

Analysis

Item 67: Oregon Liquor Control Commission

Expenditure Limitation Increases

Analyst: Michelle Deister

Request: Increase Other Funds expenditure limitation for the Oregon Liquor Control Commission by a total of \$9,407,387 and 1 permanent position (0.29 FTE), for expenses related to bank card fees, liquor store agent compensation, shipping capacity, the need for a Geographic Information Specialist in the Recreational Marijuana program, and agency reorganization efforts.

Analysis: For simplicity's sake, the Legislative Fiscal Office is dividing the Oregon Liquor Control Commission (OLCC) request into component parts for analysis and recommendation. The circumstances driving the agency's request are: sales above forecast; COVID-19 - related absences in the liquor warehouse; statutory requirements related to marijuana licensing; and reorganization efforts to enhance analytically-based policy choices. Each of these drivers and a corresponding recommendation is discussed in more detail below.

Sales Above Forecast: During the first eight months of 2020, OLCC experienced an additional \$22.0 million in gross revenue due to sales above forecast. Conservative estimates suggest an additional \$3.5 million in revenue distribution to the General Fund by biennium's end. Those additional sales translate to an additional \$5.8 million in expenditure limitation that will be needed in order to pay agents an average of 9.02% of their sales as compensation, consistent with the average referenced as part of the legislatively approved budget.

Sales of distilled spirits are taking place primarily in liquor stores, due to spring closures and subsequent customer capacity restrictions in bars and restaurants. As Oregonians have been purchasing more of their liquor in liquor stores, they have been using bank cards as a primary means of payment. OLCC pays bank card fees for agents on sales related to liquor. An additional \$3.2 million in Other Funds expenditure limitation will be needed to pay additional bank card fees on behalf of liquor store agents, based on the updated sales forecast.

The Legislative Fiscal Office recommends increasing OLCC's Other Funds expenditure limitation by \$5,800,000 to enable maintenance of liquor agent compensation at an estimated average 9.02% of liquor agent sales. The Legislative Fiscal Office recommends increasing Other Funds expenditure limitation for OLCC by \$3,200,000 for fees related to bank card use by customers in liquor stores.

COVID-19-related Absences in the Liquor Warehouse: Increased use of paid leave related to the Coronavirus pandemic has resulted in gaps in OLCC's liquor distribution capacity. Illness, self-quarantine, and care of family members have driven up absenteeism to an average of 35% between March and early September. The rates of absenteeism are not expected to improve significantly as school begins (since it is primarily distance learning for most school aged children), and as long as case levels remain elevated and social distancing protocols remain in effect. Winter holidays are fast approaching, and require a full complement of warehouse personnel to meet consumer demand. To preserve revenue and distribution capacity -- especially as relates to labor-intensive special orders and mixed cases accounting for approximately \$160,000 in revenue per day -- OLCC plans to maintain

18 additional temporary personnel in the warehouse for the remainder of the 2019-21 biennium. To do so requires additional expenditure limitation of \$331,000, because the agency's budget was reduced by \$1.77 million to reflect vacancy savings during the August 2nd special session of 2020.

The Legislative Fiscal Office recommends increasing Other Funds expenditure limitation for OLCC by \$331,000 for temporary workers to maintain OLCC liquor distribution capacity.

Statutory Requirements of the Recreational Marijuana Program: Statute requires that licensed marijuana facilities be located no closer than 1,000 feet of an instructional activity site for K-12 students. OLCC has not had capacity to verify the location of schools since an agreement to provide Geographic Information Services (GIS) related to recreational marijuana was terminated by the Oregon Health Authority in July 2019. OLCC has the requisite software to update locations, but not proficiency among current staff. OLCC explored contracting for this service but determined that an employee would be better able to meet ongoing needs of the agency and program, less expensively. OLCC requests a permanent, full-time position (0.29 FTE) supported by recreational marijuana fee revenue, which will be dedicated to mapping licensee locations and developing applications for use by licensing and enforcement staff to ensure that statutory siting requirements are met in a timely fashion.

The Legislative Fiscal Office recommends one permanent, full-time position (0.29 FTE) and an increase in Other Funds expenditure limitation related to the regulation of recreational marijuana in the amount of \$84,557, for personal services and related services and supplies.

Agency Reorganization: The OLCC is requesting a shift in expenditure limitation and position authority from the medical marijuana program to the administrative expenses program (liquor program). The fund shift will appropriately reflect positions and funding for a newly created Policy, Analytics and Communication Division.

The Legislative Fiscal Office is not recommending shifting expenditure limitation and position authority between divisions of the agency at this time; instead, it seems more appropriate to consider reorganizations and fund shifts in the context of all the agency's funding streams, priorities, and resource needs, which can occur when budget recommendations are made for the 2021-23 biennium.

Legislative Fiscal Office Recommendation: The Legislative Fiscal Office recommends that the Emergency Board increase the Other Funds expenditure limitation for the Oregon Liquor Control Commission for administrative expenses related to bank card fees and warehouse shipping capacity by \$3,531,000; increase the Other Funds expenditure limitation for liquor agent compensation by \$5,800,000; and increase the Other Funds expenditure limitation for recreational marijuana regulation by \$84,557 and authorize the establishment of one permanent position (0.29 FTE) for Geographic Information Systems capabilities.

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Oregon Liquor Control Commission
Brickman

Request: Increase Other Funds expenditure limitation by \$9,419,137 for Liquor Store Agent Compensation (\$5.8 million), bank card fees for liquor store purchases (\$3.2 million), 18 temporary employees for the warehouse to fill in behind employees on Oregon Family Leave related to COVID-19 (\$331,000), and for one GIS position (0.29 FTE) (\$88,137) to provide the technical support to ensure marijuana retail licenses are not within 1,000 feet of a site providing instructional activities for K-12 students.

Transfer \$647,792 Other Funds expenditure limitation from the Medical Marijuana appropriation to the Administrative Expenses appropriation to support a reorganization of the agency.

Recommendation: Approve the requests related to the increase of Other Funds expenditure limitation. Deny the request to move limitation from the Medical Marijuana appropriation to the Administrative Services appropriation.

Discussion:

Liquor Store Agent Compensation

In 2020, the Oregon Liquor Control Commission (OLCC) has experienced record sales of distilled spirits. As the sales have increased, so have the costs associated with those sales. Compensation paid to liquor store agents' averages 9.02 percent of liquor sales. Current expenditure limitation for agent compensation is approximately \$132.4 million, which was based on a forecast of \$1.47 billion in-store liquor store sales for the current biennium. The increase in sales has increased the current estimate for liquor sales to be \$1.53 billion, for which an estimate of \$138.3 million is needed for agent compensation. The agency is requesting \$5.8 million in additional Other Funds expenditure limitation based on the difference between the original projected expenditure limitation and what is now projected for agent compensation based on increased sales.

Bank Card Fees

The request for additional Other Funds expenditure limitation for bankcard fees is also related to the increase in sales of liquor in-stores by people using credit cards. The OLCC pays bankcard fees related to all sales of liquor. The agency determines the need for bankcard fees by multiplying the percentage of sales estimated to be paid by consumers with bank cards/credit cards. The current amount of expenditure limitation of \$14.8 million is based on a forecast of 76 percent of liquor sales to consumers being paid for with credit, rather than by cash or a check. The OLCC now forecasts that bankcard (credit) usage has increased to 90 percent of all transactions. The increased forecast results in a need of \$18 million Other Funds expenditure limitation. The agency is requesting \$3.2 million in additional Other Funds expenditure limitation to pay bankcard fees associated with credit card purchases.

Temporary Employees for Warehouse

Currently, OLCC employs 55 individuals to cover two shifts in the warehouse, which results in shipping an average of 15,015 cases or 158,730 bottles of liquor per day. As the impacts of COVID-19 began to hit the warehouse workers, OLCC has experienced an average of 35 percent of employees using leave related to COVID-19. To address potential slowdowns of work in the warehouse associated with permanent employees on approved leave, the agency hired temporary

employees to keep the workflow consistent. The use of temporary workers may be even more critical to keeping things working smoothly as the holiday season approaches and with it, possibly an even higher level of liquor sales. In particular, most of these workers are focused on the agency's "repack" conveyor line from which bottles are picked individually and packaged for shipment. Many of these bottles are specialty spirits and Oregon produced products. According to OLCC, the "repack" line is responsible for about \$160,000 per day in liquor sales. The \$331,000 increase in Other Funds expenditure limitation requested by the agency is based on paying 18 workers \$17.68 per hour each for 1,040 hours.

GIS Specialist for Marijuana Program

The OLCC is requesting a GIS Analyst to provide assistance in licensing recreational marijuana businesses. Currently, OLCC is running a backlog of approximately 800 license applications, some of which have been open for more than a year. Prior to this biennium, OLCC contracted with the Oregon Health Authority (OHA) for this work. However, OHA is no longer providing this service and has not done so since the beginning of this biennium. The OLCC will use the GIS Analyst position to provide necessary technical support and application development to integrate OLCC data and a web-based application for use by licensing and enforcement staff in the marijuana program. The GIS services are also critical to the agency, as it licenses marijuana business to ensure no licensed business is within 1,000 feet of a site holding instructional activities for K-12 students. The expenditure limitation request of \$88,137 is for one permanent position (0.29 FTE) at \$72,807 and \$11,750 for Services and Supplies. This position and any Services and Supplies associated with the position, will be paid for with marijuana revenues. While the agency may want more flexibility for the technical support to cross into its liquor programs, OLCC would need to bring that request to the Legislature in the future, as marijuana revenues are dedicated to the marijuana program.

Agency Reorganization (transfer of limitation between programs)

The OLCC has started an agency reorganization and formed a new division within its administrative program area. The new division is called the Policy Analytics, Communication, and Education (PACE) division. The OLCC submitted a permanent finance plan to the Chief Financial Office to reclassify and shift positions from the Medical Marijuana program (financed solely by marijuana revenues) to the Administrative Operations portion of the agency, which uses liquor revenues as a source of funding. The permanent finance plan was placed on hold in order to have a policy discussion with the Legislature because expenditures for administrative purposes using liquor revenues have an impact on the amount of money the agency contributes to General Fund and local communities. The Medical Marijuana positions were given to the agency during the 2017 Legislative Session, but a number of the positions have remained vacant. This request is better suited to a conversation about the overall organization and costs of the agency during the Ways and Means process in a future legislative session.

Legal Reference: Increase the Other Funds expenditure limitation established by chapter 694, section 1, subsection 4, Oregon Laws 2019, by \$5,800,000 for agent compensation, for the 2019-21 biennium.

Increase the Other Funds expenditure limitation established by chapter 694, section 1, subsection 1, Oregon Laws 2019, by \$3,531,000, for administrative expenses related to bankcard fees and temporary warehouse workers, for the 2019-21 biennium (House Bill 5273).

Increase the Other Funds expenditure limitation established by chapter 694, section 1, subsection 2, Oregon Laws 2019, by \$88,137, for one position (0.29 FTE) to assist with recreational marijuana business licensing, for the 2019-21 biennium.



Oregon

Kate Brown, Governor

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September 4, 2020

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Tina Kotek, Co-Chair
900 Court Street, NE
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Salem Oregon 97301-0408

Dear Co-Chairpersons:

Liquor Warehousing and Sales Costs Increase

Nature of the Emergency/Request

The Oregon Liquor Control Commission experienced record sales of distilled spirits during the first eight months of 2020 and much higher costs associated with those sales. Liquor sales have generated an additional \$22 million in gross revenue above forecast, resulting in \$8.4 million in distributable revenue for the state general fund, cities, and counties in the first seven months of the year. The increase in sales, however, have also increased costs, which are part of OLCC's limited budget. The increase in sales will increase the compensation paid out to liquor store agents. Increased consumer liquor sales, combined with the increased use of credit cards in liquor stores, have resulted in higher card fees that need to be covered by OLCC. The COVID outbreak has dramatically increased the absenteeism in the liquor warehouse (35% on an average day), resulting in a reduction in shipping capability.

Agency Action

Compensation paid to liquor agents averages 9.02% of liquor sales. The current limitation set in OLCC's budget for store agent compensation is \$132.4 million, based on a forecast of \$1.468 billion in-store liquor sales during the current biennium. The estimates for liquor sales with the increased consumer spending during the epidemic is now projecting to be \$1.533 billion, with total store agents' compensation now estimated at \$138.3 million, which is a \$5.8 million increase. Compensation paid to liquor store agents is a variable cost of business based on their store liquor sales. Failure to raise the limitation for store agents' compensation will result in liquor stores not being paid adequately for their actual liquor sales at the end of the current biennium.

OLCC pays for bank card fees related to all sales of liquor. The current biennium limitation for bank card costs is \$14.8 million based on a forecast of 76% of all liquor sales would be to consumers (versus bars), and the credit card usage rate would be 77% for all liquor purchases (versus paying with cash or check). Along with the increase in liquor sales, the COVID outbreak and resulting restrictions has increased

consumer liquor sale purchases to 100% of all sales in combination with increased usage of bank cards to 90% of all transactions. This shift in the business mix has resulted in a forecast of bank card fees that will have to be paid by OLCC to \$18.0 million by the end of the biennium, a \$3.2 million increase. Bank card costs are also variable costs of doing business and are uncontrollable. Failure to raise the limitation on bank card costs will result in liquor stores not being able to accept credit and debit cards for liquor purchases during the last three (3) months of the biennium.

OLCC's liquor distribution warehouse currently employs 55 workers assigned to two shifts that ship an average of 15,015 cases or 158,730 bottles of liquor per day. The warehouse continued to operate during the COVID epidemic. However, illness, self-quarantining, and enhancements of the Family Medical Leave Act have resulted in an average daily absenteeism rate of 35%. Significantly impacted is the warehouse's "repack" conveyor line, where bottles are picked individually and packaged for shipment. This line contains a large number of specialty spirits and Oregon produced products, which accounts for 3.4% of the daily sales. OLCC has recruited temporary workers to fill in for the absent permanent workers to maintain its shipping capacity. The additional costs of the temporary workers, however, are not covered under OLCC's current budget (estimated at \$331,000). Failure to fund temporary workers will require OLCC to shut down the repack conveyor line again and reduce shipping to liquor stores. The actual revenue impacts are unknown, but the repack product line is responsible for about \$160,000 per day in liquor sales. This shut down could have a potential sales revenue impact of \$28 million for the remainder of the current biennium and a distributable revenue impact of \$11 million to the general fund, cities and counties.

Action Requested

OLCC requests that expenditure limitation for Liquor Store Agents Compensation be raised from \$132.4 million to \$138.3 million for the 2019-21 biennium, a \$5.8 million increase.

OLCC requests that expenditure limitation for bank card fees in Administrative Expenses be raised from \$14.8 million to \$18.0, a \$3.2 million increase.

OLCC requests an additional \$331,000 in additional expenditure limitation in Administrative Expenses to fund a total of 18 temporary Liquor Distribution 1 workers employed at staggered six-month intervals through the remainder of the biennium (18 workers x 1040 hours/per worker x \$17.68 per hour).

Legislation Affected

Increase the Other Funds expenditure limitation established by Chapter 694, Section 1(2), Oregon Laws 2019, for the Oregon Liquor Control Commission, Administrative Expenses, by **\$3,531,000** for the 2019-21 biennium. Increase the Other Funds expenditure limitation established by Chapter 694, Section 1(2), Oregon Laws 2019, for the Oregon Liquor Control Commission, Agents Compensation All Other, by **\$5,800,000** for the 2019-21 biennium.

Recreational Marijuana Program

Nature of the Emergency/Request

The Oregon Liquor Control Commission (OLCC) requires one position to fulfill critical areas of the agency's mission in regulating recreational marijuana. The requested position impacts the agency's ability to license recreational marijuana businesses. The requested position is one Information Services Specialist 6; GIS Analyst (Recreational Marijuana).

Agency Action

The current statute requires that marijuana retail locations be located no closer than 1,000 feet of a site that holds instructional activities for K-12 students. Without accurate real-time data, OLCC cannot properly meet the specified criteria. Improper siting of businesses subjects that business to the additional cost of moving and puts the state at risk of incurring those expenses. Previously, OLCC was funding one position in the Oregon Health Authority (OHA) to provide these services. In July 2019, OHA terminated the agreement with OLCC to host this service and provide other GIS services needed by the agency.

OLCC needs to develop capacity previously filled by OHA to perform mission-critical functions related to GIS and fulfill statutory requirements. The GIS Analyst position will provide extensive technical support and application development to help integrate OLCC data and a web-based application used by licensing and enforcement staff in the marijuana program. This position will be funded as a recreational marijuana position but housed in Information Services.

Action Requested

The Oregon Liquor Control Commission requests approval of the one permanent position Information Services Specialist 6, GIS Analyst (Recreational Marijuana Program), and limitation to purchase GIS software. The amount for the position is \$72,807 for personal services, \$11,750 for supplies and services including workspace, and \$3,580 for GIS software. The position will represent 0.29 FTE during the 2019-21 biennium and 1.00 FTE for the following biennium.

Legislation Affected

Increase the Other Funds expenditure limitation established by Chapter 694, Section 1(2), Oregon Laws 2019, for the Oregon Liquor Control Commission, Marijuana Regulation, by **\$88,137** for the 2019-21 biennium.

Agency Reorganization Funding Change

Nature of the Emergency/Request

The Oregon Liquor Control Commission requests that budget limitation be reassigned from the Medical Marijuana budget to the Administrative service's budget to fund requested positions for an agency reorganization of the Policy, Analytics, Communication and Analytics (PACE) Division. The Medical Marijuana Program will abolish four regulatory specialists valued at \$645,792 and create three positions valued at \$614,400. These positions have already been approved by the DAS Chief Human Resource

Office. These positions were provided in the current biennium budget but based on a high estimate of medical marijuana licensees that never came into existence.

Agency Action

The Oregon Liquor Control Commission is requesting the Department of Administrative Services to adapt its organizational structure. The proposed organizational changes will allow OLCC to meet its business objective to generate additional revenue for the general fund, along with cities and counties across Oregon. As well as uphold its policy objective to enhance community livability through the regulation of licensees, keeping alcohol and marijuana out of the hands of minors, and preventing diversion and illegal activity. The agency's reorganization of policy, analytics, communication, and education staff into one program (PACE) is streamlining policy development and developing business analytics capacity across the whole Commission to improve decision making in the ever-changing and multi-layered response to Covid-19. The program maintains regular communication with a multitude of stakeholders and centralizes communication and education support for the entire agency. The funding shift is requested to complete the reorganization.

Action Requested

The Oregon Liquor Control Commission requests that limitation for Medical Marijuana be reduced by \$645,792, and limitation for Administrative Expenses be increased by \$647,792 to allow for completion of the reorganization.

Legislation Affected

Reduce the Other Funds expenditure limitation established by Chapter 694, Section 1(2), Oregon Laws 2019, for the Oregon Liquor Control Commission, Marijuana Regulation Medical by \$647,792. Increase the Other Funds expenditure limitation established by Chapter 694, Section 1(2), Oregon Laws 2019, for the Oregon Liquor Control Commission, Administrative Expenses by \$647,792.

Thank you for your consideration.

Sincerely,



Steve Marks
Executive Director
Oregon Liquor Control Commission

cc:

Michelle Deister, Legislative Fiscal Office Analyst
Tamara Brickman, Chief Financial Office Analyst