

WEAKENED STATE:
OHIO FALLS SHORT
ON BASIC SERVICES

A REPORT FROM
POLICY MATTERS OHIO

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Executive Summary

With a looming gap between revenues and expenditures in the upcoming budget, there has been significant attention to likely spending cuts. It is easy to forget that Ohio's state budget already has been squeezed, with major reductions to basic services that Ohioans expect from government. This paper reviews some state services that have eroded, explicitly focusing on cuts not related to human services and education documented elsewhere. This is not comprehensive, it is merely a review of several areas that have been starved for funding in recent years, including:

- **Board of Tax Appeals:** Homeowners and businesses that appeal property-tax valuations now have to wait more than two years for a hearing because of staff cuts and the rising volume of cases. Between Fiscal Years 2005 and 2010, cases nearly tripled, from 1,608 to 4,679, yet the state sliced funding by \$815,847 or 41 percent in Fiscal 2010 from FY09. Funding for FY11 slipped another one percent, to \$1,149,715. The board was forced to lay off 60 percent of staff in 2009, leaving just three examiners, compared to 10 three years ago. The last full year that the BTA kept up with its caseload was FY2006. In February 2011, the examiners were hearing cases filed more than two years earlier.
- **Division of Weights and Measures:** This division ensures honest commerce by helping ensure that scales weigh items properly and that counties adequately monitor supermarket scanners, gas pumps and other measuring devices. Over the past five years, General Revenue Fund (GRF) funding for Weights and Measures in Ohio dropped precipitously by 81.4 percent, from \$1.074 million to \$200,000. Field services provided by the state have been slashed, and spot checks in some instances have replaced the previous regular inspections. Ohio and its counties share responsibility for these services, and the state's retreat leaves hard-pressed counties struggling to pick up the responsibilities in the face of their own budget shortfalls.
- **Division of Parks and Recreation:** Seventy-four state parks in 60 counties encompass 174,212 acres of land and water, attract more than 50 million visitors annually, and generate over a billion tourism dollars per year. According to the November 2010 budget request letter, the funding request for FY2012-13 matches the 1988 GRF request. Over the last decade, funding for parks and recreation has declined in inflation-adjusted dollars by 23.5 percent. The parks have deferred maintenance projects, including EPA-mandated sewer and water upgrades. We've seen a 45 percent staffing reduction, a \$556 million backlog in maintenance, and a decline in perceived safety by visitors. Ohio is considering selling Jefferson Lake State Park to Jefferson County for one dollar. The County would sell timber and drilling rights to pay for dam repair and campsite upgrades. Locally, bike trails and parks have been closed; at the state level, the discussion has turned from preservation of recreational assets to use of state parks for drilling. Years of investment in a system of parks and recreational facilities could be lost, hurting tourism, too.
- **Ohio Civil Rights Commission:** In FY 2000, the Ohio Civil Rights Commission had 199 employees; there are now 94. GRF funding of \$10.6 million in 2000 was hacked to \$4.6 million in FY 2010, a decline of 54 percent. Flat or ten percent reduced funding is expected to result in the elimination of an additional 17 to 23 positions. A loss of 23 individuals would mean 1,600 fewer investigations per year, a 36% decline.

More cuts could bring quality problems, negative press, even lawsuits, as in the mid 1990s, when a burst of activity and lack of capacity undermined service provision.

- **Ohio Ethics Commission:** Ethics cases have risen an average of 18 percent each year since 2000 and ethics filings are up 30 percent over the past 15 years, but the budget hasn't kept up. During the first year of the Strickland administration, funding for the Ethics Commission rose by about 16 percent, inflation-adjusted. But by FY2010, GRF funding had fallen by 19 percent after inflation from a high in 2007. As a result, ethics education was reduced by 19 percent; staffing fell from 25 to 21; the operations budget was cut by 30 percent; and equipment has not been updated for the past three fiscal years.
- **Environmental Review Appeals Commission:** GRF funding for Environmental Review Appeals Commission has fallen by 20 percent over the past decade after inflation. Staffing has fallen from 14 to 2 since the agency was founded in the mid 1970s. Length of time in investigations has caused legislation and litigation.
- **Public libraries:** Historically, Ohio libraries have dominated the ranks of the nation's top libraries. Over the past two years, state support for library funding has been chopped by nearly 23 percent. Overall, libraries received \$347.9 million from the state Public Library Fund last calendar year, compared to \$450 million in 2008, despite a successful grassroots effort that reduced the cuts. In response, libraries reduced hours, closed branches, reduced purchasing, cut programming and shed staff. Overall, Ohio public libraries cut hours by more than 10 percent in 2009. The slashed state support has meant a huge increase in proposed property-tax levies. According to a recent analysis by Driscoll & Fleeter, the 71 library levy proposals that appeared on the ballot across the state in 2010 were twice as many as in any previous year since 1980, except in 2009, when there were 45. Greater dependence on local levies will result in disparity of service.

Our recommendations include:

- **Protect taxpayer return on investment.** Our parents and grandparents invested billions of dollars in libraries, parks, fair appeals processes, and services to ensure an honest market place and fair work places. We must protect, not undermine, this investment.
- **Restore capacity to public services eroded by inflation.**
- **Increasing dependence on fees leads to politicization of services.** Regulated interests opposed fee hikes for Weights and Measures and the Environmental Review Appeals Commission. A growing dependence on fees exposes critical public services to political pressures.
- **Keep public services affordable.** Dependence on fees can lead to disparity in quality and availability of services.

Eroded State Services

As the Ohio General Assembly begins consideration of the two-year state budget that will begin on July 1, many observers have pointed to a huge gap between revenues and expenditures that must be bridged. Major spending cuts and restructuring proposals are expected.

Given such discussion, it is easy to forget that Ohio's state budget already has been slashed. Ohio has seen a decline in the capacity of state government to deliver basic public services in disparate areas ranging from tax appeals to policing the ethics of public officials. The result has been a reduction in basic services that Ohioans expect their government to provide.

Homeowners and businesses that appeal their property-tax valuations now have to wait two years for a hearing because of staffing cutbacks – and that's after the first stage of the appeals process. In some instances, including the Environmental Review Appeals Commission and the Division of Weights and Measures, fee increases to boost capacity were rejected, leaving a precarious situation for the next biennium, with the possibility of reduced services. In others, such as enforcement of anti-discrimination laws, staffing cutbacks may hinder investigation and enforcement. A mounting backlog of capital needs and staffing cuts threatens Ohio's state park system. Ohio's public libraries, historically the best in the nation, are cutting services even as they turn to voters for property-tax levies to offset lost state funds. What kind of foundation does this lay for Ohio's future?

Not a sound one. The unceasing demand to lower taxes is eroding services we depend upon. In this issue brief, Policy Matters Ohio examines seven basic public services and evaluates funding trends that undermine their ability to protect businesses, consumers and homeowners in the future:

- Board of Tax Appeals
- Division of Weights and Measures
- Division of Parks and Recreation
- Ohio Civil Rights Commission
- Ohio Ethics Commission
- Environmental Review Appeals Commission
- Public libraries

The state suffers when basic public services are understaffed and cannot deliver timely assistance. In this paper, we examine funding of services that enhance the quality of life, protect natural assets, and assist in preventing or solving problems for homes and businesses, in the workplace and the market place. We find an erosion of resources, funding, and services to the public. This research is not meant to be comprehensive – human service cutbacks, including slashing of early childhood education and mental health, have been detailed elsewhere. This brief simply

chronicles some dramatic cuts that have already taken place in non-human service spending. Key recommendations include:

1. **Protect the taxpayers' return on investment.** Our parents and grandparents invested billions of dollars over the generations into an excellent library system, fair appeals processes, and services to ensure an honest market place and fair work places. It is the responsibility of leadership to protect the investment of our parents and grandparents, not to disinvest, undermining longtime contributions.
2. **Restore capacity to public services eroded by inflation.** It is the job of the executive branch to ensure services are efficiently delivered. It is the job of the legislature to ensure services are adequately funded and not eroded by inflation and disinvestment.
3. **Increasing dependence on fees may lead to politicization of services.** Targeted fee proposals have not yielded the funding needed for staffing and maintenance of parks. Regulated interests opposed fee hikes for Weights and Measures and the Environmental Review Advisory Commission. Broader and more fair revenue sources are needed for what is widely recognized as an important public good. Fees do not constitute a dependable sources of funding for important services that serve the public interest.
4. **Keep public services affordable.** A dependence on fees can, over time, make access to critical public services inaccessible to citizens based on income, creating inequity to the system.

Board of Tax Appeals

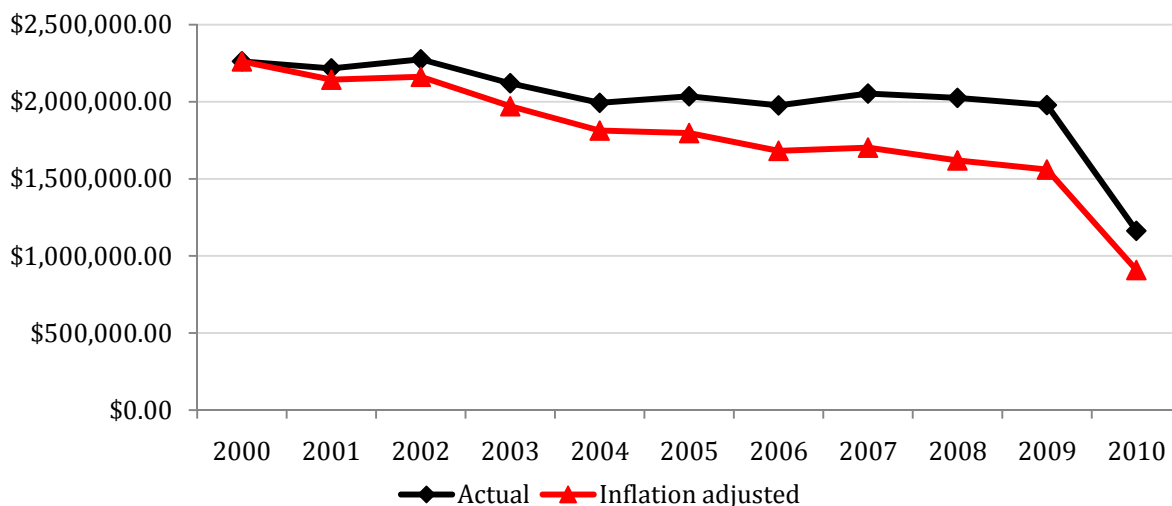
As its name suggests, the Board of Tax Appeals handles tax disputes. Its three members, appointed by the governor, take up all appeals that come up under Ohio tax laws, except for estate taxes. The vast bulk of its cases involve appeals by homeowners of their property valuations after decisions by county boards of revision. Most of the rest involve determinations by the state tax commissioner. Cases can also come from other sources, such as municipal boards of appeal or county budget commissions. This fiscal year, the board received a significant constitutional challenge to Ohio's commercial activity tax (CAT), and more important CAT cases are expected.¹

BTA attorney examiners review the materials, hear the case, and prepare a draft decision for the board. The board reviews it and may agree, disagree or ask for a redraft. Decisions may be appealed further to courts of appeals or the Ohio Supreme Court.

¹ Sally F. Van Meter, Executive Director, Board of Tax Appeals, Letter to J. Pari Sabety, Director, Ohio Office of Budget and Management, Director's Summary for FY 2012 - 2013 Biennium Budget Request, Nov. 1, 2010.

Over the last several years, with the state's foreclosure crisis, the number of cases filed has skyrocketed (Figure 1). Between Fiscal Years 2005 and 2010, the number nearly tripled, from 1,608 to 4,679 cases.² This year, BTA Chairperson Pamela L. Margulies guesses that between 3,500 and 4,000 will be filed, which would make it the second-highest in recent memory. Yet even as cases multiplied, the state slashed funding to the board. The board received an \$815,847 or 41 percent cut in Fiscal 2010 from FY09. Funding for FY10 slipped another one percent, to \$1,149,715.³

Figure 1: GRF funding for the Board of Tax Appeals, FY2000-2010



Source: Ohio Legislative Service Commission. Figures are adjusted for inflation using CPI, with 1984-86 = 100. CPI figures from the U.S. Bureau of Labor Statistics.

Figure 1 illustrates trends over the past decade; on an inflation-adjusted basis, state support for the bureau of tax Appeals has declined by 60 percent since fiscal year 2000.

After budget cuts had kept the BTA from filling attorney examiner positions in Fiscal 2009, the board laid off 60 percent of its staff in August 2009. There are now only three examiners, compared to 10 three years ago. Pamela L. Margulies, chairperson of the BTA, noted that when she arrived as a board member in 2001, the BTA had 30 staff. Today, it has seven (numbers exclude the three board members).⁴

This has led to a huge increase in the case backlog and delays in the disposition of appeals. After nearly doubling between FY2005 and 2008, to 2,745 cases, the caseload ballooned to 6,235 by the end of Fiscal 2010 and 7,869 at the end of December 2010. The backlog has fallen very slightly since then, to 7,724 as of Feb. 18, in part because the BTA has not been receiving any cases from Cuyahoga County

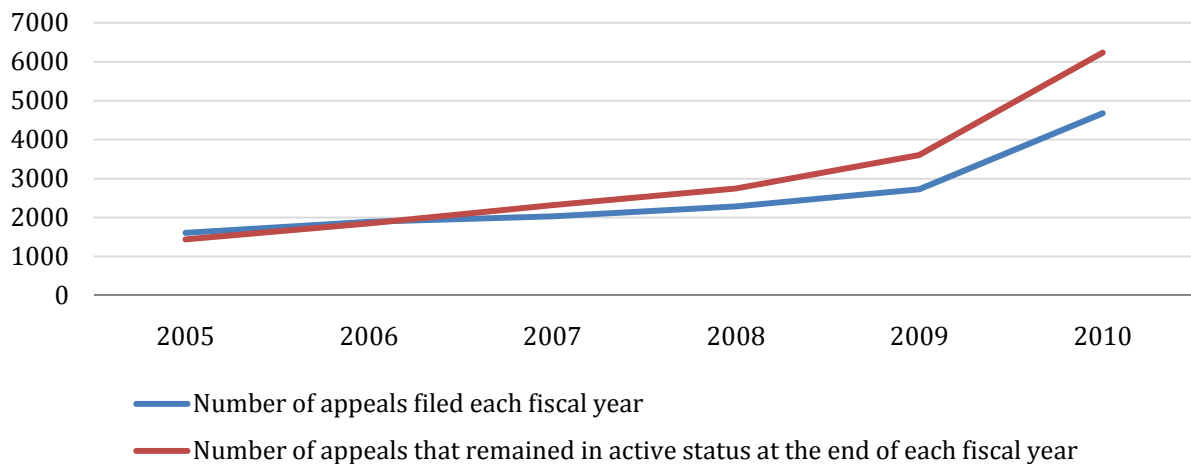
² Annual Report of the Ohio Board of Tax Appeals for Fiscal Year 2010, p. 18.

³ Legislative Service Commission, Catalog of Budget Line Items, p. 689

⁴ Interview with Pamela L. Margulies, December 24, 2010

and because more cases are being settled, Margulies said.⁵ The last full year that the BTA kept up with its caseload was FY2006.⁶ Parties in a case can choose to waive a hearing, rely on the existing record and file or not file briefs. However, in February 2011, the examiners were hearing cases filed in January of 2009.⁷ Figure 2 depicts the number of appeals filed each year with the BTA and its year-end backlog:

Figure 2: BTA annual appeals filed and backlog at the end of each fiscal year



Source: Board of Tax Appeals Fiscal Year 2010 Annual Report

It's not completely clear why the BTA received such a large cut, but it was certainly the product of a stringent budget environment. A proposal to increase fees paid by local governments to make up the shortfall failed in conference committee. Meetings of interested parties later agreed on other changes to improve the tax-appeal system, but could not agree on a source of funding, according to J. Donald Mottley of Taft, Stettinius & Hollister LLP, then chair of the Ohio State Bar Association's Taxation Committee. This was despite data from Mottley showing that the amounts held up because of delays in the appeals process far exceed the \$1 million needed to at least bring funding back to its prior level.⁸

While some have suggested other improvements that need to be made at the BTA, such as simplification of the pleading process,⁹ there is no dispute that funding is inadequate. Whatever the cause of the funding reduction, the inability to find such a small sum means that thousands of taxpayers are left in limbo. Despite budget problems, in an article on the BTA in *State Tax Notes*, Columbus lawyer Edward J.

⁵ Interview with Pamela L. Margulies, Feb. 25, 2011. Cuyahoga County's Board of Revision did not hear cases for a period of time, so the BTA did not receive any appeals from the county.

⁶ Annual Report of the Ohio Board of Tax Appeals for Fiscal Year 2010, p. 6

⁷ Interview with Sally F. Van Meter, Feb. 18, 2011. The BTA annual report notes that in FY2010 it took on average 8.6 months (63.2 percent) more time to process a case that had been continued, compared to FY2005; 3.7 months (33.3 percent) more time, for all types of cases, and 1.7 months (18.5 percent) more time for cases that had not been continued. See p. 21

⁸ Mottley, J. Donald, Ways & Means Testimony Outline, BTA Funding Issue, May 12, 2010

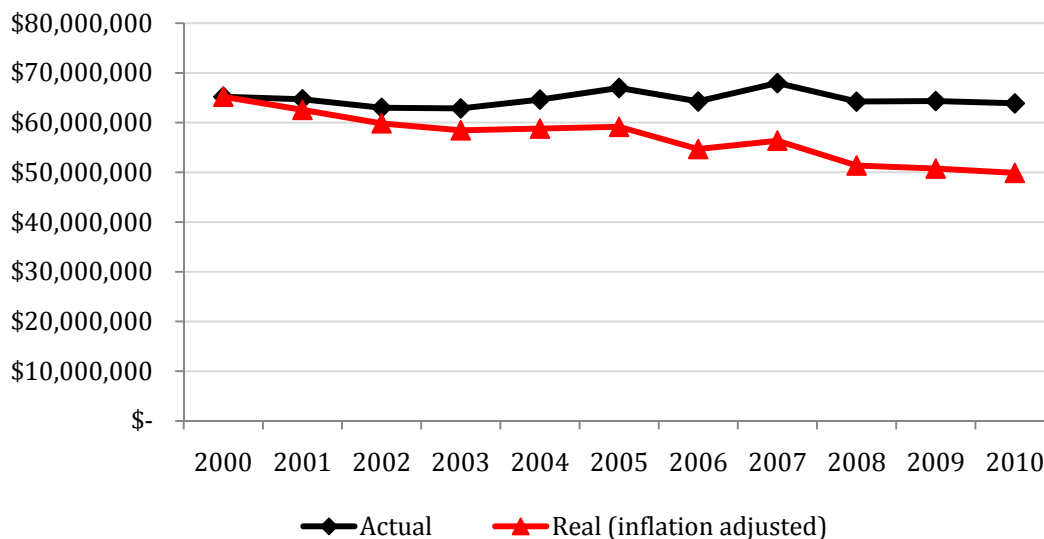
⁹ Bernert, Edward J., "Delay Becomes the Norm at the Ohio Board of Tax Appeals," *State Tax Notes*, August 23, 2010, p. 501

Bernert wrote “a tax appeals process is like the plumbing in a house – it is a nonoptional system that must be maintained.”¹⁰ Ohio is not properly maintaining it.

Parks and Recreation

At the Department of Natural Resources, inflation has eroded years of essentially flat funding for its best-known assets and services. According to the November, 2010, budget request letter of former budget director Sean Logan, the funding request for the Department from General Revenue Fund resources for fiscal year 2012-13 matches the request of 1988.¹¹ Over the last decade, **overall** funding for parks and recreation has declined in inflation-adjusted dollars by 23.5 percent (Figure 3).

Figure 3: Funding for ODNR’s Division of parks and recreation, FY2000-2010



Source: Ohio Legislative Service Commission. Figures are adjusted for inflation using CPI - U state fiscal year

Ohio’s state park system is extensive, reflecting both the natural assets of the state and demand for recreational services by the people of the nation’s seventh most populous state. Seventy-four state parks, located in sixty of Ohio’s eighty-eight counties, encompass 174,212 acres of land and water with nearly 10,000 family campsites in 57 campgrounds; 1,025 miles of shoreline, 80 public beaches and 188 boat ramps; 36 nature/visitor centers; 183 playgrounds and 6 golf courses; 394 individual trails totaling 1,167 miles; 518 cottages and 9 resort lodges. According to a 2009 assessment of the Ohio Division of Natural Resources, Ohio supports the third

¹⁰ Ibid., p. 503

¹¹ Sean Logan, Executive Director, Ohio Department of Natural Resources, Letter to J. Pari Sabety, Director, Ohio Office of Budget and Management, Director’s Summary for FY 2012 – 2013 Biennium Budget Request, Nov. 1, 2010.

most visited system of parks in the nation, with over 50 million visitors annually generating over a billion dollars in tourism activity.¹²

The cumulative effect of eroded budgets over time includes very large deferred capital maintenance needs which include EPA-mandated upgrades of sewer and water facilities. The Ohio State Park and Recreational Facility Study Committee of 2009 identified a 45 percent reduction in staffing and a \$556 million backlog in deferred maintenance as critical issues facing the state of Ohio.¹³

Deferred capital maintenance can translate into hundreds of thousands of dollars worth of untended upkeep in any given state park. In Jefferson County, for example, the state is considering selling Jefferson Lake State Park to the County for one dollar. The County, which would bear the costs of upkeep - \$600,000 to repair the dam and \$100,000 for upgrades to the campsite - plans sale of timber and drilling rights. Environmentalists and neighbors have protested.¹⁴

In June of 2009, the Columbus *Dispatch* recounted the litany of problems besetting Ohio's state parks: a prior-year study had found 27 state-owned dams in need of repair or replacement at a cost of \$81 million; 59 sewage plants and systems needed \$45.8 million worth of work.¹⁵ The Ohio State Park and Recreational Area Study Commission report of 2009 said that visitors felt less safe in Ohio state parks in 2009, because of cuts in staffing, according to customer satisfaction surveys and polling.¹⁶ In 2005, Department officials tried to turn to fees to replace declining state support, but received insufficient legislative support. With base funding falling and proposed fees quashed, easy solutions are hard to find.

State officials considered downgrading Jefferson Lake State Park to a nature preserve. The division of ODNR that oversees nature preserves, however, has been even harder hit by budget cuts than parks and recreation. The Division of Natural Areas and Preserves, which protects environmentally sensitive areas under state ownership, has seen a decline of 35 percent of funding, adjusted for inflation, over the past 10 years (Figure 4). The decline in this division, which provides trails and flood control and related recreational and land management services, corresponds to the diminished support of parks and recreation at both the state and local levels.¹⁷

2 Ohio State Park and Recreational Area Study Committee Report, February 27, 2009, p.15

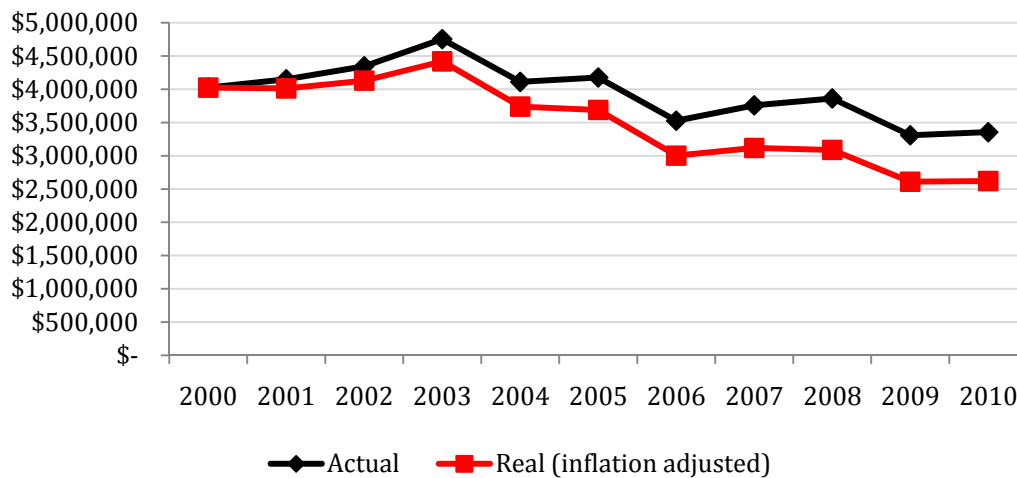
3 Ohio State Park and Recreational Area Study Committee Report, February 27, 2009, p.16

14 Mark Law, "Environmental Groups Question Deal for Jefferson State Lake," HeroldStarOnline, 1/12/2011

15 Spenser Hunt, "State Parks Face Hefty Repair List," The Columbus Dispatch, June 14, 2009.

16 Ohio State Park and Recreational Area Study Committee, Op.Cit., p. 17

17 Licking county is closing parks (<http://www2.nbc4i.com/news/2011/jan/05/licking-park-district-needs-votes-pepsi-grant-afte-ar-351401/>.) In Fairfield County, local levies for parks maintenance have been turned down 10 times. (<http://www.10tv.com/live/content/local/stories/2010/05/03/story-lancaster-fairfield-county-parks-levy-election.html>) Clark county faces closure of bike trails and parks (<http://www.whiotv.com/news/25776063/detail.html>).

Figure 4: Funding for Division of Natural Areas & Preserves, FY 2000-2010.

Source: Ohio Legislative Service Commission. Figures are adjusted for inflation using CPI-U state fiscal year.

At the local level, bike trails and parks have been closed for lack of maintenance and funding; at the state level, the discussion has turned from preservation of recreational assets to use of state parks for logging and drilling. Ohio taxpayers invested for years in a system of parks and recreational facilities. Abandoning these investments will not bring jobs back to Ohio, but it can erode Ohioan's recreational opportunities, hurt the billion-dollar tourism industry in rural places, and eliminate the return on taxpayer investment.

Lack of legislative support for entrance fees in parks illustrates two dangers associated with a shift from broad public support to targeted user fees. One, user fees are regressive: it is harder for people with low or moderate income to afford them than wealthier people, and legislators know that. In a weakened economy, no one wants to antagonize voters with a barrier to a trip to the lake. Second, when support becomes political, stewardship of assets takes a second place. This highlights the need for Ohio to establish a system of public finance sufficient to maintain the assets Ohio taxpayers have invested in over the years.

Ohio Department of Agriculture's Division of Weights and Measures

Ohio, like other states, hosts a division of weights and measures associated with the National Institute of Standards and Technology (NIST). In some states, it's called the Division of Consumer Protection. In others, it is called the Office of Legal Affairs. In Ohio, it's called the Division of Weights and Measures and is part of the Ohio Department of Agriculture. The Weights and Measures Division promotes uniformity in U.S. weights and measures laws, regulations, and standards to achieve equity between buyers and sellers in the marketplace.

Tom Konst, Deputy Auditor/Weights & Measures Inspector of Carroll County and Treasurer of The Ohio Weights and Measures Association, points out that even the Bible mentions the importance of honest weights and measures (Leviticus 19:36).¹⁸ According to the trade association, National Conference on Weights and Measures (NCWM), an inaccuracy of slightly more than one tablespoon per five gallons of gas costs consumers and businesses \$125 million nationally. At the grocery, if every pound of meat was weighed inaccurately by one-hundredth of a pound, it would mean an error of 500 million pounds of meat nationally.¹⁹ According to the NCWM, sales of products or services impacted by weights and measures laws in the United States represent an estimated half of the U.S. Gross Domestic Product.

Ohio's Division of Weight and Measures and local government weights and measures functions – typically in the office of the county or city auditor - have dual jurisdiction over inspection and verification. Weights and measures oversight is specified in statute (O.R.C. 1327.46-99). Oversight ranges from industrial shipments to commercial marketplace scales, gas pumps and supermarket checkouts. The state sets standards, traceable to the National Institute of Standards and Technology, and provides training to county and city weights and measures staff. While local jurisdictions are responsible for testing and inspecting commercial retail weighing and measuring devices such as scales, gasoline pumps, taxi meters etc., the state has tested and inspected large scales used in industry, shipping agriculture and other large uses: vehicle and livestock scales and truck weights, for example.

Business stakeholders as well as consumers depend on the service to maintain an honest market place. Last year, it was found that some seafood sales tipped in favor of the vendor when ice was added to the charged weight. According to a national investigation into the labeled weight for the seafood, consumers and businesses in some places were paying up to \$23 per pound for ice when purchasing frozen seafood products. Most of the states reported significant overcharges due to incorrect package weight. In some cases, inspectors found ice comprising up to 40 percent of the product weight. This investigation was requested by The National Fisheries Institute, a seafood industry association.²⁰

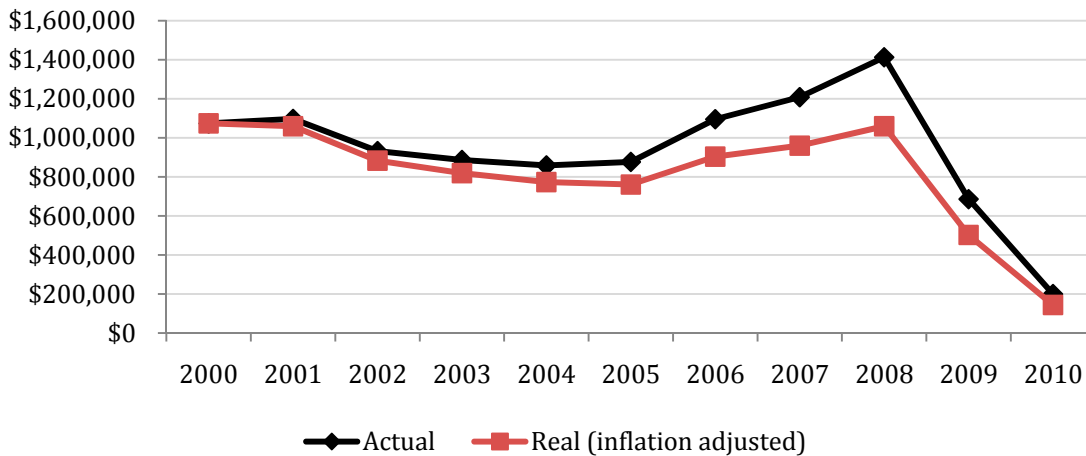
Over the past five years, GRF funding for Weights and Measures operations in Ohio has dwindled by 81.4 percent, from \$1.074 million to \$200,000 (Figure 5).

¹⁸ "You shall have just balances, just weights...." From Leviticus 19:36; New American Standard Bible, 1995

¹⁹ National Conference on Weights and Measures at <http://www.ncwm.net/content/press>

²⁰ National Conference on Weights and Measures Press Release, "National Investigation Exposes Fraud in Seafood Labeling," March 29, 2010, at http://www.ncwm.net/sites/default/files/about/press/2010/2010_03_29_Seafood_Investigation.pdf. Accessed Feb. 25, 2010.

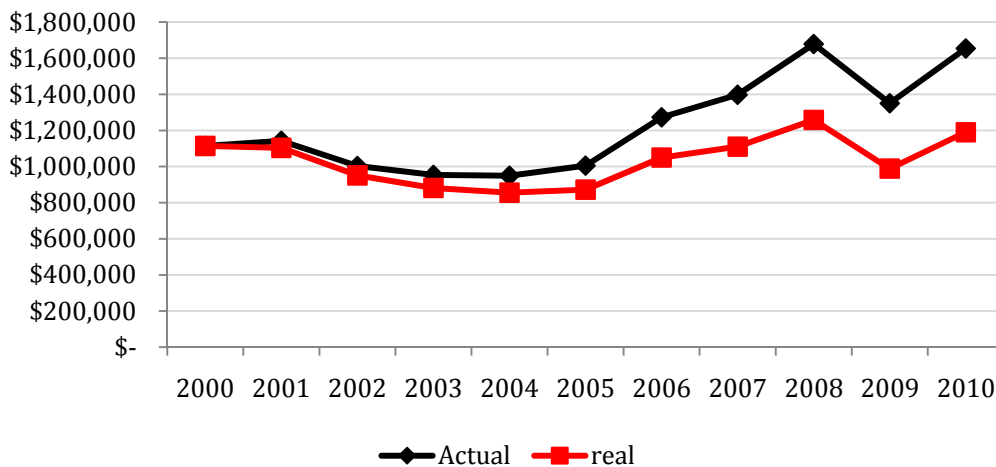
Figure 5: GRF funding for Weights and Measures, FY 2000 - 2010



Source: Ohio Legislative Service Commission. Figures are adjusted for inflation using CPI-U state fiscal year.

Funding in the division is also generated through fees for the metrology lab, which tests and calibrates weighing and measuring standards and devices. One of 17 such laboratories nationally, the fees-for-service within Ohio’s metrology lab have grown (Figure 6).

Figure 6: Weights and Measures total budget, including fees for metrology service, FY 2000-2010



Source: Ohio Legislative Service Commission. Figures are adjusted for inflation using CPI-U state fiscal year.

Fees have supported the overall divisional budget, but not staffing in the areas that support local government enforcement activities. A proposed fee increase was not approved in 2009 and staffing in the Division of Weights and Measures was reduced by eight positions.²¹ Spot checks now fill in for regular inspections that the

²¹ Interview with former ODA Director Robert Boggs, Dec. 28, 2010.

state provided in the past.²² Ohio remains one of four states that does not check motor fuel quality.²³

For their part some local governments, bearing much of the responsibility for smaller retail weights and measures functions, have been hard-pressed to fulfill all their responsibilities. Ashtabula County, for example, reduced the hours of its weights and measures inspector sharply in 2009, from 80 hours per pay period to 24.²⁴ Hamilton County requested local funding for new inspectors in 2009, pointing out that the staff of four had dwindled to two even as state assistance ceased.²⁵

"There are rarely problems because they know we're out there and we're going to be diligent about testing," Chief County Weights and Measures Inspector Tom Woods said. "But, if we're not there, companies will become more lax."²⁶

Weights and measures is central to ensuring honest commerce for businesses and consumers alike. The practice of dual jurisdiction has allowed the state to reduce field services for large scales. Hard-pressed counties face difficulties in picking up the responsibilities in the face of their own budget shortfalls. Deficiencies in this ancient public service impact the commercial marketplace.

A consistent and robust revenue base assures consistency in services. Ohio's reduction in state resources, and the inability to replace the loss with fees, has weakened capacity and service delivery.

The Ohio Ethics Commission

Ohio's enhanced focus on ethics stems from a series of high profile cases at the state and local levels. Governor Strickland implemented a comprehensive program of ethics training for state workers when he came to office, and provided funding to support new activity. In the first half of the decade, GRF funding for the Ethics Commission had fallen in inflation-adjusted terms by 5.6 percent, but during the first year of the Strickland administration, funding for the Ethics Commission was boosted by about 16 percent (adjusted for inflation). Although demand for ethics services remained high, the increase in funding was not sustained (Figure 6). By FY2010, GRF funding had fallen by 19 percent (after inflation) from that high in 2007.

Budget constraints are part of a long-term trend at the Ethics Commission. According to the budget letter filed by then-Executive Director David E. Freel, ethics

²² Ohio Propane Gas Association at http://associationsites.com/article_Display_one2.cfm?RecordID=2012&usr=OPGA, accessed Feb. 25, 2010.

²³ Interview with Director Boggs, Op. Cit. (See footnote #21).

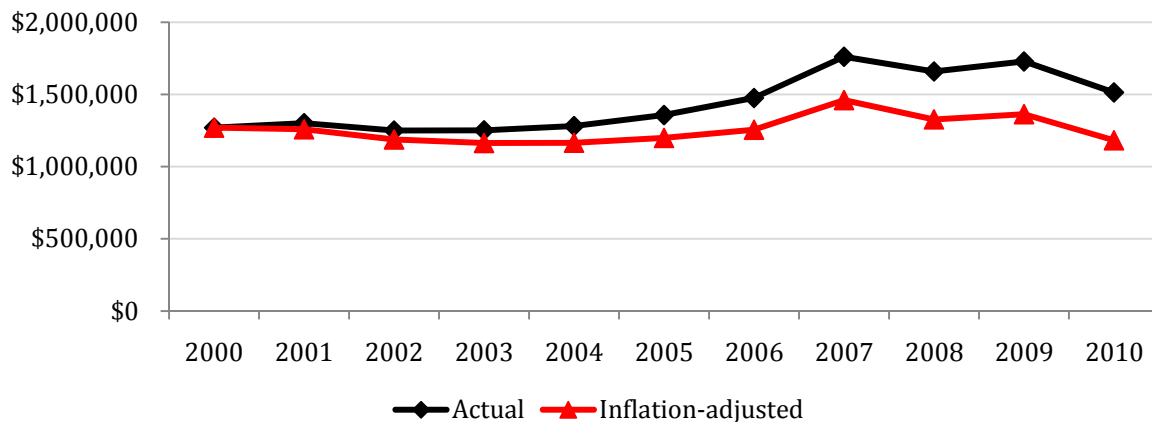
²⁴ Carl E. Feather, "County Auditor Pares Office Hours," Star Beacon (Ashtabula, Ohio), accessed at All business.com at <http://www.allbusiness.com/government/government-bodies-offices-government/12619347-1.html>, accessed March 2, 2010.

²⁵ Sharon Coolidge, "Gas Pump, Meter Inspections at Risk." Cincinnati Enquirer, Cincinnati.com, Nov. 15, 2010. Accessed Feb. 25, 2010.

²⁶ Ibid.

cases have risen an average of 18 percent in each year since 2000 and ethics filings are up by 30 percent over the past 15 years, but the budget has not grown to accommodate the increase in demand and inflation has eroded the value of funding over time.²⁷

Figure 7: GRF funding to the Ohio Ethics Commission, FY 2000 – 2010



Source: Ohio Legislative Service Commission, Operating Budget, Budget Line Items in Detail, deflated based on CPIU- state fiscal year

The budget letter submitted in the fall of 2010 noted that as a result of increased demand and diminished funding, ethics education was reduced by 19 percent; the 2000 staffing level of 25 was reduced to 21, impacting investigations, teaching, advisory and financial disclosure staff; the operations budget has been cut by 30 percent; and new computers, projectors and other tools have not been provided for the past three fiscal years.

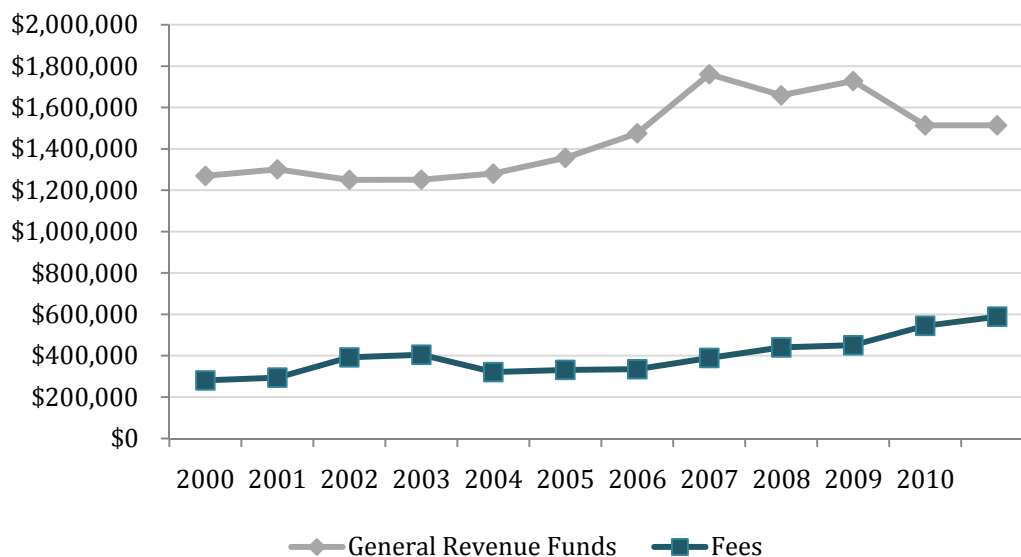
Though it criticized the commission for lacking credibility and not posting information online, *The Plain Dealer* recently editorialized that “the Ohio Ethics Commission now has to perform its oversight function against ever-increasing odds because of budget cuts.” It further noted: “The agency has only five investigators and three attorneys to police more than 600,000 public officials across the state. It has two people to review more than 11,000 annual financial disclosure forms, which list people who buy public officials gifts or meals, and list sources of income and business or real estate interests.”²⁸

A share of the Ethics Commission budget comes from user fees, which has helped to compensate for the shortfall in funding. Figure 8 illustrates that as funding dropped over the past two years, revenues from fees increased. Fees are relatively modest, ranging from \$20 for someone on a school board to \$65 for a state legislator.

²⁷ David E. Freel, Executive Director, Ethics Commission, Letter to J. Pari Sabety, Director, Ohio Office of Budget and Management, Director’s Summary for FY 2012 – 2013 Biennium Budget Request, Oct. 29, 2010.

²⁸ The Plain Dealer, Editorial, “Politicians Prefer to starve the ethics watchdogs,” Oct. 2, 2010.

Figure 8: General Revenue Funds and fees in the funding of the Ohio Ethics Commission, FY 2000 – 2010 (not adjusted for inflation)



Source: Ohio Legislative Service Commission, Operating Budget, Budget Line Items in Detail, deflated based on CPIU- state fiscal year

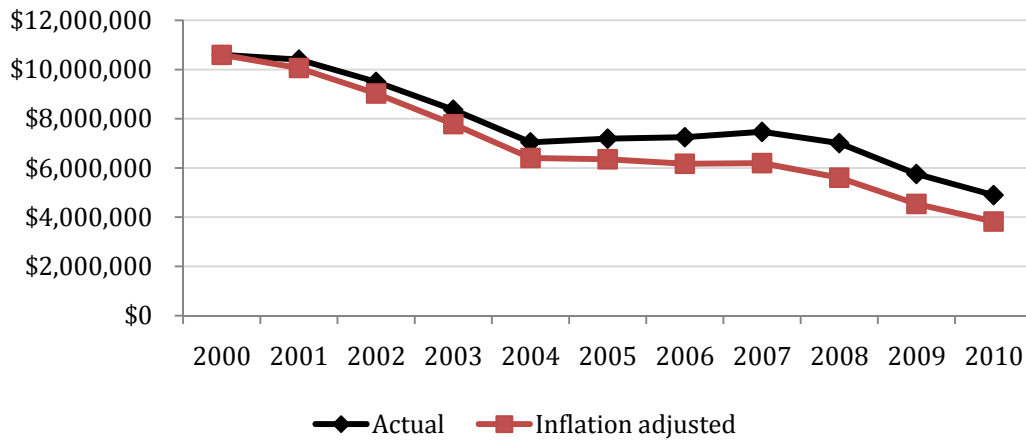
Diminished capacity in the watchdog agency is a problem for taxpayers and leadership alike. Citizens need to be sure that ethics can be closely monitored. Legislators should ensure the Ethics Commission is provided with sufficient resources to safeguard the public trust.

The Ohio Civil Rights Commission

The Ohio Civil Rights Commission investigates complaints of civil discrimination based on race, color, religion, sex, national origin, disability, age, familial or military status or ancestry. Focus areas include credit, employment, housing, higher education, public accommodations and retaliation. It has a stated mission of educating the public on civil rights. As a part of Ohio's law enforcement infrastructure, this is the only state entity authorized to enforce Ohio Revised Code section 4112, the state discrimination laws. There are offices to take complaints in five of Ohio's large cities.

In FY 2000, the agency had 199 employees; in the current biennium, the agency has 94 employees. General revenue funding of \$10.6 million in 2000 had dwindled to \$4.6 million in FY 2010, a decline of 54 percent. (Figure 9).

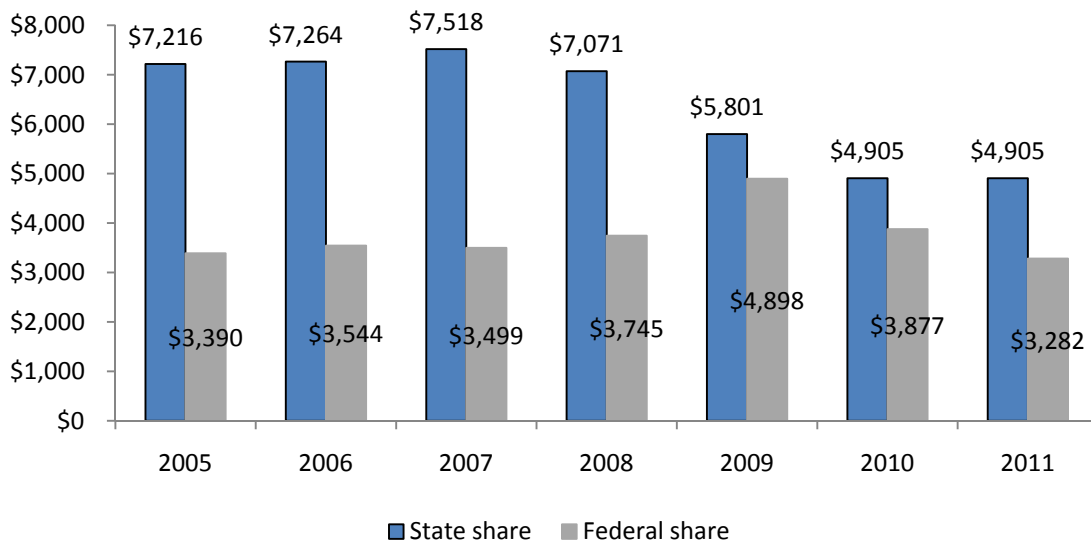
Figure 9: GRF funding for the Ohio Civil Rights Commission, FY 2000-2010



Source: Ohio Legislative Service Commission, Operating Budget, Budget Line Items in Detail, deflated based on CPIU- state fiscal year

All states have an office that enforces discrimination laws in partnership with federal programs in the U.S. Department of Housing and Urban Development and the Equal Employment Opportunity Commission. Ohio’s agency, the Ohio Civil Rights Commission, has seen earnings from federal referrals decline slightly over time, but due to the sharp drop in state funding, federal contract work has played an increasing role in the annual budget of the agency (Figure 10).

Figure 10: Annual Funding of Ohio Civil Rights Commission, 2005-2011 (\$000)



Source: Ohio Legislative Service Commission, Budget Line Items in Detail
 Note: not adjusted for inflation

The Ohio Civil Rights Commission investigates charges of discrimination and provides an administrative forum in lieu of court litigation. While a legal function,

there is no charge for the service. While under Ohio law discrimination victims can choose to avoid the OCRC and take their cases to court, that is not an option for many low-income people seeking relief.

“Our services are free to people of all levels of income,” points out executive director G. Michael Payton. “Wealthier earners can hire a lawyer if they like. But our services ensure that no citizen of Ohio needs to suffer unlawful discrimination without a means of redress, regardless of their income level – or lack of income. Our services ensure that.”²⁹

The commission investigated 4,546 discrimination charges in 2009, successfully mediated close to 700 cases, and prevailed in about 65 percent of those cases it litigated. From 25 percent to 33 percent of people who file a charge with the agency receives some benefit-monetary or otherwise.³⁰ Settlements totaled \$15.3 million in 2009 and \$3.4 million in 2010 for people who had been discriminated against.³¹

The agency is facing a decline in federal funding in the coming biennium and fears further declines in state support. In terms of federal funding, a \$262,350 cut is in place through the contract with the EEOC while income from HUD contracts has declined since the 2008-09 biennium.³² The funding outlook from the state is also bleak: Due to current obligations and an extra payroll period in one year of the coming biennium, flat funding is expected to result in the elimination of an additional 17 positions. A ten percent reduction could eliminate six more individuals.³³ For an agency that has lost 64 percent of its staff since 2000, further reductions of this scale would be devastating, affecting staffing for 1,600 Investigations per year or 36% (of production).³⁴ Between state budget woes and dropping federal sources, Executive Director G. Michael Payton is worried. The agency cannot decline to take cases; every case is investigated; and there is a timeframe (one year) for completion.

“The provision of \$4.4 million dollars in GRF funding for FY 12/13 is insufficient for the Ohio Civil Rights Commission to perform a minimum level of operations,” Payton wrote in his budget request overview and summary last fall. More cuts, he added, could bring quality problems, negative press, even lawsuits, as in the mid 1990s, when a burst of activity and lack of capacity undermined service provision.³⁵

According to information provided by the agency, in 2009, a \$10.8 million

²⁹ Interview with Director G. Michael Payton on Jan. 3, 2011.

³⁰ Ibid.

³¹ E-mail correspondence with the agency dated Feb. 4, 2011.

³² G. Michael Payton, Executive Director, Ohio Civil Rights Commission, Letter to J. Pari Sabety, Director, Ohio Office of Budget and Management, Overview and Summary of the FY 2012 – 2013 Biennium Budget Request, Nov. 1, 2010.

³³ Ibid.

³⁴ Interview with Director, Op.Cit. (see footnote #29).

³⁵ Overview and Summary of Biennial budget Request, Op.Cit. (see footnote #32).

dollar settlement was awarded to 67 residents from a predominantly African-American neighborhood of Zanesville who filed a complaint against the city, the East Muskingum Water Authority, and Muskingum County, for failing to provide the residents with access to public water services. If wrongs of that magnitude continue to afflict Ohio citizens, anti-discrimination laws are still needed and adequate resources to investigate claims should be provided.

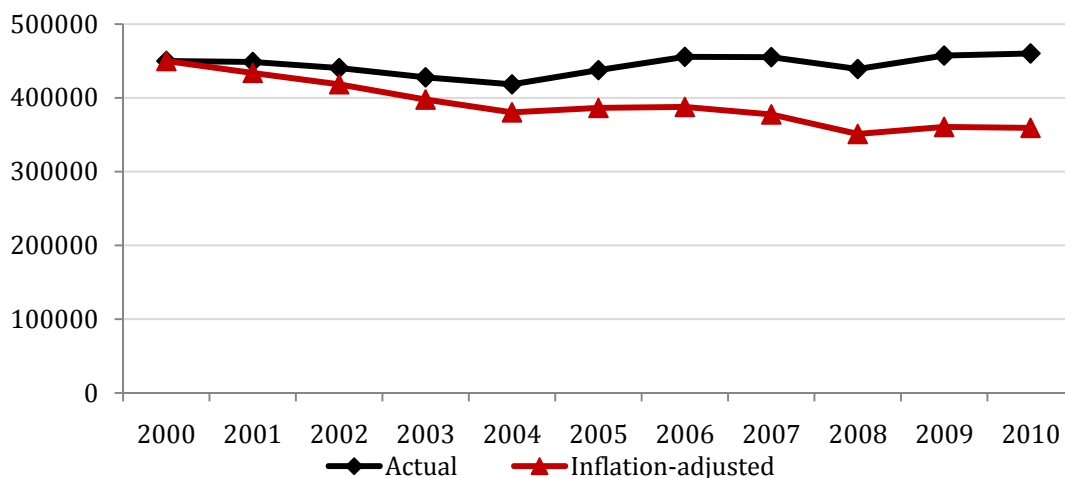
Environmental Review Appeals Commission

By law the Environmental Review Appeals Commission (ERAC) hears and issues decisions on a multitude of actions by Ohio EPA as well as a limited number of actions by other state agencies. The appeals heard by ERAC include:

- Ohio EPA rules; enforcement orders; permitting decisions in air, water, solid waste, hazardous waste, etc. and decisions related to the Voluntary Action Program (brown fields)
- Actions by the Boards of Health related to solid waste facilities
- Orders of the State Fire Marshall relative to the Bureau of Underground Storage Tank Regulation (BUSTR)
- Water permits and orders issued by Ohio Department of Agriculture for large factory farms

GRF funding for ERAC has fallen by 20 percent over the past decade (Figure 11) after adjustment for inflation.

Figure 11: GRF funding for the Environmental Review Appeals Commission, FY 2000-2010



Source: Ohio Legislative Service Commission, Operating Budget, Budget Line Items in Detail, deflated based on CPIU- state fiscal year

Staffing has fallen from 14 to 2 since the agency was founded in the mid 1970s. Length of time in investigation and decisions has caused legislation and litigation. The biennial budget bill of the 128th General Assembly contained a schedule of strict time lines for decisions, but no increased budget for research or staff. Hearings on backlogged cases were promptly scheduled and restricted to one hour. Citing a Gongwer article, blogger and former Ohio EPA Director Joe Koncelik posted the following comments on October 9, 2009 from ERAC Chairwoman Lisa Eschleman, who pointed out that:

“...limits on hearings were necessary to comply with deadlines for ERAC to issue rulings, included in the biennial budget bill (HB 1). Under the new deadlines, the commission must issue final decisions in 339 appeals by Dec. 15, she said, noting hearings were scheduled through Dec. 1.

‘We took 339, divided it by the number of days, minus the number of holidays. It means we had to do six de novo hearings a day,’ she said. ‘Physically we had to put a limit on the amount of the time the people can have.’”³⁶

The legislation was reversed by court order. On October 9, 2009, a Franklin County Common Pleas Court provided a judgment entry that ordered all one-hour hearings vacated; required full and fair hearings (de novo) and declared the legislatively-imposed deadlines as non-binding.³⁷

According to Trent Dougherty of the Ohio Environmental Council, complexity impacts the length of ERAC investigations:

First, environmental cases are very complex and require review of volumes of highly technical scientific and engineering data and reports – and with that volumes of expert witness testimony from each party. This fact is why ERAC was created in the first place – to have a central body that reviews these complex cases and thus creates a statewide body of law (and not 88 different county court interpretations of the same complex laws).

Efforts to raise funding through fees to support additional staff was discussed but rejected during the last budget. The \$70 fee is set in code (ORC Section 3745.02).

Like the Ohio Civil Rights Commission, the Environmental Review Appeals Commission is an affordable way that businesses, homeowners or other citizens can dispute actions of the government that impact their lives in harmful ways. A basic

³⁶ “A Dozen Companies File Constitutional Challenge to 1-hour Hearings on Ohio Environmental Appeals.” Posted on Sept. 9, 2009 by Joe Koncelik, Ohio Environmental Law blog at <http://www.ohioenvironmentallawblog.com/tags/environmental-review-appeals-c/>, accessed Feb. 25, 2011.

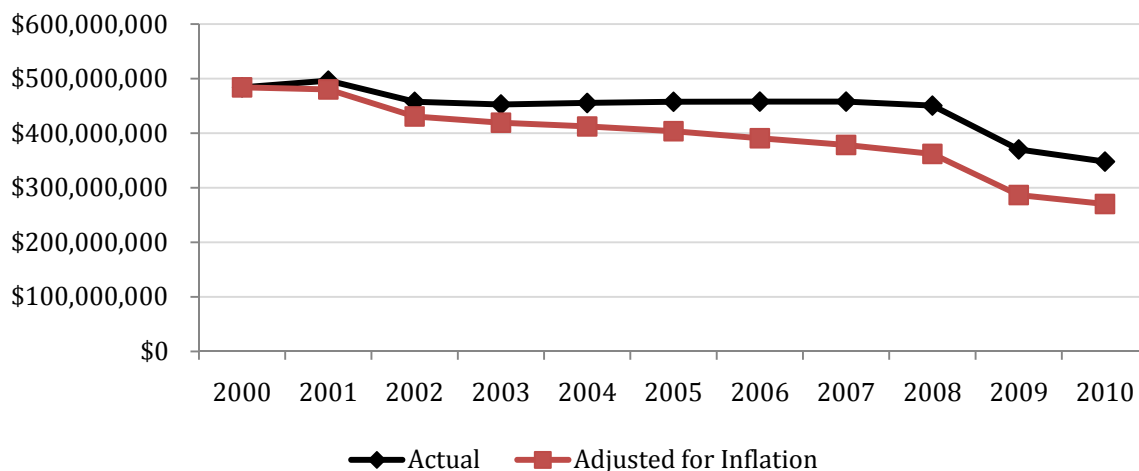
³⁷ “Court Orders Full Hearings in Ohio Environmental Appeals” Posted on Oct. 9, 2009 by Joe Koncelik, Ohio Environmental Law blog at <http://www.ohioenvironmentallawblog.com/tags/environmental-review-appeals-c/>; Accessed Feb. 25, 2011.

public service, budget cuts have eviscerated the capacity of this entity to perform its legislated mandates. This undermines the intent of the laws of the State.

Public Libraries

Ohio traditionally has funded its public libraries primarily at the state level. However, the Public Library Fund, the state's support to Ohio's 251 public library systems, has been slashed in the past two years. What is now the PLF was no higher in 2008 than it was in 1999, without any adjustment for inflation. Then, over the past two years, state support for library funding has been chopped by nearly 23 percent. Overall, libraries received \$347.9 million from the PLF last calendar year, compared to \$450 million in 2008.³⁸ This was despite a successful grassroots effort that reduced the scope of the cutbacks in the current two-year budget. On an inflation adjusted basis, support for the libraries has been declining over the past decade. State funding in 2010 was 44 percent lower than a decade earlier, on an inflation-adjusted basis (Figure 12).

Figure 12: Distributions from the Public Library Fund* (Calendar years).



Source: Ohio Library Council. *-- Prior to Fiscal Year 2008, distributions to libraries were made from the Library and Local Government Support Fund.

The results have been predictable: Reduced hours and closed branches, chops in material purchases, reduced programming, and of course, staff cuts.³⁹ Overall, Ohio public libraries cut hours of operation by more than 10 percent in 2009.⁴⁰ The

³⁸ Ohio Library Council, "Ohio Public Libraries: Open to All," p.6, available at <http://www.olc.org/pdf/OLCWhitepaperonLibraries.pdf>

³⁹ An August, 2009, article in *LibraryJournal.com* itemized how libraries from Akron to Zanesville cut back in response to the state funding cuts. See Lynn Blumenstein, "Ohio Libraries Cut Staff, Hours in Response to Downturn," *LibraryJournal.com*, Aug. 17, 2009, available at <http://www.libraryjournal.com/article/CA6676897.html>

⁴⁰ State Library of Ohio, Ohio Public Library Statistics, available at <http://library.ohio.gov/LPD/LibraryStats>

Norwalk Public Library has 17 staff today, down from 27 in August 2009. It is now open two evenings a week, instead of four, and has reduced children's summer reading programming, computer classes, and materials purchases.⁴¹

Ohio's libraries have been the best in the United States, as evidenced by the awards that they win, from the smallest to the largest. Thomas J. Hennen Jr., who publishes a well-known set of public library ratings, noted in June 2009 that Ohio libraries dominated the rankings of the country's top libraries, accounting for a quarter of the top 10 rankings in a decade's time (by comparison, Ohio has less than 4 percent of the U.S. population).⁴²

Besides a reduction in service, the cut in state support has also helped result in a huge increase in the number of library systems seeking property-tax levies. According to a recent analysis by Driscoll & Fleeter, the 71 library levy proposals that appeared on the ballot across the state in 2010 were twice as many as in any previous year since 1980, except in 2009, when there were 45. By and large, voters love their libraries, and even the proliferation of levies in the last two years did not change that view: The success rates in 2009 and 2010, at 77.8 percent and 78.9 percent, were higher than the 30-year average of nearly 73 percent.⁴³

The new and additional levies have allowed some libraries to restore services cut because of state funding reductions. For instance, after voters approved the first library property-tax levy there, the Chillicothe and Ross County Public Library reopened a branch in January that it closed after the 2009 cuts, and rehired some of the nine staff it had laid off. However, not all of the cuts to hours, book purchases, and staff have been restored.⁴⁴

Overall, libraries are moving toward greater dependence on local levies. "If you become more and more dependent on property tax, you begin to see a disparity between libraries," Lynda Murray, director of government and legal services at the Ohio Library Council, noted in an interview last year.⁴⁵ Not only will this lead to a more unequal provision of library service across the state, it will make efforts at regional cooperation that much more difficult. This is exactly the kind of uneven financing and balkanization that has so troubled our public school systems, yet that is the direction Ohio's libraries are moving in.

⁴¹ Interview with Norwalk Public Library Director Sarah Contreras, Feb. 28, 2011.

⁴² See blog posting for June 28, 2009 at <http://haplr.blogspot.com/>. See also Jacqueline Courtney Klentzin, "Outlier Ohio: A Case Study of Ohio Public Libraries and an Analysis of Their Collective Success," Submitted in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy, Robert Morris University, School of Education and Social Sciences, Instructional Management and Leadership Program, March 2010

⁴³ Driscoll & Fleeter, "Analysis of Proposed Tax Levies for Library Purposes," January 11, 2011

⁴⁴ Interview with Nanette Clary, chief fiscal officer, Chillicothe and Ross County Public Library, March 1, 2011

⁴⁵ Zimmer, Russ, NewarkAdvocate.com, "Is state funding of libraries on borrowed time?" April 19, 2010.

Summary and recommendations

The erosion of basic services under the current budget illustrates that the major additional reductions that are widely forecast in the two-year budget beginning July 1 would have a severe impact on life in Ohio. This brief has only scratched the surface of the services that are offered or supported by the state. For example, enforcement of our minimum-wage law, a right under Ohio's Constitution, was only barely maintained this fiscal year, after funding was eliminated in the state budget approved by the General Assembly in 2009. And even with the special move by the State Controlling Board to provide funding, last fall the state had only nine investigators, far fewer than in most other big states.⁴⁶

Ohioans are hurt when basic public services are understaffed and cannot deliver timely assistance. As we move into the most dangerous fiscal period our state has known since the last great recession, we make the following recommendations to leadership in Columbus:

- 1. Protect the taxpayers' return on investment.** Our parents and grandparents invested billions of dollars over the generations into an excellent library system, fair appeals processes, and services to ensure an honest market place and fair work places. It is the responsibility of leadership to protect the investment of our parents and grandparents, not to disinvest in their historical contribution.
- 2. Restore capacity to public services eroded by inflation.** It is the job of the executive branch to ensure services are efficiently delivered. It is the job of the legislature to ensure services are adequately funded and not eroded by inflation and disinvestment.
- 3. Increasing dependence on fees may lead to politicization of services.** Targeted fee proposals have not yielded the funding needed for staffing and maintenance of parks. Regulated interests opposed fee hikes for Weights and Measures and the Environmental Review Advisory Commission. Broader and more fair revenue sources are needed for what is widely recognized as an important public good. Fees do not constitute a dependable sources of funding for important services that serve the public interest.
- 4. Keep public services affordable.** A dependence on fees can over time make access to critical public services inaccessible to citizens based on income, creating inequity in the system.

⁴⁶ DeCarlo, Sarah and Zach Schiller, "Investigating Wage Theft: A Survey of the States," Policy Matters Ohio, November 2010, p. 4, available at <http://www.policymattersohio.org/WageTheft2010.htm>

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