



Ohio Legislative Service Commission

Final Analysis

Monica Baker
and other LSC staff

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(As Passed by the General Assembly)

- Reps.** Duffey, Mecklenborg, J. Adams, Combs, Dovilla, Grossman, Huffman, Stebelton, Hollington, McGregor, Gardner, Beck, Hall, McClain, Anielski, Balderson, Slaby, Amstutz, R. Adams, Sears, Baker, Blair, Blessing, Boose, Brenner, Bubb, Buchy, Damschroder, Derickson, Gonzales, Goodwin, Hackett, Henne, Maag, Martin, Rosenberger, Ruhl, Stautberg, Thompson, Uecker, Wachtmann
- Sens.** Faber, Patton, Daniels, Gillmor, Hughes, Seitz, Jones, Bacon, Schaffer, Beagle, Cates, Hite, Lehner, Obhof, Oelslager, Widener, Niehaus, Manning

Effective date: February 18, 2011

ACT SUMMARY

Formation; articles; board of directors

- Requires the Governor to form a nonprofit corporation, to be named "JobsOhio."
- Sets forth the requirements of the JobsOhio articles of incorporation, including the creation of a board of directors consisting of the Governor and eight directors, to be appointed by the Governor, and a provision for the appointment of a chief investment officer.
- Requires the articles of incorporation to require the board to adopt a resolution providing for compensation of the chief investment officer and to approve an employee compensation plan.
- Prohibits the directors from receiving any compensation from JobsOhio, except for actual and necessary expenses incurred in connection with services performed for JobsOhio.
- Requires the board of directors to establish an audit committee to be comprised of directors.
- Authorizes the Governor to remove a director for misconduct.

- Describes the characteristics an individual must satisfy to qualify for appointment to the JobsOhio board of directors, and how the evidence of such may be demonstrated.
- Requires each individual appointed to the board of directors to be United States citizens and at least six of the individuals appointed to the board to be residents of or domiciled in Ohio.
- Permits JobsOhio to indemnify the board of directors, officers, and employees from liability arising from JobsOhio duties and functions, and to purchase civil liability insurance for this purpose.
- Requires the Director of Development to execute a contract, and specifies terms of the contract, with JobsOhio for JobsOhio to assist the Director and Department with providing services or otherwise carrying out the functions or duties of the Department of Development.
- Specifies that the contract executed by the Director must not negate, impair, or otherwise adversely affect the obligation of the state to pay debt charges or to abide by any related pledge or covenant regarding debt charges on certain securities executed or issued by the state.
- Requires that prior to execution, all contracts between the Director of Development and JobsOhio are subject to Controlling Board approval.

Applicability of laws governing state agencies, officers, and employees

- States that the JobsOhio corporation is not "a state or public department, agency, office, body, institution, or instrumentality" for the purposes of certain laws that otherwise govern state agencies and other entities performing governmental functions.
- Prescribes alternative rules governing the corporation, its board, and employees in the performance of governmental functions.
- Specifies that the state's public officer ethics laws generally do not apply to JobsOhio directors or employees.
- Imposes the more limited financial disclosure requirements applicable to public university trustees and some lower-paid officials to the chief investment officer, any other officer or employee with significant administrative, supervisory, contracting, or investment authority, and any governor-appointed director of JobsOhio.

- Requires the board to adopt a conflict of interest policy recommended by the I.R.S. for tax-exempt organizations.
- Specifies that employees, officers, and directors of JobsOhio (other than the Governor) are not public servants under the offenses against justice and public administration provisions of the Criminal Code.
- Prohibits bribery of directors, officers, or employees of JobsOhio.
- Specifies that the state's open meetings law does not apply to JobsOhio, but that the JobsOhio board must open its in-person meetings to the public and prepare, file, and maintain minutes of the meetings except for executive sessions held to consider certain matters.
- Requires the JobsOhio board to establish a method to notify a person, upon request and payment of a reasonable fee, of the time and place of the board's in-person public meetings.
- Specifies that the state's public records law does not apply to JobsOhio, but requires the contract between the Department of Development and JobsOhio to designate certain records of the corporation to be made public through the Department.
- Requires any person who lobbies JobsOhio, and the lobbyist's employer, to comply with the same lobbying registration and reporting requirements that apply to lobbyists of executive agencies.
- Prohibits any state elected officer or staff member from receiving compensation other than from the agency with which the person serves for any service rendered personally in any matter that is before JobsOhio.
- Prohibits JobsOhio from making campaign or political contributions.
- Specifies that JobsOhio is not subject to the law governing state contracting and procurement.
- Specifies that JobsOhio is not subject to the collective bargaining law that applies to public employees, or to laws governing state employee whistleblower protection, civil service, compensation, work hours, leave, and benefits.
- Specifies that directors or employees of JobsOhio are not members of the Public Employees Retirement System and that former state employees, upon employment with JobsOhio, are not considered public employees.
- Specifies that JobsOhio must be audited by an independent public accountant.

- Requires JobsOhio officers and employees to comply with certain procedures regarding the handling of public funds and provides that the officers and employees are liable for mishandling of such funds.
- Specifies that JobsOhio is subject to the jurisdiction of the state Inspector General on the same terms as a state employee or an entity doing business with the state, but not as a state agency.
- Exempts JobsOhio from specified provisions of the general law governing nonprofit corporations.

Reporting

- Requires the Director of Development to submit a report to the General Assembly recommending statutory changes necessary:
 - to improve the functioning and efficiency of the Department; and
 - to transfer specified powers, functions, and duties of the Department to other existing state agencies or to JobsOhio or eliminate specified powers, functions, or duties.
- Requires the chief investment officer of JobsOhio to prepare and submit an annual report of JobsOhio's activities for the preceding year.
- Prevents any public money in the possession of JobsOhio from being commingled with other money of the corporation.
- Requires any funds of the corporation that hold public money to be maintained and accounted for separately and independently from other funds of the corporation.

Legal actions

- States that the venue for any legal action by JobsOhio against a director or former director is the Franklin County Court of Common Pleas.
- States that the Ohio Supreme Court has original and exclusive jurisdiction over constitutional claims arising from the act or actions undertaken under the act's authority.

Appropriation

- Makes an appropriation not to exceed \$1 million to the Department of Development, from the Department's existing FY 2011 appropriation, to fund establishment and operation of JobsOhio.

- Requires the Department of Development to submit to the Controlling Board biannual reports of the use of funds appropriated, until all funds are used.

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CONTENT AND OPERATION

The formation of JobsOhio

The act authorizes the Governor to form a nonprofit corporation, to be named "JobsOhio." Under continuing law, corporations can be formed by one or more persons.¹ JobsOhio's purpose is to promote economic development, job creation, job retention, job training, and the recruitment of business to Ohio. "JobsOhio" is defined to mean the nonprofit corporation formed as described in the preceding sentence, and

¹ See R.C. 1702.04 (not in the act).

includes any subsidiary of that corporation. The act specifies that any section of Ohio law that refers to JobsOhio also refers to any such subsidiary unless otherwise specified or clearly appearing from the context.

Articles of incorporation

The act requires the JobsOhio articles of incorporation to set forth the following:

- (1) The designation of the name of the corporation as JobsOhio;
- (2) The creation of a board of directors consisting of the Governor and eight directors, to be appointed by the Governor, who satisfy the qualifications prescribed – see "**Board of directors of JobsOhio**," below;
- (3) A requirement that the Governor make initial appointments to the board within 60 days after the filing of the articles of incorporation. Of the initial appointments made to the board, two must be for a term ending one year after the date the articles were filed, two must be for a term ending two years after the date the articles were filed, and four must be for a term ending four years after the date the articles were filed. The articles must state that, following the initial appointments, the Governor must 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 a director's domicile, residency, or citizenship status changes such that the act's requirements of all board members being United States citizens and six being Ohioans are no longer met, that director's seat becomes immediately vacant. It must be filled immediately by the Governor for the remainder of the term of the vacant seat.
- (4) The designation of the Governor as the chairperson of the board and procedures for electing directors to serve as officers of JobsOhio and members of an executive committee;
- (5) A provision for the appointment of a chief investment officer of JobsOhio by the recommendation of the board of directors and approval of the Governor. The chief investment officer serves at the pleasure of the Governor and has the power to execute contracts, spend JobsOhio funds, and hire employees on behalf of JobsOhio.
- (6) Provisions requiring the board to do all of the following:
 - (a) Adopt one or more resolutions providing for compensation of the chief investment officer;
 - (b) Approve an employee compensation plan recommended by the chief investment officer;

(c) Approve a contract with the Director of Development for JobsOhio to "assist" the Director and Department with providing services or otherwise carrying out the functions, or duties of the Department, including the operation and management of programs, offices, divisions, or boards, as may be determined by the Director in consultation with the Governor – see "**Contract with JobsOhio**";

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

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

(f) Establish a conflicts of interest policy that, at a minimum, complies with the conflicts of interest policy required under the act – see "**Conflicts of interest policy**";

(g) 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;

(h) 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;

(i) Adopt standards of conduct for the directors.

(7) A statement that directors must not receive any compensation from JobsOhio, except that Governor-appointed directors can be reimbursed for actual and necessary expenses incurred in connection with services performed for JobsOhio;

(8) A provision authorizing the board to amend provisions of the articles of incorporation or regulations, except provisions required by the act;

(9) Procedures by which JobsOhio would be dissolved and by which all its rights, liabilities, and assets would be distributed to the state or to another corporation organized under Ohio law. The procedures are to incorporate any procedures set forth in the act for the dissolution of JobsOhio. The articles must state that no dissolution is to take effect until JobsOhio has made adequate provision for the payment of any outstanding bonds, notes, or other obligations.

(10) A provision establishing an audit committee to be comprised of directors. The articles must require that the audit committee hire an independent certified public accountant to perform a financial audit of JobsOhio at least once every year.

(11) A provision authorizing the Governor, as chairperson of JobsOhio, to remove a director for misconduct as may be defined in the articles or regulations of JobsOhio. Such a removal of a director creates a vacancy on the board that the Governor must fill by appointment for the remainder of the term of office of the vacated seat.²

Board of directors of JobsOhio

Under the act, to qualify for appointment to the JobsOhio board of directors, an individual must satisfy all of the following: (1) understand generally accepted accounting principles and financial statements, (2) possess the ability to assess the general application of those principles in connection with the accounting for estimates, accruals, and reserves, (3) have experience preparing, auditing, analyzing, or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be presented by JobsOhio's financial statements, or experience actively supervising one or more persons engaged in those activities, (4) understand internal controls and procedures for financial reporting, and (5) understand audit committee functions.

Specific experience demonstrating the qualifications required above can be evidenced by any of the following:

(1) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor, or experience in one or more positions that involve the performance of similar functions;

(2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor, or person performing similar functions;

(3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing, or evaluation of financial statements; or

(4) Other experience considered relevant by the Governor consistent with the above paragraph.

² R.C. 187.01.

Each individual appointed to the board of directors must be a United States citizen. At least six of the individuals appointed to the board must be residents of or domiciled in Ohio.³

The act permits JobsOhio to indemnify, to the fullest extent permitted by law, the board, the directors, and officers and employees, from liability incurred in the performance of duties or functions of JobsOhio. JobsOhio may procure civil liability insurance for this purpose.⁴

Contract with JobsOhio

The act requires the Director of Development, as soon as practical after the act's effective date, to execute a contract with JobsOhio for JobsOhio to "assist the Director and the Department of Development with providing services or otherwise carrying out the functions or duties of the Department," including the operation and management of programs, offices, divisions, or boards, as is determined by the Director in consultation with the Governor. The approval and disapproval of awards are to remain functions of the Department. All contracts for grants, loans, and tax incentives are to be between the Department and the recipient and are to be enforced by the Department. JobsOhio is prohibited from executing contracts obligating the Department for loans, grants, tax credits, or incentive awards that JobsOhio recommended to the Department.

Prior to execution, all contracts between the Director and JobsOhio are subject to Controlling Board approval. The term of a contract must not extend beyond a fiscal biennium of the General Assembly, but can be renewed or amended by the parties.

The contract must include all of the following:

(1) Terms assigning to JobsOhio the duties of advising and assisting the Director of Development in the Director's evaluation of the Department and the formulation of recommendations – see "**Report on needed statutory changes**";

(2) Terms designating records created or received by JobsOhio that must be made available to the public under the same conditions as are public records under the Public Records Law. Documents designated to be made available to the public under the contract must be kept on file with the Department of Development.

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

³ R.C. 187.02.

⁴ R.C. 187.11.

"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."

The act states that, other than the act's requirement that all contracts between the Department and JobsOhio are subject to approval from the Controlling Board, nothing prohibits the Department from contracting with JobsOhio to (1) promote and advocate for the state, (2) make recommendations to the Department, (3) perform research for the Department, (4) establish and manage programs or offices on behalf of the Department, by contract, or (5) negotiate on behalf of the state. Additionally, nothing in the act other than the requirement of Controlling Board approval of contracts prohibits the Department from compensating JobsOhio from funds currently appropriated to the Department to perform these functions.

The act also provides that any contract entered into between the Director and JobsOhio must not negate, impair, or otherwise adversely affect the obligation of the state (1) to pay debt charges on certain securities executed or issued by the state or (2) to abide by any pledge or covenant relating to the payment of the debt charges made in related proceedings. The securities affected are those executed by the Director or issued by the Treasurer of State, Ohio Public Facilities Commission, or any other issuing authority authorized to fund economic development programs.⁵

Corporation's nongovernmental status; applicability of laws

The act states that the JobsOhio corporation is not "a state or public department, agency, office, body, institution, or instrumentality" for the purposes of certain laws that otherwise govern state agencies and other entities performing governmental functions.⁶ Accordingly, most laws generally governing the affairs of state agencies and other governmental entities, and their governing boards or employees, do not apply to the JobsOhio corporation or its board or employees. But the act specifically applies some of those laws to JobsOhio and its governing board. And, in some cases where those laws do not apply, alternative rules are prescribed for JobsOhio. The Governor's position as chairman of the board of directors does not exempt the Governor from laws that otherwise apply to the office.

The state agency laws that do not apply, that do apply, or the alternative rules that apply to JobsOhio are indicated below.

⁵ R.C. 187.04 and 122.011.

⁶ R.C. 187.03 and 1.60.

Public official ethics

JobsOhio, its appointed directors, and its employees (excluding the Governor) are not subject to the public official ethics law except for financial disclosure requirements, but some alternative ethics requirements would apply.

Financial disclosure

Financial disclosure requirements, unchanged by the act, vary depending on the office held, with one set of disclosures applying to elected officials, department directors, other high-level department administrators, and directors of various commissions, and another, limited set applying to university trustees and relatively low paid local government officials. The first set includes disclosure of family members, sources of income of any amount, business holdings or positions, property holdings, creditors and debtors, and the sources of gifts over \$75, travel expense payments, or food and beverages received. The second, more limited set includes family members, business holdings or positions, property holdings, and creditors and debtors, but excludes travel expense payments and food and beverages. Income sources must be reported only if the income exceeds \$500, and gifts (other than travel and meals) must be reported only if they exceed \$500 in value. All disclosures are available to the public unless filed by school district officers or uncompensated members of boards and commissions.

The act applies the second, relatively limited set of disclosures to the chief investment officer, any other officer or employee with significant administrative, supervisory, contracting, or investment authority, and any governor-appointed director of JobsOhio (the Governor's disclosure duties are unchanged by the act). Accordingly, those individuals must report, to the Ohio Ethics Commission, family members, business holdings or positions, property holdings, creditors and debtors, sources of income over \$500, and gifts of over \$500 in value. The manner of reporting and any reporting exceptions applicable to public officials or employees also apply. The financial disclosure statements filed by these individuals must be kept confidential. The act provides that it is not to be construed to impair the existing powers and duties of the Ohio Ethics Commission to investigate and enforce the financial disclosure laws with respect to these individuals.⁷

Conflicts of interest, revolving door, and other ethics laws

Law unchanged by the act bars public officials and employees from having an unlawful interest in public contracts and from receiving outside compensation for

⁷ R.C. 102.02, 102.022, and 187.03(A) and (B)(1) and (2).

performing their duties.⁸ It also bars them from representing anyone on a matter in which the official or employee participated; the bar against representation applies throughout the term of office or employment and lasts for 12 months after public employment ends.⁹ Public officials and employees also are prohibited from disclosing or improperly using confidential information, using their position to obtain anything of value if it may improperly influence their duties, soliciting or accepting anything of value if it may improperly influence their duties, soliciting or accepting an honorarium, receiving outside compensation for dealings with the person's public employer, or selling goods or services to the person's public employer.¹⁰

Under the act, these continuing laws do not apply to JobsOhio, its appointed directors, or its employees,¹¹ but the corporation's conflicts of interest policy does apply (see "**Conflicts of interest policy**," below).

Travel, meals, or lodging expenses; expenditure reports

The act states that the actual or in-kind expenditures for travel, meals, or lodging of the Governor or of any public official or employee designated by the Governor are *not* violations of the above-described ethics laws *if* the expenditures are made by the corporation, or on behalf of the corporation by any person, in connection with the Governor's performance of official duties as chairperson of the board of directors of JobsOhio. Any person may be designated by the Governor for this purpose, if the expenditures are made on behalf of the person in connection with the Governor's performance of official duties as chairperson. A public official or employee so designated by the Governor must comply with all applicable financial disclosure requirements.

Beginning in 2012, JobsOhio must file with the Department of Development a written report of all such expenditures paid or incurred during the preceding calendar year. The report is to include (1) the dollar value and purpose of each expenditure, (2) the date of each expenditure, (3) the name of the person that paid or incurred each expenditure, and (4) the location, if any, where services or benefits of an expenditure were received. Any information that may disclose proprietary information is not to be included.¹²

⁸ R.C. 2921.42 and 2921.43 (not in the act).

⁹ R.C. 102.03(A) (not in the act).

¹⁰ R.C. 102.03 and 102.04 (not in the act).

¹¹ R.C. 187.03(B)(1) and 2921.01(A).

¹² R.C. 187.03(B)(3).

Ohio Ethics Commission advisory opinions

A director, officer, or employee of JobsOhio may request an advisory opinion from the Ohio Ethics Commission with regard to questions concerning the provisions of the ethics law to which the person is subject (that is, R.C. 102.02 and 102.022).¹³

Criminal Code offense exclusion and bribery prohibition

Under the act, employees, officers, and directors of JobsOhio (other than the Governor) are not public servants subject to certain Criminal Code provisions specifying offenses against justice and public administration, including bribery. However, the act prohibits a person from promising, offering, or giving any valuable thing or benefit, with the purpose to corrupt a director, officer, or employee of JobsOhio. Whoever violates this prohibition is guilty of the offense of bribery, a third degree felony for which a one to five year prison term may be imposed.¹⁴

Open meetings

The open meetings law that applies to all public offices, although unchanged by the act, does not fully apply to the JobsOhio board of directors. Similar rules would apply, however, to the board's "in-person" meetings at which a quorum of the board must be physically present. For example, the act requires the board to establish a reasonable method whereby any person may obtain the time and place of all in-person public meetings of the board. The act requires the method to provide that any person may obtain reasonable advance notice of all such meetings, upon request and payment of a reasonable fee.

The in-person meetings must be open to the public and the board must promptly prepare, file, and maintain minutes of the meetings. The board, however, is permitted to go into a closed or "executive" session if the matter under consideration is any of the following:

(1) Business strategy of the corporation.

(2) Proprietary information of potential applicants for, or recipients of, assistance from the corporation. "Proprietary information" is defined in the same manner as it is under the open meetings law that applies to governmental bodies: it includes marketing plans, specific business strategy, production techniques and trade secrets, financial projections, or personal financial statements of applicants or members of the

¹³ R.C. 187.03(B)(6).

¹⁴ R.C. 187.10 and 2921.01(B); R.C. 2921.02 (not in the act).

applicants' immediate family, including, but not limited to, tax records or other similar information not open to the public inspection.

(3) Legal matters, including litigation, in which the corporation is or may be involved.

(4) A personnel matter involving one of the corporation's employees.¹⁵

The board's meetings are not subject to some of the other provisions of the government open meetings law, including providing advance notice, upon request, of meetings dealing with specific topics.¹⁶

Public records

The public records law, unchanged by the act, does not apply to JobsOhio. The act requires, however, that the contract between the Department of Development and JobsOhio to designate certain records of the corporation to be made public through the Department. The following records must be filed with the Department and made available to the public under the same terms under which other public records must be made public under the public records law (R.C. 149.43):

--JobsOhio's federal income tax return (IRS Form 990; federal law requires these to be made public--26 U.S.C. 6104).

--The reports of travel, lodging, and meal expenditures made by or on behalf of JobsOhio for the Governor (or Governor-designated public officials or employees) in the Governor's capacity as chairperson of JobsOhio's board.

--Annual compensation of JobsOhio's officers and employees.

--Copies of the independent financial audit of JobsOhio.

--Records of "fully executed incentive proposals."

--Records relating to monitoring commitments made by recipients of incentives.

--Copies of the minutes of all public meetings.

The reports of travel, lodging, and meal expenditures must be filed at least quarterly, or more often if JobsOhio and the Department agree to more frequent filing. Annual filing appears to be the requirement for all the other records.

¹⁵ R.C. 187.01(F) and 187.03.

¹⁶ R.C. 121.22.

Other than the records that the contract designates for public disclosure, no other records received or created by JobsOhio are to be public records, regardless of who may have custody of the record.

JobsOhio also is not subject to laws, unchanged by the act, that govern state agencies' management and retention of records, reports of the "transactions and proceedings" of agencies and of "every private or quasi-public" entity receiving state funding, financial reports by private entities contracting with the state, agency employee databases, and annual reports (R.C. Ch. 149.). But JobsOhio is required to prepare an annual report for the General Assembly and Governor.¹⁷

Lobbying law

Under the act, the JobsOhio corporation's appointed directors, officers, and employees are specifically made subject to the executive agency lobbying law, which has the effect of making any person who lobbies JobsOhio and the lobbyist's employer subject to the same registration and reporting requirements that apply to lobbyists of executive agencies (R.C. 121.60 to 121.69).

In addition, the act prohibits any state elected officer or staff member from receiving or agreeing to receive, directly or indirectly, compensation other than from the agency with which the person serves for any service rendered or to be rendered by the person personally in any case, proceeding, application, or other matter that is before JobsOhio. ("Staff member" means any staff as defined in R.C. 101.70 or in R.C. 121.60.)¹⁸

Campaign or political contributions prohibited

The act prohibits JobsOhio from making campaign or political contributions.¹⁹

Contracting and procurement

The act specifies that JobsOhio is not subject to the law governing state contracting and procurement, including competitive selection, centralized purchasing, preferential purchasing, and disposal of surplus supplies (R.C. Ch. 125.).²⁰

¹⁷ R.C. 187.03 and 187.04.

¹⁸ R.C. 121.67.

¹⁹ R.C. 187.12.

²⁰ R.C. 187.03(A).

Employment law and collective bargaining

JobsOhio is not subject to the collective bargaining law that applies to public employees (R.C. Ch. 4117.).²¹ Laws governing state employee whistleblower protection, civil service, compensation, work hours, leave, and benefits (R.C. Ch. 124.) do not apply to directors or employees of JobsOhio, and directors and employees are not members of the Public Employees Retirement System (PERS).²² Upon employment with JobsOhio, persons formerly employed as public employees are no longer considered public employees for purposes of PERS: the provision in current law that a public employee includes a member of PERS who continues to perform the same job duties under the direction of a contractor who has taken over what had been a publicly operated function does not apply.²³

Financial audits

JobsOhio's records are not necessarily subject to audit by the Auditor of State, but the act requires an independent certified public accountant to perform a financial audit of the corporation each year.²⁴ And, the corporation may be subject to audit by the Auditor of State under law unchanged by the act that authorizes²⁵ the Auditor to audit the accounts of "private institutions, associations, boards, and corporations receiving public money."

Misapplication of public money

Employees and officers of JobsOhio apparently would not be subject to an existing law that imposes personal liability on public officials for all public money they or their subordinates receive under color of office.²⁶ Under that law, a public official includes officers and employees of a public office that is subject to audit by the Auditor of State.²⁷ Because JobsOhio is not a public office subject to mandatory Auditor of State audits, it appears that its employees and officers would not be subject, by virtue of the auditing laws, to the personal liability statute for misapplying or misappropriating any

²¹ R.C. 187.03(B)(1) and 4117.01(B).

²² R.C. 187.03(B)(1).

²³ R.C. 187.03(B); R.C. 145.01(A)(2) (not in the act).

²⁴ R.C. 117.01(D) and 187.01(J).

²⁵ R.C. 117.10 (not in the act).

²⁶ R.C. 9.38 and 9.39 (not in the act).

²⁷ R.C. 9.38 and 117.01 (not in the act).

public money they may receive for the corporation. Liability, however, will attach with respect to mishandling of public money as described next.

Handling of public money by JobsOhio officer or employee

The act provides that if an officer or employee of JobsOhio receives more than \$1,000 of public money in the person's official capacity, the person must deposit the money into the fund or account into which the money is required to be deposited by law or the regulations of the corporation on the next business day following the day the money is received. If the person receives \$1,000 or less of public money, the person must deposit the money in the same time period unless the JobsOhio board of directors adopts a policy permitting a different time period. If the board adopts such a policy, the policy must specify that the time period may not exceed three business days following the day the money is received and that the person must safeguard the moneys until that time. The policy must include provisions and procedures to safeguard public money until it is deposited.

Any JobsOhio officer or employee who has custody or control of public money received or held by JobsOhio under the contract between the Director of Development and JobsOhio or because of the assumption of powers, functions, or duties transferred to JobsOhio by the Director is liable for the public money to the same extent as other public officials are liable under current law.²⁸

Inspector General

The act subjects JobsOhio to the jurisdiction of the state Inspector General in the corporation's capacity as a "person who does business with the state," but not as a state agency.²⁹ The principal effect of this distinction is that the act authorizes the Inspector General to investigate the corporation only upon receiving a complaint alleging wrongdoing and determining there is reasonable cause to investigate; the Inspector General would not be authorized to initiate investigations into the corporation on his or her own initiative, which is a power the Inspector has with respect to state agencies.³⁰ Continuing law permits any person who knows or has reasonable cause to believe that a state employee (or person doing business with the state) committed or is committing a wrongful act or omission to file a complaint. (A complaint must identify the person filing it.)³¹

²⁸ R.C. 187.08.

²⁹ R.C. 121.41(E).

³⁰ R.C. 121.42(A) and (B) (not in the act).

³¹ R.C. 121.46 (not in the act).

Continuing law authorizes the Inspector General to administer oaths, examine witnesses, and issue subpoenas compelling testimony or documents, and state employees (and persons doing business with the state) have a duty to cooperate.³² In conducting an investigation, the Inspector General may enter state agency offices, but this authority does not appear to extend to premises of a person doing business with the state.³³ It is not clear what wrongdoing could be investigated regarding JobsOhio – as a "person who does business with the state" – because the definition of wrongful act or omission under existing law (unchanged by the act) is "an act or omission, committed in the course of office holding or employment, that is not in accordance with the requirements of law or such standards of proper governmental conduct as are commonly accepted in the community and thereby subverts, or tends to subvert, the process of government."³⁴

The Inspector General's report of an investigation generally is a public record.³⁵

General nonprofit corporation law

Although the act requires that JobsOhio be formed under the general nonprofit corporation law (R.C. Ch. 1702.), it also enumerates several sections of that law that do not apply to JobsOhio.³⁶ Most of these sections, by their terms, would not appear to apply to JobsOhio, or to be inconsistent with the act's provisions, even without the act's express statement to that effect. The sections that do not apply pertain to the following matters:

--Lawful purposes of a nonprofit corporation (R.C. 1702.03);

--Incorporation of previously unincorporated associations (R.C. 1702.08);

--De facto incorporation of religious societies (R.C. 1702.09);

--Authority of officers of a corporation that itself is a member of a nonprofit corporation to act on behalf of the member corporation in the nonprofit corporation's affairs (R.C. 1702.21);

³² R.C. 121.43 and 121.45 (not in the act).

³³ See R.C. 121.45.

³⁴ R.C. 121.41(G).

³⁵ R.C. 121.44 (not in the act).

³⁶ R.C. 187.03.

--Provisions stating that the manner of rescinding any action by members of the corporation requires the same authorization as is required for the authorization of the action being rescinded (R.C. 1702.24);

--Election of directors, their number, terms, qualifications, and classification (R.C. 1702.26 to 1702.28);

--Removal of directors as provided in the articles of incorporation or by death or resignation, and the authority of remaining directors (R.C. 1702.29);

--Conflict of interest of corporate directors or officers (the act requires JobsOhio to adopt an alternative conflicts of interest policy – see "**Conflicts of interest policy**") (R.C. 1702.301);

--Creation of committees of the board of directors (R.C. 1702.33);

--Appointment and authority of corporate officers (R.C. 1702.34);

--Inapplicability of usury laws to corporation (R.C. 1702.37);

--Authority and manner of amending articles of incorporation (R.C. 1702.38);

--Judicial sale of corporate property (R.C. 1702.40);

--Authority for merger and consolidation of the corporation with another (R.C. 1702.41 to 1702.46);

--Manner of voluntary dissolution and winding up (R.C. 1702.47 to 1702.51);

--Dissolution by order of a court (R.C. 1702.52 and 1702.521);

--Prohibitions against corporate directors, officers, employees, or agents knowingly making false representations about corporate matters or making false entries in corporate records or accounts, and personal liability therefor (R.C. 1702.54);

--Prohibitions against any person acting for or under the authority of the corporation after it has dissolved and the associated fine (R.C. 1702.57 and 1702.99);

--Applicability of R.C. Ch. 1702. and supersedence of special local provisions of law (R.C. 1702.58);

--Verification of continued existence every five years (R.C. 1702.59);

--Reinstatement of corporation after articles are cancelled (R.C. 1702.60);

--A special law applying only to a certain existing corporation permitting that corporation to create its own police force (R.C. 1702.80).

Miscellaneous

The following continuing laws that apply generally to all state administrative departments would not apply to JobsOhio: requirements for oaths of office and bonds for directors and other officers of state agencies (R.C. 121.11); the location and relocation of central offices of state agencies (R.C. 121.15); and a stated prohibition against contracting with companies found to be in contempt for failing to correct adjudicated unfair labor practices (R.C. 121.23).

Conflicts of interest policy

The act requires the JobsOhio board of directors to adopt a conflicts of interest policy in its regulations that applies to directors and officers of the corporation.³⁷ The act prescribes the minimum content of the policy.³⁸ The minimum policy is substantially identical to the policy recommended by the Internal Revenue Service for federally tax-exempt charitable organizations.³⁹ The policy prescribes procedures, internal to the board, for the voluntary disclosure of conflicts by directors and officers, for addressing undisclosed conflicts, and for preparing meeting minutes pertaining to conflicts of interest deliberations. The policy also requires the board of directors to periodically review whether its compensation policies are reasonable and the result of arm's length bargaining; whether it is operating consistently with its purpose, regulations, and contractual obligations; and whether transactions are fair to the corporation, reflect reasonable investment or payments for goods or services, further the corporation's purpose or contractual obligations, and do not result in direct private benefit to directors, officers, or "other persons," in other than a de minimis manner.

Under the policy's voluntary disclosure provision, a director or officer must disclose to each member of the board of directors any financial interest, that is other than de minimis, the director or officer may have in a transaction or arrangement under the board's consideration, and the board must provide an opportunity for the director or officer to disclose all material facts. The board must determine whether a conflict of interest exists. If the board finds by a majority vote of the disinterested directors that a conflict exists, the disinterested directors then must determine whether the corporation can obtain a more advantageous arrangement without a conflict arising. If such an

³⁷ R.C. 187.01(F)(6).

³⁸ R.C. 187.06.

³⁹ See Appendix A of IRS Form 1023, "Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code," <http://www.irs.gov/instructions/i1023/ar03.html>.

alternative arrangement is not reasonably available, the disinterested directors must vote on whether the original arrangement is in the corporation's best interest, for its own benefit, and is "fair and reasonable." If the board determines that a director or officer has not disclosed an actual or possible conflict of interest, the board must, after notice and an opportunity for explanation, take appropriate disciplinary and corrective action, including an action for breach of fiduciary duty.

The policy also must prohibit any person who serves as a JobsOhio director from soliciting or accepting employment with any entity that receives or has received an incentive or other assistance from JobsOhio as a result of a decision the director participated in as a director. (Compare R.C. 102.03(D) and (E).)

The policy also prohibits a JobsOhio officer or employee, whose responsibilities include compensation matters and who is compensated by JobsOhio for services, from voting or providing information to a compensation committee on matters relating to the individual's compensation.

Lastly, directors and officers are required to annually affirm receipt and understanding of, and agreement to comply with, the policy, and affirm an understanding of the corporation's statutory purpose.⁴⁰

Report on needed statutory changes

The Director of Development, as soon as practical after the act's effective date, must, in consultation with the Governor, evaluate all powers, functions, and duties of the Department. Within six months after that effective date, the Director must submit a report to the General Assembly recommending statutory changes necessary to improve the functioning and efficiency of the Department and to transfer specified powers, functions, and duties of the Department to other existing state agencies or to JobsOhio or eliminate specified powers, functions, or duties. The recommendations must be submitted in writing to the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate.

After submitting the report, the Director, in consultation with the Governor, must continue to evaluate the Department and make additional recommendations on such matters to the General Assembly.⁴¹

⁴⁰ R.C. 187.06.

⁴¹ R.C. 187.05.

Annual JobsOhio report

Not later than March 1, 2012, and the March 1 of each year thereafter, the chief investment officer of JobsOhio must prepare and submit a report of JobsOhio's activities for the preceding year to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate. The annual report must include the following:

- (1) An analysis of Ohio's economy;
- (2) A description of the structure, operation, and financial status of JobsOhio;
- (3) A description of JobsOhio's strategy to improve Ohio's economy and the standards of measure used to evaluate its progress;
- (4) An evaluation of the performance of current strategies and major initiatives;
- (5) An analysis of any statutory or administrative barriers to successful economic development, business recruitment, and job growth in Ohio identified by JobsOhio during the preceding year.⁴²

Bar on commingling of public and private money

The act specifies that any public money in possession of JobsOhio cannot be commingled with other money of the corporation. The act further specifies that any funds or accounts of the corporation that hold public money must be maintained and accounted for separately and independently from other funds or accounts of the corporation.⁴³

Venue for legal actions against directors or former directors

The act specifies that any legal action that JobsOhio may bring against one of its directors or former directors must be brought in the Franklin County Court of Common Pleas.⁴⁴

Legal actions challenging the act or actions taken under the act

The act vests exclusive, original jurisdiction in the Ohio Supreme Court in the case of any legal action claiming the unconstitutionality of the act or any part of the act

⁴² R.C. 187.03(F).

⁴³ R.C. 187.07.

⁴⁴ R.C. 187.09.

or of actions taken by the Governor or the corporation under the authority conferred by the act. Any such action must be filed within 60 days after the act's effective date. Actions filed in a lower court must be dismissed for lack of jurisdiction.⁴⁵

Appropriation

The act appropriates an amount not to exceed \$1 million to establish and operate JobsOhio. The act also requires the Department of Development to submit to the Controlling Board a six-month report of the use of those funds, and additional six-month reports until the funds are all used.⁴⁶

Effective date

The act states that it is not subject to the referendum (because its provisions are, or relate to, an appropriation for current expenses) and therefore takes effect immediately.⁴⁷

HISTORY

ACTION	DATE
Introduced	01-11-11
Reported, H. State Gov't & Elections	01-26-11
Re-referred to H. Finance & Appropriations, H. Rules & Reference	01-26-11
Reported, H. Finance & Appropriations	02-01-11
Passed House (59-37)	02-01-11
Reported, S. Finance	02-16-11
Passed Senate (31-2)	02-16-11
House concurred in Senate amendments (60-35)	02-16-11

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⁴⁵ Section 3 of the act.

⁴⁶ Section 5 of the act.

⁴⁷ Section 6 of the act.

