



OEC [Action Fund]

**Proponent Testimony of Ohio Environmental Council Action Fund
State Biennial Operating Budget - House Bill 110 (*As Introduced*)
Presented to the Ohio House of Representatives
Finance Committee
March 11, 2021**

Chairman Oelslager, Ranking Member Crawley, and Members of the Ohio House Finance Committee, thank you for the opportunity to provide testimony in support of the conservation provisions of the Governor's proposed budget for Fiscal Years 2022-2023, introduced as House Bill (HB) 110. My name is Trent Dougherty, General Counsel for the Ohio Environmental Council Action Fund (OECAF).

A Governor's proposed budget does not merely present how the executive branch wishes to spend money, but shines a light on the priorities of Ohio and Ohioans. In the time of a public health crisis, our priorities must align with protecting our outside environment, and ensuring that all Ohioans have equal access to to use and enjoy the basics of human existence. While there are many ways that this proposed budget falls short, it is important for us to recognize that this proposed budget is the most pro-environment and pro-conservation budget in a generation. Investments throughout Ohio EPA, Ohio Department of Natural Resources (ODNR), and Ohio Department of Agriculture (ODA) show this Administration's understanding that Ohioans deserve clean air and water, land, and sustainable energy sources. It is this Committee's job, then, to further that dedication to cleaner Ohio by supporting this conservation budget -- support its investment in communities today and its investment in the state's natural legacy. Therefore, the committee must resist amendments that rollback protections for our communities or starve environmental protection and enforcement of its necessary resources such as we have seen in the past.

Yet most of all, we urge this committee to embrace and support the provisions of this budget that:

- 1. Preserve and protect Ohio's most sensitive public lands;**
 - 2. Fully fund the successful H2Ohio program;**
 - 3. Ensure Ohioans have access to clean, safe and affordable drinking water; and**
 - 4. Strengthen energy regulation to protect consumers and the environment.**
- 1. Preserve and protect Ohio's most sensitive public lands**

The COVID-19 pandemic has been in full swing in Ohio for nearly a year now. As we are seeing in real time, maintaining public access to quality outdoor recreation opportunities is now more important than ever. Ohio and out-of-state residents are escaping to the outdoors at record levels as a matter of basic health, sanity, and overall wellness. State Parks and their facilities, as well as ODNR properties in general, are seeing significant visitation increases. The modest budget increase proposed for Ohio's State Parks is needed to meet increased public demand. We urge this committee to support the Governor's proposed ODNR funding levels not just as a matter of conservation and good stewardship, but as a matter of public health as well.

The OECAF supports Governor DeWine and the ODNR's commitment to keeping the state's public lands open and serving the public at a high level.

Separately, we do have some concerns to voice regarding provisions that would give the State the authority to conduct timber sales on federal lands, which for practical purposes means the Wayne National Forest. See Section 1503.271, lines 9616-9619; and 1503.05, lines 9397-9398, 9496-9498, 9507-9510. Under federal statute, this is referred to as "Good Neighbor" authority. The OECAF does see value in cross-boundary collaboration between the State and U.S. Forest Service. There is a significant need for scientifically-based and ecologically sensible forest management at a landscape scale in southeast Ohio. And, agency and private landowner collaboration needs to be part of that equation. However, "even-aged" commercial timber sales that clearcut or staged-clearcut (shelterwood) public forest are a major ecological net negative for forest health and resiliency. Not to mention, counterproductive public policy for federal public forest in a time of climate crisis.

We ask this committee to expressly exclude "timber sales" from the State's "Good Neighbor" authority as proposed in this bill.

2. Fully Fund the Successful H2Ohio Program

The OECAF supports the proposed funding levels in HB 110 as introduced because it helps address many of the water quality issues we face in Ohio. **Gov. DeWine's increased investment in the H2Ohio program will continue to improve Ohio's water quality by building off the program's first year success.**

Being a water rich state, unfortunately, means that we face many water challenges in Ohio. These challenges include both legacy impacts from our industrial past and emerging water contamination that threatens our communities. Over the past decade we have experienced:

- Devastating toxic algal blooms, like the 2014 bloom when nearly half a million Toledoans were left without safe drinking water because the toxin produced by a harmful algal bloom got into the drinking water supply;
- Lead contamination, including 2016's 5-month long contamination of Sebring's water system after a change to the village's water treatment system; and
- Health risks from emerging contaminants such as PFAS which has been found, albeit at levels under the federal threshold, in [106 of the 1,550 public water systems tested by the Ohio EPA.](#)

Thankfully, the current budget proposal includes continued investment in H2Ohio funding at a total of \$240 million for the 2 year biennium. This worthwhile investment would provide the OEPA with \$46 million a year, the ODA would receive \$49.3 million a year, and the ODNR would receive \$25 million a year. This well rounded, science based, program made historic investments in improving Ohio waterways while making our landscapes more resilient to climate change.

So far through ODA, the program has helped fund thousands of agricultural conservation practices covering over a million acres of farmland in Northwest Ohio to help clean up Lake Erie. Through the OEPA, the program was able to connect thousands of Ohioans to better drinking and wastewater systems and they've removed 185 lead service water lines. Through ODNR, the program helped create thousands of acres of wetlands across the state which are filtering 60,000 acres of watershed improving water quality and improving flood mitigation.

The H2Ohio program provides direct funding to reduce pollution in our waterways and help communities across Ohio afford the necessary upgrades to provide residents safe and and more affordable drinking water. **To achieve continued success, including Ohio's commitment to reduce Lake Erie phosphorus loading by 40 percent, we will need sustained and increased investments in H2Ohio going forward starting with the budget bill.**

3. Ensure Ohioans have access to clean, safe, and affordable drinking water

Due to the aforementioned water quality challenges, Ohio faces and the need for water infrastructure improvement. Ohio's residents are facing rising water and sewer rates as a result of increasing treatment costs and aging infrastructure. Water utilities need massive investments from the state and federal government to shore up failing infrastructure. The US EPA (Clean Water and Drinking Water Infrastructure Needs Assessment and Survey) reports a \$13.4 Billion dollar investment price tag for all drinking water systems in Ohio. Water systems also need federal and state support to move in the direction of implementing

permanent emergency assistance, debt relief and water affordability programs. Particularly during the COVID-19 crisis, no Ohioan should have to face a water shut off.

The OECAF believes that all Ohioans should have access to safe and affordable drinking water. We urge the committee to fully support funding for the drinking water programs at the OEPA.

On the subject of drinking water, the OEPA has proposed in this bill to strike language from the Revised Code under chapter 6109 dealing with prevention of lead contamination in water. Many of those provisions were put in place as a result of the passage of HB512 in 2016, which came in the aftermath of the 5-month long lead-in-water contamination event in Sebring, Ohio. The 131st General Assembly felt it was so important to ensure people could protect themselves from lead in water that these provisions were included in the Revised Code, rather than the Administrative Code, where it is a bit easier to make changes. There are commendable reasons to move many of these provisions into rule, such as regulatory efficiency and the ability to make changes to keep up with the requirements of federal law.

However, **we urge this committee to carefully consider the transfer of these provisions given the gravity of lead in water on our most sensitive populations, and thus we feel there should be a strong rationale for these changes.**

4. Strengthen energy regulation to protect consumers and the environment

For the past two years this General Assembly has been embroiled in the fiasco of HB6. I will leave the debate over the fate of that legislation to other committees. However, HB 6 has shined a light on more than just bailouts and alleged bribery - it unearthed conflicts of interest (real or perceived) with the Commissioners and the nominating body who picks replacements, and legislative roadblocks that keep ill-gotten rate money in the hands of the utilities instead of back into the pockets of our neighbors. Therefore, OECAF recommends to this committee that the budget is the very place to address these two important issues that impact how Ohio's Public Utilities are regulated and if Ohioans can keep their hard earned money in the face of unlawful rates.

First, **there must be amendments to the makeup of the nominating council for the Public Utilities Commission.** The nominating council for the Public Utilities Commission of Ohio, and the Commission itself, should have the utility consumers' interest at the forefront. The nominating council and the Commission should stand up for vulnerable populations, Ohio's communities of color, Ohio's seniors, and those who live in the shadows of our electric generating facilities. But most of all the nominating council and the Commission should not have financial ties to the utilities they are regulating.

Second, in the sake of fairness and justice, the legislative barrier that prohibits rebates back to customers for unlawfully approved rates, should be amended. Through hard fought litigation and appeals from a wide array of stakeholders, the Ohio Supreme Court has on a number of occasions ruled that utility rates approved by the PUCO were unlawfully approved to the detriment of working Ohioans. However, since a 1957 case, [Keco Industries v. Cincinnati & Suburban Bell Telephone Co.](#), business, industrial and residential ratepayers haven't received any refunds for charges that the Ohio Supreme Court determines are wrong.¹ In one recent example, in 2019, customers were denied nearly a half billion dollars in refunds of FirstEnergy's PUCO-approved charge that the Court found to be unlawful. This result comes about because of ORC 4905.32, which states that the utilities cannot refund any rate approved, and has a direct impact on Ohioans' pocketbooks, and their spending power and the power utilities have over the ratemaking process.

We call on this Committee to rectify this injustice by amending ORC 4905.32.

In conclusion, Chairman and Members of the Committee, thank you for considering our perspective and our recommendations. We are pleased with the budget that the Governor has proposed, and we look forward to working with the House of Representatives during the upcoming weeks to craft a bill that protects Ohio's communities today and preserves Ohio's natural treasures for future generations.

1

<https://www.cleveland.com/politics/2019/08/puco-reverses-disputed-firstenergy-charge-but-customers-wont-really-get-a-refund.html>