



Ohio Legislative Service Commission

Bill Analysis

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H.B. 189

130th General Assembly
(As Introduced)

Reps. Carney and Lundy, Driehaus, Pillich

BILL SUMMARY

JobsOhio's finances and operations

- Requires the Director of Development Services to establish and maintain a searchable, publicly accessible web site that contains specified information regarding JobsOhio's operations.
- Requires JobsOhio, its subsidiaries, and certain contractors to prepare annual financial reports that provide a full accounting of all public and private funds the entities received or distributed during that fiscal year.
- Requires the Director of Development Services to adopt rules establishing performance measures to assess the functions and efficiency of JobsOhio, and requires JobsOhio to present the findings under those rules to the Controlling Board.
- Requires the Director of Administrative Services to include each JobsOhio officer or employee's name, position, and gross pay from the most recent pay period in Ohio's online public employee salary database.
- Prohibits a person who contracts with JobsOhio or its subsidiaries to provide goods or services from receiving any financial or other economic assistance from JobsOhio.
- Specifies that JobsOhio and its subsidiaries are considered public offices that the Auditor of State must audit.
- Classifies all revenue and receipts from the state's liquor distribution and merchandising operation in the possession of JobsOhio or its subsidiaries as public money for the purposes of the Auditor's authority to audit private accounts that contain public money.

Ethics Law requirements concerning JobsOhio

- Defines JobsOhio as a public agency for the purposes of the Ethics Law, and includes JobsOhio's directors and employees as public officials or employees under that law.
- Applies several continuing provisions of the Ethics Law to JobsOhio's directors and employees.
- Permits the Ohio Ethics Commission to investigate violations of the Ethics Law by JobsOhio's directors and employees.

Inspector General investigations of JobsOhio

- Requires the Inspector General to investigate the management and operation of JobsOhio in order to determine whether state officers or employees, including officers or employees of JobsOhio, have committed wrongful acts or omissions.

Whistleblower protections for JobsOhio employees

- States explicitly that Ohio's whistleblower protections apply to employees of JobsOhio, its subsidiaries, and its contractors.

Public records and meetings of entities in public-private partnerships

- Specifies that if a corporation or other entity enters into a public-private partnership, its records are considered public under the Public Records Law.
- Specifies that the Open Meetings Law applies to the meetings of the governing board of an entity, other than JobsOhio, that is in a public-private partnership.

CONTENT AND OPERATION

JobsOhio's finances and operations

Background

JobsOhio is a nonprofit corporation that was formed in 2011 and authorized by statute to promote Ohio's economic development and job creation, retention, and training. Under continuing law, JobsOhio contracts with the Development Services Agency (formerly called the Department of Development) to assist the Agency and to carry out some of its functions. These functions include offering financial incentives to businesses that operate or plan to operate in Ohio.

JobsOhio is funded in part by the profits of Ohio's liquor distribution and merchandising system (the "enterprise acquisition project"), which the Division of Liquor Control operates. JobsOhio has an agreement with the state to lease the right to receive those profits, minus the liquor sales tax and certain other payments, for the next 25 years. In exchange, JobsOhio made an initial payment to the state, consisting of funds it raised by selling bonds.¹

Web site

Under the bill, the Director of Development Services must establish and maintain a searchable, publicly accessible web site regarding JobsOhio's operations. Officers and employees of JobsOhio must comply with all information requests from the Development Services Agency for the purposes of the web site. For each project for which JobsOhio awards financial assistance, the web site must include all of the following information:

- A brief description of the project;
- The name of the entity that receives the assistance;
- The total amount of assistance awarded;
- The intended and actual use of the assistance; and
- The intended and actual benefits of the assistance, including the number of new jobs and retained jobs anticipated.

The web site also must allow the public to report suspected fraud related to the operation of JobsOhio or suspected waste or abuse of JobsOhio's financial assistance.²

Annual financial reports

The bill requires all of the following entities to prepare annual financial reports that provide a full accounting of all public and private funds the entity received or distributed during that fiscal year:

- JobsOhio;

¹ R.C. 122.011, 187.01, 187.04, 4313.01, and 4313.02 (none of which are in the bill). See also Jeff Bell, "JobsOhio gets access to state liquor profits after bond sale." *Columbus Business First*, February 1, 2013. Available at bizjournals.com/columbus/news/2013/02/01/jobsohio-gets-access-to-state-liquor.html, accessed June 26, 2013.

² R.C. 187.16.

- JobsOhio's subsidiaries; and
- Any nonprofit economic development corporation that receives or distributes public funds during the corporation's fiscal year pursuant to a contract entered into with JobsOhio or any of its subsidiaries.

The entity must prepare the report according to generally accepted accounting principles, and the entity's board of directors or chief fiscal officer must certify the report. Within 60 days after the last day of its fiscal year, the entity must submit the report to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the Legislative Service Commission. The entity also must make the report available to the public upon request.³

Performance evaluations

The bill requires the Director of Development Services to adopt rules under the Administrative Procedure Act establishing performance measures to assess the functions and efficiency of JobsOhio. The rules must specify the relevant data needed to measure the performance of JobsOhio's activities in meeting its goals and objectives. These performance measures must be applied consistently over each reporting period. On a quarterly and annual basis, an officer of JobsOhio must present the latest findings on JobsOhio's outcomes and efficiency to the Controlling Board.⁴

Employee pay

The bill requires the Director of Administrative Services to include each JobsOhio officer or employee's name, position, and gross pay from the most recent pay period in Ohio's online public employee salary database. Under current law, JobsOhio's officers' and employees' information is not included in that database because they are not considered state employees for that purpose.⁵

Contractors

Under the bill, a person who contracts with JobsOhio or its subsidiaries to provide goods or services is not eligible to receive any financial or other economic assistance from JobsOhio.⁶

³ R.C. 187.15(B).

⁴ R.C. 187.17.

⁵ R.C. 125.20 and 187.03(A).

⁶ R.C. 187.14.

Audits

Generally

The bill specifies that JobsOhio and its subsidiaries are public offices that the Auditor of State must audit. Under continuing law, the Auditor's reports are public records once they are filed with the appropriate office.

Because the current statute (scheduled to take effect September 4, 2013) excludes JobsOhio from the definition of a public office, the Auditor does not have a duty to audit that entity. Under existing law, JobsOhio, in consultation with the Auditor, must hire a firm of independent certified public accountants to conduct an annual financial audit of JobsOhio and its wholly owned subsidiaries. The firm's audit report is not a public record, unless the contract between JobsOhio and the Director of Development Services requires it to be made publicly available (see **COMMENT**).⁷

Privately held public money

Under the bill, all liquor revenue and receipts in the possession of JobsOhio or its subsidiaries are considered public money for the purposes of the Auditor's continuing-law authority to audit private accounts that contain public money.

The current statute defines "public money" as any money received, collected by, or due a public official under color of office, as well as any money collected by an individual on behalf of a public office or as a purported representative or agent of the public office. Public money in the possession of a private entity must be accounted for separately and independently from its other funds and accounts.

"Public money" does not currently include money or revenue earned by or from a person's ownership, operation, or use of an asset that a public office sold or leased to the person. Liquor revenues or receipts in JobsOhio's possession are not considered public money, but the liquor sales tax that is due to the state is considered public money.

Under current law, the Auditor may audit a private entity's specific funds or accounts that contain public money received from a public office. The Auditor also may audit some or all of the entity's other funds or accounts if any of the following are true (see **COMMENT**):⁸

⁷ R.C. 117.01 and 187.15(A), and R.C. 117.10, 117.26, 187.01(J), 187.04(C)(4) and 4701.19 (none of which are in the bill).

⁸ R.C. 117.01, and R.C. 117.10, 117.431, and 4313.01 (none of which are in the bill).



- The audit is specifically required or authorized by the Revised Code;
- The entity requests the audit;
- All of the entity's revenue is composed of public money;
- The entity failed to separately and independently account for the public money in its possession, as the law requires; or
- The Auditor has a reasonable belief that the entity 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.

Ethics Law requirements concerning JobsOhio

The bill eliminates a provision of law that generally excludes JobsOhio from being considered a public agency under the Ethics Law. Instead, for the purposes of the Ethics Law, the bill defines JobsOhio as a public agency and includes JobsOhio's directors and employees as public officials or employees.

As a result, the bill applies several continuing ethics requirements to JobsOhio's directors and employees. For example, under the Ethics Law, a public official or employee may not improperly disclose or use confidential information obtained in the course of the person's official duties. Such a person also may not solicit or accept anything of value that manifests a substantial and improper influence on the person with respect to the person's duties.

Continuing law requires JobsOhio's directors, chief investment officer, and certain upper-level officers and employees to file financial disclosure statements. Under the bill, the Ohio Ethics Commission may require some additional JobsOhio employees to file those statements, pursuant to the Commission's continuing-law authority to require public officials or employees to file those statements if they have a specified level of administrative discretion.

Finally, the bill permits the Ohio Ethics Commission to investigate violations of the Ethics Law by JobsOhio's directors and employees. Continuing law allows the Commission to enforce the financial disclosure statement requirements with respect to the JobsOhio officials and employees who must file those statements.⁹

⁹ R.C. 102.01, and 187.03, and R.C. 102.02(B), 102.03, 102.06 (none of which are in the bill).

Inspector General investigations of JobsOhio

The bill requires the Inspector General to investigate the management and operation of JobsOhio in order to determine whether state officers or employees, including officers or employees of JobsOhio, have committed wrongful acts or omissions.

Existing law does not permit the Inspector General to investigate the management and operation of JobsOhio because JobsOhio is not considered a state agency for that purpose. However, the current statute allows the Inspector General to investigate whether JobsOhio's employees have committed wrongful acts or omissions in the management and operation of a state agency.¹⁰

Whistleblower protections for JobsOhio employees

The bill states explicitly that Ohio's whistleblower protections apply to employees of JobsOhio, its subsidiaries, and its contractors. The Whistleblower Law, which the bill does not change, generally prohibits an employer from disciplining or otherwise retaliating against an employee who reports the employer or a fellow employee for violating certain laws. Under continuing law, any person who performs a service for wages or other remuneration for an employer is covered under the Whistleblower Law. "Employer" includes any person who has one or more employees, including a government agency.¹¹

Public records and meetings of entities in public-private partnerships

The bill specifies that if a corporation or other entity enters into a public-private partnership, its records are considered public under the Public Records Law, and the Open Meetings Law applies to the meetings of its governing board. Under the bill, "public-private partnership" means a contractual relationship between a state agency and a corporation or other person for the purpose of the corporation or person assisting the agency in the exercise of any or all of the powers, functions, or duties of the agency, including the operation and management of the agency's programs, offices, divisions, or boards.

The Public Records Law, which the bill does not change, generally requires a public office, upon request, to make its records available for public inspection and to provide copies of those records at cost and within a reasonable period of time.

¹⁰ R.C. 121.41, 121.42 (not in the bill), and 187.03.

¹¹ R.C. 4113.51 and 4113.52 (not in the bill).



However, several types of records – for example, intellectual property records and certain court records – are exempt from this law.

The Open Meetings Law, also unchanged by the bill, generally requires public officials to take official action and to conduct all deliberations upon official business in open meetings that have been announced with 24 hours' notice. Continuing law exempts certain meetings from this law, including meetings of the board of directors of JobsOhio and its subsidiaries.¹²

COMMENT

The law concerning audits of JobsOhio and other private entities was amended in S.B. 67 of the 130th General Assembly. That act takes effect on September 4, 2013. As a result, the version of R.C. 117.01 that appears in the bill does not reflect the statute as it is scheduled to exist on that date. This section of the Revised Code appearing in the bill will need to be updated to reflect the changes made by that act.

HISTORY

ACTION	DATE
Introduced	06-04-13

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¹² R.C. 121.22 and 149.43.

