



# Ohio Legislative Service Commission

## Bill Analysis

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### **Am. Sub. H.B. 1**

129th General Assembly  
(As Passed by the House)

**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

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## **BILL SUMMARY**

### **Formation; articles; board of directors**

- Requires the Governor to be the only member of and 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 of JobsOhio.
- 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 five, but not more than six, of the individuals appointed to the board to be residents of or domiciled in Ohio.
- 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 in the exercise of any or all the powers, functions, or duties of the Department of Development.
- Requires Controlling Board approval, prior to execution, of all contracts between the Director of Development and JobsOhio.
- **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, but, in the case of some of those laws, prescribes alternative rules governing the corporation, its board, and employees.
- Specifies that the state's public officer ethics laws generally do not apply to JobsOhio directors or employees, but imposes the somewhat more limited financial disclosure requirements that apply to public university trustees and some lower-paid officials, and requires the board to adopt a conflict of interest policy recommended by the I.R.S. for tax-exempt organizations.
- 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 except for executive sessions held only to consider legal matters, proprietary information, specific personnel matters, or business strategy.
- 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, including employee compensation, the independent financial audit report, records of finalized incentive proposals, records pertaining to incentive monitoring, the corporation's federal tax return, and records of travel, lodging, and meal expenditures made by or on behalf of JobsOhio for the Governor (as chairman) and Governor-designated public officers.

- 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.
- 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 civil service, compensation, work hours, leave, benefits, whistleblower protection, and prohibitions against political activity.
- Specifies that directors or employees of JobsOhio are not members of the Public Employees Retirement System.
- Specifies that JobsOhio is not necessarily subject to audit by the Auditor of State, but that it must be audited by an independent public accountant.
- 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.

## **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 bill or actions undertaken under the bill's authority.

## Appropriation

- Makes an appropriation to the Department of Development, from the Department's existing FY 2011 appropriation, to fund establishment and operation of JobsOhio.

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## CONTENT AND OPERATION

### The formation of JobsOhio

The bill requires the Governor to be the only member of and to form a nonprofit corporation, to be named "JobsOhio." Under current law, corporations can be formed by one or more persons (see R.C. 1702.04). 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 includes any subsidiary of that corporation. The bill 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 bill 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.
- (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 in the exercise of any and all of the powers, 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 bill--see "**Conflict 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.

(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 bill;

(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 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.<sup>1</sup>

## **Board of directors of JobsOhio**

Under the bill, 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

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<sup>1</sup> R.C. 187.01.

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.

Each individual appointed to the board of directors must be a United States citizen. At least five, but not more than six, of the individuals appointed to the board must be residents of or domiciled in Ohio.<sup>2</sup>

### **Contract with JobsOhio**

The bill requires the Director of Development, as soon as practical after the bill's effective date, to execute a contract with JobsOhio for JobsOhio to "assist the Director and the Department of Development in the exercise of any or all of the powers, 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 Controlling Board must approve, prior to execution, all contracts between the Director and JobsOhio. The contract term must not extend beyond a fiscal biennium of the General Assembly, but can be renewed or amended by the parties.

The contract must include both of the following:

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<sup>2</sup> R.C. 187.02.

(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 and must be filed with the Department annually.<sup>3</sup>

### **Corporation's nongovernmental status; applicability of laws**

The bill 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.<sup>4</sup> 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 bill 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.

#### **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. The existing ethics law prescribes financial disclosure requirements, includes "revolving door" restrictions on post-government employment or representation, and prohibits divulging or using confidential information, receiving or soliciting gifts or honoraria, and self-dealing (R.C. Ch. 102.).

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<sup>3</sup> R.C. 187.04(A).

<sup>4</sup> R.C. 187.03



## **Financial disclosure**

Existing financial disclosure requirements 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 bill applies the second, relatively limited set of disclosures to JobsOhio directors and employees (other than the Governor, whose disclosure duties are unchanged by the bill). Accordingly, appointed directors and employees of JobsOhio must report 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 apply to JobsOhio directors and employees.<sup>5</sup>

## **Conflict of interest, revolving door, and other ethics laws**

Existing law bars public officials and employees from having an unlawful interest in public contracts and from receiving outside compensation for performing their duties.<sup>6</sup> 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.<sup>7</sup> 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 an honorarium, receiving

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<sup>5</sup> R.C. 187.03(B)(1) and (2).

<sup>6</sup> R.C. 2921.42 and 2921.43.

<sup>7</sup> R.C. 102.03(A).

outside compensation for dealings with the person's public employer, or selling goods or services to the person's public employer.<sup>8</sup>

Under the bill, these laws do not apply to JobsOhio, its appointed directors, or its employees,<sup>9</sup> but the corporation's conflict of interest policy does apply (see "**Conflict of interest policy**," below).

### **Open meetings**

The existing open meetings law that applies to all public offices does not fully apply to the JobsOhio board of directors, but similar rules would apply to the board's "in-person" meetings at which a quorum of the board must be physically present. These in-person meetings must be open to the public, but the board 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 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.

The board's in-person meetings are not subject to some of the other provisions of the government open meetings law, including those requiring a method to notify the public of the time and place of regular or special meetings, providing advance notice, upon request, of meetings dealing with specific topics, and requiring meeting minutes to be prepared, retained, and disseminated.

### **Public records**

The existing public records law does not apply to JobsOhio, but the bill requires the contract between the Department of Development and JobsOhio to designate certain

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<sup>8</sup> R.C. 102.03 and 102.04.

<sup>9</sup> R.C. 187.03(B)(1) and 2921.01(A).

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).

--Records 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. However, any such information that would disclose proprietary information does not have to be filed with the Department.

--Annual compensation of JobsOhio's 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.

The records 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. The other records must be filed annually.

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 governing 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.<sup>10</sup>

### **Economic development assistance public databases**

Existing law requires the state to maintain a public web site that includes a searchable database of all state agency grants to "entities." (For this purpose, an entity

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<sup>10</sup> R.C. 187.03(E) and 187.04(B).

includes, among other things, nonprofit corporations; "grants" is not defined.)<sup>11</sup> The web site must show the name of the grant recipient, the grant amount, information on each grant, and "any other relevant information." The Department of Development currently maintains such a web site for grants and similar assistance it provides.<sup>12</sup>

Since JobsOhio is not a state agency under the bill, it appears that if it were authorized to make grants such as those currently made by the Department of Development, it would not be required to include those grants and recipients in the state database.<sup>13</sup>

The state also is required to maintain a public web site including a searchable database of tax incentives "issued by the Department of Development" (including, presumably, the Ohio Tax Credit Authority).<sup>14</sup> The database must show the name of the tax credit, the recipient, and the county where recipient's principal place of business in Ohio is located.

Since existing law requires the state's tax incentive database to include only tax incentives awarded by the Department of Development, it is not clear whether the incentives and recipients receiving awards from JobsOhio would have to be included in the database.

### **Monitoring of compliance by Attorney General**

Existing law requires the Attorney General to monitor the compliance of recipients of economic development assistance with the terms and conditions of the assistance, and to report annually to the General Assembly on compliance.<sup>15</sup> For this purpose, economic development assistance is defined to include "state financial assistance and expenditure in any of the following forms: grants, subgrants, loans, awards, cooperative agreements, or other similar and related forms of financial assistance and contracts, subcontracts, purchase orders, task orders, delivery orders, or other similar and related transactions."

It is not clear whether the monitoring requirement would apply to any assistance awarded by JobsOhio, because the bill does not specify what form of assistance the

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<sup>11</sup> R.C. 125.112(F).

<sup>12</sup> See <http://www.development.ohio.gov/hb420/>

<sup>13</sup> R.C. 1.60.

<sup>14</sup> R.C. 125.20(A)(2). See <http://www.development.ohio.gov/HB1/>

<sup>15</sup> R.C. 125.112(G).

corporation would provide, or whether awards by the corporation would constitute "state financial assistance and expenditure." Further, the corporation's status as not being a state agency appears to exempt it from existing law's requirement that the state agency that awards the assistance must assist the Attorney General with the monitoring duties.

### **Lobbying law**

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).

### **Contracting and procurement**

The bill 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.).<sup>16</sup>

### **Employment law and collective bargaining**

JobsOhio is not subject to the collective bargaining law that applies to public employees (R.C. Ch. 4117.).<sup>17</sup> Laws governing state employee civil service, compensation, work hours, leave, benefits, whistleblower protection, and prohibitions against political activity (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.<sup>18</sup>

### **Financial audits**

JobsOhio's records are not necessarily subject to audit by the Auditor of State, but the bill requires an independent certified public accountant to perform a financial audit of the corporation each year.<sup>19</sup> And, the corporation may be subject to audit by

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<sup>16</sup> R.C. 187.03(A).

<sup>17</sup> R.C. 187.03(B)(1) and 4117.01(B).

<sup>18</sup> R.C. 187.03(B)(1).

<sup>19</sup> R.C. 117.01(D).

the Auditor of State under existing law<sup>20</sup> authorizing 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.<sup>21</sup> Under the existing law, a public official includes officers and employees of a public office that is subject to audit by the Auditor of State.<sup>22</sup> 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 to the personal liability statute for misapplying or misappropriating any public money they may receive for the corporation.

### **Inspector General**

The bill 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.<sup>23</sup> The principal effect of this distinction is that the bill 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.<sup>24</sup> Existing 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 may file a complaint. (A complaint must identify the person filing it.)

Existing 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.<sup>25</sup> In

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<sup>20</sup> R.C. 117.10.

<sup>21</sup> R.C. 9.38 and 9.39.

<sup>22</sup> R.C. 9.38 and 117.01.

<sup>23</sup> R.C. 121.41(E). A person doing business with the state has the same standing under the Inspector General law as a state employee because both terms are incorporated into the statute's definition of state employee.

<sup>24</sup> R.C. 121.42(A) and (B).

<sup>25</sup> R.C. 121.43 and 121.45.

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.<sup>26</sup> 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 bill) 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."<sup>27</sup>

The Inspector General's report of an investigation generally is a public record.<sup>28</sup>

### **Miscellaneous**

The following existing 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).

### **General nonprofit corporation law**

Although the bill 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.<sup>29</sup> 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);

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<sup>26</sup> See R.C. 121.45.

<sup>27</sup> R.C. 121.41(G).

<sup>28</sup> R.C. 121.44.

<sup>29</sup> Most of these sections, by their terms, would not appear to apply to JobsOhio, or to be inconsistent with the bill's provisions, even without the bill's express statement to that effect.

--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 bill requires JobsOhio to adopt an alternative conflict of interest policy--see "**Conflict 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);

### **Conflict of interest policy**

The bill requires the JobsOhio board of directors to adopt a conflict of interest policy in its regulations that applies to directors and officers of the corporation.<sup>30</sup> The bill prescribes the minimum content of the policy.<sup>31</sup> The minimum policy is substantially identical to the policy recommended by the Internal Revenue Service for federally tax-exempt charitable organizations.<sup>32</sup> 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 conflict 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 excessive private benefit to directors, officers, or "other persons."

Under the policy's voluntary disclosure provision, a director or officer must disclose to each member of the board of directors any financial interest 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 other material facts. The board must determine whether a conflict of interest exists. If the board finds that a conflict exists, it then must determine whether the corporation can obtain a more advantageous arrangement without a conflict arising. If such an alternative arrangement is not reasonably available, the board must vote on whether the original arrangement is in the corporation's best interest, for its own benefit, and is "fair and reasonable."

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).)

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<sup>30</sup> R.C. 187.01(F)(6).

<sup>31</sup> R.C. 187.06.

<sup>32</sup> 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>.

The policy requires the corporation to distribute the policy to directors and officers, requires directors and officers to affirm receipt and understanding of, and agreement with, the policy, and affirm an understanding of the corporation's statutory purpose.

### **Report on needed statutory changes**

The Director of Development, as soon as practical after the bill'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.<sup>33</sup>

### **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;

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<sup>33</sup> R.C. 187.05.

(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.<sup>34</sup>

### **Venue for legal actions against directors or former directors**

The bill 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.<sup>35</sup>

### **Legal actions challenging the act or actions taken under the act**

The bill 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 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.<sup>36</sup>

### **Effective date**

The bill states that it is not subject to the referendum and therefore takes effect immediately, pursuant to R.C. 1.471. That section provides that the General Assembly determines the effective date of any section of an act that includes an appropriation for current expenses if the section is a current expense appropriation, an earmarking of a current expense appropriation, or a provision that depends on a current expense appropriation in the act.<sup>37</sup> (Section 5 of the bill makes an appropriation.)

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
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

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<sup>34</sup> R.C. 187.03(E).

<sup>35</sup> R.C. 187.07.

<sup>36</sup> Section 3 of the bill.

<sup>37</sup> Section 6 of the bill.