

Employment Relations Board

	2017-19 Actual	2019-21 Legislatively Adopted	2019-21 Legislatively Approved *	2021-23 Current Service Level	2021-23 Governor's Budget
General Fund	2,451,129	2,956,273	2,844,094	3,281,932	3,186,292
Other Funds	2,297,704	2,404,621	2,723,342	2,594,847	2,504,923
Total Funds	4,748,833	5,360,894	5,567,436	5,876,779	5,691,215
Positions	13	13	13	13	13
FTE	13.00	13.00	13.00	13.00	13.00

* Includes Emergency Board and administrative actions through January 2021

Program Description

The Employment Relations Board's (ERB) mission is to resolve disputes concerning labor relations. ERB provides four main services to help employers, employees, and labor organizations resolve their disputes: labor mediation; contested case hearings; labor appeal cases; and union representation elections. The Board for ERB, which acts as the state's "labor appeal court" for labor and management disputes within state and local government for an estimated 3,000 employers and 275,000 employees in public and private employment in the state. The agency is responsible for administering specific portions of Oregon law: the Public Employee Collective Bargaining Act, which governs collective bargaining in state and local government; the State Personnel Relations Law, which creates appeal rights for non-union state employees who believe they were treated unfairly in the workplace; and the private sector labor-management relations law, which addresses collective bargaining for private sector employers who are not covered by federal law.

Public sector caseloads for ERB are cyclical (i.e., vary by fiscal year) and are influenced by the negotiation of multi-year labor contracts. The timely disposition of cases has many influences, including the volume of cases, case complexity, budget reductions (i.e., furloughs), employee turnover or vacancies, and new employee training, among others. The caseload for state government can be more complicated and time consuming than local government cases because they may involve single individuals seeking remedy under the state personnel law.

The Legislative Fiscal Office (LFO) requested in May of 2020 that ERB evaluate the impact on caseloads of recent recessionary periods. ERB reviewed caseload for the 2001 and 2008/2009 recessions and concluded that: "...it is unclear if any meaningful patterns can be identified, as there are numerous factors (outside of a recession) that affect the labor-relations of ERB's stakeholders, as well as whether cases are ultimately filed with ERB. Moreover...the number of case filings do not show a clear picture of a pattern. There is, however, an increase in filings approximately one to two years following the onset/effect of the recession." Therefore, it is inconclusive to say that the state's collective bargaining environment generally becomes more contentious with diminished state and local government resources.

CSL Summary and Issues

The 2021-23 current service level budget (CSL) is \$5.9 million total funds, including \$3.3 million General Fund and \$2.6 million Other Funds. The total funds budget is \$309,343 (or 5.6%) more than the 2019-21 legislatively approved budget of \$5.6 million. The budget includes 13 positions (13.00 FTE). The CSL includes reversing a one-time General Fund fund shift to Other Funds. The package totals \$38,489.

ERB receives General Fund revenue and charges fees to support labor relations functions conducted on behalf of local government while state government-related activities are supported by an Other Funds assessment on state agencies. The ERB state agency assessment is based on the number of covered employees, including non-unionized employees from the Executive, Legislative, and Judicial branches as well as temporary employees. The employer rather than the employee pays the assessment. The projected state agency assessment revenue for 2021-23 is \$2.2 million, which is based on a \$2.40 assessment per employee per month, an increase of \$.06, from the 2019-21 assessment of \$2.34, and is based on an estimate of 38,000 employees. State agency assessment revenue has a General Fund component since some agencies use General Fund to pay their assessment. ERB also charges fees for the following services: unfair labor practice complaints and answers, collective bargaining mediations, arbitrator panel, training, an hourly rate charged for mediation facilitation, and miscellaneous fees for facsimile filing, copies, etc.

Policy Issues

In *Janus v. AFSCME Council 51*, the U.S. Supreme Court overturned its precedent and held that it was unconstitutional for a public employee to have any agency fee or any other payment to a union deducted from the employee's wages, unless the employee affirmatively consents to that deduction or payment. For Oregon, this has meant that many public-sector employers and labor organizations had their fair-share provisions invalidated. Additionally, the decision means that numerous provisions of Public Employee Collective Bargaining Act (PECBA) were also invalidated. The Legislature in 2019 updated the Oregon Revised Statutes in numerous ways in light of the Supreme Court's decision. For the upcoming Legislative Session in 2021, ERB has asked for the introduction of HB 2061 to remove from the statute language that allows a public employer and labor organization to enter into fair-share agreement and allows a public employer to deduct in-lieu-of-dues payment from salary or wages of public employee. ERB states that there continues to be insufficient information to assess how both the *Janus* decision and the PECBA changes might affect the agency's filings.

Pandemic

ERB reports that the agency's transition to virtual services has been successful and in part due to the recent addition of the electronic filing and case management system (discussed below). The pandemic's impact on case filing is difficult to determine due to what may be a close nexus with economic-driven filings. While a recent spike in case filing has tapered off, case filing remain higher than historic levels.

Other Significant Issues and Background

ERB has requested a single policy package that seeks to acquire supplemental funding for Department of Administrative Service volume based charges that are above standard inflation and as compared to the rates charged for the previous biennium. This includes services for

Workday, Shared Client Services for accounting and budget; data processing, and Information Technology Help Desk. The request is for \$59,321 General Fund and \$37,984 Other Funds for a total funds cost of \$97,305. The Governor's budget funds ERB at \$5.7 million total funds, which is \$123,779, or 2.2%, more than the 2019-21 legislatively approved budget of \$5.6 million. The Governor's budget funds the agency's single policy package and the \$2.40 State Agency Assessment remains unchanged.

ERB's ten percent reduction options include: reducing the FTE for one Administrative Law Judge and travel, and reducing the Board Chair and members FTE, reduce employee training, office expenses, dues and subscriptions, and Information Technology expendable property. Reductions for agencies the size of ERB can be particularly problematic to ongoing operations; however, past reduction that have been effective are targeted fund shifts.

The agency self-managed a NICUSA information technology contract to design, develop, maintain and host an electronic case management system (phase-I) and then add a web-based electronic filing and electronic payment capability (phase-II). The project was completed in the fall of 2020 albeit behind its original Spring of 2019 schedule. The vendor charges an annual licensing and hosting fee estimated at \$60,000 per-year, which is included in the CSL budget.

Beginning in the 2013-15 biennium, at the behest of the Legislature, ERB undertook a number of changes to improve its processes and procedures, including: establishing timelines for issuing orders; identifying specific types of contested cases for expedited processing; involving stakeholders in a review of the agency's processes and procedures; establishing a Rules Advisory Committee; completing an independent review of some recent Board orders; and involving stakeholders in a discussion of complaint or other actions that lack legal merit. The result has been an elimination of all case backlogs and a substantial improvement in the timelines for processing cases. The agency also reviewed and updated its key performance measures. ERB made a variety of technical changes to clarify and modernize statutes related to the agency. Additionally, over the last several biennia, the agency requested, and the Department of Administrative Services approved, compensation plan changes (increases) or reclassifications for all the agency's positions. ERB had in past biennia difficulty establishing and following a routinized methodology in the development of the State Agency Assessment rate, which triggered a statutory requirement for this to be done. ERB now follows a written rate development methodology and the agency routinely reviews and updates the number of covered and uncovered employees. Lastly, as noted, the Legislature approved an electronic case management application that includes an electronic filing and payment feature.

Key Performance Measures

A copy of the ERB Annual Performance Progress Report can be found on the LFO website:

https://www.oregonlegislature.gov/lfo/APPR/APPR_ERB_2020FINAL.pdf