



SAVE OUR
SYMPHONY
MINNESOTA

ORCHESTRA

The MOA Debacle: Unlocking the Truth

November 20, 2013

presented by

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Jonathan Eisenberg, J.D. – Vice Chair**

Agenda

- Who we are and why we are here
- Brief history of MOA finances
- Comparison of MOA financial results to their public statements to legislature, city
- “Deep dive” of MOA financial records
- Observations and conclusions
- Calls to action for various stakeholders

Save Our Symphony Minnesota

- Grass roots, community-based organization
- Audience members, season and occasional ticket holders, donors, friends
- Formed in August 2013
- Over 8,300 followers on Facebook
- Active on Twitter, multiple blogs
- Sponsored rallies, letter writing, etc.
- Strongly support immediate end to lockout
- Dedicated to preserving a world class orchestra in Minnesota

A Few Disclaimers

- We are an independent, audience advocacy group
- We do not represent or speak for anyone else
- We do not have all the information or all the answers
- We hope to educate, enlighten and drive constructive resolution



SOSMN

BACKGROUND HISTORY

MOA's Financial History

- Feb. 2009, Chair of Finance Committee to MOA Board:
 - “If the deficit is between \$3 million and \$5 million in fiscal 2010, it will be of the same size range for the next two years of the musicians’ contract. **This is a serious liquidity issue, and the MOA already has \$11 million in debt.** Our job is to leave behind a sustainable business.” (Emphasis added.)
- Another Board member:
 - “...reminded everyone that what is said today cannot go out of this room.”

MOA's Financial History

- September 2009 minutes of MOA Finance and Executive Committee meeting
- Brian Ebensteiner, VP of Finance:
 - “Balances in 2009 and 2010 would support our state bonding aspirations, while the deficits in 2011 and 2012 would demonstrate the need to reset the business model.”
- *How could he know in 2009 this would happen?*
- *How did MOA make it happen?*
- *How does this compare to what MOA told the Legislature and the City of Minneapolis?*

State Bonding Initiative

- CEO Michael Henson, Jan. 2010 (2 hearings):
 - “On the financial front, we have announced balanced budgets over the last three consecutive years, and **we are facing the current economic downturn with a degree of stability.**”
 - “On the financial front, we have announced balanced budgets over the last three consecutive years, and **we are facing the current economic downturn with some fortitude and consistency of planning.**”
- Mar. 2010: Gov. Pawlenty signed legislation authorizing \$14M in state bonds to City of Minneapolis to renovate Orchestra Hall



Legislative Auditor's Report

- **“Mr. Henson presented a generally positive picture of the Minnesota Orchestral Association’s finances, and he was not asked substantive questions about the association’s financial condition.”**
- **“Mr. Henson did not indicate to legislators that he and some association board members were beginning to have significant concerns about the association’s financial condition.”**
- **“In . . . board meetings, there were expressions of concern about sharing this more pessimistic picture of the association’s financial condition with outside audiences.”**

Legislative Auditor's Report

- **“Legislators asked few substantive questions**, either about the renovation plans or the Minnesota Orchestra’s finances.”
- “Furthermore, it is not clear how a more complete—and less positive— presentation about the association’s financial challenges would have affected the association’s request that the Legislature support the Orchestra Hall remodeling project. More information about the association’s financial challenges might have caused some legislators to be more cautious toward the project, but it also might have persuaded others to be more supportive.”

MOA Strategic Planning

- **Nov. 2011**
 - MOA adopted strategic plan “Vision for a Sound Future”
 - **“For more than 10 years, MOA has had an unsustainable financial structure”**
 - “A new sustainable financial structure is needed.”
 - A plan for “Achieving Financial Sustainability.”
 - “Further expense reduction strategies are necessary”
 - “All expenses within the MOA business model will be restructured, including: Contracts with musicians . . . [and] Administration.”



Arguably Flawed Implementation

- **Dec. 2011:**
 - MOA paid CEO Michael Henson his second bonus in calendar year 2011
 - FY ending Aug. 31, 2011 bonus paid in **March 2011**
 - FY ending Aug. 31, 2012 bonus paid in **Dec. 2011**
 - Total bonuses: **\$202,500**
 - Total 2011 compensation: **\$619,313**

Some Employees Weren't As Lucky

- **May 9, 2012:**
 - MOA eliminated 9 full-time positions (13% of administrative staff), 7 part-time positions
 - Projected savings \$450,000 over 2012-13 season
 - Cuts in response to 2011 deficit of \$2.9M
 - Henson's compensation = 20% of deficit
 - Some positions might return after hall reopens in "fall of 2013"
 - Since 2009, administrative staff has been cut 20%
 - These cuts likely had major operational impacts, to be discussed

City Grant and Loan

- **April 2012:** City Council and Mayor Rybak approve resolution authorizing \$15M Revenue Notes, proceeds to be loaned to MOA for Orchestra Hall renovation
- **May 25, 2012:** Mayor Rybak approves resolution accepting state grant and approved signing agreements with MOA
- **June 2012:** State Bond and City loan closing held

Meanwhile . . .

- **May 24, 2012:** MOA purchased 13 domain names:
 - savetheminnesotaorchestra.com
 - savethemnorchestra.com
 - savethemnorchestra.org
 - saveourorchestra.com
 - saveourorchestra.net
 - saveourorchestra.org
 - saveourminnesotaorchestra.com
 - saveourminnesotaorchestra.org
 - saveourminnesotaorchestra.net
 - saveourmnorchestra.com
 - saveourmnorchestra.org
 - savetheorchestra.com
 - savetheorchestra.org

Name not captured: Save
Our Symphony MN

State/City Funding in a Nutshell

- State issued \$14M bonds, \$ granted to city
- City issued \$15M notes, \$ loaned to MOA
- MOA signed 50-yr. “ground lease” of Orchestra Hall property to City
- City leased Orchestra Hall back to MOA for 20 yrs. with up to 30 yrs. renewals
- City lease/use agreement with MOA
 - Operation of Orchestra Hall by MOA as a “government program” under contract with City



- **State law:**
 - City to operate a “performing arts center”
- **City resolution:**
 - “establishment and maintenance of a performing arts center”
- **City/MOA Lease/Use Agreement:**
 - Goal to “maintain a regionally renowned concert hall”
 - “Orchestra Hall will be utilized by multiple performing arts organizations, in addition to the Minnesota Orchestra”
 - MOA to have “broad and unfettered artistic freedom in content and selection of all performances and programs”

MOA Projections to City of Mpls.

(\$000)	FY 2011 Actual	FY 2014 Budget	% Change	Notes
Earned Revenue	\$9,199	\$10,001	+8.7%	
Contributions	9,285	9,729	+4.8%	
Draws and Distributions	9,060	7,537	-16.8%	
Operating Revenue	27,544	27,268	-1%	
Concert Expense	5,130	5,440	+6%	
Overhead Expense	24,698	20,689	-16%	-\$3.3M Sal./Bens.
Total Operating Expense	30,451	27,259	-10.5%	
NET OPERATIONS	-\$2,908	\$9	+100%	+\$2,917

City of Mpls. Assessment

- “The stabilized financial condition in FY 2014 is based on a number of assumptions including:”
 - “Cost cutting, including a significant decrease in salaries and benefits they hope to achieve as a result of musicians’ union contract negotiations now under way.”
- “[T]here is no guarantee that all these assumptions will be achieved and thus there is a risk that the operations will not be consistently self-sufficient.”
- “However, MOA has a large combined endowment that will be available to help manage any deficits.”
- “These risks appear comparable to those for other State grant-funded projects in which the City has played this role (e.g., Guthrie Theater, MacPhail and Cowles Center).”

Red Flags for MOA's Auditor

- **Feb. 2009:** “This is a serious liquidity issue.”
- **Sept. 2009:** “Balances in 2009 and 2010 would support our state bonding aspirations, while the deficits in 2011 and 2012 would demonstrate the need to reset the business model.”
- **Nov. 2011:** “For more than 10 years, MOA has had an unsustainable financial structure.”
- **March & Dec. 2011:** Paying CEO two bonuses well before the end of two fiscal years.
- In this financial condition
 - Undertaking \$50M+ Orchestra Hall renovation
 - Taking on \$15M city bond obligation

FINANCIAL ANALYSIS

Questions about MOA's financial record

- *What happened with MOA's finances?*
- *How did it go from “announcing a balanced budget” to showing large operating deficits?*
- *Why did MOA hold itself out as financially sound?*
- *Why did MOA's auditor never qualify its report or issue a warning?*

Data Sources and Limits of Analysis

- **Sources**

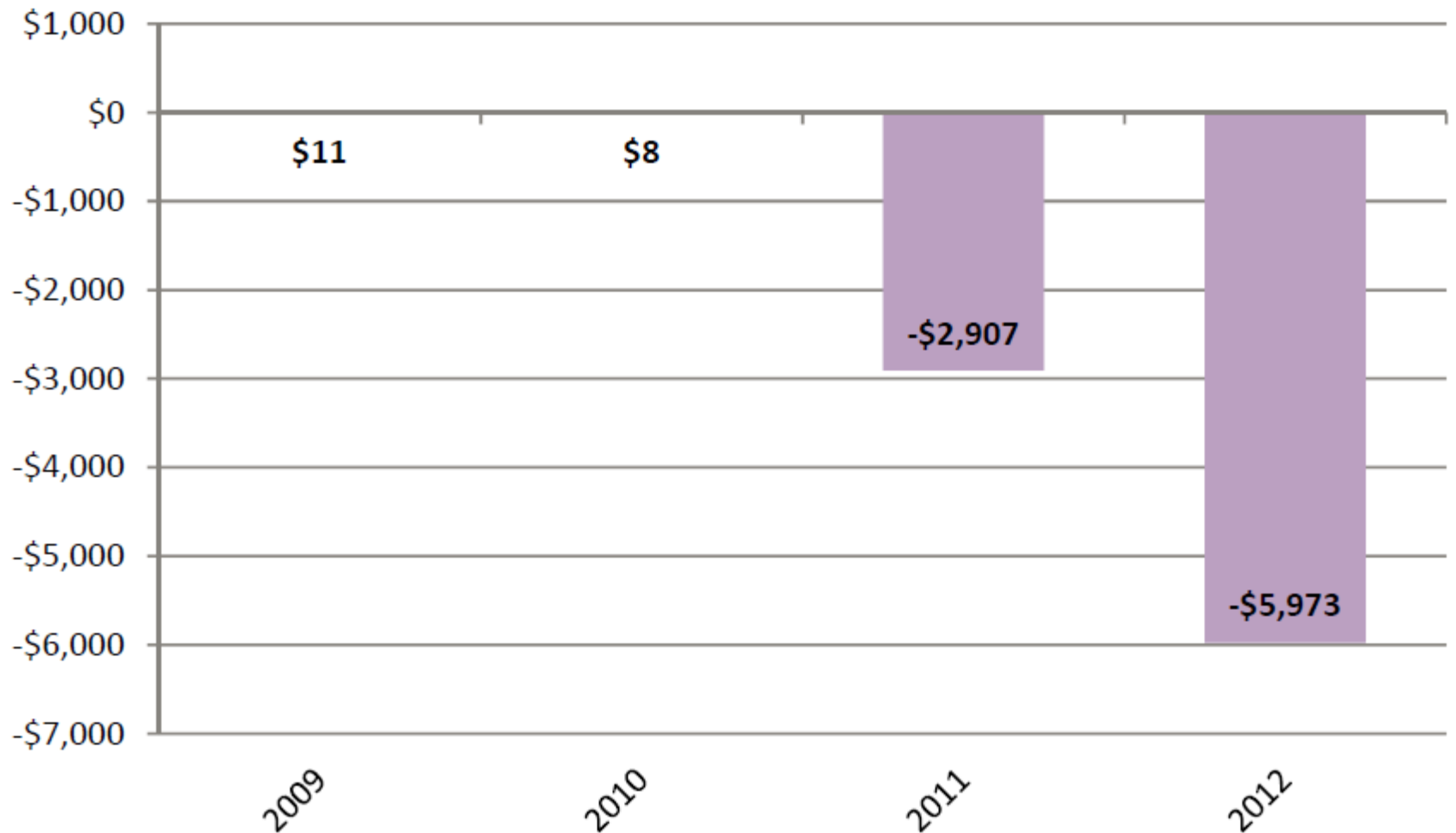
- MOA Annual Reports 2002-12
- MOA Audited Financial Statements 2008-12
- MOA IRS Form 990s 2009-12
- MOA SHOWCASE magazine (# of concerts/yr.)

- **Limitations**

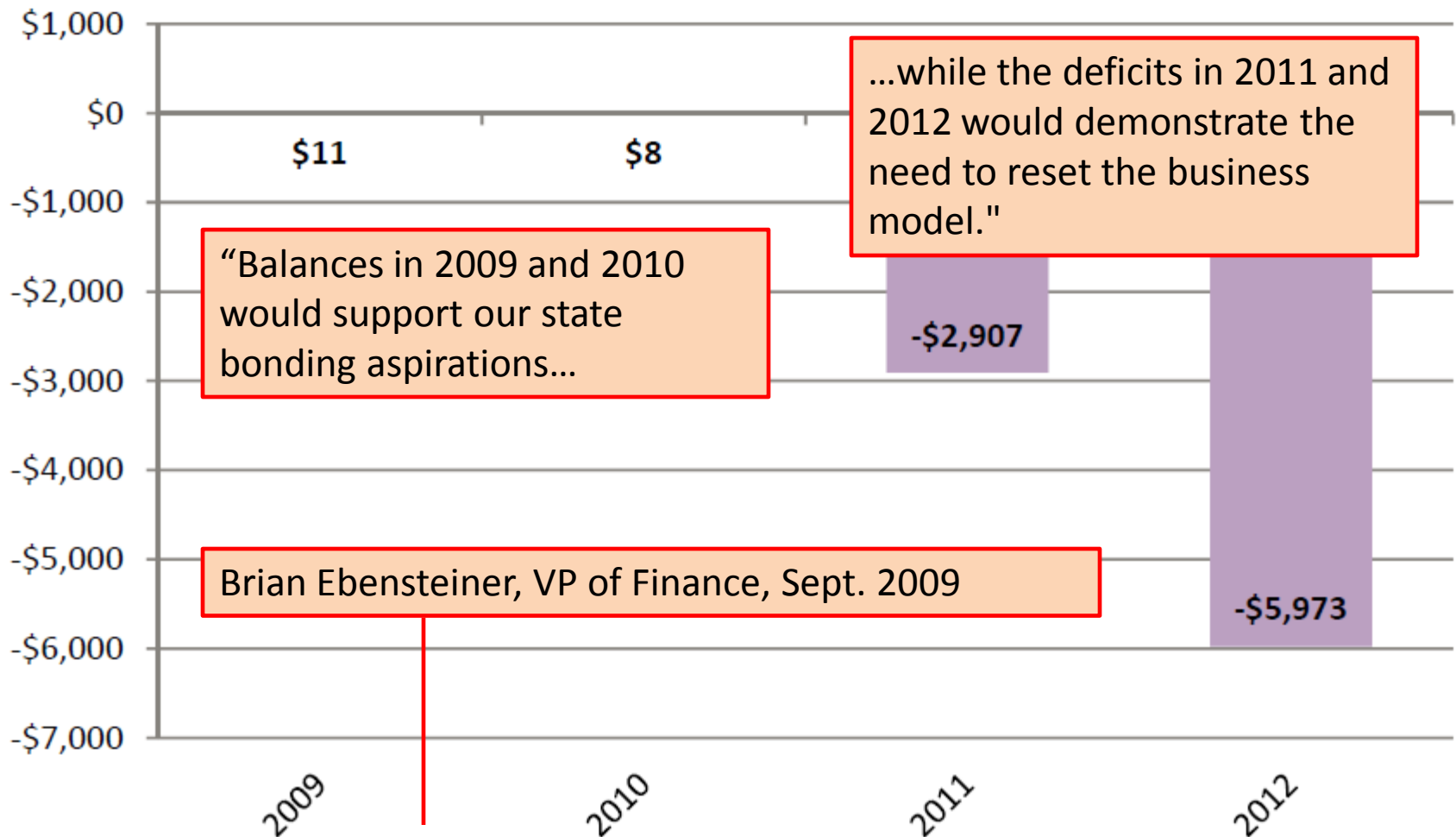
- Based upon published documents
- No access to employees for questions
- No access to unaudited monthly, quarterly financial statements
- No access to MOA 2013 financial statements

Note: All MOA financial reports and data are for fiscal year (FY) ending Aug. 31

MOA Net Total Revenue-Expenses (\$000)

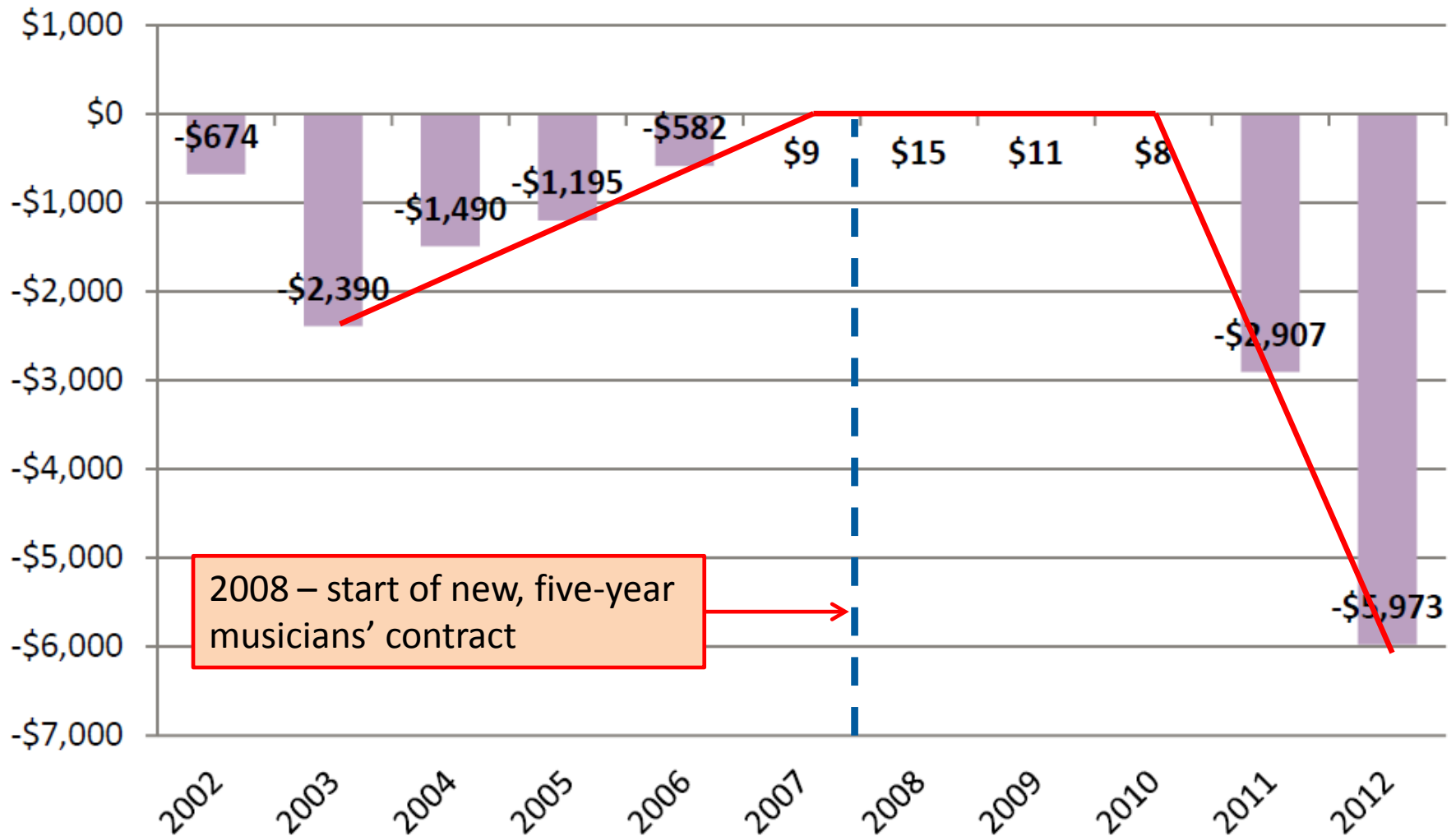


MOA Net Total Revenue-Expenses (\$000)



MOA Net

Total Revenue-Expenses (\$000)



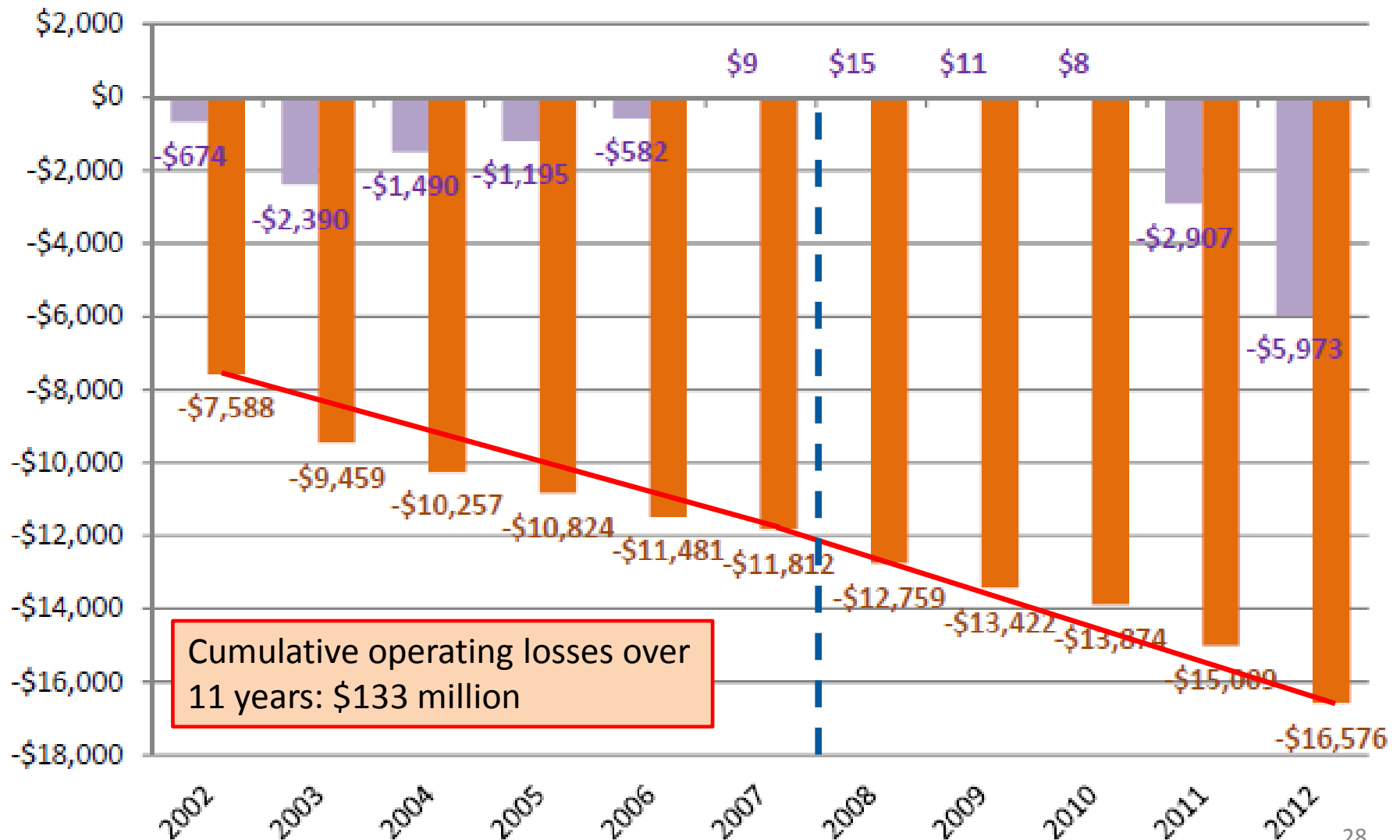
2008 – start of new, five-year musicians' contract

Observations

- MOA “announced balanced budgets” in 2009-10
- MOA went deep into the red in 2011-12
- MOA did *exactly what Ebensteiner said it would do*
 - Truthful statements to MOA Board behind closed doors
- *How did that happen?*

MOA Net Revenue-Expenses with and without Endowment/Oakleaf/SPF Draws (\$000)

Actual Net (Revenue-Expenses) Net (Rev-Exp) without Endowment & Oakleaf/SPF Draws



Observations

- MOA ran large operating deficit in all years examined, 2002-12
 - Revenue (tickets, sales and donations but not endowment draws) less operating expenses
- Operating deficit increased continuously through the entire period
- Declines from 2002-03 and 2003-04 were early warning signals
 - \$10 million operating loss in 2004

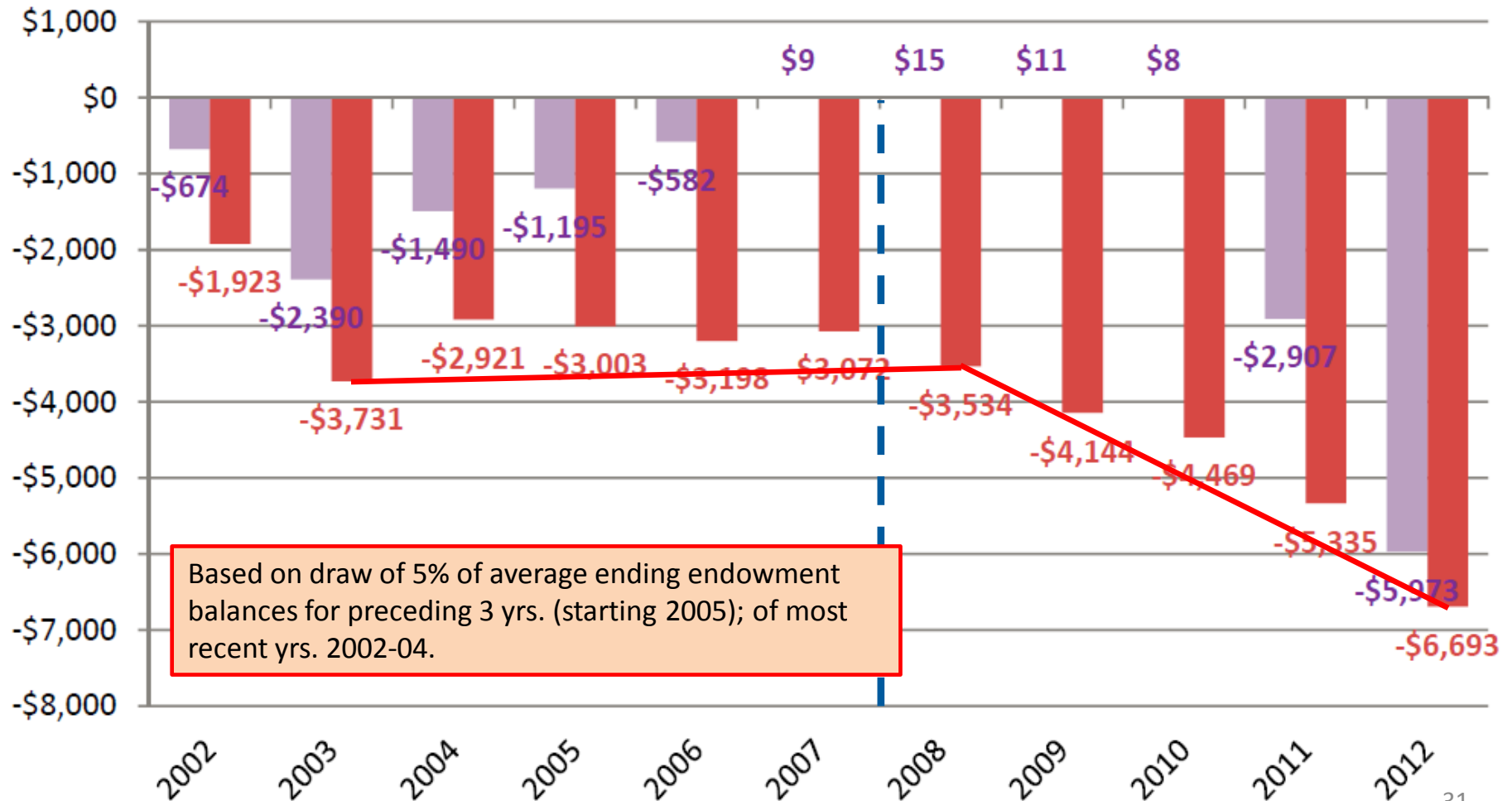
Comments

- Many nonprofits run occasional operating deficits
- Drawing from the endowment is common and proper
 - Occasional modest principal draws help “smooth the bumps in the road”
 - Most large organizations follow a defined formula
- MOA uses a rolling 12-quarter average balance
 - Has stated that a draw of 5% is “ideal”
- Board must manage endowment properly along with all other financial and operational affairs

MOA Net Revenue-Expenses

Actual vs. "What If" Using 5% Endowment Draw Rule (\$000)

Actual Net (Revenue-Expenses) "What If" Net Using 5% Assumption

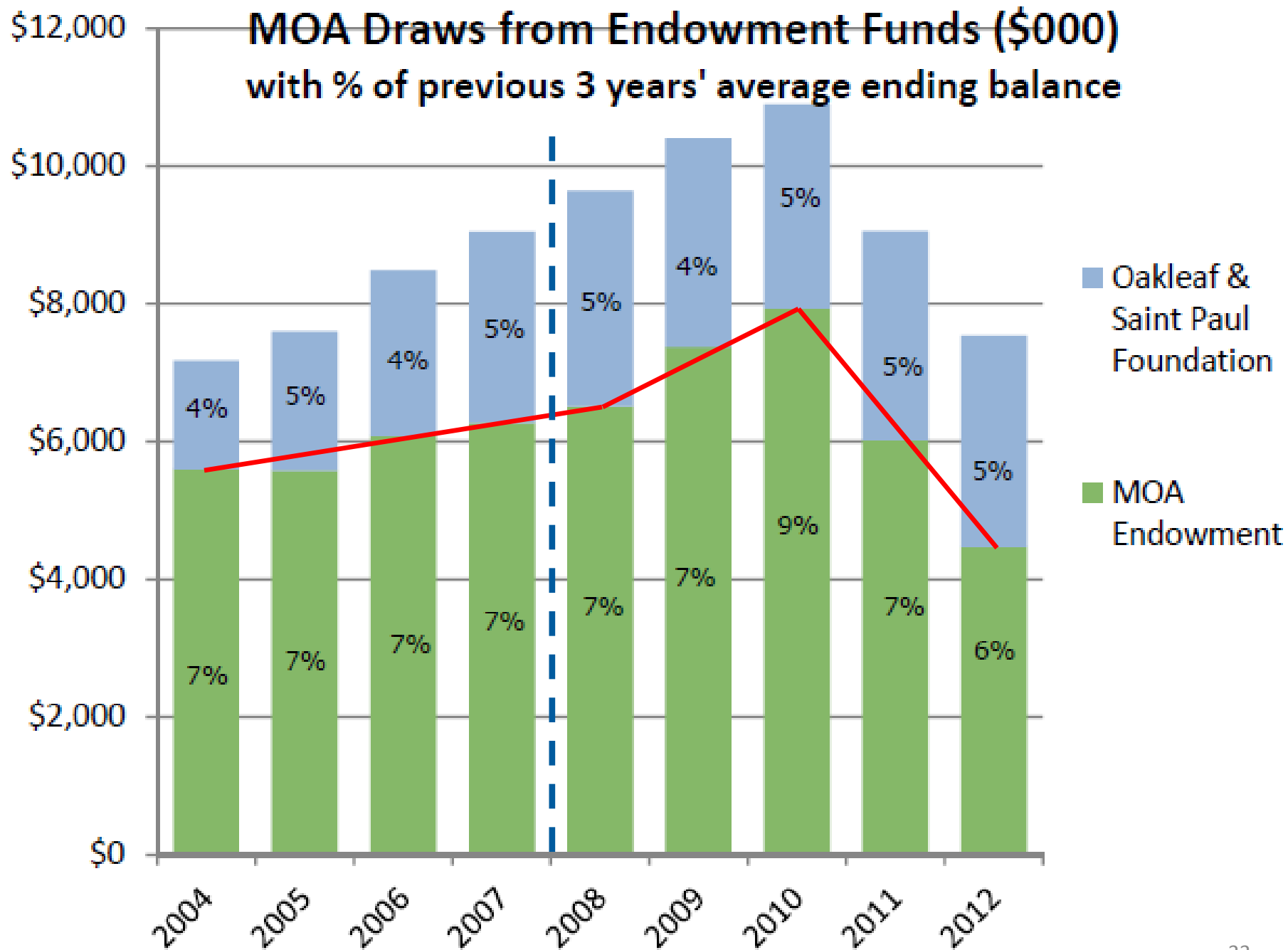


Observations

- But for “excessive” endowment draws, MOA would have had much larger operating deficits
 - (\$2M+) 2002-12
 - (\$3M+) 2006-12
 - (\$4M+) 2009-12
- The operating deficit was within a comparable range 2003-08
- The operating deficit grew significantly in 2009-12

MOA Draws from Endowment Funds (\$000)

with % of previous 3 years' average ending balance



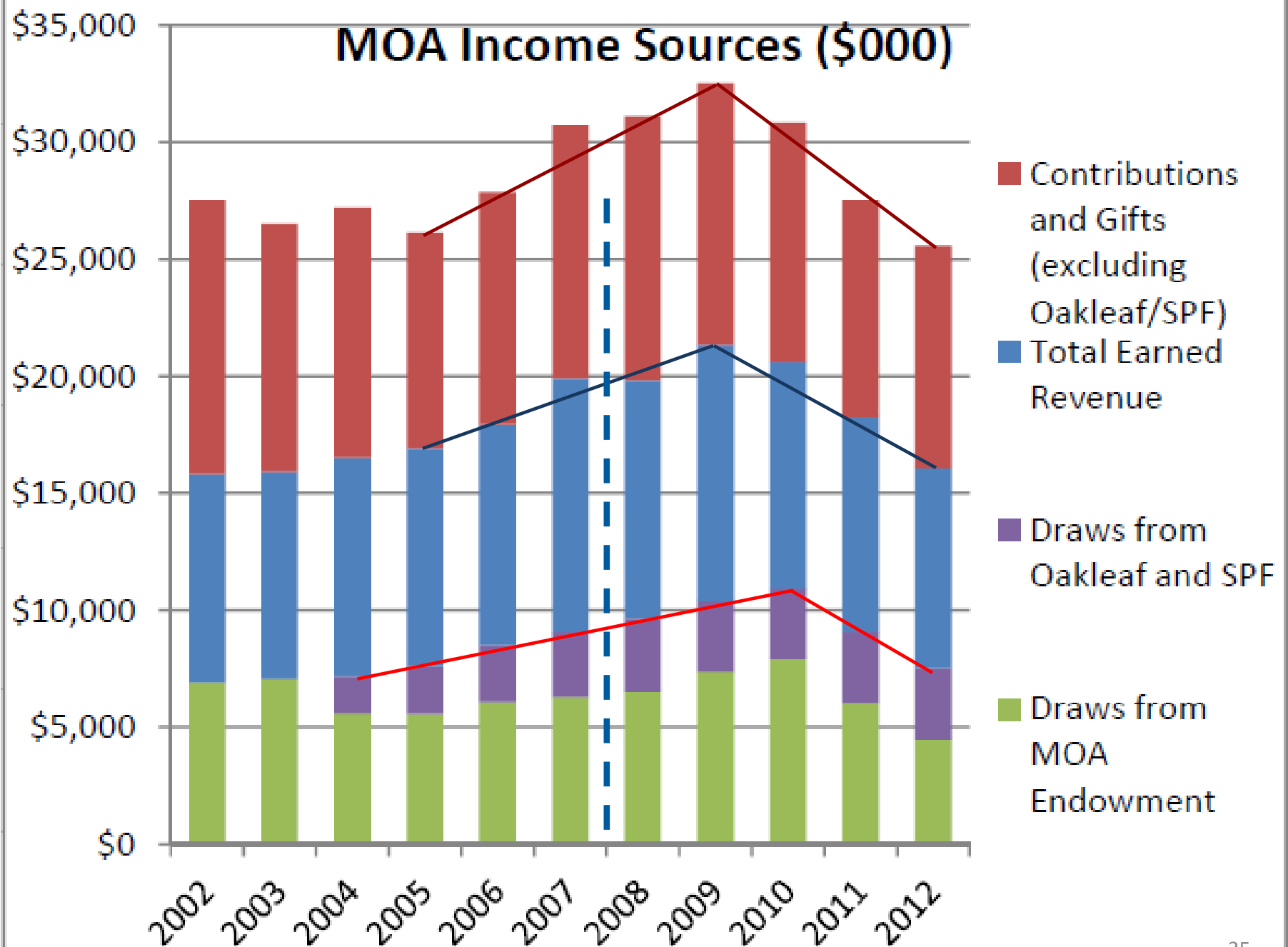
Observations

- The Board increased the endowment draws gradually from 2005-08
- The Board took even larger draws in 2009-10
- The Board steeply cut endowment draws in 2010-12
- In all years, Board designated endowment draws exceeded a 5% target
- The Board consistently used endowment draws to balance its budget from 2006 until 2011-12

"Balances in 2009 and 2010 would support our state bonding aspirations..."

...while the deficits in 2011 and 2012 would demonstrate the need to reset the business model."

MOA Income Sources (\$000)

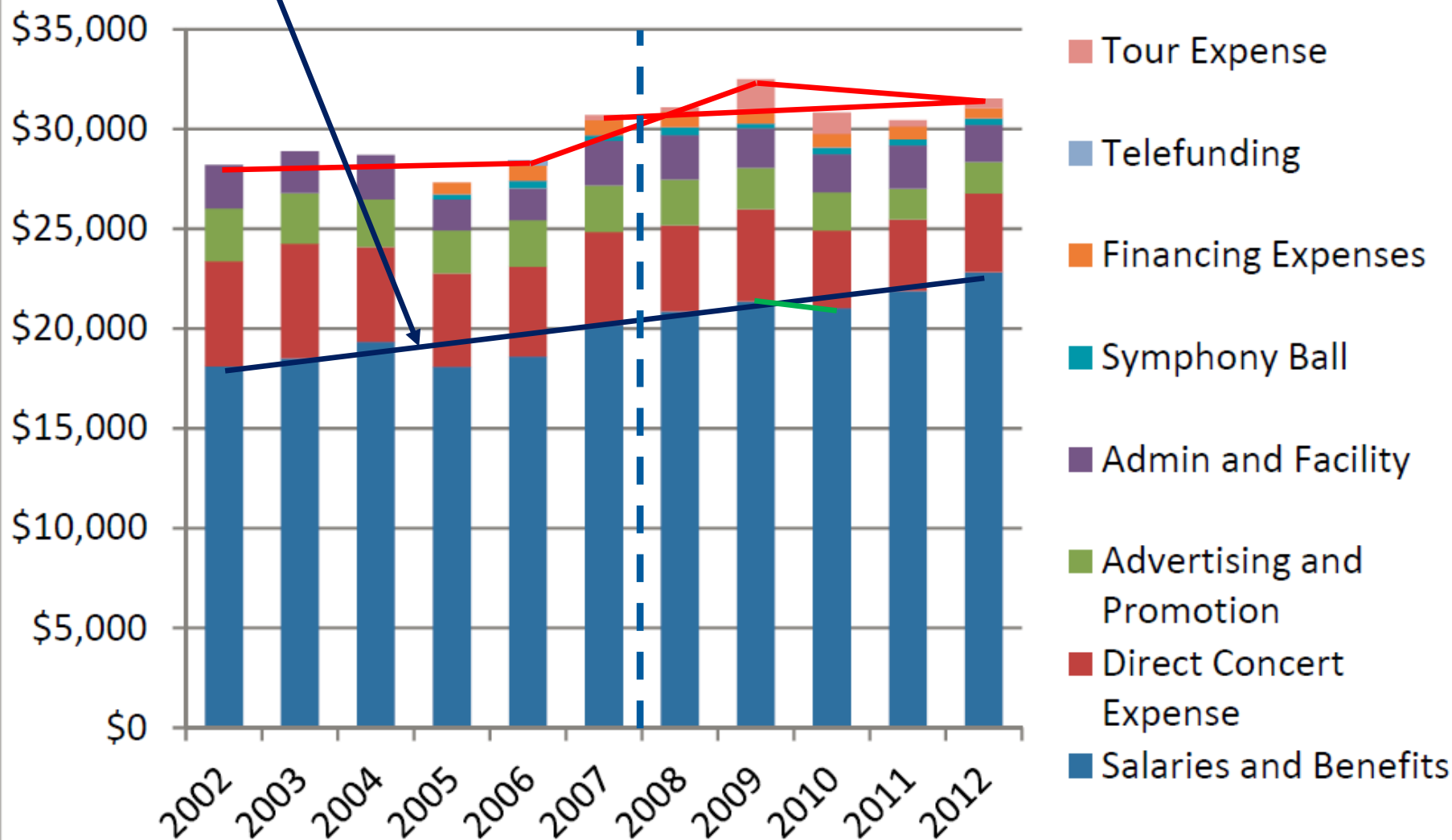


Observations

- Total contributions and gifts increased strongly from 2005-09 then fell heavily
- Total earned revenue also rose faster than endowment draws from 2005-09 then fell more quickly
- These changes were not associated with the new musician contract signed in 2007
- *What caused these other changes?*
- *Does MOA have an expense problem or a revenue problem, or both?*

MOA +12% vs.
Employment Cost
Index: +17%

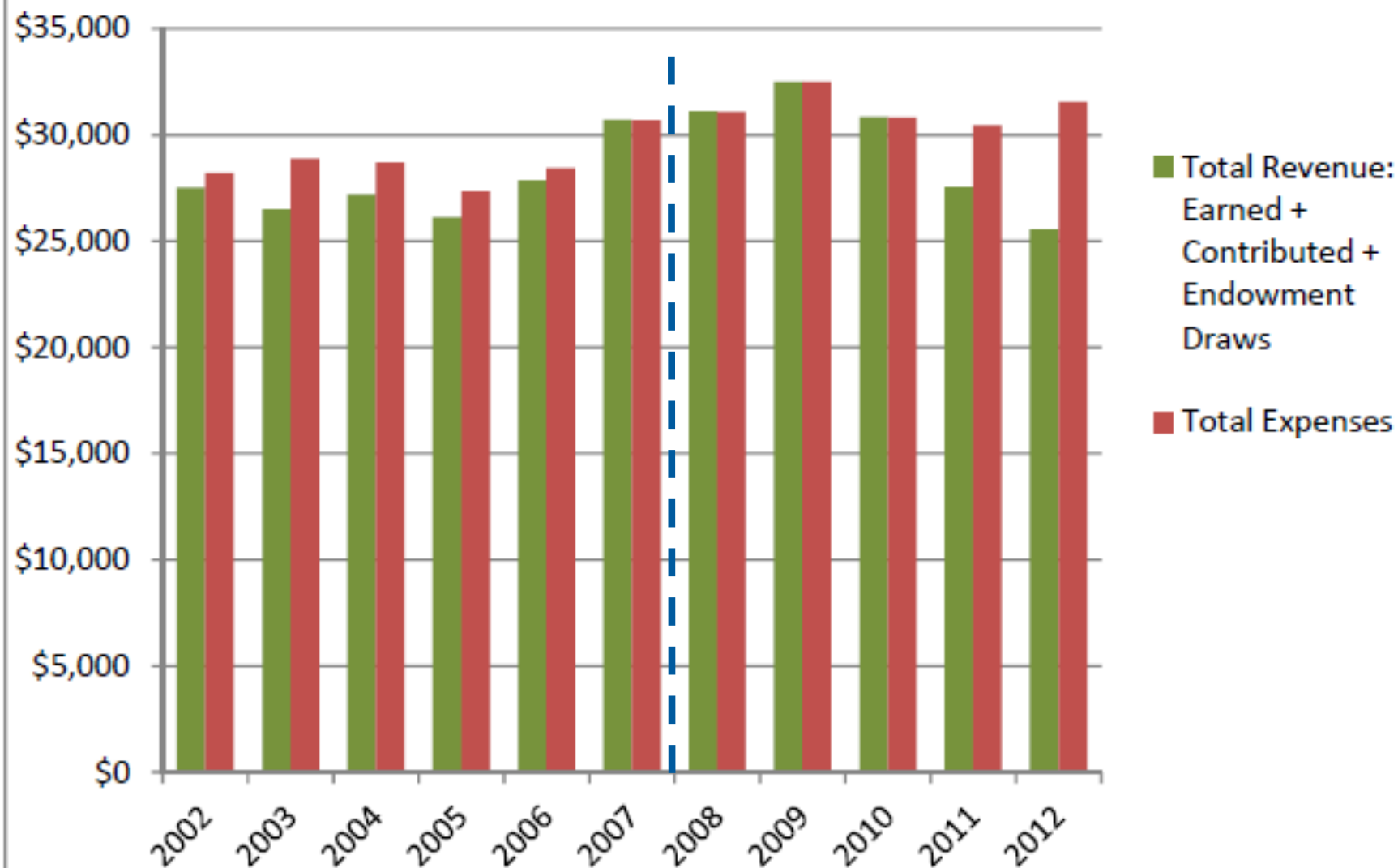
MOA Total Expenses (\$000)



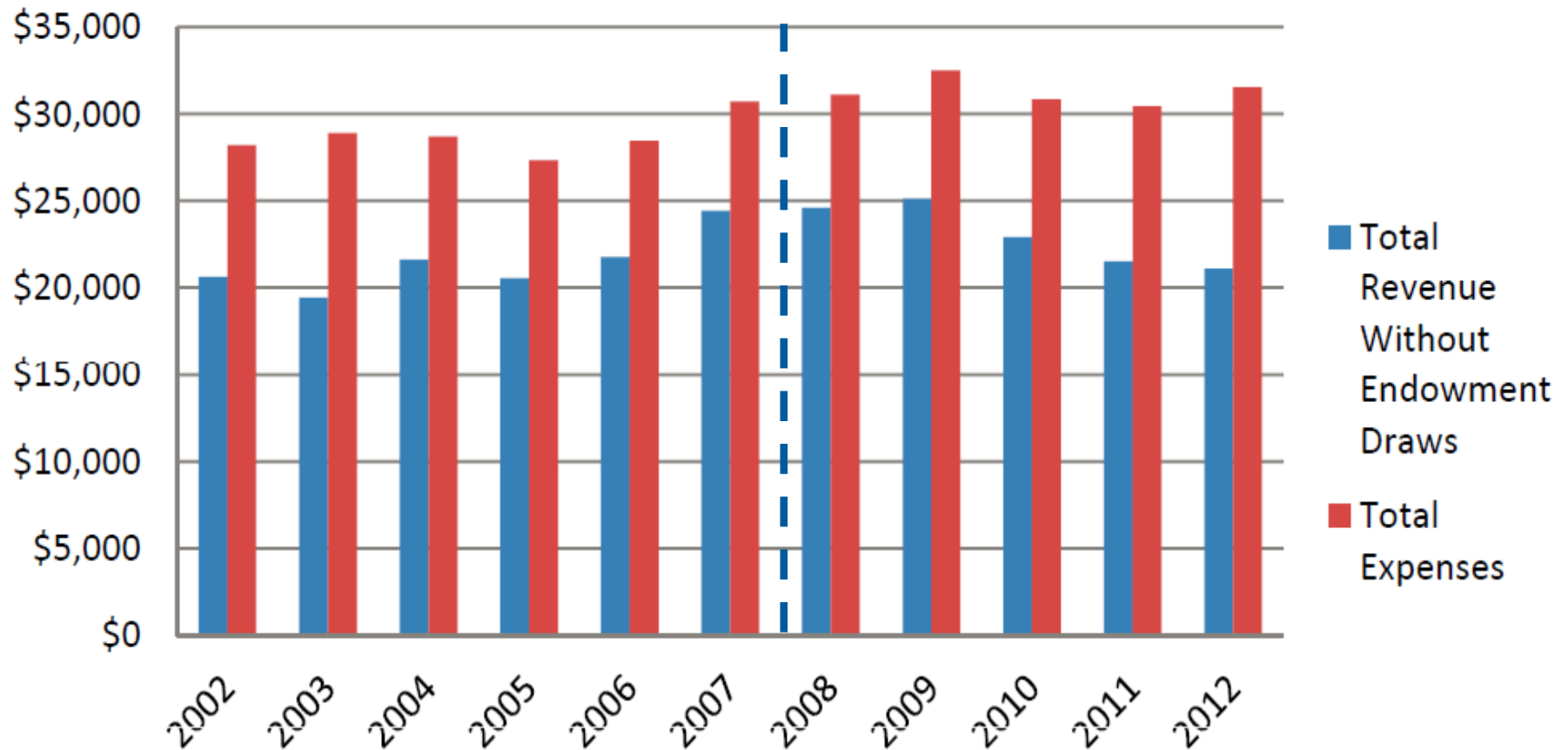
Observations

- Total expenses were flat 2002-06
- Total expenses increased from 2007-09 but then fell from 2010-12
- Total expenses were held essentially flat from 2007-12
 - But only through painful cuts in later years
- Salary and benefit costs increased consistently from 2002-12
 - MOA increase 12% vs. Employment Cost Index 17%
 - Musicians gave \$4.5 million concession in 2009
- There was no significant difference post 2007 (signing of new musician contract)
 - Includes effects of cost cutting in later years

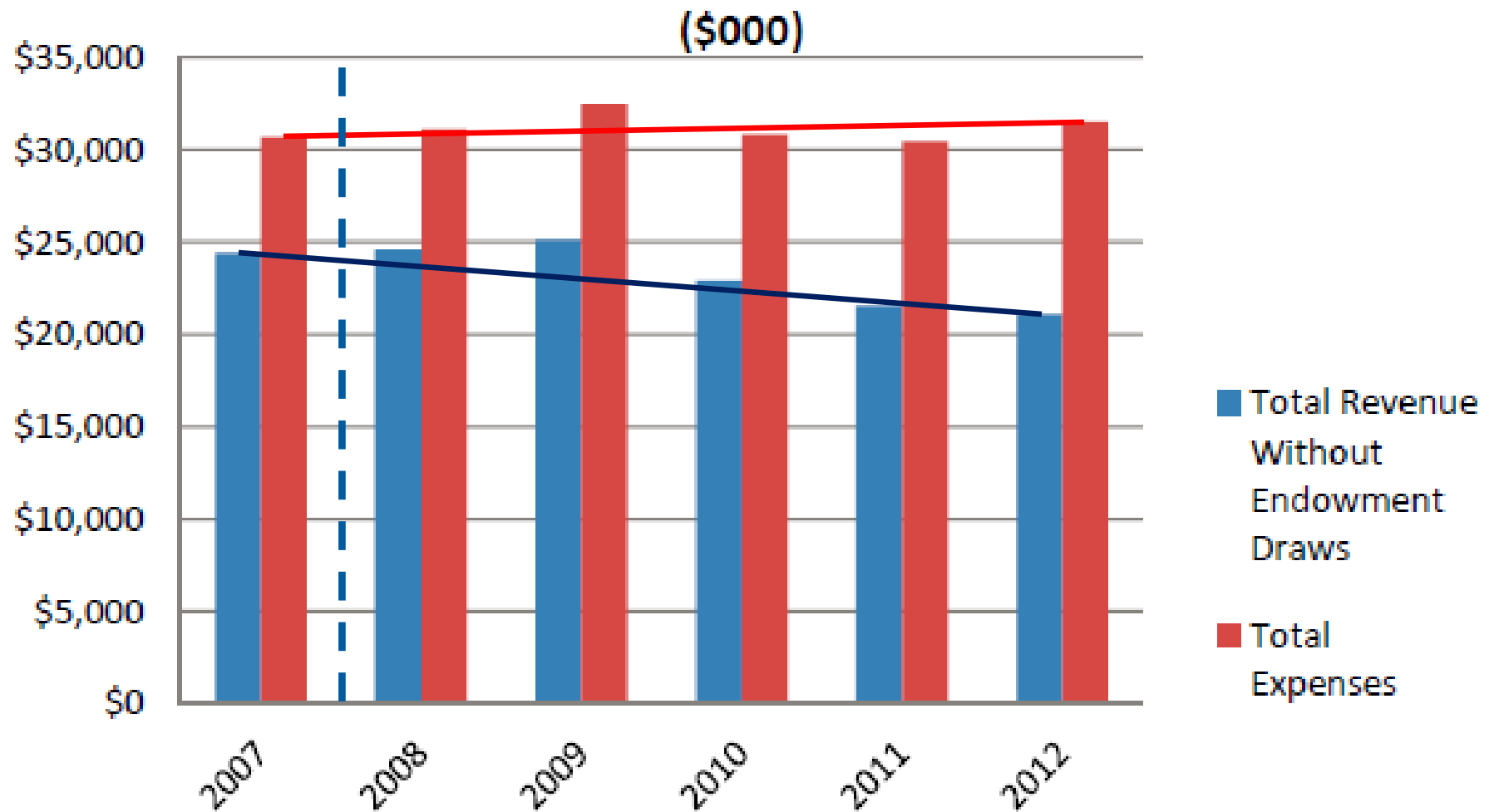
MOA Total Revenue & Expenses (\$000)



MOA Total Revenue Without Endowment Draws vs. Total Expenses (\$000)



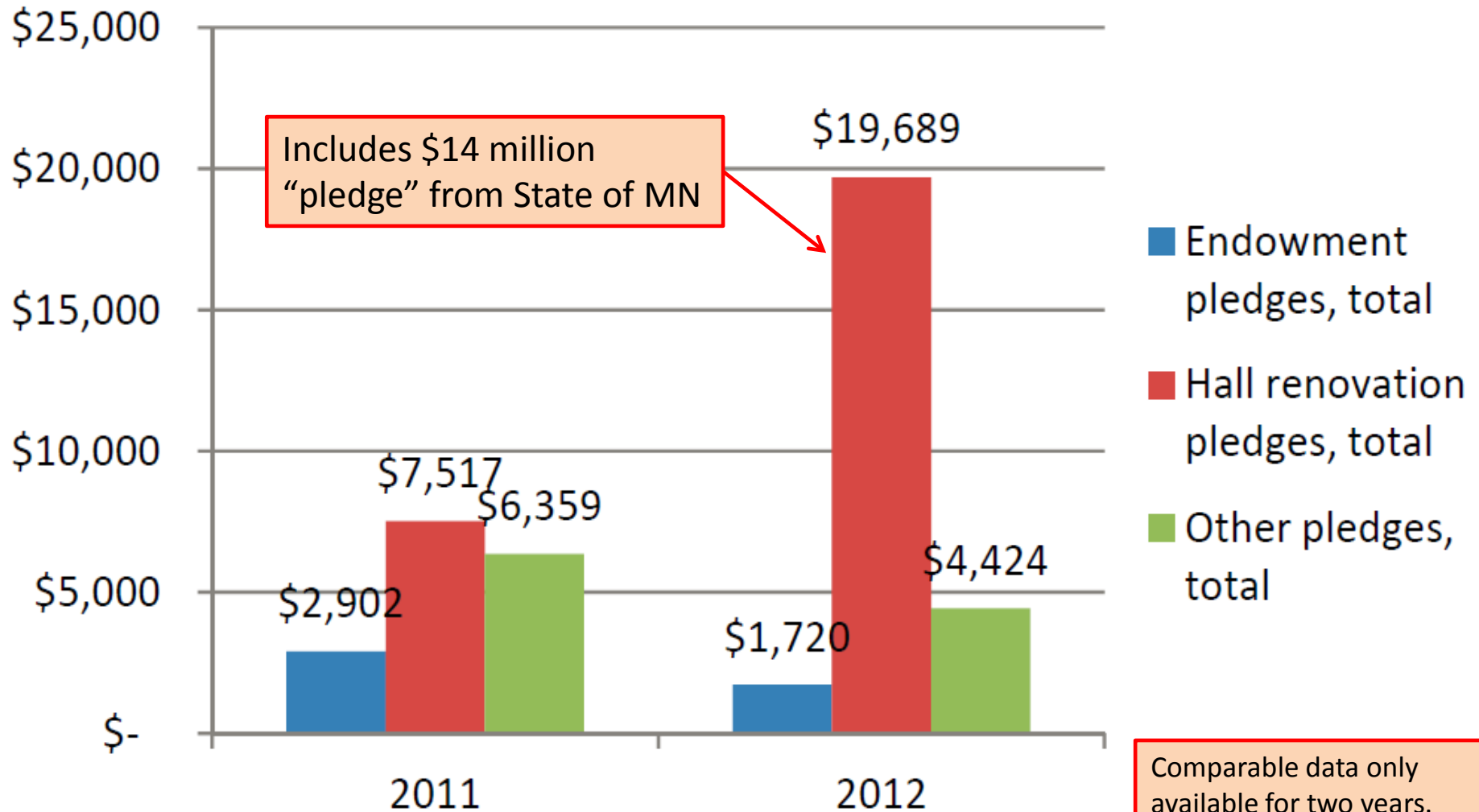
MOA Total Revenue Without Endowment Draws vs. Total Expenses



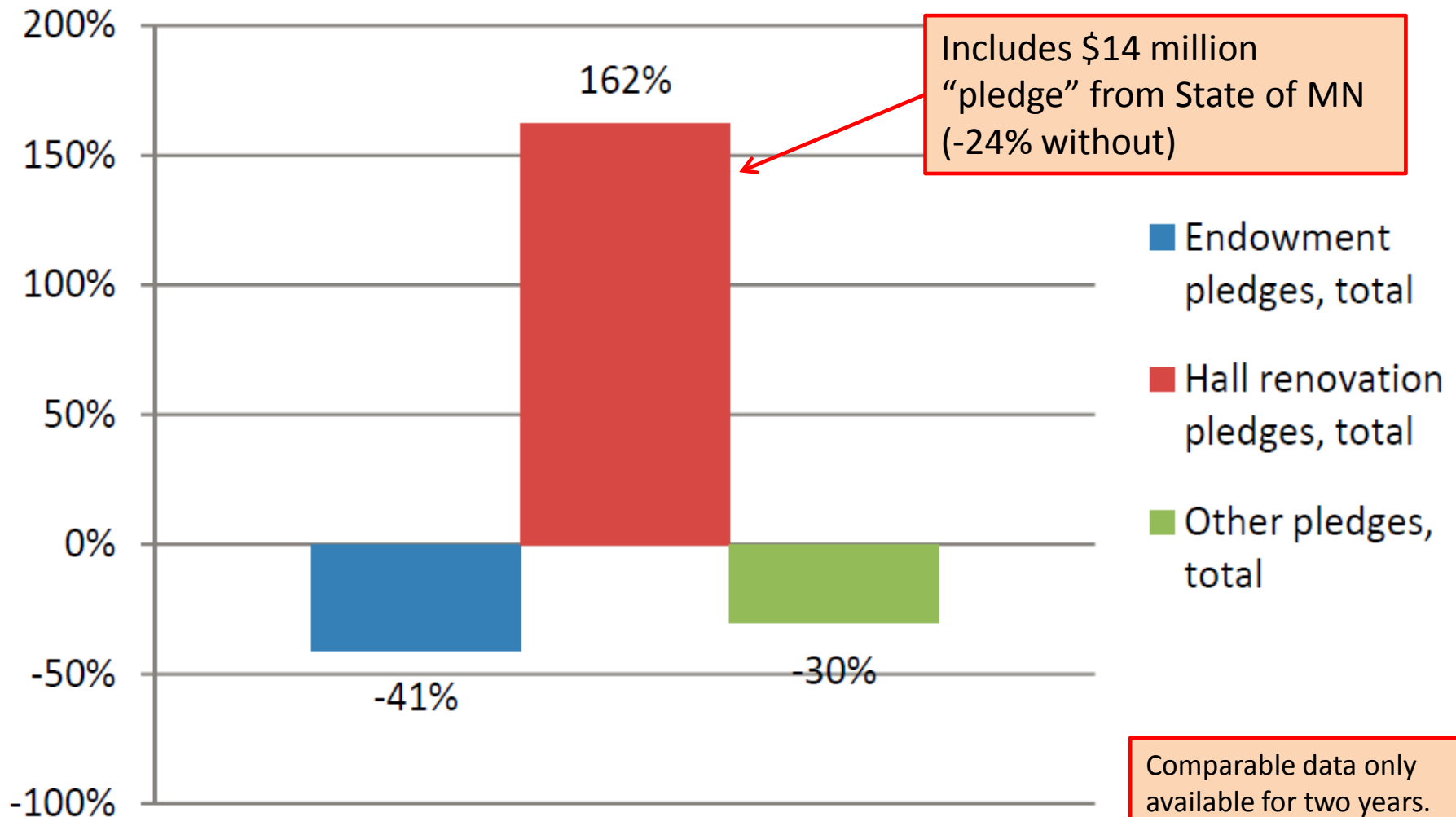
Observations

- For at least the last six fiscal years, MOA has contained expenses
- MOA has had a significant revenue problem 2010-12
- *Why has it had a revenue problem?*
- *Did cutting expenses cause increased revenue problems?*

Pledges Receivable by Type (\$000)



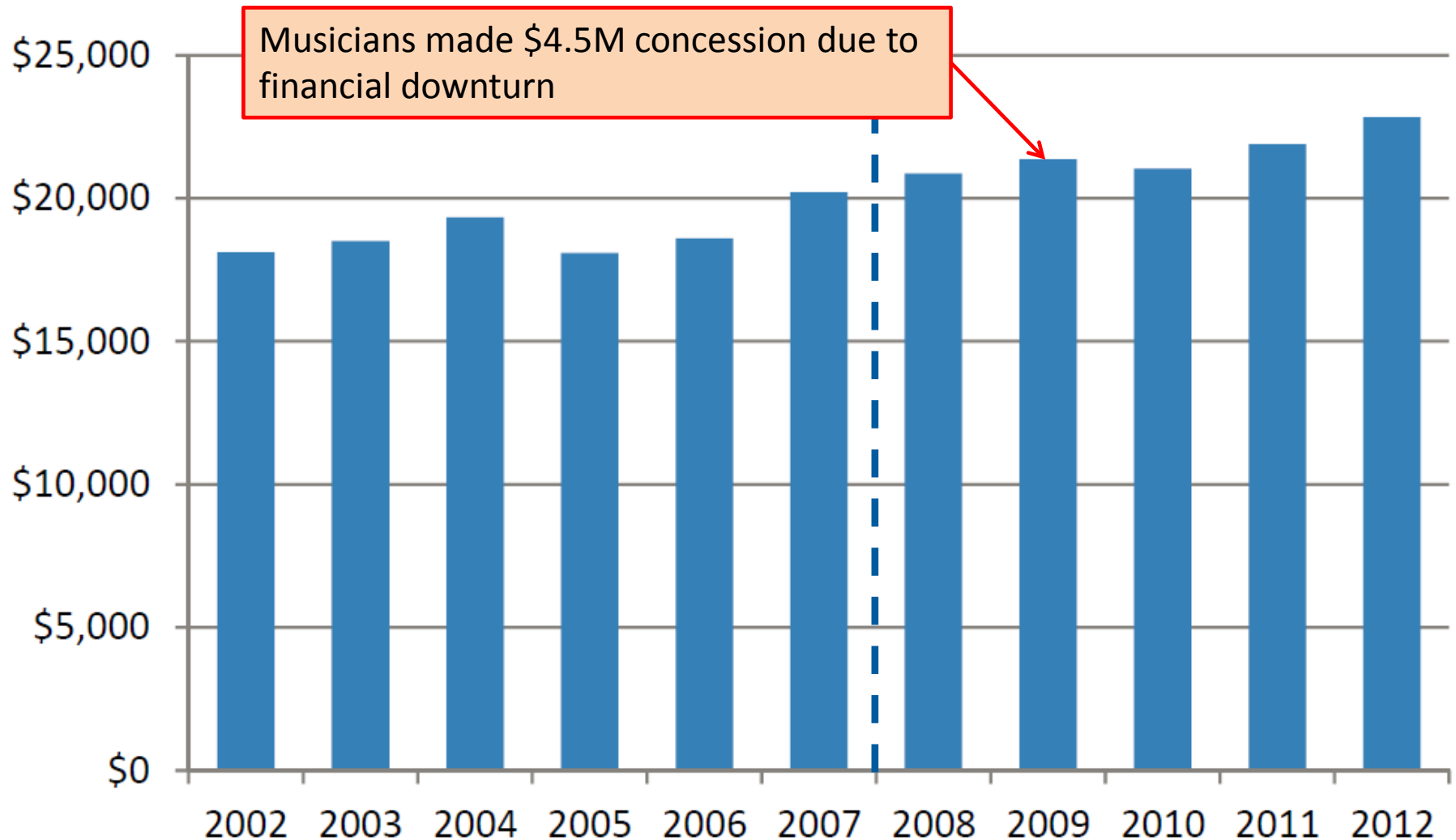
% Change Pledges Receivable 2011-12



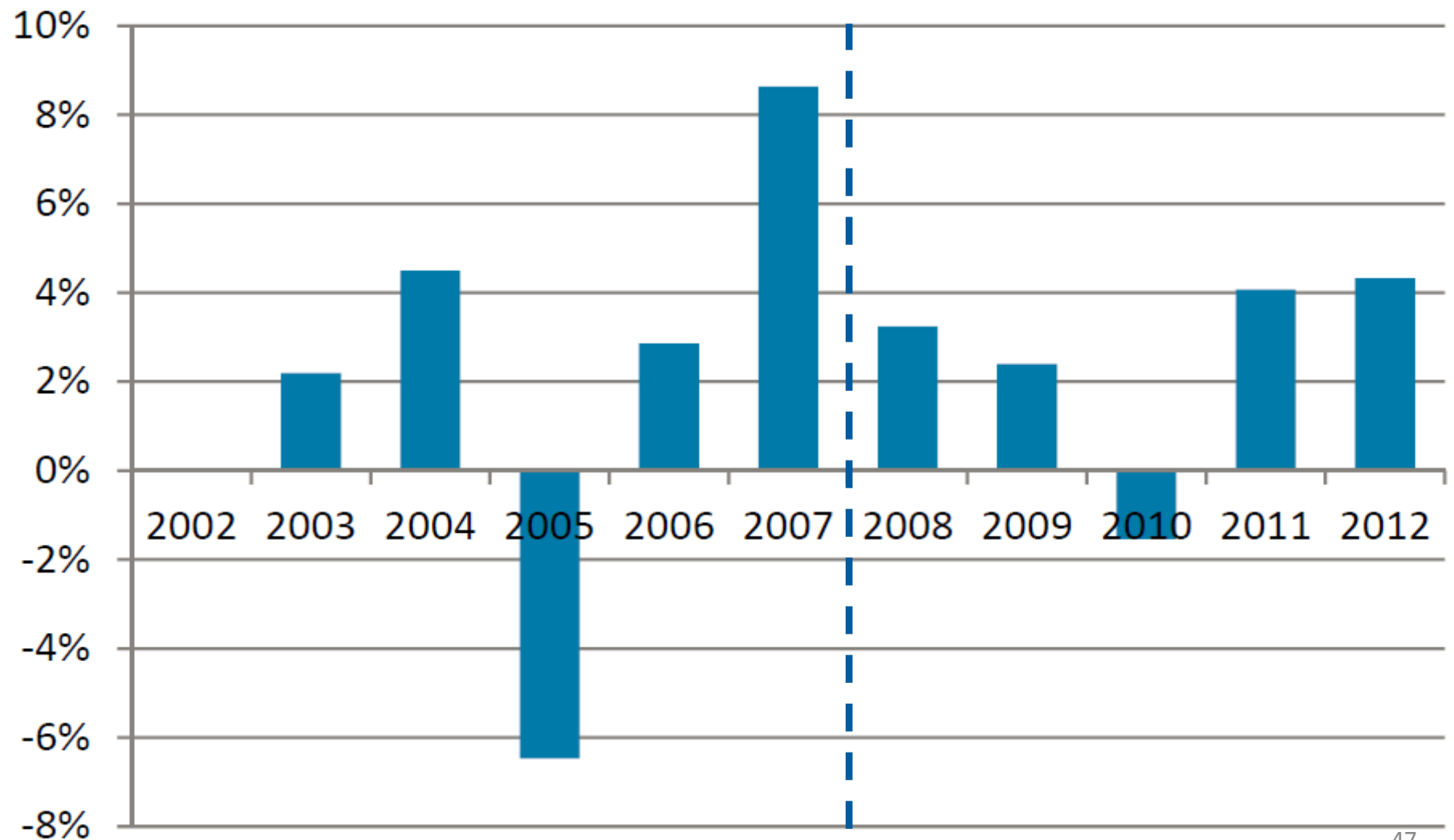
Observations

- Heavy emphasis on fundraising for Orchestra Hall renovation was temporally associated with significant decreases in both endowment pledges and all other pledges
- Severe “concentration” of donations in recent years:
 - “One donor (State of MN, \$14M grant for the Hall renovation) accounted for 54% of total pledges receivable at 8/31/12. Two private individual donors accounted for 20% of total pledges receivable at 8/31/11. Three donors accounted for 37% of total pledges receivable at 8/31/10.”
 - “Two donors (State of MN \$14M grant and one individual estate gift) accounted for 59% of contribution income in 2012. Two donors accounted for 38% of contribution income in 2011. Two donors accounted for 27% of contribution income in 2010.”

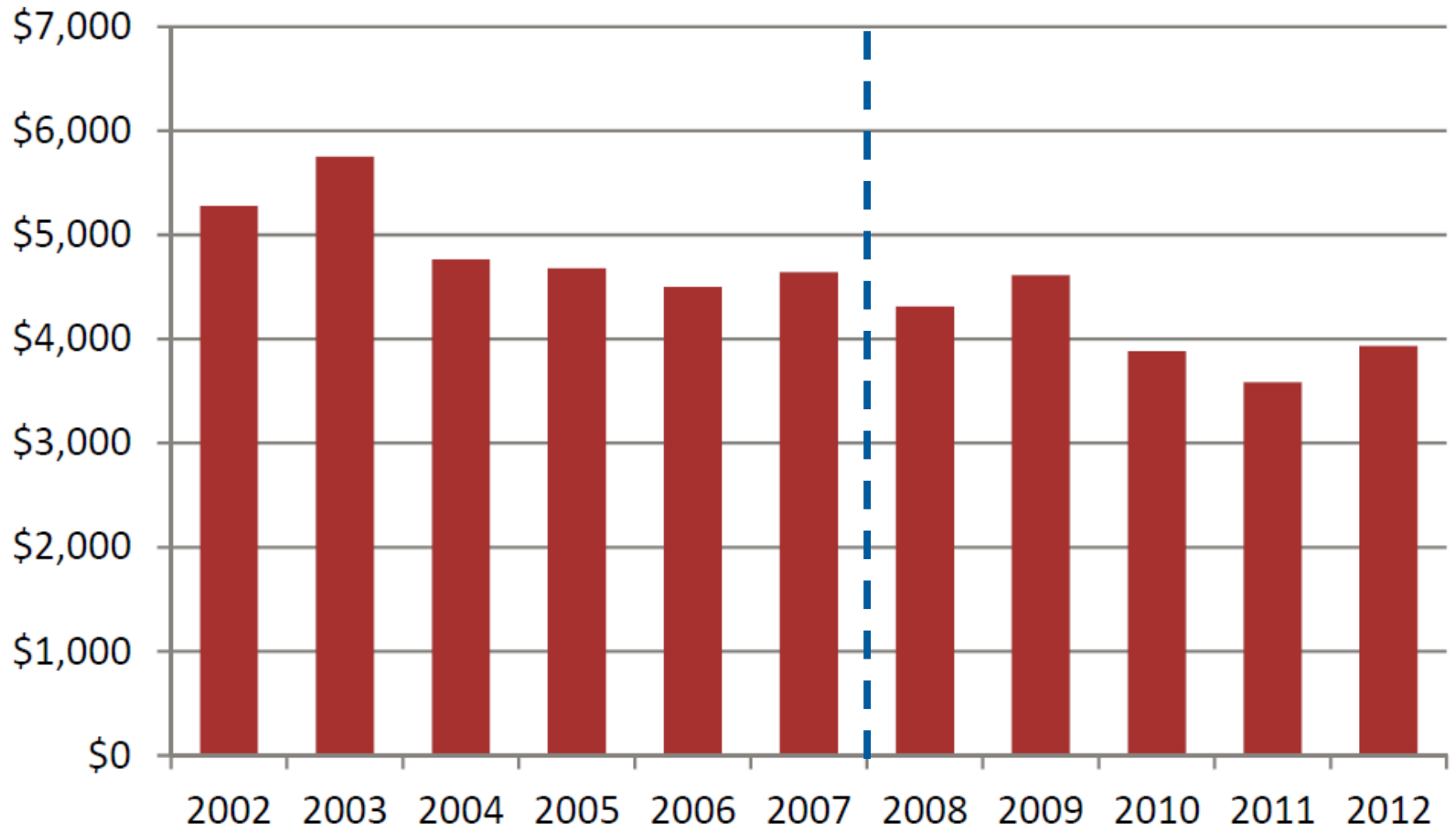
MOA Salary & Benefit Expenses (\$000)



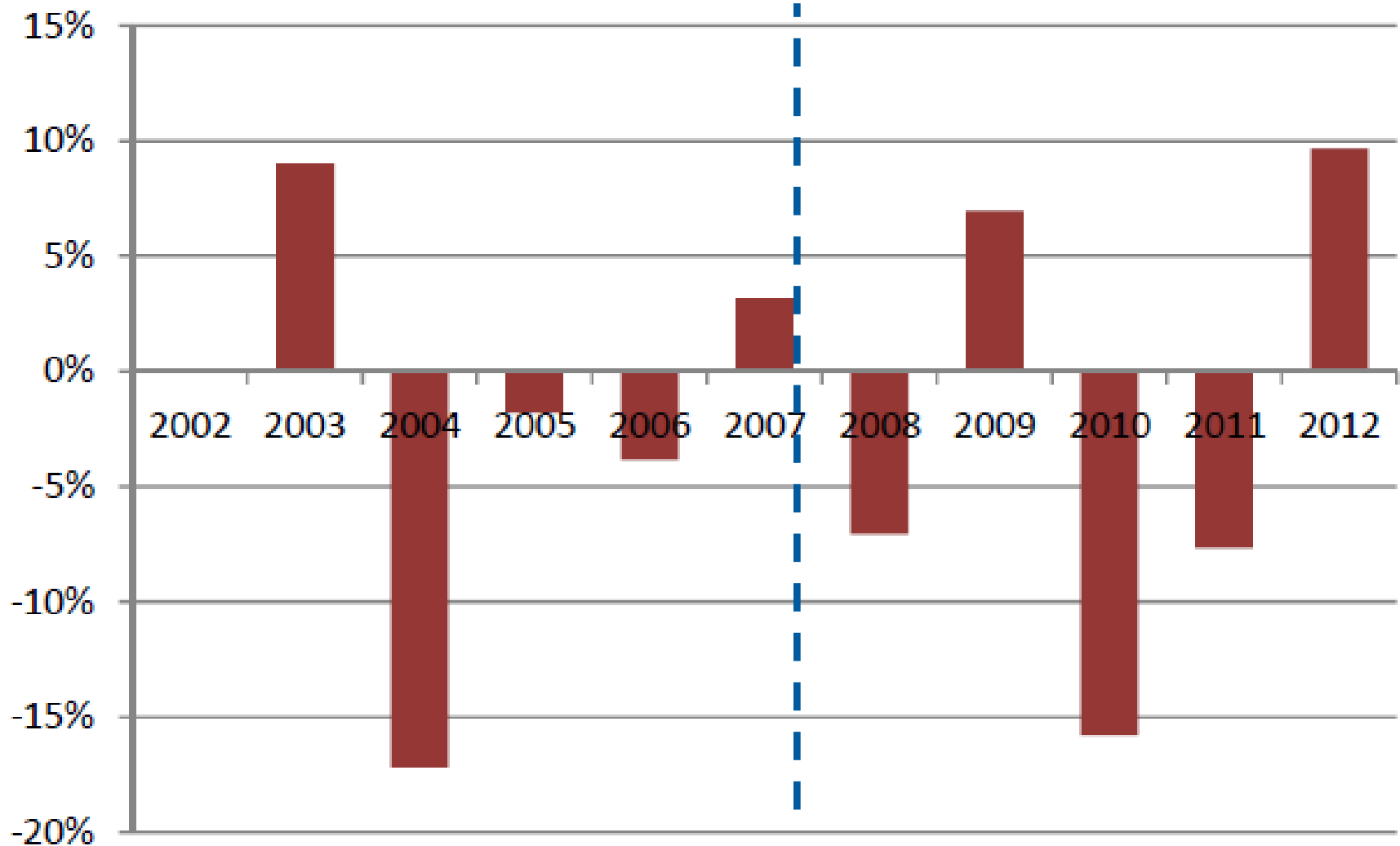
MOA Salary & Benefits % Change from Previous Year



MOA Direct Concert Expenses (\$000)



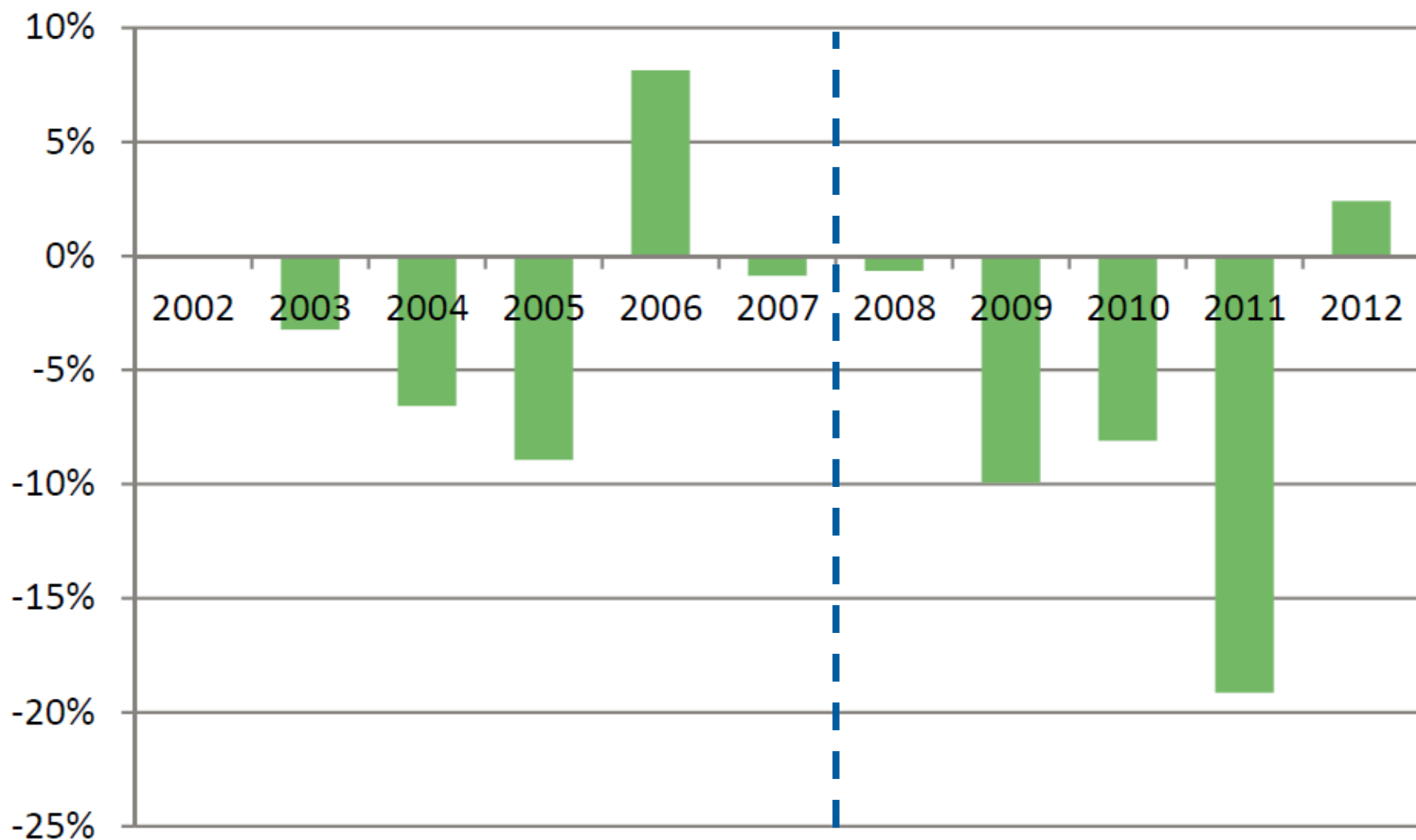
Direct Concert Expense % Change from Previous Year



MOA Advertising & Promotion Expenses (\$000)



MOA Advertising & Promotion % Change from Previous Year



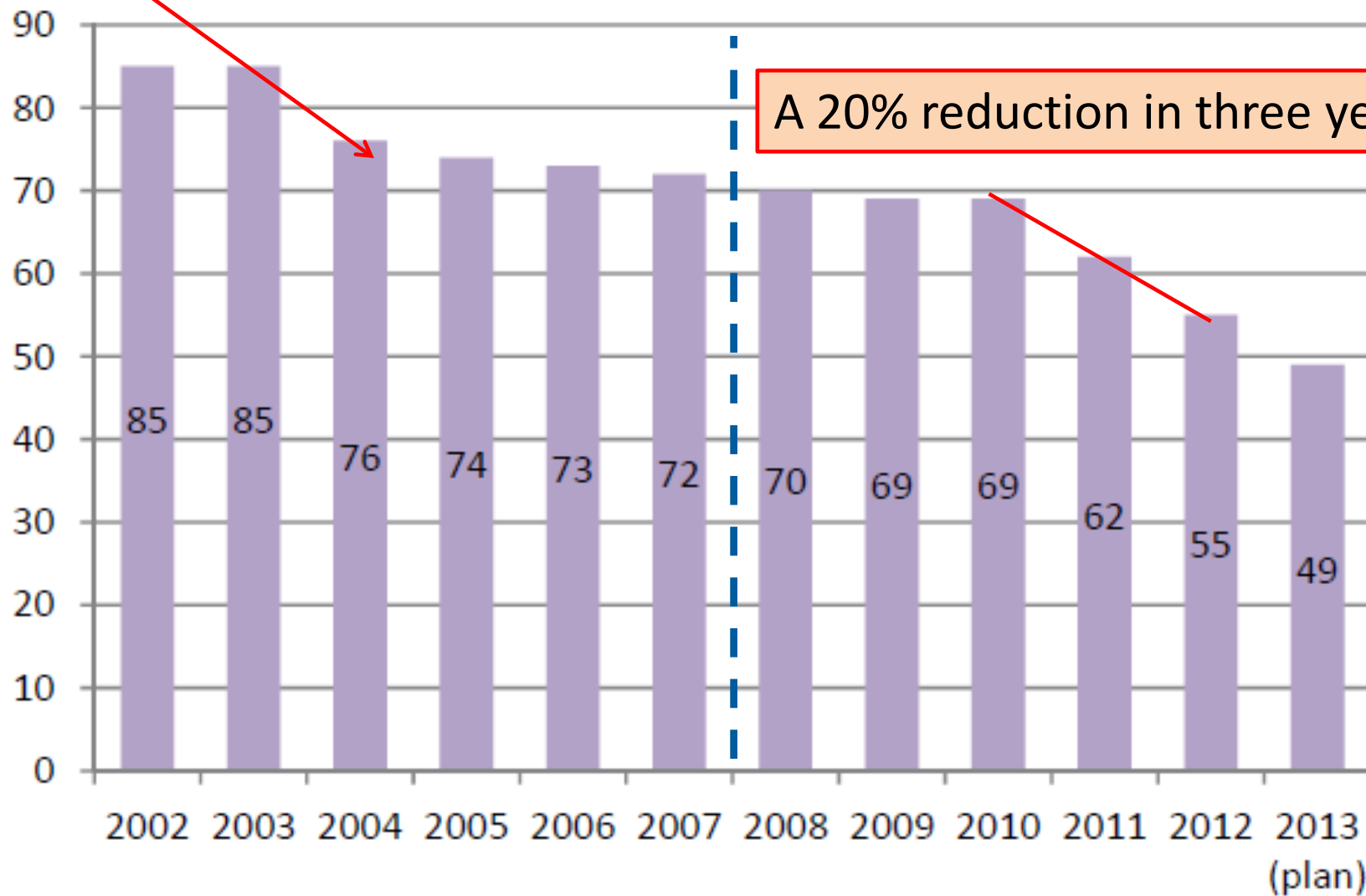
Observations

- Salary & Benefit Expenses increased steadily 2002-12, with a few exceptions
 - Includes entire MOA staff
 - Musicians' \$4.5M concession in 2009 helped moderate costs
- Direct Concert Expenses decreased 2002-12, with significant decreases 2010-12 over 2009
- Advertising & Promotion Expenses decreased 2002-05, increased and remained stable 2006-08, then fell significantly 2009-12

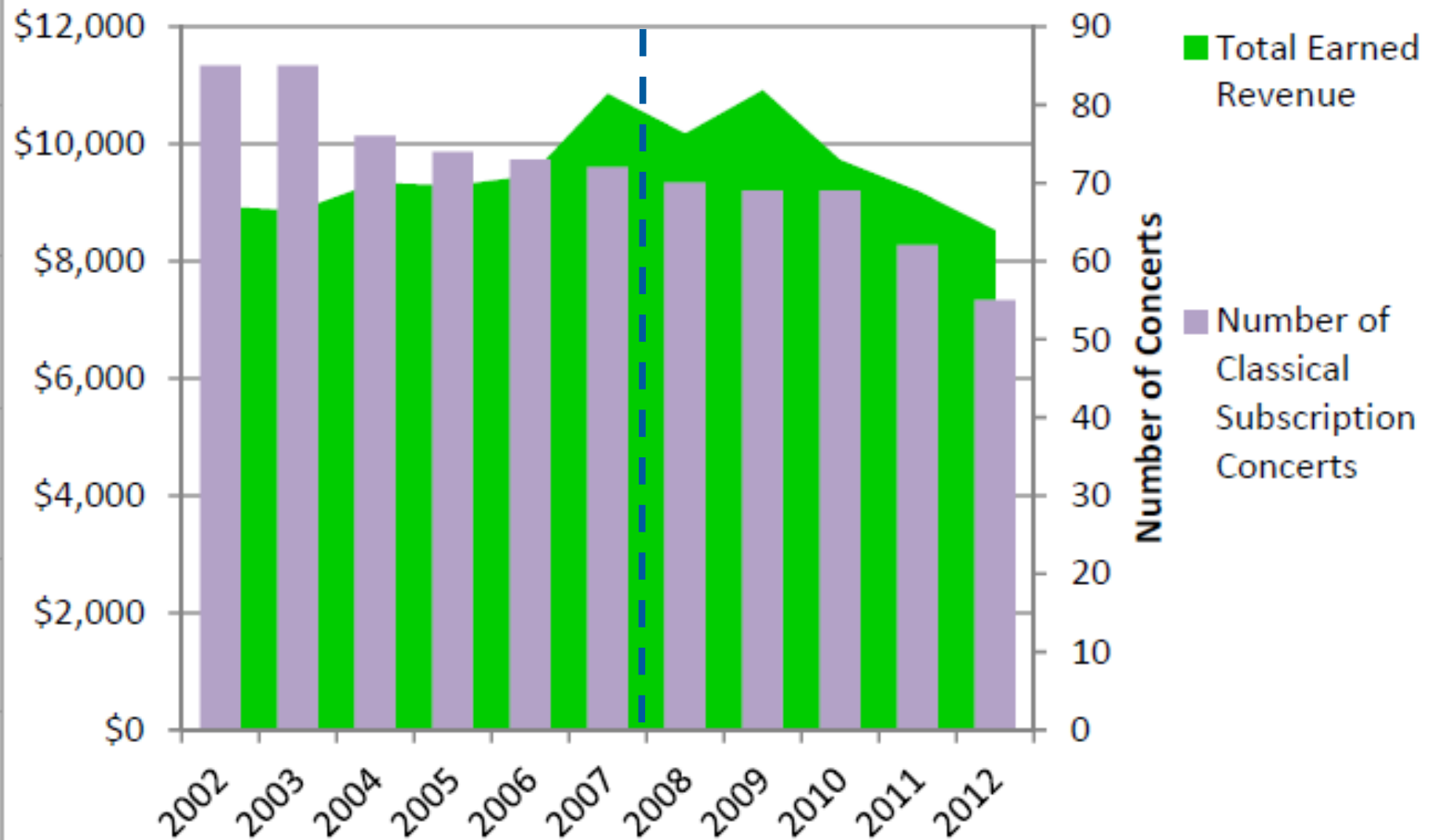
Number of Concerts per Year (Principal Classical Concert Series)

European
Tour Year

A 20% reduction in three years



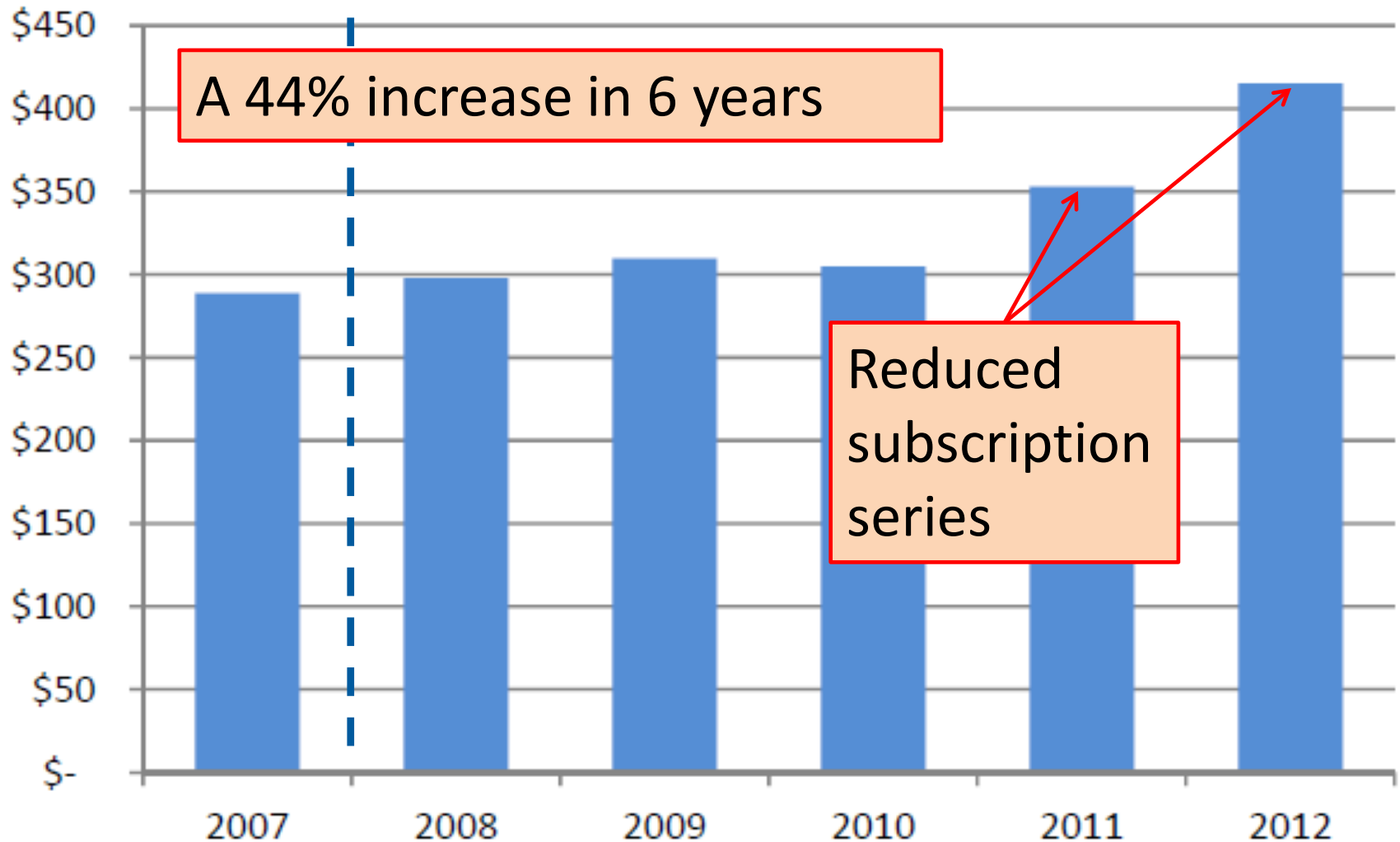
Earned Revenue (\$000) vs. Number of Concerts



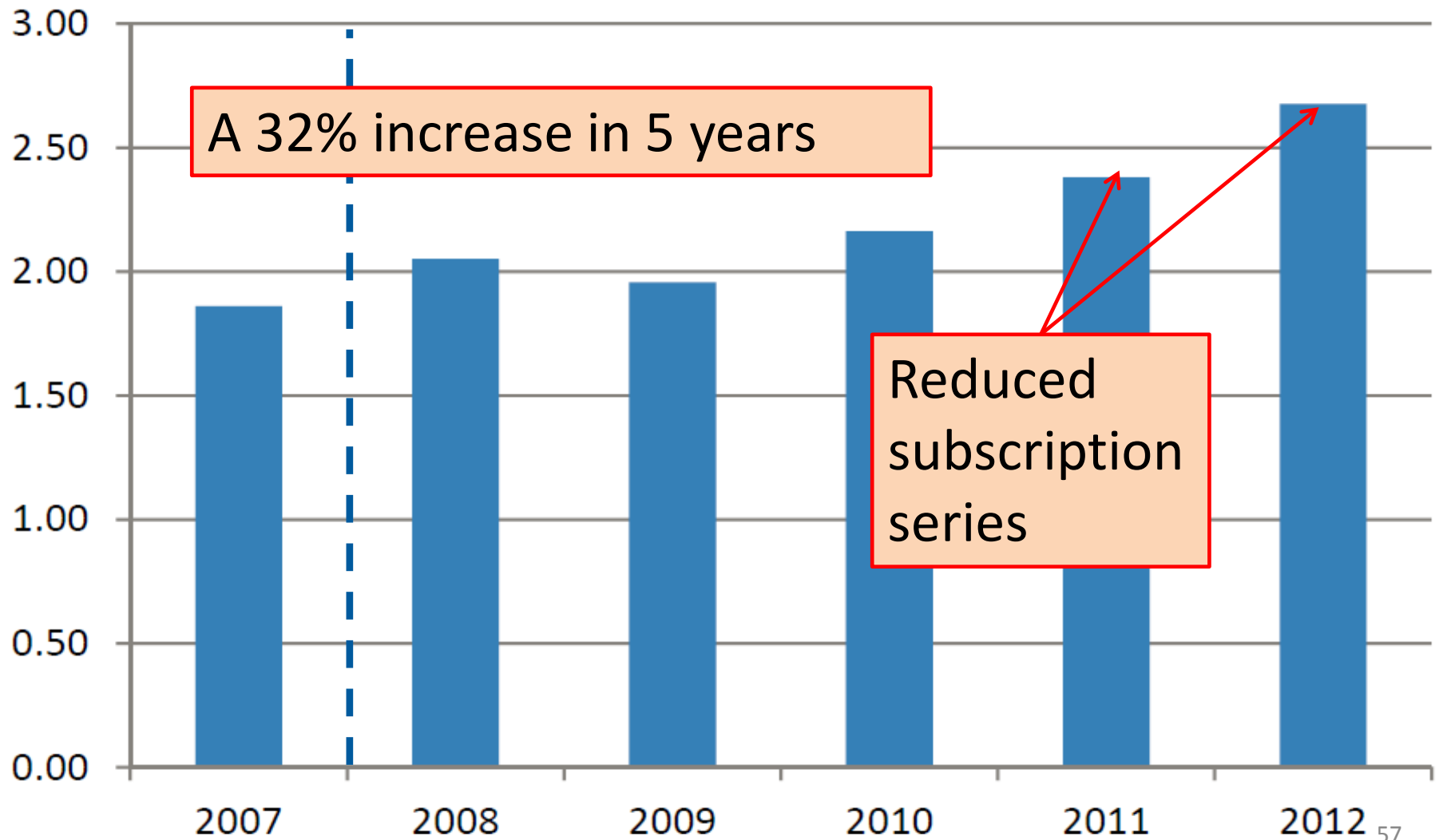
Observations

- Number of concerts fell 20% in three years
 - A disturbing reduction in MOA's principal product offering
 - This change was *not* requested by musicians
 - Correlates with reduced Advertising & Promotion Expenses
 - Correlates with falling Earned Revenue

Salary & Benefit Expense Per Concert (\$000) (Principal Classical Concert Series)



Ratio of Salary & Benefit Expenses to Total Earned Revenue



Observations

- Significantly reduced productivity
 - Higher labor costs combined with reduced number of concerts
 - “Inability to improve productivity” is a common complaint in orchestra management discussions
 - Static concert schedule coupled with increasing labor and other operating costs
 - MOA’s productivity has moved completely in the wrong direction due to the multiplier effect of a reduced number of concerts
 - *Even increased* concert offerings would have been a reasonable tradeoff for increased pay



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Unanswered Questions

- *Why did MOA sell securities at a \$14M loss in 2009?*
- *Why did MOA's appointees create a \$3M fund in Oakleaf Trust in 2011 "for accounting purposes only"?*
- *A number of other questions have been publicly asked and never answered by MOA*

		(i) Securities
7a	Gross amount from sales of assets other than inventory	28,712,336
b	Less cost or other basis and sales expenses	42,670,920
c	Gain or (loss)	-13,958,584
d	Net gain or (loss)	
* * * * *		

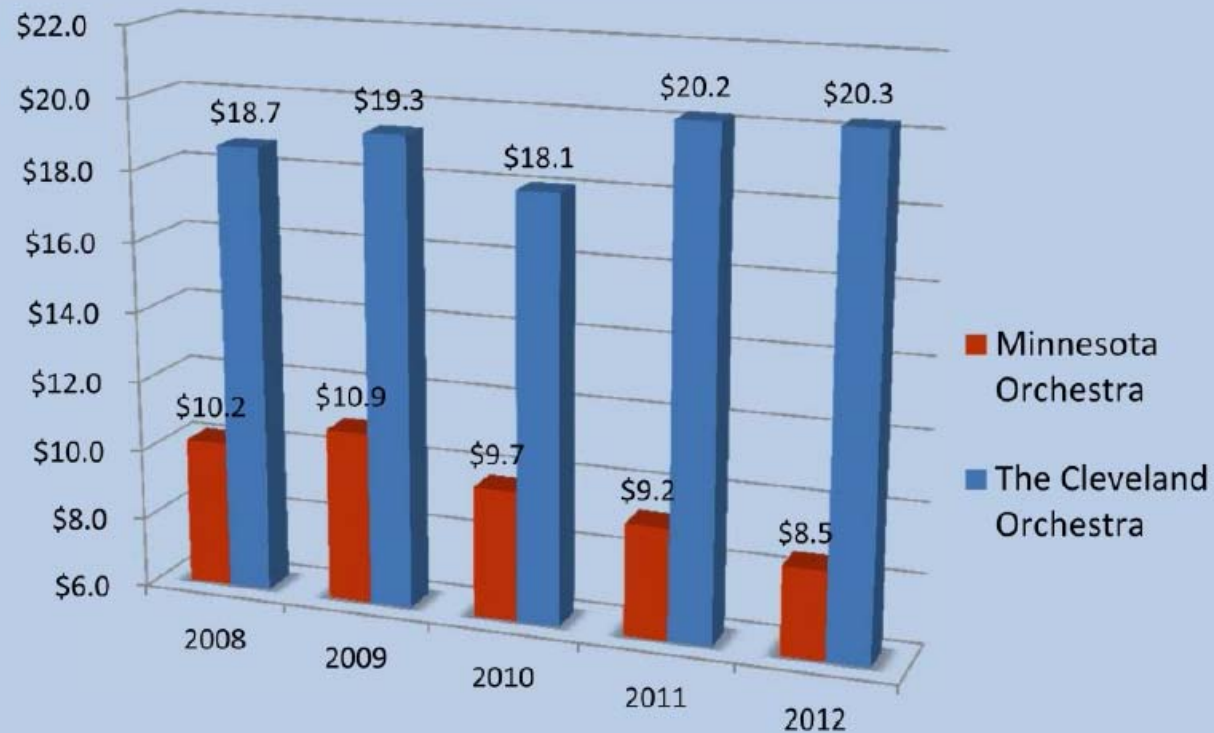
Cleveland Comparison

Orchestrate Excellence (another independent group of community members who support the Minnesota Orchestra) produced a benchmarking report, ***A Tale of Two Orchestras***, in April 2013. It compares 2008-2012 trends experienced by The Cleveland Orchestra and The Minnesota Orchestra. The full report can be found here: <http://www.orchestrateexcellence.org/a-tale-of-two-orchestras/>

From their summary: “The *Tale of Two Orchestras* study focused on revenue trends. There are sufficient commonalities between Cleveland and the Twin Cities — top tier orchestras and musicians, non-coastal but culturally vibrant cities of similar size, significant business model challenges and operating deficits — to make a trends comparison relevant and potentially instructive. The trends each organization has experienced over the five years are clear: The Cleveland Orchestra has achieved growth in operating revenue, contributions and endowment over the five year period, while the Minnesota Orchestral Association has experienced declines.”

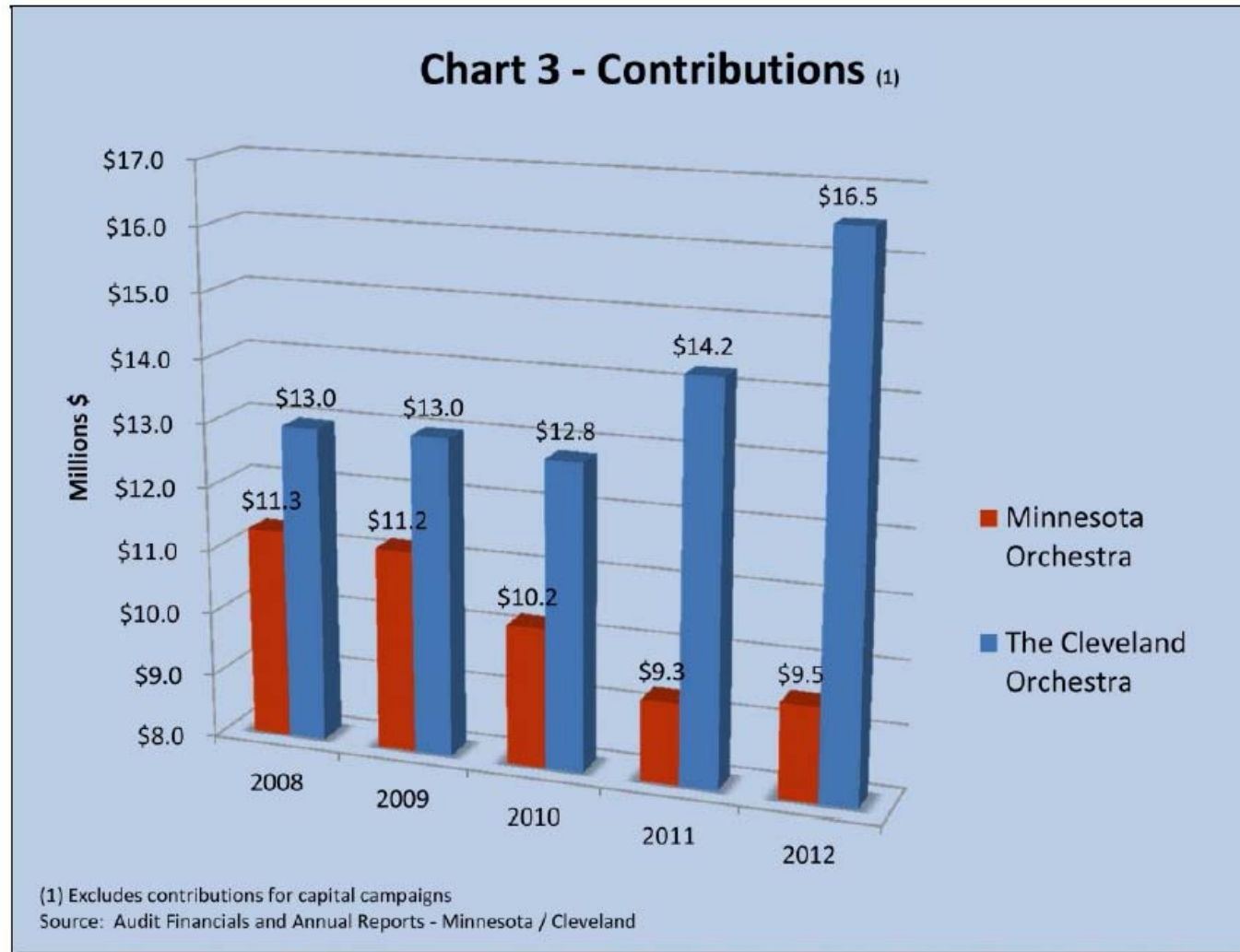
Orchestrate Excellence Study: Revenue from Operations

Chart 2 - Revenue from Operations



Source: Audit Financials and Annual Reports - Minnesota / Cleveland

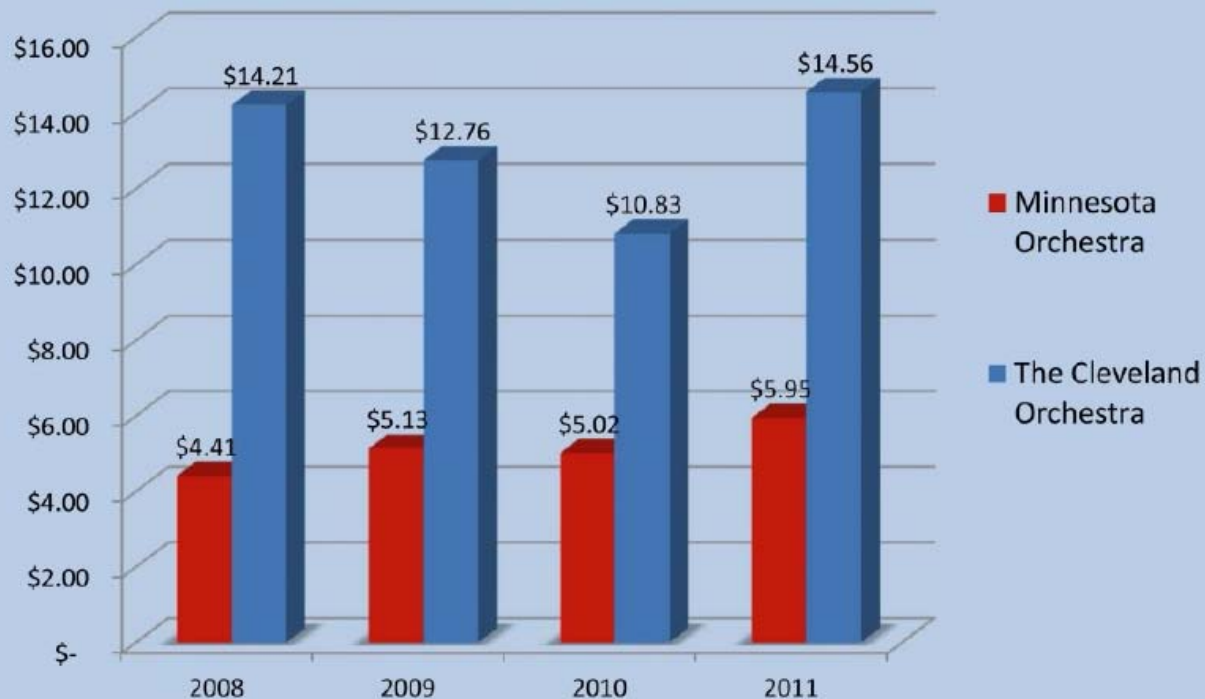
Orchestrate Excellence Study: Contributions



Orchestrate Excellence Study:

Operating Revenue Generated from Advertising & Promotion

Chart 8 - Operating Revenue dollars generated per \$1 dollar of Advertising & Promotion spent ⁽¹⁾



(1) 2012 data omitted due to reporting lag by IRS

Source: Audit Financials, Annual Reports and IRS 990 form - Minnesota / Cleveland

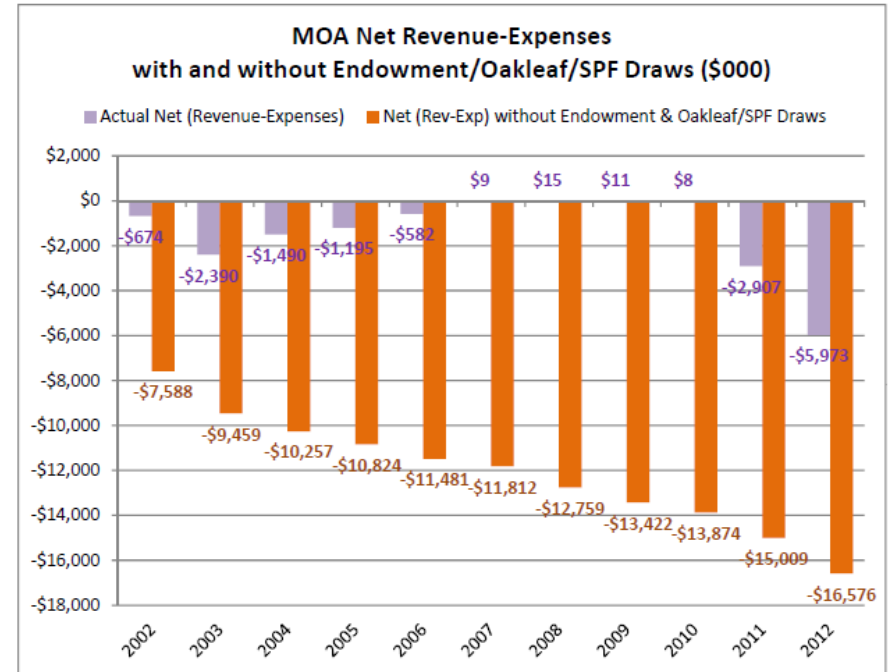


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CONCLUSIONS

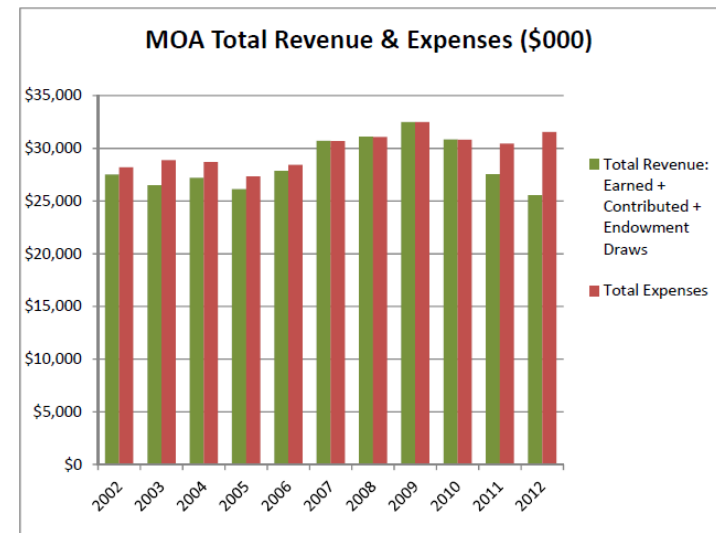
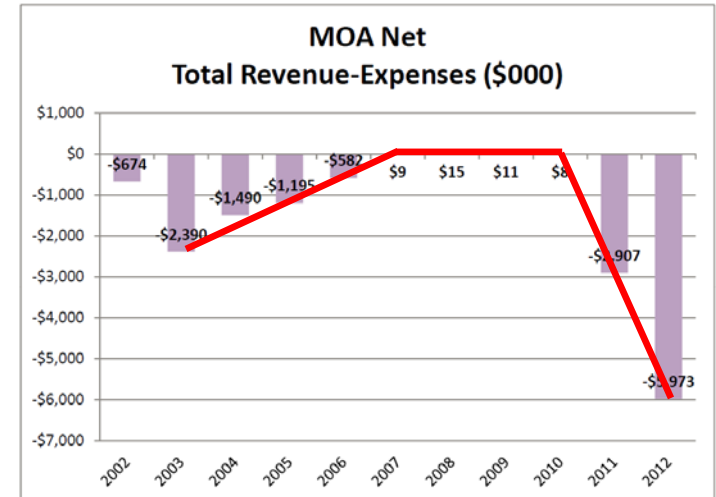
Conclusions

- Very troubling financial performance for over a decade
- Early warnings in 2002-04
- Ongoing and increasing operating losses since 2002 (excluding endowment draws)
- Cumulative operating losses of \$133M



Conclusions

- Operating losses were covered for years using endowment draws
- Endowment draws were excessive for many years
- Enabled MOA to “announce balanced budgets”
- Operating results and their usage smack of financial statement manipulation



Conclusions

- Stark contrast between internal MOA knowledge of financial condition and external communications to secure bonding and donations
- MOA financial results were “dolled up” to secure state, city financing and private donations to support Orchestra Hall renovation
- Henson’s statements to legislators were highly misleading and entirely non-candid
- No evidence seen that MOA’s intent to lockout musicians shortly after receiving bond financing was communicated to the city or state

Conclusions

- There were multiple red flags of financial distress over the studied period
 - “This is a serious liquidity issue.”
 - “For more than 10 years, MOA has had an unsustainable financial structure.”
 - Internal minutes documenting manipulation of financial statements
 - Paying CEO two bonuses well before the end of each fiscal year.
 - Undertaking \$50M+ Orchestra Hall renovation and taking on \$15M city bond obligations while in this condition
- The performance of MOA’s auditor as compared to its duties should be examined

Conclusions

- As stated at the outset, we do not have all the answers or a magic formula
- A common base of understanding is essential for the parties and the community to move forward
- Other cities have solved similar problems – there is good reason to be hopeful
- Our community has 19 Fortune 500 companies and can afford \$97M for Target Center renovations, \$975M for a Vikings stadium and \$303M for TCF Bank Field
- Musicians have stated a willingness to negotiate all issues once finances are fully disclosed and with a shared vision of maintaining a great orchestra
- Other orchestral associations have achieved much better results

Conclusions

- MOA leadership has no remaining credibility
- MOA leadership must be held accountable
 - Financial mismanagement
 - Unprecedented and disastrous lockout
 - Very negative PR campaign against musicians, Vänskä that is hurting MOA's reputation and support
- The community has no confidence that current MOA leadership can resume and sustain a world class orchestra in Minnesota
- MOA leadership change is essential to any solution
- Outside oversight from Attorney General or another independent financial monitor is essential to restore credibility and stability



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CALLS TO ACTION

Call to Action: MOA

- MOA should immediately end the lockout
- The MOA Board needs to bring in fresh leadership and a new CEO
- MOA needs much greater financial transparency
 - 2012 IRS 990 never released; SOSMN found it via Guidestar
 - 2013 financial statements not yet released
 - Should give regular, timely financial reports to all stakeholders
- The MOA Board should reassess the performance of its auditor
- MOA should adopt a clear statement of intent to preserve a world class orchestra in Minnesota
- MOA should immediately stop its highly divisive public relations campaign
- MOA should clearly state if it is willing to work with Sen. Mitchell as mediator and abide by agreed confidentiality terms
- MOA should return to the bargaining table as soon as these steps have been completed

Call to Action: Musicians

- The musicians should clearly identify any remaining missing financial or other information needed from MOA
- The musicians should provide a clear statement of their goals and objectives and any steps needed to reach resolution
- The musicians should clearly state if they are willing to work with Sen. Mitchell as mediator and abide by agreed confidentiality terms
- The musicians should return to the bargaining table once these steps and MOA's steps have been completed

Call to Action: Governor

- Use the influence of your office to get the parties to complete the called-upon actions and to return to the bargaining table
- Help the parties determine if Sen. Mitchell can still be effective or if a new mediator is needed
- Help MOA understand why its negative and divisive PR campaign is more harmful than helpful
- Request and coordinate the activities of other state officers recommended below
- Consider appointing a blue ribbon task force to help develop a solution



Call to Action: State Auditor

- The State Auditor should investigate:
 - MOA's financial record and performance
 - The duties and performance of MOA's auditor
 - MOA's representations to the state and city to secure bonding
 - The ability of MOA to repay city bonds
 - The impact of MOA's non-operational status and financial condition on state bonds

Call to Action: State Attorney General

- Under Minnesota law, the Attorney General has the authority and responsibility to supervise and investigate questions concerning nonprofit corporations.
- The Attorney General should investigate:
 - MOA's financial performance and management
 - Reason for a \$14M stock trading loss in 2009
 - Other financial and accounting questions SOSMN can identify separately
 - The duties and performance of MOA's auditor
 - MOA Board's failure of oversight and the potential need for an independent monitor

Call to Action: Legislature

- The Legislature should exercise its oversight responsibility with respect to the use of state bonding funds in this situation
- The Legislature should address requirements applicable to future bond funding requests, including financial due diligence and operational conditions such as financial controls and the consequences of employee lockouts
- The Legislature should examine the impact of legislative changes that allow MOA's Board to continuously re-elect itself with no member voting rights or other community oversight

Call to Action: City

- The City of Minneapolis should investigate:
 - MOA's representations to secure bonds
 - The City's own financial analysis and acceptance of MOA's projections and assumptions regarding future performance
 - The ability of MOA to repay city bonds and impact on City's bond rating
 - The authority of the City to take control of Orchestra Hall and restart the music
 - The use of City authority and influence to bring about a negotiated resolution

Call to Action: Business Community

- Large employers need to recognize the importance of a world class orchestra to the MN business community (*e.g.*, recruiting, employee relocation and retention)
- Help our elected officials understand the business impact of the prolonged lockout; quantify and report it
- Business leaders are needed to serve on a blue ribbon task force if created
- Join SOSMN in a business coalition to help end the lockout

Call to Action: Individuals

- Letters/e-mails to MOA Board members
 - Call for Board leadership and CEO change
- Contact your elected representatives
 - Governor Mark Dayton
 - State Auditor Rebecca Otto
 - Attorney General Lori Swanson
 - Your State Senator and Representative
 - Mayor R.T. Rybak
 - Mayor-Elect Betsy Hodges
 - City Council members
- Letters to the Editor
- Social media

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www.songofthelark.wordpress.com



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www.maskoftheflowerprince.wordpress.com



Rolf Erdahl, “Low Rumbblings”

www.lowrumbblings.wordpress.com



Bill Eddins, “Sticks and Drones”

www.insidethearts.com/sticksanddrones/



Drew McManus, “Adaptistration”

www.adaptistration.com

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THANK YOU! QUESTIONS?

A PDF of these slides may be downloaded here, or by scanning the QR code below

www.saveoursymphonymn.org/presentations.html



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