

OHIO

SENATE

JOURNAL

WEDNESDAY, MAY 29, 2013

FIFTY-THIRD DAY
Senate Chamber, Columbus, Ohio
Wednesday, May 29, 2013, 11:00 o'clock a.m.

The Senate met pursuant to adjournment.

Pursuant to Senate Rule No. 3, the Clerk called the Senate to order.

Senator Beagle was selected to preside according to the rule.

The journal of the last legislative day was read and approved.

**REPORTS OF REFERENCE AND BILLS FOR SECOND
CONSIDERATION**

Senator Jordan reports for the Standing Committee on Reference, recommending that the following bills and resolution, standing in order for second consideration, be referred to committee as recommended:

Sub. H. B. No. 98-Representatives Gonzales, Retherford, et al.

To amend sections 4506.09, 4713.60, 4723.24, 4725.16, 4725.51, 4732.14, 4733.15, 4743.04, 5903.10, 5903.12, and 5903.121 and to enact section 5903.03 of the Revised Code to revise the Occupational Licensing Law regarding military service members and veterans and to declare an emergency.

To the Committee on Public Safety, Local Government, and Veterans Affairs.

H. B. No. 141-Representative Damschroder, et al.

To amend sections 1901.01, 1901.02, 1901.021, 1901.08, and 1901.311 of the Revised Code to abolish the Fostoria Municipal Court and the Tiffin Municipal Court, to create the Tiffin-Fostoria Municipal Court, and to declare an emergency.

To the Committee on Public Safety, Local Government, and Veterans Affairs.

S. C. R. No. 15-Senator Patton, et al.

To urge the United States House of Representatives Committee on Energy and Commerce Subcommittee on Communications and Technology to hold regular hearings regarding the nationwide broadband public safety network, require the First Responder Network Authority (FirstNet) to identify the costs of such network to Ohio, and include related amendments to the law

governing FirstNet.

To the Committee on Public Safety, Local Government, and Veterans Affairs.

S. B. No. 137-Senator Patton.

To amend sections 4511.01, 4511.04, 4511.213, and 4513.17 to require motor vehicle operators to take certain actions upon approaching a highway maintenance vehicle and to repeal the version of section 4511.01 of the Revised Code that is scheduled to take effect on January 1, 2017.

To the Committee on Transportation.

S. B. No. 138-Senator Tavares.

To amend section 3701.99 and to enact sections 3701.048, 3711.15, 3712.12, 3721.37, 3727.58, 3793.062, 5103.0329, 5119.021, 5119.203, 5119.222, 5123.1910, 5139.88, and 5155.39 of the Revised Code to require that employees in certain health care and other facilities be notified of bed bug or lice infestations.

To the Committee on Medicaid, Health and Human Services.

YES - 7: KRIS JORDAN, CHRIS WIDENER, LARRY OBHOF,
KEVIN BACON, TOM PATTON, LOU GENTILE,
RANDY GARDNER.

NO - 0.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Said bills and resolution were considered a second time and referred to committee as recommended.

INTRODUCTION AND FIRST CONSIDERATION OF BILLS

The following bill was introduced and considered the first time:

S. B. No. 139-Senator Uecker.

Cosponsors: Senators Peterson, Sawyer, Schaffer, LaRose.

To amend sections 120.01, 120.03, 120.04, 120.06, 120.08, 120.13, 120.14, 120.15, 120.16, 120.18, 120.23, 120.33, 120.34, 120.35, 120.36, 120.40, 307.441, 2941.51, 2945.37, 2945.40, and 2953.21 and to repeal sections 120.24, 120.25, 120.26, 120.27, and 120.28 of the Revised Code to provide a 50 per cent reimbursement to the counties for their indigent defense costs, to increase the guaranteed reimbursement rate for such indigent defense costs, to require the State Public Defender to approve the establishment of county public defender commissions, to approve the appointment or retention of the county public defender, and to set a statewide schedule of hourly rates and per case maximums to be paid to appointed counsel, to eliminate the option for a county to operate a joint-county public defender system, to permit the State Public Defender to create state-run regional and district offices that would operate in lieu of the county-run systems, to allow the State Public Defender to use the Indigent Defense Support Fund to pay the state's portion of costs for the regional and district offices, to provide that the Governor's next appointment to the Ohio Public Defender Commission be from a list of nominees submitted by the County Commissioners Association of Ohio, and to allow the State Public Defender to contract directly with a municipal corporation to provide representation in municipal ordinance cases.

Message from the House of Representatives

Mr. President:

I am directed to inform you that the House of Representatives has concurred in the passage of the following bill:

Am. S. B. No. 67 -Senator Peterson

Cosponsors: Senators Obhof, Seitz, Hughes, Beagle, Hite, Balderson, Coley, Eklund, Faber, Gardner, Jordan, LaRose, Manning, Oelslager, Patton, Widener Representatives Amstutz, Beck, Buchy, Dovilla, Hackett, Hall, Henne, Huffman, Johnson, Maag, McClain, McGregor, Scherer, Sprague, Terhar, Young, Speaker Batchelder

To amend sections 111.15, 117.01, 117.10, 117.11, 117.12, 117.16, 117.20, 127.18, 187.01 and 187.04 and to enact sections 117.114 and 117.431 of the Revised Code to create an agreed-upon procedure audit for certain eligible political subdivisions, to eliminate the Auditor of State's exemption from filing a rule summary and fiscal analysis with proposed rules, to exclude from public moneys subject to audit by the Auditor of State any revenue earned by or from a person's ownership, operation, or use of a tangible or intangible asset that was sold, was leased, was licensed, was the granting of a franchise, or was transferred or conveyed by a public office to the person pursuant to an agreement under which the public office received consideration, to specify which JobsOhio revenues are not public moneys subject to audit by the Auditor of State, to clarify by whom JobsOhio is to be audited and which audit records are public records, and to provide for annual compliance and control

reviews of JobsOhio.

With the following additional amendments, in which the concurrence of the Senate is requested.

In line 8, after "111.15," insert "117.01, 117.10,"

In line 9, delete the first "and"; after "127.18" insert ", 187.01, and 187.04"; delete "section" and insert "sections"; after "117.114" insert "and 117.431"

Between lines 204 and 205, insert:

"Sec. 117.01. As used in this chapter:

(A) "Color of office" means actually, purportedly, or allegedly done under any law, ordinance, resolution, order, or other pretension to official right, power, or authority.

(B) "Public accountant" means any person who is authorized by Chapter 4701. of the Revised Code to use the designation of certified public accountant or who was registered prior to January 1, 1971, as a public accountant.

(C) "Public money" means any money received, collected by, or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office.

"Public money" does not include either of the following:

(1) Money or revenue earned by or from a person's ownership, operation, or use of an asset, whether tangible or intangible, that either in whole or in part was sold, was leased, was licensed, was the granting of a franchise, or was otherwise transferred or conveyed by a public office to the person pursuant to an agreement, authorized by law, between the person and the public office in which the public office received consideration from the person for the asset that was sold, leased, licensed, franchised, or otherwise transferred or conveyed;

(2) With respect to the transfer described in Chapter 4313. of the Revised Code and the operation of the enterprise acquisition project, revenues or receipts of or from the enterprise acquisition project in the hands of the nonprofit corporation formed under section 187.01 of the Revised Code or of a nonprofit entity the sole member of which is that nonprofit corporation, but does include any taxes collected on the spirituous liquor sales and then due the department of taxation and amounts then due to the state general revenue fund pursuant to section 4301.12 of the Revised Code. As used in this division, "enterprise acquisition project" has the meaning defined in section 4313.01 of the Revised Code.

(D) "Public office" means any state agency, public institution, political subdivision, other organized body, office, agency, institution, or entity

established by the laws of this state for the exercise of any function of government. "Public office" does not include the nonprofit corporation formed under section 187.01 of the Revised Code.

(E) "Public official" means any officer, employee, or duly authorized representative or agent of a public office.

(F) "State agency" means every organized body, office, agency, institution, or other entity established by the laws of the state for the exercise of any function of state government.

(G) "Audit" means any of the following:

(1) Any examination, analysis, or inspection of the state's or a public office's financial statements or reports;

(2) Any examination, analysis, or inspection of records, documents, books, or any other evidence relating to either of the following:

(a) The collection, receipt, accounting, use, or expenditure of public money by a public office or by a private institution, association, board, or corporation;

(b) The determination by the auditor of state, as required by section 117.11 of the Revised Code, of whether a public office has complied with all the laws, rules, ordinances, or orders pertaining to the public office.

(3) Any other type of examination, analysis, or inspection of a public office, or of the specific funds or accounts of a private institution, association, board, or corporation receiving into which public money has been placed or deposited, that is conducted according to generally accepted or governmental auditing standards established by rule pursuant to section 117.19 of the Revised Code.

(H) "Person" has the meaning defined in section 1.59 of the Revised Code.

Sec. 117.10. (A) The auditor of state shall audit all public offices as provided in this chapter. The auditor of state also may audit the specific funds or accounts of private institutions, associations, boards, and corporations receiving into which has been placed or deposited public money for their use from a public office and may require of them annual reports in such form as the auditor of state prescribes. The auditor of state may audit some or all of the other funds or accounts of a private institution, association, board, or corporation that has received public money from a public office only if one or more of the following applies:

(1) The audit is specifically required or authorized by the Revised Code;

(2) The private institution, association, board, or corporation requests that the auditor of state audit some or all of its other funds or accounts;

(3) All of the revenue of the private institution, association, board, or

corporation is composed of public money:

(4) The private institution, association, board, or corporation failed to separately and independently account for the public money in its possession, in violation of section 117.431 of the Revised Code;

(5) The auditor of state has a reasonable belief that the private institution, association, board, or corporation illegally expended, converted, misappropriated, or otherwise cannot account for the public money it received from a public office and that it is necessary to audit its other funds or accounts to make that determination.

(B) If the auditor of state performs or contracts for the performance of an audit, including a special audit, of the public employees retirement system, school employees retirement system, state teachers retirement system, state highway patrol retirement system, or Ohio police and fire pension fund, the auditor of state shall make a timely report of the results of the audit to the Ohio retirement study council.

(C) The auditor of state may audit the accounts of any provider as defined in section 5111.06 of the Revised Code.

(D) If a public office has been audited by an agency of the United States government, the auditor of state may, if satisfied that the federal audit has been conducted according to principles and procedures not contrary to those of the auditor of state, use and adopt the federal audit and report in lieu of an audit by the auditor of state's own office.

(E) Within thirty days after the creation or dissolution or the winding up of the affairs of any public office, that public office shall notify the auditor of state in writing that this action has occurred.

(F) Nothing in this section precludes the auditor of state from issuing to a private institution, association, board, or corporation a subpoena and compulsory process for the attendance of witnesses or the production of records under section 117.18 of the Revised Code if the subpoena and compulsory process is in furtherance of an audit the auditor of state is authorized by law to perform."

Between lines 520 and 521, insert:

" **Sec. 117.431.** Public money in the possession of any private institution, association, board, or corporation shall be accounted for separately and independently from its other funds and accounts. The auditor of state may adopt rules establishing the manner in which the public money shall be separately and independently accounted for."

Between lines 621 and 622, insert:

"Sec. 187.01. As used in this chapter, "JobsOhio" means the nonprofit corporation formed under this section, and includes any subsidiary of that corporation. In any section of law that refers to the nonprofit corporation formed under this section, reference to the corporation includes reference to any such

subsidiary unless otherwise specified or clearly appearing from the context.

The governor is hereby authorized to form a nonprofit corporation, to be named "JobsOhio," with the purposes of promoting economic development, job creation, job retention, job training, and the recruitment of business to this state. Except as otherwise provided in this chapter, the corporation shall be organized and operated in accordance with Chapter 1702. of the Revised Code. The governor shall sign and file articles of incorporation for the corporation with the secretary of state. The legal existence of the corporation shall begin upon the filing of the articles.

In addition to meeting the requirements for articles of incorporation in Chapter 1702. of the Revised Code, the articles of incorporation for the nonprofit corporation shall set forth the following:

(A) The designation of the name of the corporation as JobsOhio;

(B) The creation of a board of directors consisting of nine directors, to be appointed by the governor, who satisfy the qualifications prescribed by section 187.02 of the Revised Code;

(C) A requirement that the governor make initial appointments to the board within sixty days after the filing of the articles of incorporation. Of the initial appointments made to the board, two shall be for a term ending one year after the date the articles were filed, two shall be for a term ending two years after the date the articles were filed, and five shall be for a term ending four years after the date the articles were filed. The articles shall state that, following the initial appointments, the governor shall appoint directors to terms of office of four years, with each term of office ending on the same day of the same month as did the term that it succeeds. If any director dies, resigns, or the director's status changes such that any of the requirements of division (C) of section 187.02 of the Revised Code are no longer met, that director's seat on the board shall become immediately vacant. The governor shall forthwith fill the vacancy by appointment for the remainder of the term of office of the vacated seat.

(D) A requirement that the governor appoint one director to be chairperson of the board and procedures for electing directors to serve as officers of the corporation and members of an executive committee;

(E) A provision for the appointment of a chief investment officer of the corporation by the recommendation of the board and approval of the governor. The chief investment officer shall serve at the pleasure of the board and shall have the power to execute contracts, spend corporation funds, and hire employees on behalf of the corporation. If the position of chief investment officer becomes vacant for any reason, the vacancy shall be filled in the same manner as provided in this division.

(F) Provisions requiring the board to do all of the following:

(1) Adopt one or more resolutions providing for compensation of the chief investment officer;

(2) Approve an employee compensation plan recommended by the chief investment officer;

(3) Approve a contract with the director of development services for the corporation to assist the director and the development services agency with providing services or otherwise carrying out the functions or duties of the agency, including the operation and management of programs, offices, divisions, or boards, as may be determined by the director of development services in consultation with the governor;

(4) Approve all major contracts for services recommended by the chief investment officer;

(5) Establish an annual strategic plan and standards of measure to be used in evaluating the corporation's success in executing the plan;

(6) Establish a conflicts of interest policy that, at a minimum, complies with section 187.06 of the Revised Code;

(7) Hold a minimum of four board of directors meetings per year at which a quorum of the board is physically present, and such other meetings, at which directors' physical presence is not required, as may be necessary. Meetings at which a quorum of the board is required to be physically present are subject to divisions (C), (D), and (E) of section 187.03 of the Revised Code.

(8) Establish a records retention policy and present the policy, and any subsequent changes to the policy, at a meeting of the board of directors at which a quorum of the board is required to be physically present pursuant to division (F)(7) of this section;

(9) Adopt standards of conduct for the directors.

(G) A statement that directors shall not receive any compensation from the corporation, except that directors may be reimbursed for actual and necessary expenses incurred in connection with services performed for the corporation;

(H) A provision authorizing the board to amend provisions of the corporation's articles of incorporation or regulations, except provisions required by this chapter;

(I) Procedures by which the corporation would be dissolved and by which all corporation rights and assets would be distributed to the state or to another corporation organized under this chapter. These procedures shall incorporate any separate procedures subsequently set forth in this chapter for the dissolution of the corporation. The articles shall state that no dissolution shall take effect until the corporation has made adequate provision for the payment of any outstanding bonds, notes, or other obligations.

(J) A provision establishing an audit committee to be comprised of directors. The articles shall require that the audit committee hire ~~an~~ a firm of independent certified public ~~accountant~~ accountants, selected in consultation with the auditor of state, to perform , once each year, a financial audit of the

corporation ~~at least once every year~~ and of any nonprofit entity the sole member of which is JobsOhio. The articles also shall require all of the following:

(1) Commencing with JobsOhio's fiscal year beginning July 1, 2012, the financial statements to be audited are to be prepared in accordance with accounting principles and standards set forth in all applicable pronouncements of the governmental accounting standards board;

(2) The firm of independent certified public accountants hired is to conduct a supplemental compliance and control review pursuant to a written agreement by and among the firm, the auditor of state, JobsOhio, and any nonprofit entity the sole member of which is JobsOhio; and

(3) A copy of each financial audit report and each report of the results of the compliance and control review are to be provided to the governor, the auditor of state, the speaker of the house of representatives, and the president of the senate.

(K) A provision authorizing a majority of the disinterested directors to remove a director for misconduct, as that term may be defined in the articles or regulations of the corporation. The removal of a director under this division creates a vacancy on the board that the governor shall fill by appointment for the remainder of the term of office of the vacated seat.

Sec. 187.04. (A) The director of development services, as soon as practical after February 18, 2011, shall execute a contract with JobsOhio for the corporation to assist the director and the development services agency with providing services or otherwise carrying out the functions or duties of the agency, including the operation and management of programs, offices, divisions, or boards, as may be determined by the director in consultation with the governor. The approval or disapproval of awards involving public money shall remain functions of the agency. All contracts for grants, loans, and tax incentives involving public money shall be between the agency and the recipient and shall be enforced by the agency. JobsOhio may not execute contracts obligating the agency for loans, grants, tax credits, or incentive awards recommended by JobsOhio to the agency. Prior to execution, all contracts between the director and JobsOhio entered into under this section that obligate the agency to pay JobsOhio for services rendered are subject to controlling board approval.

The term of an initial contract entered into under this section shall not extend beyond June 30, 2013. Thereafter, the director and JobsOhio may renew the contract for subsequent fiscal biennia, but at no time shall a particular contract be effective for longer than a fiscal biennium of the general assembly.

JobsOhio's provision of services to the agency as described in this section shall be pursuant to a contract entered into under this section. If at any time the director determines that the contract with JobsOhio may not be renewed for the subsequent fiscal biennium, the director shall notify JobsOhio of the director's decision not later than one hundred twenty days prior to the end of the current fiscal biennium. If the director does not provide such written notice to JobsOhio

prior to one hundred days before the end of the current fiscal biennium, the contract shall be renewed upon such terms as the parties may agree, subject to the requirements of this section.

(B) A contract entered into under this section shall include all of the following:

(1) Terms assigning to the corporation the duties of advising and assisting the director in the director's evaluation of the agency and the formulation of recommendations under section 187.05 of the Revised Code;

(2) Terms designating records created or received by JobsOhio that shall be made available to the public under the same conditions as are public records under section 149.43 of the Revised Code. Documents designated to be made available to the public pursuant to the contract shall be kept on file with the agency.

Among records to be designated under this division shall be the following:

(a) The corporation's federal income tax returns;

(b) The report of expenditures described in division (B)(3) of section 187.03 of the Revised Code. The records shall be filed with the agency at such times and frequency as agreed to by the corporation and the agency, which shall not be less frequently than quarterly.

(c) The annual total compensation paid to each officer and employee of the corporation;

(d) A copy of the ~~audit~~ report for each financial audit of the corporation and of each supplemental compliance and control review of the corporation performed by ~~an~~ a firm of independent certified public ~~accountant~~ accountants pursuant to division (J) of section 187.01 of the Revised Code.

(e) Records of any fully executed incentive proposals, to be filed annually;

(f) Records pertaining to the monitoring of commitments made by incentive recipients, to be filed annually;

(g) A copy of the minutes of all public meetings described in division (C) of section 187.03 of the Revised Code not otherwise closed to the public.

(3) The following statement acknowledging that JobsOhio is not acting as an agent of the state:

"JobsOhio shall have no power or authority to bind the state or to assume or create an obligation or responsibility, expressed or implied, on behalf of the state or in its name, nor shall JobsOhio represent to any person that it has any such power or authority, except as expressly provided in this contract."

(C)(1) Records created by JobsOhio are not public records for the

purposes of Chapter 149. of the Revised Code, regardless of who may have custody of the records, unless the record is designated to be available to the public by the contract under division (B)(2) of this section.

(2) Records received by JobsOhio from any person or entity that is not subject to section 149.43 of the Revised Code are not public records for purposes of Chapter 149. of the Revised Code, regardless of who may have custody of the records, unless the record is designated to be available to the public by the contract under division (B)(2) of this section.

(3) Records received by JobsOhio from a public office as defined in section 149.011 of the Revised Code that are not public records under section 149.43 of the Revised Code when in the custody of the public office are not public records for the purposes of section 149.43 of the Revised Code regardless of who has custody of the records.

(4) Division (B) of section 4701.19 of the Revised Code applies to any work papers of the firm of independent certified public accountants engaged to perform the annual financial audit and the supplemental compliance and control review described in division (J) of section 187.01 of the Revised Code, and to the financial audit report and any report of the supplemental compliance and control review, unless the record is designated to be available to the public by the contract under division (B)(2) of this section.

(D) Any contract executed under authority of this section shall not negate, impair, or otherwise adversely affect the obligation of this state to pay debt charges on securities executed by the director or issued by the treasurer of state, Ohio public facilities commission, or any other issuing authority under Chapter 122., 151., 165., or 166. of the Revised Code to fund economic development programs of the state, or to abide by any pledge or covenant relating to the payment of those debt charges made in any related proceedings. As used in this division, "debt charges," "proceedings," and "securities" have the same meanings as in section 133.01 of the Revised Code.

(E) Nothing in this section, other than the requirement of controlling board approval, shall prohibit the agency from contracting with JobsOhio to perform any of the following functions:

- (1) Promoting and advocating for the state;
- (2) Making recommendations to the agency;
- (3) Performing research for the agency;
- (4) Establishing and managing programs or offices on behalf of the agency, by contract;
- (5) Negotiating on behalf of the state.

(F) Nothing in this section, other than the requirement of controlling board approval, shall prohibit the agency from compensating JobsOhio from funds currently appropriated to the agency to perform the functions described in

division (E) of this section."

In line 622, after "111.15," insert "117.01, 117.10,"

In line 623, delete "and"; after "127.18" insert ", 187.01, and 187.04"

In line 1 of the title, after "111.15," insert "117.01, 117.10,"

In line 2 of the title, delete the first "and"; after "127.18" insert ", 187.01, and 187.04"; delete "section" and insert "sections"; after "117.114" insert "and 117.431"

In line 5 of the title, delete "and" and insert a comma

In line 7 of the title, after "rules" insert ", to exclude from public moneys subject to audit by the Auditor of State any revenue earned by or from a person's ownership, operation, or use of a tangible or intangible asset that was sold, was leased, was licensed, was the granting of a franchise, or was transferred or conveyed by a public office to the person pursuant to an agreement under which the public office received consideration, to specify which JobsOhio revenues are not public moneys subject to audit by the Auditor of State, to clarify by whom JobsOhio is to be audited and which audit records are public records, and to provide for annual compliance and control reviews of JobsOhio"

Attest:

Bradley J. Young,
Clerk.

Said amendments were laid over under the rule.

On the motion of Senator Brown, the Senate adjourned until Thursday, May 30, 2013 at 11:00 o'clock a.m.

Attest:

VINCENT L. KEERAN,
Clerk.