident Educator program to mentor and provide professional development opportunities to beginning teachers during the first four years of their career. The program is required for those pursuing Alternative Resident Educator licenses as well as traditional licensure candidates. The Alternative Resident Educator program provides an accelerated pathway to classroom teaching for candidates with relevant content-related knowledge, life experience, and successful career experience. The General Assembly voted to eliminate the Ohio Resident Educator program in the FY 2018–2019 budget, but Governor John Kasich vetoed the item.

## Straight A Fund

Beyond his new proposed school funding formula in the FY 2014–2015 budget, Governor John Kasich recommended a $300 million Straight A Fund as part of his "Achievement Everywhere" plan. The fund, which was to be modeled after the Ohio Third Frontier Program, was to provide school districts with implementation grants for creative and transformational instruction practices that would be self-sustaining once start-up funding was exhausted. Projects were to be aimed at either advancing student achievement, reducing spending over a five-year period, utilizing proportionately more resources in the classroom, or using a shared service delivery model. Although the General Assembly added several earmarks to the program, it largely approved the Straight A Fund program as it was originally designed. However, funding from the Lottery Profits Education Fund for this program was reduced to $250 million, $100 million in FY 2014 and $150 million, in FY 2015.

Governor Kasich recommended $100 million annually for the Straight A Fund in the FY 2016–2017 budget, but the General Assembly continued the downward trajectory of appropriations for the program. Funding totaled only $27.25 million in FY 2016 and $15 million in FY 2017, but even some of these amounts were earmarked for purposes other than supporting sustainable proposals to improve student achievement or reducing operational costs to drive more dollars to the classroom.

Governor Kasich recommended continuing the Straight A Program at the FY 2017 level of $15 million for each year of the FY 2018–2019 biennium. Instead, the General Assembly eliminated the program altogether. The budget bill did require the Ohio Department of Education to submit a report on recommendations on projects previously funded that merited future replication.

## Cleveland Plan for Transforming Schools

In July 2012, Governor John Kasich signed into law sweeping changes designed to reinvent public education in the City of Cleveland. The Cleveland Plan for Transforming Schools, put forward by Mayor Frank Jackson, with support from Governor Kasich, the greater Cleveland community, and school district officials, made several fundamental changes in the relationship between the Cleveland Metropolitan School District (CMSD) and its charter schools and teachers. Critical elements of the Cleveland Plan included: permitting the district to share property tax revenue with select charter schools; giving city and district involvement regarding what charter sponsors can start new schools; paying teachers on a differentiated salary schedule based on performance, skills, and duties; and giving preference to high-performing and specialized teachers during layoffs rather than giving priority to tenure and seniority.

Preliminary results of the Cleveland Plan for Transforming Schools indicate some notable successes, including: expanded access to high-quality preschools; improved reading scores; record high school graduation rates; and declining college remediation rates. However, the CMSD struggled to meet other goals of the Cleveland Plan, such as eliminating failing schools from the city and tripling the number of students enrolled in high-performing school districts and charter schools.[26]

Mayor Jackson hoped that the Cleveland Plan might serve as a template for transforming other troubled school districts in the state. While Governor Kasich's 2015 plan to overhaul the Youngstown City School District shared some common elements with the Cleveland Plan, this initiative was not particularly well received by most leaders and educators in the Mahoning Valley community.

## Academic Distress Commission Overhaul[27]

At the request of the Kasich Administration in June 2015, the Ohio Senate inserted an eleventh-hour, 66-page amendment to overhaul the state's Academic Distress Commission process into what had been an innocuous House bill, HB 70 of the 131st General Assembly, creating community learning centers. The initiative, which was supported by some Youngstown community leaders but opposed by many others, gained quick approval and equally fast concurrence by the Ohio House of Representatives over the strong objections of many legislators to both the process and the policy.

The action occurred just as the Conference Committee report on the FY 2016–2017 budget bill was receiving its final approvals in the legislative process. One late Conference Committee addition not in any version of the budget bill previously was an earmark of $930,000 in FY 2016 and $2 million in FY 2017 for the establishment of academic distress commissions.

At the time, only the Youngstown and Lorain city schools had academic distress commissions, but the new legislation applied to any other school district receiving failing grades for three consecutive years on state report cards. Commissions are state-controlled in that three of their five members are appointed by the Superintendent of Public Instruction, while two members would be appointed locally. Effective with the 2018–2019 academic year, the East Cleveland City School District also became subject to state intervention.

Academic distress commissions are empowered to hire a chief executive officer (CEO), who need not be an educator but must have "high-level management experience." The CEO's powers widen considerably over time. By year two, the CEO has authority to close school buildings, fire staff and

teachers, and reopen the properties as charter schools. Students who would otherwise have attended a school in the academically distressed district would be eligible for state voucher assistance, regardless of the performance of the nearest school building. In year three, Ohio law concerning contracts and labor agreement could be changed or suspended. If the commission is still in place by year five, the elected school board can be replaced with a board appointed by the mayor.

With academic improvement, voters could choose to return to an elected school board. If a school district can earn a grade of "C" on their state report card with no "F" grades over the next two years, it can be freed from academic distress commission control. However, based on past performance, this would be a high hurdle for most major urban districts.

In 2018, the General Assembly seriously considered placing a moratorium on the state takeover of local school districts in academic distress status. Ultimately, it ordered Ohio Department of Education to reexamine the responsibilities of Academic Distress Commissions as well as the duties of their CEOs. The study is to be completed by May 2019.

# Comparison with Higher Education

As is still the case with primary and secondary education, public higher education in the state was long the responsibility of an independent coordinating body, the Ohio Board of Regents. In 2007, Governor Ted Strickland and the General Assembly, led by then House Speaker Jon Husted, took action to make the agency a cabinet department; it would be renamed the Ohio Department of Higher Education eight years later. Adult career-technical education and Adult Basic Literacy Education (ABLE) were moved from the Ohio Department of Education to the new cabinet-level department. The Board of Regents remained as an advisory body. However, as of June 2018, the board had not met in well over one year. As members have departed, seats have remained unfilled and a quorum was no longer possible.

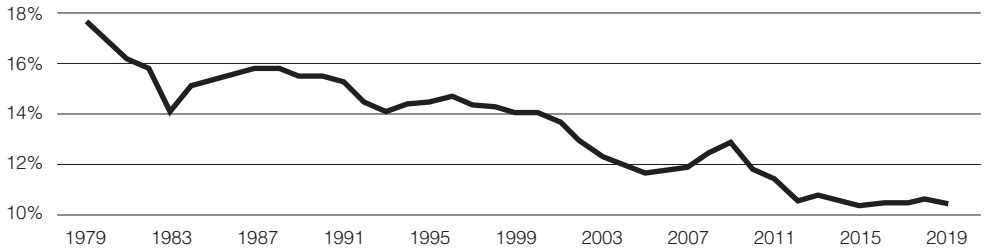
In addition to adult career-technical education and ABLE, the Ohio Department of Higher Education governs Ohio's system of 14 public universities and 23 community colleges. The agency also issues certificates of authorization to not-for-profit colleges and universities in the state. Their students, as well as those at Ohio for-profit colleges and universities, participate in many of the department's financial aid programs.

## Higher Education Funding and Innovation

Unlike primary and secondary education, higher education is not enshrined in the Ohio Constitution. While undoubtedly an important focus in most state budgets, it does not enjoy the priority status that primary and secondary education routinely does. Indeed, higher education's share of all state-source funding has shrunk steadily since the late 1970s, from a high of 17.7 percent in FY 1979 to 11.3 percent of total state-source funding when Governor John Kasich took office in 2011. It continued to decrease further to 10.4 percent by FY 2019 at the end of his term. Figure 14-2 displays the downward trend in state support over the 40-year period from FY 1979 to FY 2019. If higher education were still funded at its historical high share of support, the FY 2019 appropriation for this important function would have been $1.8 billion higher than the actual appropriation of $2.6 billion.

## Figure 14-2: Higher Education Budget Share

**Higher Education as a Percentage Share of State-source Funding, FY 1979 – FY 2019**




*Source: Ohio Legislative Service Commission.*

The lion's share of the nearly $2.6 billion in state support for higher education in FY 2019 was appropriated to the State Share of Instruction subsidy. Much of the remaining $617 million in FY 2019 funding was in the form of student aid. As recently as FY 2009, total appropriations for higher education had reached nearly $2.8 billion. A 57 percent reduction in need-based student financial aid during the Great Recession was the primary reason for the decreased level of support. Only a very small portion of this funding has since been restored, despite an ever-increasing demand for such assistance as a result of rising college costs. Sixty-five percent of all Ohio undergraduates were in debt following their graduation in 2016. Average student debt upon graduation for these students was $29,579, the 16th highest level in the nation.[28]

The State Share of Instruction is the primary mechanism for subsidizing the cost of instruction at public colleges and universities in order to keep undergraduate tuition for Ohio students at an affordable level. The item was funded at $1.98 billion in FY 2019, the same level as in the previous two fiscal years. This restrained level of funding support has been made more difficult for institutions because of the significant caps on tuition that have existed in recent years. The FY 2016–2017 budget did allow a 6 percent increase for incoming freshmen but specified that the new amount must then be locked in for four years for such students. The FY 2018–2019 budget bill included a provision to raise the allowable one-time increase for incoming freshmen to 8 percent, but the item was vetoed by Governor Kasich. Tuition for community college students can be increased by $10 per credit hour in FY 2019, but the governor vetoed a similar increase for FY 2018.

Ohio has been a leader in performance funding for higher education since the late 1990s, but it became a much more significant part of state funding during the Kasich Administration. The State Share of Instruction is distributed on a formula basis with individual university and college allocations determined by a number of performance-based metrics unique to their specific sector of education. Importantly, unlike Foundation Funding for primary and secondary education, the State Share of Instruction formula contains no guarantees or gain caps; it is a formula that functions as was intended.

Ohio has also been a leader in recent years in ensuring the seamless transfer of college and university coursework between educational institutions. This work was subsequently expanded into the areas of adult career-technical education credit transfer, registered apprenticeship pathways, and the award of credit for military training and experience.

The FY 2018–2019 budget included numerous other policy changes, or at least set the stage for further

innovation in the future, that would particularly impact community colleges. It authorized the creation of applied bachelor's degree programs at community colleges under certain specified circumstances. It also called for the development of program models for "3 + 1" degree programs between community colleges and public universities, as well as credentialing program models at community colleges and technical centers for in-demand occupations. It also requested that the Chancellor recognize a provider of competency-based education programs. Finally, it authorized financial aid for the first time for students enrolled in short-term certificate programs.

As with primary and secondary education, Ohio higher education policy during the course of the Kasich Administration was long on innovation and somewhat less so on funding support. Addressing the combined impact of many years of less than optimal state support for higher education, tuition caps, and rising non-tuition student fees will likely continue to present a serious challenge to college and university leadership.

## Should K–16 Education Functions Be Consolidated?

Few items are more important to a governor's agenda than primary and secondary education. Yet, it is administered in a manner that provides less accountability than perhaps might be ideal with an organizational structure largely independent of executive control. An additional concern is that as the lines between K–12 and higher education have become increasingly blurred, such as through the College Credit Plus initiative, the organizational structures of the two agencies charged with these responsibilities remain separate and distinct. The same argument can be made with regard to the limited connections between the educational agencies and workforce development. Ohio does not appear to have the optimal organizational alignment it needs to make progress towards achieving its ambitious goal of having 65 percent of its adult citizens with a higher education degree or workforce certification credential by 2025. Reaching this goal would require a nearly 50 percent increase over current levels of achievement.

Governor John Kasich and then House Speaker Cliff Rosenberger launched a sweeping proposal in 2018 to centralize education and workforce policymaking, and in the process streamline these functions, improve communications, create a culture of continuous learning, and better prepare the workforce of the future. Specifically, the proposal would have consolidated the departments of Education and Higher Education, along with the Governor's Office of Workforce Transformation, into a single, cabinet-level agency, the Ohio Department of Learning and Achievement. Because it is a Constitutionally created entity, the State Board of Education was retained in the plan, but its functions would have been significantly reduced. It would continue to be responsible for issuing teacher licenses, disciplinary matters, and maintain some oversight of community schools and the state schools for the blind and deaf. However, fully 80 percent of its responsibilities would flow to the new cabinet-level department.

The sweeping proposal stalled because of opposition from education advocates who argued that it could limit their access to the education policy process and that there were less drastic ways to ensure cooperation among education and workforce agencies. Still others, primarily home-school advocates, opposed the initiative seeing it as an effort to mandate government-controlled workforce placement. Moreover, any impact in closing Ohio's achievement gap would likely be quite limited, if such action were undertaken without a concomitant increase in state financial support.

# Summary

Two education priorities were central to the administration of Governor John Kasich, innovation and accountability. Yet, despite wide-ranging efforts to improve educational outcomes, Ohio has fallen short. *Education Week* ranks states annually on student achievement and other success indicators, such as graduation rates and preschool enrollment, as well as financial measures. Ohio was ranked as having the fifth best public schools in the nation in the *Education Week* survey the year Kasich was first elected governor in 2010. However, this ranking dropped to 18th by the time the governor stood for reelection in 2014 and fell further to 23rd in 2015. It improved only slightly to 22nd in 2016, where it remained in both 2017 and 2018.

The decline from excellence towards average reflected the large achievement gap between the state's highest and lowest performing schools as well as a charter school sector that was the most troubled in the nation. *Education Week* found the gap between students from low-income and high-income families to be a dismal 37th in the nation. Not surprisingly, Ohio also ranked 37th in the area of funding equity.[29]

This is simply not good enough for such a fundamental state responsibility, particularly one where Ohio has had such a long history of leadership. To have meaningful improvement, Ohio should consider returning to the mandate in *DeRolph* to provide an adequate and equitable education for all of its citizens. This should begin with determining the cost of providing a quality education and then fully funding it. Governor Ted Strickland accomplished the former with his Evidence-based model. The challenge would be accomplishing the second part, fully funding Ohio's system of common schools. Currently, Ohio's tax policies and its priority focus on community schools would seem to preclude this possibility.

## *Endnotes*

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AFTERWORD:

# An Uncertain Future

"On every journey you take, you are met with options. At every fork in the road, you make a choice."

*—Governor Mike DeWine*

## Mike DeWine, 2019–

| DEWINE ADMINISTRATION VISION FOR OHIO'S FUTURE |
| --- |
| • Creating high-paying jobs through increased skill training, innovation, research, and investment, and eliminating burdensome regulations<br>• Overcoming the drug epidemic through a multi-faceted approach of law enforcement, community outreach, and education<br>• Keeping the Medicaid expansion and protecting coverage for people with pre-existing conditions<br>• Prioritizing early childhood development education<br>• Lessening educational testing and making higher education more affordable |

Despite some truly significant advances during the administration of Governor John Kasich, Mike DeWine took office in January 2019 facing both near and long-term challenges. Two underlying issues confronting Governor DeWine, and quite likely his successors in office no matter how successful his administration, are the changing nature of the Ohio economy and the state's demographics.

## A Changing Economy

Ohio reached an all-time high in state employment in September 2018 of 5,638,900. This was a level not seen in the Buckeye State in more than 18 years. The recession that followed the next year in 2001 and the Great Recession later in the decade were significantly worse than that experienced in most of the rest of the nation. So, too, was the recovery during the intervening years of 2003 to 2007 when employment in the state grew by an abysmal 0.5 percent, less than one-tenth of the national average. During the decade following the Great Recession, job prospects in Ohio have been much stronger. Yet, until 2018, Alabama, Connecticut, Illinois, Michigan, Mississippi were the only other states in which employment trailed the levels experienced at the start of the 21st century.[1]

The nature of work in Ohio has changed even more dramatically than the size of its workforce. Between 2000 and 2010, manufacturing employment plummeted by 39.3 percent, a drop of more than

400,000. By the end of the Great Recession, manufacturing, the historic driver of the Ohio economy, would generate only 17 percent of the gross state product with durable manufacturing accounting for a less than 10 percent share. The state's economy had become increasingly dependent on service jobs. While these trends have plagued Ohio and much of the industrial Midwest for decades, they have been exacerbated by recent developments. See Chapter 2 for additional information on this subject.

The state has struggled to transition its economic base from legacy industries to the knowledge-based economy. By 2017, a "Best States" survey conducted by McKinsey & Company for *U.S. News & World Report* would rank Ohio's economic strength at only 31st among all states, placing it in the fourth quintile.[2] Of even greater concern were the sub-rankings that it gave for the state's business environment, 44th, and most particularly, for entrepreneurship, where Ohio ranked dead last, 50th. This lack of "dynamism" is evidenced in Ohio's comparatively low rate of new business formations.[3]

A bright spot in the Ohio economy was the state's support for technology and innovation, as evidenced in its long-time support of the Third Frontier initiative. Ohio ranked 15th among the states in technology and innovation, according to a CNBC survey on top states for business.[4] It achieved the same ranking in its concentration of advanced industries as a share of its total employment in a February 2015 Brookings study.[5] However, no Ohio metropolitan area ranked in the top 20 nationally. Dayton had the greatest concentration of advanced industries in Ohio, ranking 22nd in the nation, although the Cleveland-Elyria metro area, ranked 40th in the survey, had the largest employment in these fields at 94,400.

A related concern is the ability of the state to transform its workforce to match the jobs of the new economy. Governor John Kasich spoke to the challenges and opportunities that technology will provide to the Ohio economy moving forward in his penultimate State of the State Address in April 2017. The governor warned that not only blue-collar jobs, but insurance adjusters, stockbrokers, and many other occupations will be impacted. Some jobs will change, while others will disappear entirely; yet, others will emerge. A 2013 University of Oxford study on "The Future of Employment" supports Governor Kasich's analysis. It found that 2.5 million of Ohio's 5.5 million total jobs are at risk of being automated at some point in the future.[6] The world is changing, and Ohio must stay ahead of those changes. To do so, the governor added, the state must take risks, whether it is investing in artificial intelligence, such as driverless vehicles and drones, or making difficult decisions on taxes.[7]

Embracing innovation will be no easy matter, given the adherence to the status quo by individuals and institutions alike, especially in the education community. This challenge will be particularly great for Ohio, as not enough of the state's residents have the education and skill set to fill the jobs that will be available. Ohio scored poorly on education metrics as measured in the *U.S. News* "Best States" survey. The state's education effort ranked only 38th overall, and its higher education system was rated even lower, 43rd. Ohio ranked 36th among the states in tuition and fees, and 38th in both student debt and educational attainment.

While few things are potentially more valuable than an education, an education that offers limited job prospects is an opportunity lost to both the individual and that individual's potential employer. Without better alignment of primary and its secondary education and higher education institutions, the state will continue to be unprepared for the workforce tsunami it will inevitably face. However, with the correct support provided to its research and educational institutions, the state can succeed. Governor Kasich strongly argued that both K–12 and colleges and universities must adapt their educational product and workforce training efforts to work more closely with business leaders. He felt it

imperative that they teach the skills students need to succeed in an increasingly complex, technology-driven world. His proposed merger of the departments of Education and Higher Education and the Governor's Office of Workforce Transformation into a unified cabinet agency fully under the governor's direction could have been an important step in helping to bridge this gap. However, while such an action may have provided the organizational alignment necessary for meaningful reform, it would have meant little if state leaders did not also address years of inadequate financial support for Ohio's educational delivery system and those whom it serves.

## Changing Demographics

Demographics are indeed destiny. Ohio's population was already older than the national average in 2010, when a little less than one-fifth of the state's population was age 60 or over. The percentage of Ohio seniors is expected to soar to nearly 29 percent by 2030, according to Miami University's Scripps Gerontology Center. The oldest of this population, those aged 85 and over, is growing at an even faster rate, and significantly so. The state's population over age 85 is expected to increase by nearly 50 percent during this period from 230,419 to an estimated 336,664.[8]

Health care costs tend to increase with age, and quite dramatically for those in the latter stages of their lifetimes. One of the fastest rising diseases, with equally fast-rising associated treatment costs, is Alzheimer's and other forms of dementia. Nearly a third, or 32 percent, of all seniors over age 85 will be touched by this disease. While Alzheimer's impacts only 3 percent of those aged 65 to 74, the number affected by this disease increases steadily with age. Eighty-two percent of all Alzheimer's patients are over age 75 with nearly half of these being age 85 or greater. The human and budgetary costs of Alzheimer's are enormous. Medicaid costs for Ohioans 65 years and older living with Alzheimer's or other dementia was $2.24 billion in 2017. This amount is expected to rise by 27.2 percent by 2025 to $2.85 billion, according to the Alzheimer's Association.[9] Health care costs are expected to rise more generally as well, including those for other Ohioans who may require either institutional or home- and community-based long-term care. Despite the state's continuing laudable efforts to control expenditures in ways that do not hinder quality and service provision, Medicaid costs can be expected to rise significantly over time.

An aging population not only impacts health care costs, it also affects the ability of the state to meet that obligation and other budgetary challenges that it will face. Ohio's working population, ages 25 to 64, is expected to decline by an estimated 10 percent between 2010 and 2035. Wage and salary earnings over the same period will likely decrease by an even greater percentage, 21 percent, which will reduce the income-adjusted income tax base by 13.5 percent in real terms. Moreover, since senior-headed households spend less than younger individuals on taxable expenditures, estimated Ohio sales tax receipts, the largest source of state revenue, will likely remain largely stagnant through 2035.[10]

As Baby Boomers age, there will become greater the need for increased expenditures in health care. Taxes cannot continue to be reduced without regard to long-term trends, the state's health care needs, and other critical policy areas.[11] While a national problem as well, the test will be particularly acute in states with older populations, such as Ohio. The budgetary choices will be daunting, and the willingness of younger Ohioans to bear this burden remains to be seen. Transformational changes in the role of state government will be required if this obligation is to be effectively met.

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***Note:*** *Italic t following a page number indicates a table. Italic f following a page number indicates a figure.*

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