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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Rogers

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SUMMARY

- Subjects JobsOhio to an annual audit by the Auditor of State.
- Requires JobsOhio to file an annual financial report.
- Modifies the authority of the Auditor to audit specific funds or accounts of a private entity.
- Eliminates a provision excluding, from the meaning of public money, any money earned from an asset a person receives from a public office under an agreement under which the public office receives consideration from the person.

DETAILED ANALYSIS

Overview

The Auditor of State audits public offices every fiscal year or every other fiscal year,¹ and the Auditor has authority to audit any fund or account of a private entity if public money² from a public office has been placed or deposited into the fund or account.³ JobsOhio, a nonprofit corporation created by Ohio law to encourage economic development through investment in Ohio communities, currently is treated as a private entity for audit purposes, with special

¹ R.C. 117.11, not in the bill.

² Defined as “any money received, collected by, or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office.” There are two exclusions – both eliminated by the bill – discussed in more detail below. R.C. 117.01(C).

³ R.C. 117.10. In some cases, the Auditor may audit other funds or accounts of the private entity.

provisions regarding an annual audit. The bill instead aims to treat JobsOhio in a similar manner as public offices for audit purposes, still with special provisions regarding an annual audit.⁴

JobsOhio audit and financial report

When JobsOhio initially was established, Ohio law required its Articles of Incorporation to include a provision establishing an Audit Committee comprised of directors for the purpose of hiring an accounting firm to perform an annual financial audit of JobsOhio. In addition, and according to a written agreement between JobsOhio and the accounting firm, the firm conducts a supplemental compliance and control review. The Audit Committee must select the accounting firm in consultation with the Auditor; the Auditor is also party to the written agreement regarding the supplemental compliance and control review.⁵ The annual financial audit and supplemental review are available to the public⁶ and must be provided to the Governor, Auditor, Senate President, and House Speaker.⁷

The bill retains the Audit Committee but otherwise eliminates these provisions. Instead, the bill requires the Auditor to conduct an annual financial audit of JobsOhio; the Auditor has discretion to engage an independent certified public accountant to conduct the audit, to be selected in consultation with the Audit Committee.⁸ This is in similar fashion to public offices (other than state agencies), which under continuing law may request that an independent certified public accountant conduct an audit in lieu of the Auditor; in such cases, the public office participates in the selection of the accountant.⁹

Each financial audit of JobsOhio must include an audit of the revenues, receipts, and expenditures associated with the Enterprise Acquisition Project, under which JobsOhio operates Ohio's liquor sales business in lieu of the Department of Commerce.¹⁰ Under current law, the revenues and receipts associated with the project do not constitute "public money" and therefore, the Auditor does not have authority to audit the JobsOhio funds/accounts where those revenues and receipts are placed or deposited.¹¹

⁴ The bill's provisions also apply to any nonprofit corporation of which JobsOhio is the sole member, such as JobsOhio Beverage Systems.

⁵ R.C. 187.01(J).

⁶ R.C. 187.04(B)(2)(d).

⁷ R.C. 187.01(J)(3).

⁸ R.C. 187.04(G)(2) and 117.561.

⁹ R.C. 117.115, not in the bill.

¹⁰ R.C. 117.561 and 4313.02, not in the bill.

¹¹ R.C. 117.01(C)(2) and 117.10(A). The taxes and fees related to liquor sales are currently "public money."

Also under the bill, JobsOhio must file an annual financial report,¹² which public offices are required to file under continuing law;¹³ the Auditor also has authority under continuing law to require a private entity that receives public money to file annual reports.¹⁴ Both the audit report for the annual financial audit and the annual financial report are available to the public,¹⁵ and the financial report must be published on JobsOhio's website.¹⁶

The Audit Committee's responsibilities under the bill are to consult with the Auditor regarding the Auditor's annual financial audit and to oversee JobsOhio's compliance with the annual financial report requirement.¹⁷

The bill effectively requires JobsOhio to amend its Articles of Incorporation to reflect these modifications.

Public money received by private entities

The bill also modifies the authority of the Auditor to audit specific funds or accounts of a private entity. Current law limits the scope of such an audit to the specific funds or accounts into which public money from a public office has been placed or deposited.¹⁸

Finally, the bill eliminates a provision of current law that specifies the following is not considered public money:¹⁹

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

¹² R.C. 187.04(G)(1). The report must be prepared according to generally accepted accounting principles and certified by the JobsOhio Board of Directors or the treasurer/other chief fiscal officer.

¹³ R.C. 117.38, not in the bill, regarding public offices other than state agencies; and 126.21(A)(9), not in the bill, regarding state agencies.

¹⁴ R.C. 117.10(A).

¹⁵ R.C. 187.04(B)(2)(d). Records received by JobsOhio from any person or entity not subject to Ohio's Public Records Act are not disclosable as public records under continuing law (R.C. 187.04(C)(2)), and any such information must be redacted from any audit or report under the bill.

¹⁶ R.C. 187.04(G)(2). If JobsOhio no longer has a website in the future, the report must be published on Franklin County's website.

¹⁷ R.C. 187.01(J).

¹⁸ R.C. 117.10(A).

¹⁹ R.C. 117.01(C)(1).

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 03-03-20 |
