

LSC Greenbook

Analysis of the Enacted Budget

Liquor Control Commission

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TABLE OF CONTENTS

OVERVIEW	1
Agency Overview.....	1
Appropriation Overview	1
Summary of Budget Issues	1
Adjudication Hearings.....	1
Operating Costs.....	2
Forfeiture Collections	3
New GRF Funding Mechanism	3
ANALYSIS OF ENACTED BUDGET	4
ATTACHMENT:	
Budget Spreadsheet By Line Item	

Liquor Control Commission

- Biennium budget of \$1.5 million
- Over 2,400 cases heard in FY 2011
- Commission hearing costs are highly variable and difficult to accurately budget for
- Nearly \$750,000 in forfeitures deposited in the GRF in FY 2011

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. However, this will change beginning in the second half of FY 2012, as the budget redirects spirituous liquor profits to JobsOhio to fund its economic development programs.

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.

Appropriation Overview

The budget provides LCO with funding of \$753,933 in FY 2012, a 12.9% increase compared to FY 2011 spending of \$667,875. The funding provided for FY 2013 is \$754,146.

Summary of Budget Issues

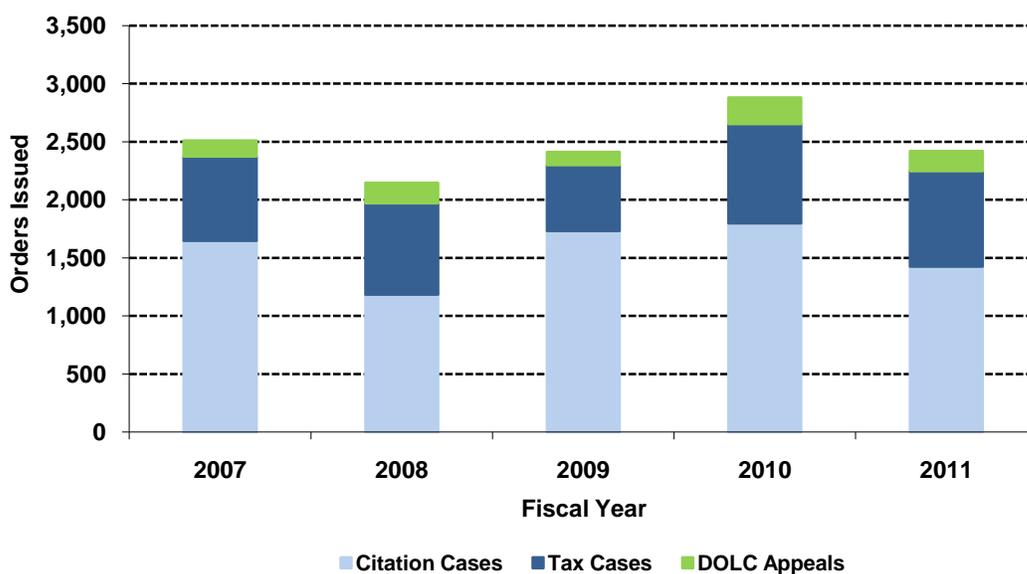
Adjudication Hearings

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 2011, orders were issued for over 2,400 cases.

As Chart 1 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. The increased caseload handled in FY 2010, when nearly 2,900 orders were issued, 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 1: LCO Orders Issued by Case Type, FY 2007-FY 2011



Operating Costs

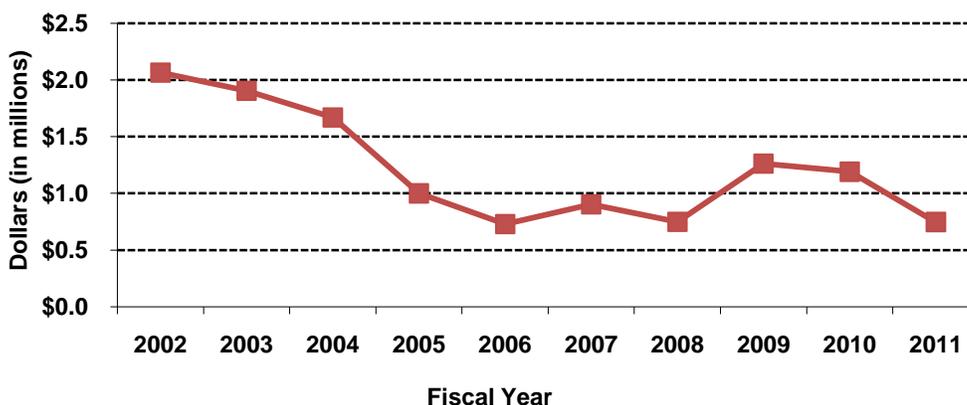
There are a number of variables that can affect the Commission's operating costs and are difficult to budget for from year to year. These variables include the length of hearing days, the number of witnesses subpoenaed, witness compensation and mileage reimbursement, court reporter services, and transcript 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 2011 totaled \$747,359, down from the \$1.2 million collected in FY 2010. As Chart 2 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 2: Forfeitures Collected, FY 2002-FY 2011



New GRF Funding Mechanism

Due to the 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 main operating appropriations act supports the Commission through transfers from the GRF to the Liquor Control Fund (Fund 7043) once the transfer to JobsOhio has been effectuated, which is set to occur in the second half of FY 2012, likely in or around January 2012. The provision authorizing these changes appears as part of the Department of Commerce's uncodified law section. Of the total amounts transferred, up to \$400,000 in FY 2012 and up to \$800,000 in FY 2013 has been set aside for Commission operations.

ANALYSIS OF ENACTED BUDGET

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. However, this will change to cash transfers from the GRF to Fund 7043 once the transfer of the state's liquor enterprise to JobsOhio takes effect. The table below shows the appropriations for this line item.

Appropriation 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 of \$753,933 in FY 2012 is 12.9% more when compared to FY 2011 spending of \$667,875. The amount for FY 2013 increases only slightly over the FY 2012 amount, to \$754,146.

In terms of staffing, LCO intends to fill the vacant assistant director position. However, a decision has yet to be made on whether or not to fill the other vacant roster spot. As noted in the **Overview**, LCO incurs purchased services 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.

FY 2012 - FY 2013 Final Appropriation Amounts

All Fund Groups

Line Item Detail by Agency			FY 2010	FY 2011	Appropriations FY 2012	FY 2011 to FY 2012 % Change	Appropriations FY 2013	FY 2012 to FY 2013 % Change
Report For Main Operating Appropriations Bill			Version: Enacted					
LCO Liquor Control Commission								
7043	970321	Operating Expenses	\$ 736,207	\$ 667,875	\$ 753,933	12.89%	\$ 754,146	0.03%
Liquor Control Fund Group Total			\$ 736,207	\$ 667,875	\$ 753,933	12.89%	\$ 754,146	0.03%
Liquor Control Commission Total			\$ 736,207	\$ 667,875	\$ 753,933	12.89%	\$ 754,146	0.03%