

LSC Redbook

Analysis of the Executive Budget Proposal

Liquor Control Commission

Jason Phillips, Senior Budget Analyst
Legislative Service Commission

April 2011

TABLE OF CONTENTS

OVERVIEW	1
Agency Overview.....	1
Appropriation Overview	1
Summary of Budget Issues	2
Adjudication Hearings.....	2
Operating Costs.....	3
Forfiture Collections.....	3
Ohio Liquor Law Enforcement Database	4
New GRF Funding Mechanism	4
ANALYSIS OF EXECUTIVE PROPOSAL	5

ATTACHMENTS:

- Catalog of Budget Line Items
- Budget Spreadsheet By Line Item

Liquor Control Commission

- Biennium budget of \$1.5 million
- Nearly 3,500 cases heard in FY 2010, an increase over prior years
- Commission hearing costs are highly variable and difficult to accurately budget for
- \$1.2 million in forfeitures deposited in the GRF in FY 2010

OVERVIEW

Agency Overview

The Liquor Control Commission (LCO) is the rule-making and adjudication agency that oversees the alcohol beverage industry in Ohio. The Commission's mission is to ensure compliance with Ohio's liquor laws and regulations. This requires LCO to work with the Department of Commerce's Division of Liquor Control, the state's permit-issuing authority, the Attorney General, and the Department of Public Safety.

The Commission's responsibilities include (1) making and interpreting rules regarding liquor production, sales, advertising, and so forth, (2) hearing and ruling on cases regarding alleged liquor permit violations, (3) hearing and ruling on appeals of the Division of Liquor Control decisions concerning liquor permit renewals and distribution, and (4) hearing and ruling on appeals of liquor permit revocations and of permit nonrenewals based on tax delinquencies. The Commission receives its funding from the Liquor Control Fund (Fund 7043), which consists of receipts from the sale of spirituous liquor.

The Commission is comprised of three members appointed by the Governor for six-year terms and five full-time staff, including an executive director, although two positions are currently vacant. The Commissioners' salaries are fixed by the Governor's office and increase only when new appointments are made. One appointment is slated to occur sometime this fiscal year.

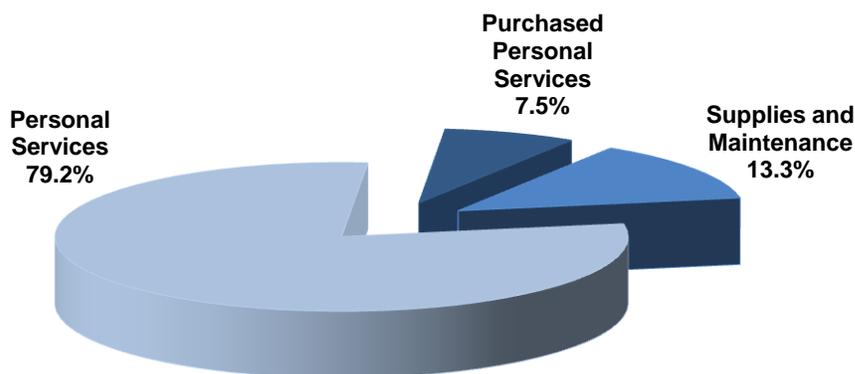
Appropriation Overview

The executive budget provides LCO with funding of \$753,933 in FY 2012, an 11.0% decrease compared to the adjusted FY 2011 appropriation of \$847,524. The funding recommended for FY 2013 is \$754,146. Of the amounts recommended, the executive budget provides an increase for payroll-related expenses, but reduces the allocation for purchased services such as transcription services, which are quite variable from year to year and are therefore difficult to budget for. The amount budgeted for supplies and maintenance is also reduced.

As Chart 1 below shows, 79.2% of the executive budget is for personal services, and 13.3% is slated for supplies and maintenance. The remaining 7.5% is for purchased

personal services, including costs for court reporting services and transcripts, writs served, and witness reimbursements that tend to fluctuate from year to year depending on Commission caseload.

**Chart 1: Biennial Executive Budget Recommendations
by Expense Category, FY 2012-FY 2013**



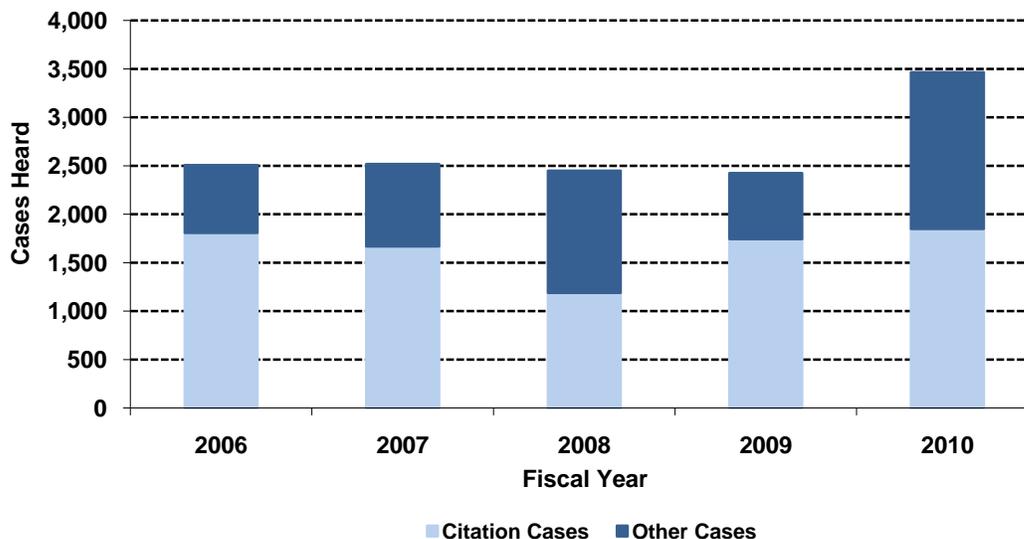
Summary of Budget Issues

Adjudication Hearings

The bulk of Commission work revolves around preparing for and holding adjudication hearings. These tasks entail preparing paperwork before hearings, producing decisions, and handling correspondence and various reports related to cases. The Commission's goal is to issue decisions within 45 days, although the vast majority of decisions are issued within two weeks. During FY 2010, nearly 3,500 cases were heard.

As Chart 2 below shows, the number of violations issued by law enforcement authorities – referred to as citation cases – primarily drives the Commission's caseload. These cases can involve illegal gambling, selling drugs on a permit premises, underage drinking, unsanitary conditions, illegal use of Electronic Benefits Transfer (EBT) cards, and so forth. Nevertheless, the increased caseload handled in FY 2010 can be attributed to a substantial increase in the number of noncitation cases. These cases can involve the appeal of Division of Liquor Control decisions, sales tax appeals, sales tax complaints, unemployment compensation cases, and Bureau of Workers' Compensation (BWC) payment issues involving permit holders. The increase in these types of cases is being driven by the weak economy, as additional permit holders have become delinquent on various tax and premium payments.

Chart 2: LCO Cases Heard by Type, FY 2006-FY 2010



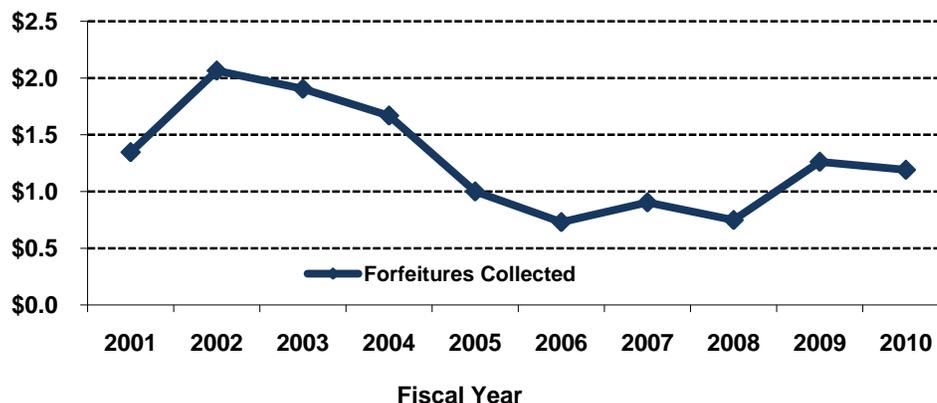
Operating Costs

There are a number of variables that can affect the Commission's operating costs and are difficult to budget for from year to year. These variables include the length of hearing days, the number of witnesses subpoenaed, witness compensation and mileage reimbursement, court reporter services, and transcript expenses related to cases heard by the Commission. In addition, H.B. 525 of the 127th General Assembly increased the witness mileage reimbursement rate from 10 cents to 50.5 cents. Because these costs can fluctuate substantially from year to year, periodically the Commission has sought Controlling Board approval for an increase in appropriations to account for these expenses. The last such increase occurred in April 2010, when LCO was granted an increase of \$75,000 annually for FY 2010 and FY 2011.

Forfeiture Collections

The Commission has the authority to impose forfeitures, or cash fines, depending on the circumstances of a case. These forfeitures are not retained by the Commission, but are instead deposited into the GRF. Forfeitures collected in FY 2010 totaled \$1.2 million and \$739,250 in FY 2011 year-to-date. As Chart 3 below shows, forfeitures peaked in FY 2002 at just over \$2.0 million. While the amount of forfeitures ordered or collected in any year depends on the types of cases heard, the Commission's judgment on the frequency and severity of offenses also plays a role.

Chart 3: Forfeitures Collected (in millions), FY 2001-FY 2010



Ohio Liquor Law Enforcement Database

During the current biennium, the Commission ended its participation in the development of the Ohio Liquor Law Enforcement (OLLE) database. This system was intended to facilitate information sharing with the Commission and its partner agencies, including the Department of Commerce's Division of Liquor Control, the Attorney General's Liquor Unit, and the Department of Public Safety's Investigative Unit. The database is hosted and supported by the Department of Public Safety. For a short time during the initial stages of development, LCO entered data into both its primary database application, FileMaker Pro, and OLLE. However, numerous technical problems have hindered the functionality of OLLE. As a result, LCO continues to rely on FileMaker Pro for information sharing with the Division of Liquor Control. This shared data includes information about individuals that have or have not paid a fine, what LCO cases have been appealed, and so on. The Division of Liquor Control stopped using OLLE itself in 2007.

LCO's share of the development cost for OLLE was \$8,333 per quarter. Due to budget constraints facing the Commission, the Department of Public Safety waived LCO's contributions for FY 2010 and FY 2011, with the expectation that contributions would resume in FY 2012 and FY 2013. However, LCO has decided to no longer participate in order to save money. The savings will be used to help fund costs such as court reporting services and transcripts, writs served, and witness reimbursements.

New GRF Funding Mechanism

Due to the proposed transfer of the state's liquor enterprise to JobsOhio, the spirituous liquor profits used to fund the Commission's operating expenses will no longer be available. Instead, the bill supports the Commission through transfers from the GRF to the Liquor Control Fund (Fund 7043) beginning in the second half of FY 2012, when the transfer of JobsOhio is proposed to take place. The provision authorizing these changes appears as part of the Department of Commerce's uncodified law section.

ANALYSIS OF EXECUTIVE PROPOSAL

The Commission's operations are funded by a single line item appropriation from the Liquor Control Fund (Fund 7043), the primary revenue source for which is retail and wholesale liquor sales. The table below shows the Governor's recommended funding for this line item.

Governor's Recommended Funding for the Liquor Control Commission				
Fund	ALI and Name		FY 2012	FY 2013
Liquor Control Fund Group				
7043	970321	Operating Expenses	\$753,933	\$754,146

This line item pays for operating expenses, most notably payroll, supplies, fixed maintenance costs, and purchased services related to court reporting services and transcripts, writs served, and witness reimbursements. Overall, the funding recommended for FY 2012 is 11.0% less than the adjusted FY 2011 amount of \$847,524. The amount for FY 2013 increases only slightly.

The executive proposal increases the amount of the LCO budget allotted to payroll-related expenses from about \$522,000 in FY 2011 to \$601,000 in FY 2012 and \$594,000 in FY 2013. The Commission hopes to use the additional payroll-related funding to fill two vacant positions. Whether one or both of those positions are filled will largely depend on the salary that the Governor fixes for the appointee to be named later in FY 2011, as well as where that appointee lives. Since the Commission must pay for the Commissioners' travel expenses, this is an important factor in the LCO budget. For CY 2011, the Board is scheduled to hold hearings four to five days a week during one week each month.

The increase that the executive budget allows for in payroll is more than offset, however, by a decline in the amount slated for purchased services, supplies, and fixed maintenance costs. Indeed, the executive proposal allots approximately \$53,000 in FY 2012 and approximately \$60,000 in FY 2013 for purchased services. In comparison, the FY 2011 budget for these costs is \$149,000. As noted in the **Overview**, LCO incurs costs for subpoenas, witness compensation and reimbursement, court reporters, and transcripts that are difficult to accurately budget for due to their unpredictability. Subpoenaed witnesses are paid \$6 for one-half day's attendance or \$12 for a full day's attendance at a hearing and are also entitled to mileage reimbursement of 50.5 cents per mile. There are also transcription costs related to hearing records that must be produced in appeals filed with the Franklin County Court of Common Pleas. The hourly rate for the court reporter is \$60. A hearing day lasts at least five hours, resulting in court reporting costs of a minimum of \$300 per day. In addition to these costs, there is a separate charge for a copy of a transcript to be produced in the event

that an LCO order is appealed. This cost includes a fee of \$4.95 per page plus \$15 for binding and delivery. Depending on the length of the transcript, these expenses can easily run into the hundreds of dollars.

Finally, although it is not directly related to hearing costs, there can also be unforeseen costs for LCO decisions appealed to the Franklin County Court of Common Pleas. Should the appellant win the appeal, the Commission may be required to pay the appellant's attorney's fees. Just such an occasion occurred in the FY 2008-FY 2009 biennium, when LCO was ordered to pay \$51,433 in attorney's fees.

LCO.docx / sle

Liquor Control Commission

Liquor Control Fund Group

7043 970321 Operating Expenses

FY 2008	FY 2009	FY 2010	Estimate FY 2011	Introduced FY 2012	Introduced FY 2013
\$728,162	\$713,505	\$736,207	\$847,524	\$753,933	\$754,146
	-2.0%	3.2%	15.1%	-11.0%	0.0%

Source: Liquor Control Fund Group: Spirituous liquor sales revenue

Legal Basis: ORC 4301.12; Section 325.10 of Am. Sub. H.B. 1 of the 128th G.A. (originally established by Am. Sub. H.B. 215 of the 122nd G.A.)

Purpose: This line item pays for the operating expenses of the Liquor Control Commission, which ensures compliance with liquor laws and regulations and provides impartial hearings related to violations of state liquor laws that could result in fines or the suspension or revocation of liquor permits. Expenses include personnel and maintenance costs as well as purchased personal services for such items as court reporting and transcripts, writs served, and witness reimbursements.

FY 2012 - FY 2013 Introduced Appropriation Amounts

All Fund Groups

Line Item Detail by Agency			FY 2010	Estimate FY 2011	Introduced FY 2012	FY 2011 to FY 2012 % Change	Introduced FY 2013	FY 2012 to FY 2013 % Change
Report For Main Operating Appropriations Bill			Version: As Introduced					
LCO Liquor Control Commission								
7043	970321	Operating Expenses	\$ 736,207	\$ 847,524	\$ 753,933	-11.04%	\$ 754,146	0.03%
----- Liquor Control Fund Group Total			\$ 736,207	\$ 847,524	\$ 753,933	-11.04%	\$ 754,146	0.03%
Liquor Control Commission Total			\$ 736,207	\$ 847,524	\$ 753,933	-11.04%	\$ 754,146	0.03%