



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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## The Controlling Board

The Controlling Board is the principal instrument by which the General Assembly exercises a measure of continuing control over the state budget after enacting budget legislation. A seven-member panel that includes six legislators, it is the body responsible for making interim adjustments to appropriations between the biennial budget acts. In addition to adjusting appropriations, the Board may release, transfer, and approve expenditure of funds, approve state agency purchases, and take other designated actions.

### Contents

Overview .....	1
Membership.....	2
Controlling Board authority .....	2
Transfers.....	3
Releases.....	5
Waiving competitive selection .....	5
Approval of purchases.....	6
Authorizing expenditures of excess or unanticipated revenue .....	6
Miscellaneous approvals.....	7
Meetings .....	8
LBO support.....	9

### Overview

Initially established by the General Assembly as a temporary body in the 1915 general appropriations act, the Controlling Board was reestablished every two years until 1975, when the legislature made it permanent.<sup>1</sup> The Ohio Constitution provides that money cannot be drawn from the state treasury except pursuant to a specific appropriation made by law.<sup>2</sup> Only the General Assembly can appropriate money. Therefore, the Board serves as an alternative to bringing the entire legislature together each time adjustments are needed.

<sup>1</sup> 1914-1915 Ohio Laws 33, 100; 1917 Ohio Laws 187, 350; and 1975-1976 Ohio Laws 781.

<sup>2</sup> Ohio Constitution, Article II, Section 22.

## Membership

The Board consists of seven members:

1. The Director of Budget and Management (OBM) or an OBM employee designated by the Director;
2. The chairpersons or vice-chairpersons of the House and Senate Finance committees;
3. One member of the majority party and one member of the minority party of the House, appointed by the Speaker; and
4. One member of the majority party and one member of the minority party of the Senate, appointed by the Senate President.

When engaged in their Board duties, the legislative members are paid a per diem of \$150, plus necessary traveling expenses.<sup>3</sup>

In practice, the OBM Director designates an individual to serve as President of the Controlling Board. Traditionally, that individual is an OBM deputy director. The President must prepare the proposed agenda for Board meetings and, at least seven days before each meeting, provide the agenda and supporting documentation to the Board members and the Legislative Service Commission (LSC).<sup>4</sup> The Board typically meets twice a month (see “**Meetings**,” below).

## Controlling Board authority

The Controlling Board’s authority to act is found throughout the Revised Code and in the uncodified law of a variety of acts, particularly appropriations acts. However, its organization and principal powers are set forth in R.C. Chapter 127. The Board’s activities are governed by the constitutional provisions regarding appropriations and a statutory provision prohibiting Board action that does not carry out legislative intent “regarding program goals and levels of support of state agencies as expressed in the prevailing appropriation acts . . . .”<sup>5</sup>

The Controlling Board’s powers can be grouped into five main categories, described in the table below:

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<sup>3</sup> R.C. 127.12. The [Controlling Board’s website](http://ecb.ohio.gov) provides information about current Board membership, as well as other Board information: [ecb.ohio.gov](http://ecb.ohio.gov).

<sup>4</sup> R.C. 127.13.

<sup>5</sup> R.C. 127.17.

Controlling Board Authority	
Type of Action	Example
Transferring money from one fund, appropriation item, or fiscal year to another	Attorney General request to transfer the unexpended, unencumbered balance of \$372,735.20 in GRF appropriation item 055505, Pike County Capital Case, from FY 2022 to FY 2023. <sup>6</sup>
Releasing, or approving expenditure of, appropriated funds	Department of Natural Resources request to release \$6,230,101 in capital funds from appropriation item C72514, Clean Ohio Trail Fund, for community project grants. <sup>7</sup>
Waiving competitive selection for purchases or approving purchases made via competitive selection	Department of Rehabilitation and Correction request to waive competitive selection for up to \$155,600 in FY 2022 and \$1,539,427 in FY 2023 from GRF appropriation item 503321, Parole and Community Operations, for enhancement, maintenance, and support of the Ohio Community Supervision System from sole source provider COBRA Systems. <sup>8</sup>
Approving miscellaneous requests	State Cosmetology Board request to establish fees exceeding the amounts prescribed in R.C. Chapter 4775. <sup>9</sup>
Authorizing expenditures of excess or unanticipated revenue	Department of Development request to increase appropriation authority by \$109,983,948 in appropriation item 195601, HOME Program, in FY 2023 to reflect additional federal funding. <sup>10</sup>

## Transfers

The Board is permitted, at the request of any state agency or the OBM Director, to make certain transfers of appropriations or cash. In doing so, the Board may transfer money to an existing appropriation item but may also create or make transfers to a new appropriation item.

<sup>6</sup> Controlling Board request [AGO0100850](#) (approved June 13, 2022). To access any of the requests referenced in the table, either click the hyperlink in the footnote or go to the Board's "search approved requests" page and pick the agency and enter a description to search: [ecb.ohio.gov/Public/Search](http://ecb.ohio.gov/Public/Search).

<sup>7</sup> Board request [DNR0102358](#) (approved April 25, 2022).

<sup>8</sup> Board request [DRC0102418](#) (approved May 23, 2022).

<sup>9</sup> Board request [COS101](#) (approved May 8, 2006).

<sup>10</sup> Board request [DEV0105006](#) (approved July 11, 2022).



\*There are numerous funds from which the Board may not transfer money out to the GRF. R.C. 127.14(D) specifies which ones they are.

### **Capital-related transfers**

The Board also may authorize a state agency that receives a capital improvements appropriation to spend the money for purposes other than those set forth in an appropriations act by (1) transferring money among items or (2) creating new items and authorizing transfers to them. However, before the Board takes that action, the requesting agency must notify by mail the General Assembly members elected from the affected counties, stating the time and place of a hearing on the proposed transfers. The Board may not authorize an agency to use a capital appropriation for operating expenses unless the General Assembly provides for it.<sup>11</sup>

### **Money appropriated to the Board**

On some occasions, the General Assembly appropriates money to the Controlling Board, not for the Board's own activities, but to hold and transfer to other agencies for specified purposes. For example, H.B. 110, the main appropriations act for FY 2022-FY 2023, authorized the Controlling Board to tap the Emergency Purposes/Contingencies Fund, if needed, to pay for:

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<sup>11</sup> R.C. 127.15.

- Ballot advertising and absentee ballot costs incurred by the Secretary of State;<sup>12</sup>
- Loan repayments under the OhioMeansJobs workforce development program.<sup>13</sup>

## Releases

Occasionally, a law requires Controlling Board approval, or “release,” before an agency can spend appropriated funds. These types of release requirements appear in the Revised Code, but are also frequently enacted as temporary, uncodified law in appropriations acts. For example, the State Board of Education is prohibited from distributing any money appropriated for the School Foundation Program (state subsidies paid to school districts) without Controlling Board approval.<sup>14</sup> In another example, it has been a custom to appropriate funds to the Department of Education for if-needed assistance to enable school districts to remain financially solvent, but the awards first must be approved by the Controlling Board.<sup>15</sup>

### Releasing capital appropriations

Controlling Board approval is required for the release of any money appropriated for (1) the purchase of real estate or (2) capital projects of a “general” nature. After a capital appropriations act is passed, the OBM Director must identify which projects in the act are “general” for purposes of the Board’s authority to act. As the Board is authorized to release money appropriated for general projects, the Director is authorized to release money appropriated for specific projects. Some types of projects, most notably school or higher education projects, may be subject to other requirements prior to release, as well.<sup>16</sup>

### Waiving competitive selection

The Controlling Board may waive competitive selection requirements for public purchasing contracts. Generally, a state agency must use competitive selection, or request the Board to waive it, before making purchases of \$50,000 or more from any particular supplier in a fiscal year. This threshold applies to purchases that, when combined with all amounts paid to the supplier for the agency’s purchases during the fiscal year, and all outstanding payments or expected payments for the agency’s purchases made from the supplier, would amount to \$50,000 or more. The threshold for leases of real estate is \$75,000.<sup>17</sup>

The Board may waive competitive selection at the request of either a state agency or the OBM Director. If the Board determines that “an emergency or a sufficient economic reason

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<sup>12</sup> Section 395.20, H.B. 110 of the 134<sup>th</sup> General Assembly.

<sup>13</sup> Section 413.40, H.B. 110 of the 134<sup>th</sup> General Assembly.

<sup>14</sup> R.C. 3317.01.

<sup>15</sup> See, for example, Section 265.320, H.B. 110 of the 134<sup>th</sup> General Assembly, for the FY 2022-FY 2023 biennium.

<sup>16</sup> R.C. 126.14.

<sup>17</sup> R.C. 127.16.

exists,” the agency may proceed with the purchase. Without this determination, a Controlling Board waiver of competitive selection likely is invalid.<sup>18</sup>

Certain types of state contracts are exempt from competitive selection, and therefore, the Board’s waiver process does not apply. These include various highway construction and repair contracts entered into by the Director of Transportation, purchases made by any agency of the legislative or judicial branch, and others.<sup>19</sup>

### **Approval of purchases**

In addition to seeking a waiver of competitive selection, an agency may have an alternative path to purchasing goods or services if it uses a qualifications-based method to select a vendor.<sup>20</sup> At the agency or OBM Director’s request, the Controlling Board may approve the purchase, as follows:

- For purchases by the Department of Administrative Services, if the Department uses any of these processes:
  - Competitive sealed bidding;
  - Competitive sealed proposals;
  - Reverse auctions.<sup>21</sup>
- For any public authority, following the process for evaluation and selection for professional design services;<sup>22</sup>
- For any agency, if the agency demonstrates a competitive process involving a request for proposals, qualifications, or information was used.

The Board, by majority vote, may disapprove or defer the purchase request, or may request that the agency resubmit the request, if the agency fails to demonstrate use of one of the processes.<sup>23</sup> If the agency must resubmit the request, it will be evaluated under the competitive selection waiver process described above.

### **Authorizing expenditures of excess or unanticipated revenue**

Although the Constitution specifies that appropriations may be drawn from the treasury pursuant to a specific appropriation only, circumstances arise in which an agency may need authority to spend excess or unanticipated revenue received. At the request of an agency or the OBM Director, the Board may allow the agency to use both federal and nonfederal revenues that exceed or otherwise are unanticipated in the agency’s current appropriations. The Board may

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<sup>18</sup>*Columbus Blank Book Co. v. Maloon*, 116 Ohio App. 393 (10<sup>th</sup> Dist. 1963) (paragraph one of the syllabus).

<sup>19</sup> For examples, see R.C. 122.05, 127.16, 1509.071, 1513.27, 1513.37, 5103.12, 5501.311, 5501.71, and 5526.08.

<sup>20</sup> R.C. 127.162.

<sup>21</sup> R.C. 125.07, 125.071, and 125.072.

<sup>22</sup> R.C. 153.69.

<sup>23</sup> R.C. 127.162.

also create additional funds to receive unanticipated federal or nonfederal revenue and may authorize expenditure of those funds.<sup>24</sup>

At first glance, the Board's authority to approve spending or adjust appropriations related to excess or unanticipated revenues may appear to violate the constitutional prohibition against drawing money from the state treasury without a specific appropriation. However, the General Assembly that enacted R.C. 131.35 in 1977, and general assemblies since, have tried to reconcile the Board's use of this authority with the Constitution by including a provision in the main operating appropriation act that "hereby appropriates" for the fiscal biennium "any moneys that the Controlling Board approves for expenditure" under R.C. 131.35.<sup>25</sup>

Certain restrictions apply to this authority. For example, the Board may only authorize spending from certain funds.<sup>26</sup> Additionally, the Board is limited in the amount of excess or unanticipated revenues it may authorize an agency to spend. It may not approve the spending of excess or unanticipated funds that would exceed 0.5% of GRF appropriations for that fiscal year. For FY 2022, for example, that meant the Board could not approve additional spending of more than \$182.4 million for a specific or related purpose or item.<sup>27</sup> The General Assembly has approved exceptions to this limit.<sup>28</sup>

The "0.5% limit" was enacted in 2017 in the main appropriations act, H.B. 49. The General Assembly's action was likely in response to the Board's 2013 approval of a Department of Medicaid request to spend federal funds to expand the Medicaid program in accordance with the federal Affordable Care Act. Governor Kasich vetoed the limit, but the General Assembly overrode the veto, thus allowing the limit on Board authority to become law.<sup>29</sup>

### **Miscellaneous approvals**

Other laws require Controlling Board approval of actions that do not involve transferring money or releasing or spending appropriated funds. The following are examples of the Board's miscellaneous approval powers:

1. A number of professional licensing boards are empowered to establish fees exceeding those set in statute, although not by more than 50%, if the Controlling Board approves.

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<sup>24</sup> R.C. 131.35.

<sup>25</sup> Section 503.110, H.B. 110 of the 134<sup>th</sup> General Assembly.

<sup>26</sup> R.C. 127.14(D) lists the funds for which the Board may not approve spending of excess or unanticipated revenue.

<sup>27</sup> R.C. 131.35(E).

<sup>28</sup> Section 329.10, regarding the State Lottery Commission, and Section 518.14, regarding costs associated with public employee salary increases, both in H.B. 110 of the 134<sup>th</sup> General Assembly.

<sup>29</sup> H.B. 49 of the 132<sup>nd</sup> General Assembly; Controlling Board, Department of Medicaid request [#MCD0100009](#), available on the Controlling Board website by searching "Search Approved Requests" for FY 2013: [ecb.ohio.gov](http://ecb.ohio.gov).

These include the Accountancy Board, the State Medical Board, the State Cosmetology and Barber Board, and several others.<sup>30</sup>

2. Advertising purchased with public money by a statewide office holder or General Assembly member that, for the same purpose, exceeds an aggregate of \$50,000 during the fiscal year is subject to Board approval.<sup>31</sup>
3. The Chancellor of Higher Education, with the Board's periodic review and approval, may contract with a contiguous state under which each state agrees to provide financial aid to the other state's students to attend its higher educational institutions.<sup>32</sup>
4. The Chief of the Division of Wildlife may adopt rules, with Controlling Board and Wildlife Council approval, for the issuance and governance of management permits and establishing permit fees that do not exceed the fees established by law for hunting, fishing, or trapping, under certain circumstances.<sup>33</sup>
5. The Board must approve student fee increases charged by the Chancellor of Higher Education to comply with institutional covenants or to meet unfunded mandates or legally binding obligations. (Otherwise, public colleges and universities are typically limited in increasing their tuition and fees from year to year.)<sup>34</sup>

## Meetings

The Board must meet at least once monthly, but usually meets every other Monday at 1:30 p.m. in the North Hearing Room of the Senate Building. In the course of a year, 2,000 to 2,500 items are typically considered. A simple majority (four of the seven members) is necessary for the Board to take any action.<sup>35</sup>

The President sets an agenda for each meeting. At the meeting, the Board reviews requests from agencies. There are five common types of requests, each requiring different forms of documentation: capital, operating, operating transfer, fund/appropriation, and land acquisition. The Board has adopted procedural rules requiring certain information from the agency for each type of request.<sup>36</sup> Ordinarily, a request must be submitted electronically to the Board by 9:00 a.m. on the 21<sup>st</sup> day before the meeting, but exceptions may be granted. The Board may send an item back for modification or further information, or defer it.<sup>37</sup>

Although the President sets the Board's agenda, it is possible for the legislative members to consider an item in opposition to the President. If the Senate, House, Supreme Court, or any

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<sup>30</sup> R.C. 4701.21, 4709.12, 4713.11, 4731.75, and others.

<sup>31</sup> R.C. 125.051.

<sup>32</sup> R.C. 3333.17.

<sup>33</sup> R.C. 1533.113.

<sup>34</sup> Section 381.160, H.B. 110 of the 134<sup>th</sup> General Assembly.

<sup>35</sup> R.C. 127.13; [Controlling Board Manual \(PDF\)](#), page 14, available on the Board's website: [ecb.ohio.gov](http://ecb.ohio.gov).

<sup>36</sup> [Controlling Board Manual \(PDF\)](#), page 41, available on the Board's website.

<sup>37</sup> [Controlling Board Manual \(PDF\)](#), pages 14 and 99, available on the Board's website.

of the five statewide office holders submits a request to the President that an item be added to the agenda, a majority of the Board has the power, if the item is not currently before the Board, to require that it be added for a specified future meeting.

Also, after items on the regular agenda have been disposed of, “the Controlling Board may agree to consider additional items.” Usually these “add ons” are items that were requested too late to be placed on the announced agenda, but the President has determined they are of an emergency nature or otherwise urgent to consider.<sup>38</sup>

### **LBO support**

In the seven days before the meeting, the Board members, their staff, and Legislative Budget Office (LBO) analysts review the requests. LBO’s review focuses on ensuring the agency is meeting the General Assembly’s intent regarding program goals and appropriation levels. LBO analysts also may provide a briefing document that summarizes complex or precedent-setting items, analyzes substantive concerns, or provides additional information. The LBO briefing document is added to the Controlling Board website for the hearing.<sup>39</sup>

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<sup>38</sup> R.C. 127.13 and [Controlling Board Manual \(PDF\)](#), page 106, available on the Board’s website.

<sup>39</sup> [Controlling Board Manual \(PDF\)](#), page 15, available on the Board’s website.