

As Introduced

133rd General Assembly

Regular Session

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H. B. No. 531

Representative Rogers

Cosponsors: Representatives Becker, Brown, Crawley, Crossman, Hicks-Hudson, Lepore-Hagan, Lightbody, Patterson, Skindell, Smith, K., Sobecki

A BILL

To amend sections 117.01, 117.10, 187.01, and 1
187.04 and to enact section 117.561 of the 2
Revised Code to establish that JobsOhio must 3
submit to audits by the Auditor of State, and 4
that an audit of JobsOhio must include an audit 5
of the revenues, receipts, and expenditures of 6
JobsOhio associated with the enterprise 7
acquisition project. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 117.01, 117.10, 187.01, and 9
187.04 be amended and section 117.561 of the Revised Code be 10
enacted to read as follows: 11

Sec. 117.01. As used in this chapter: 12

(A) "Color of office" means actually, purportedly, or 13
allegedly done under any law, ordinance, resolution, order, or 14
other pretension to official right, power, or authority. 15

(B) "Public accountant" means any person who is authorized 16
by Chapter 4701. of the Revised Code to use the designation of 17

certified public accountant or who was registered prior to
January 1, 1971, as a public accountant.

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

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

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

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

(D) "Public office" means any state agency, public institution, political subdivision, other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.	47 48 49 50
"Public office" does not include the nonprofit corporation formed under section 187.01 of the Revised Code.	51 52
(E) "Public official" means any officer, employee, or duly authorized representative or agent of a public office.	53 54
(F) "State agency" means every organized body, office, agency, institution, or other entity established by the laws of the state for the exercise of any function of state government.	55 56 57
(G) "Audit" means any of the following:	58
(1) Any examination, analysis, or inspection of the state's or a public office's financial statements or reports;	59 60
(2) Any examination, analysis, or inspection of records, documents, books, or any other evidence relating to either of the following:	61 62 63
(a) The collection, receipt, accounting, use, or expenditure of public money by a public office or by a private institution, association, board, or corporation;	64 65 66
(b) The determination by the auditor of state, as required by section 117.11 of the Revised Code, of whether a public office has complied with all the laws, rules, ordinances, or orders pertaining to the public office.	67 68 69 70
(3) Any other type of examination, analysis, or inspection of a public office, or of the specific funds or accounts of a private institution, association, board, or corporation into which receiving public money has been placed or deposited, that	71 72 73 74

is conducted according to generally accepted or governmental
auditing standards established by rule pursuant to section
117.19 of the Revised Code. 75
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(H) "Person" has the meaning defined in section 1.59 of
the Revised Code. 78
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Sec. 117.10. (A) The auditor of state shall audit all
public offices as provided in this chapter. The auditor of state
also may audit the specific funds or accounts of private
institutions, associations, boards, and corporations ~~into which~~
~~has been placed or deposited receiving~~ public money ~~from a~~
~~public office~~ and may require of them annual reports in such
form as the auditor of state prescribes. The auditor of state
may audit some or all of the other funds or accounts of a
private institution, association, board, or corporation that has
received public money from a public office only if one or more
of the following applies: 90

(1) The audit is specifically required or authorized by
the Revised Code; 91
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(2) The private institution, association, board, or
corporation requests that the auditor of state audit some or all
of its other funds or accounts; 93
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(3) All of the revenue of the private institution,
association, board, or corporation is composed of public money; 96
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(4) The private institution, association, board, or
corporation failed to separately and independently account for
the public money in its possession, in violation of section
117.431 of the Revised Code; 98
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(5) The auditor of state has a reasonable belief that the
private institution, association, board, or corporation 102
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illegally expended, converted, misappropriated, or otherwise 104
cannot account for the public money it received from a public 105
office and that it is necessary to audit its other funds or 106
accounts to make that determination. 107

(B) If the auditor of state performs or contracts for the 108
performance of an audit, including a special audit, of the 109
public employees retirement system, school employees retirement 110
system, state teachers retirement system, state highway patrol 111
retirement system, or Ohio police and fire pension fund, the 112
auditor of state shall make a timely report of the results of 113
the audit to the Ohio retirement study council. 114

(C) The auditor of state may audit the accounts of any 115
provider as defined in section 5164.01 of the Revised Code. 116

(D) If a public office has been audited by an agency of 117
the United States government, the auditor of state may, if 118
satisfied that the federal audit has been conducted according to 119
principles and procedures not contrary to those of the auditor 120
of state, use and adopt the federal audit and report in lieu of 121
an audit by the auditor of state's own office. 122

(E) Within thirty days after the creation or dissolution 123
or the winding up of the affairs of any public office, that 124
public office shall notify the auditor of state in writing that 125
this action has occurred. 126

(F) ~~Nothing in this section precludes the~~ The auditor of 127
state ~~from issuing~~ may issue to a private institution, 128
association, board, or corporation a subpoena and compulsory 129
process for the attendance of witnesses or the production of 130
records under section 117.18 of the Revised Code if the subpoena 131
and compulsory process is in furtherance of an audit the auditor 132

of state is authorized by law to perform. 133

Sec. 117.561. The auditor of state shall audit JobsOhio, 134
the nonprofit corporation formed under section 187.01 of the 135
Revised Code, and of any nonprofit entity the sole member of 136
which is JobsOhio, each fiscal year in accordance with this 137
chapter. The auditor may engage an independent certified public 138
accountant to conduct the audit that may be selected in 139
consultation with the audit committee established under division 140
(J) of section 187.01 of the Revised Code. An audit of JobsOhio 141
or any nonprofit entity the sole member of which is JobsOhio, 142
shall include, but not be limited to, an audit of revenues, 143
receipts, and expenditures associated with the enterprise 144
acquisition project under section 4313.02 of the Revised Code. 145

Sec. 187.01. As used in this chapter, "JobsOhio" means the 146
nonprofit corporation formed under this section, and includes 147
any subsidiary of that corporation. In any section of law that 148
refers to the nonprofit corporation formed under this section, 149
reference to the corporation includes reference to any such 150
subsidiary unless otherwise specified or clearly appearing from 151
the context. 152

The governor is hereby authorized to form a nonprofit 153
corporation, to be named "JobsOhio," with the purposes of 154
promoting economic development, job creation, job retention, job 155
training, and the recruitment of business to this state. Except 156
as otherwise provided in this chapter, the corporation shall be 157
organized and operated in accordance with Chapter 1702. of the 158
Revised Code. The governor shall sign and file articles of 159
incorporation for the corporation with the secretary of state. 160
The legal existence of the corporation shall begin upon the 161
filing of the articles. 162

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

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

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

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

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

- (E) A provision for the appointment of a chief investment officer of the corporation by the recommendation of the board and approval of the governor. The chief investment officer shall serve at the pleasure of the board and shall have the power to execute contracts, spend corporation funds, and hire employees on behalf of the corporation. If the position of chief investment officer becomes vacant for any reason, the vacancy shall be filled in the same manner as provided in this division. 193
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- (F) Provisions requiring the board to do all of the following: 201
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- (1) Adopt one or more resolutions providing for compensation of the chief investment officer; 203
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- (2) Approve an employee compensation plan recommended by the chief investment officer; 205
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- (3) Approve a contract with the director of development services for the corporation to assist the director and the development services agency with providing services or otherwise carrying out the functions or duties of the agency, including the operation and management of programs, offices, divisions, or boards, as may be determined by the director of development services in consultation with the governor; 207
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- (4) Approve all major contracts for services recommended by the chief investment officer; 214
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- (5) Establish an annual strategic plan and standards of measure to be used in evaluating the corporation's success in executing the plan; 216
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- (6) Establish a conflicts of interest policy that, at a minimum, complies with section 187.06 of the Revised Code; 219
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- (7) Hold a minimum of four board of directors meetings per year at which a quorum of the board is physically present, and such other meetings, at which directors' physical presence is not required, as may be necessary. Meetings at which a quorum of the board is required to be physically present are subject to divisions (C), (D), and (E) of section 187.03 of the Revised Code. 221
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- (8) Establish a records retention policy and present the policy, and any subsequent changes to the policy, at a meeting of the board of directors at which a quorum of the board is required to be physically present pursuant to division (F)(7) of this section; 228
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- (9) Adopt standards of conduct for the directors. 233
- (G) A statement that directors shall not receive any compensation from the corporation, except that directors may be reimbursed for actual and necessary expenses incurred in connection with services performed for the corporation; 234
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- (H) A provision authorizing the board to amend provisions of the corporation's articles of incorporation or regulations, except provisions required by this chapter; 238
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- (I) Procedures by which the corporation would be dissolved and by which all corporation rights and assets would be distributed to the state or to another corporation organized under this chapter. These procedures shall incorporate any separate procedures subsequently set forth in this chapter for the dissolution of the corporation. The articles shall state that no dissolution shall take effect until the corporation has made adequate provision for the payment of any outstanding bonds, notes, or other obligations. 241
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(J) A provision establishing an audit committee, to be comprised of directors, to consult with the auditor of state under section 117.561 of the Revised Code, and to oversee the corporation's compliance with division (G) of section 187.04 of the Revised Code. The articles shall require that the audit committee hire a firm of independent certified public accountants, selected in consultation with the auditor of state, to perform, once each year, a financial audit of the corporation and of any nonprofit entity the sole member of which is JobsOhio. The articles also shall require all of the following:

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

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

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

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

vacated seat. 280

Sec. 187.04. (A) The director of development services, as 281
soon as practical after February 18, 2011, shall execute a 282
contract with JobsOhio for the corporation to assist the 283
director and the development services agency with providing 284
services or otherwise carrying out the functions or duties of 285
the agency, including the operation and management of programs, 286
offices, divisions, or boards, as may be determined by the 287
director in consultation with the governor. The approval or 288
disapproval of awards involving public money shall remain 289
functions of the agency. All contracts for grants, loans, and 290
tax incentives involving public money shall be between the 291
agency and the recipient and shall be enforced by the agency. 292
JobsOhio may not execute contracts obligating the agency for 293
loans, grants, tax credits, or incentive awards recommended by 294
JobsOhio to the agency. Prior to execution, all contracts 295
between the director and JobsOhio entered into under this 296
section that obligate the agency to pay JobsOhio for services 297
rendered are subject to controlling board approval. 298

The term of an initial contract entered into under this 299
section shall not extend beyond June 30, 2013. Thereafter, the 300
director and JobsOhio may renew the contract for subsequent 301
fiscal biennia, but at no time shall a particular contract be 302
effective for longer than a fiscal biennium of the general 303
assembly. 304

JobsOhio's provision of services to the agency as 305
described in this section shall be pursuant to a contract 306
entered into under this section. If at any time the director 307
determines that the contract with JobsOhio may not be renewed 308
for the subsequent fiscal biennium, the director shall notify 309

JobsOhio of the director's decision not later than one hundred
310 twenty days prior to the end of the current fiscal biennium. If
311 the director does not provide such written notice to JobsOhio
312 prior to one hundred days before the end of the current fiscal
313 biennium, the contract shall be renewed upon such terms as the
314 parties may agree, subject to the requirements of this section.
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(B) A contract entered into under this section shall
316 include all of the following:
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(1) Terms assigning to the corporation the duties of
318 advising and assisting the director in the director's evaluation
319 of the agency and the formulation of recommendations under
320 section 187.05 of the Revised Code;
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(2) Terms designating records created or received by
322 JobsOhio that shall be made available to the public under the
323 same conditions as are public records under section 149.43 of
324 the Revised Code. Documents designated to be made available to
325 the public pursuant to the contract shall be kept on file with
326 the agency.
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Among records to be designated under this division shall
328 be the following:
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(a) The corporation's federal income tax returns;
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(b) The report of expenditures described in division (B)
331 (3) of section 187.03 of the Revised Code. The records shall be
332 filed with the agency at such times and frequency as agreed to
333 by the corporation and the agency, which shall not be less
334 frequently than quarterly.
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(c) The annual total compensation paid to each officer and
336 employee of the corporation;
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(d) A copy of the <u>annual financial report for prepared</u> <u>under division (G)(1) of this section, and the report of each</u> <u>financial audit of the corporation and of each supplemental</u> <u>compliance and control review of the corporation performed by a</u> <u>firm of independent certified public accountants pursuant to</u> <u>division (J) of section 187.01 of the Revised Code prepared</u> <u>under section 117.561 of the Revised Code. Information that</u> <u>appears in the report or audit that identifies a person or</u> <u>entity described under division (C)(2) of this section that</u> <u>provided a record to JobsOhio shall be redacted from the report</u> <u>or audit before the document is made available to the public.</u> <u>Any redaction shall be redacted from the report or audit before</u> <u>the document is made available to the public and shall be made</u> <u>in compliance with division (B)(1) of section 149.43 of the</u> <u>Revised Code.</u>	338 339 340 341 342 343 344 345 346 347 348 349 350 351 352
(e) Records of any fully executed incentive proposals, to be filed annually;	353 354
(f) Records pertaining to the monitoring of commitments made by incentive recipients, to be filed annually;	355 356
(g) A copy of the minutes of all public meetings described in division (C) of section 187.03 of the Revised Code not otherwise closed to the public.	357 358 359
(3) The following statement acknowledging that JobsOhio is not acting as an agent of the state:	360 361
"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	362 363 364 365 366

contract." 367

(C) (1) Records created by JobsOhio are not public records 368
for the purposes of Chapter 149. of the Revised Code, regardless 369
of who may have custody of the records, unless the record is 370
designated to be available to the public by the contract under 371
division (B) (2) of this section. 372

(2) Records received by JobsOhio from any person or entity 373
that is not subject to section 149.43 of the Revised Code are 374
not public records for purposes of Chapter 149. of the Revised 375
Code, regardless of who may have custody of the records, unless 376
the record is designated to be available to the public by the 377
contract under division (B) (2) of this section. 378

(3) Records received by JobsOhio from a public office as 379
defined in section 149.011 of the Revised Code that are not 380
public records under section 149.43 of the Revised Code when in 381
the custody of the public office are not public records for the 382
purposes of section 149.43 of the Revised Code regardless of who 383
has custody of the records. 384

~~(4) Division (B) of section 4701.19 of the Revised Code applies to any work papers of the firm of independent certified public accountants engaged to perform the annual financial audit and the supplemental compliance and control review described in division (J) of section 187.01 of the Revised Code, and to the financial audit report and any report of the supplemental compliance and control review, unless the record is designated to be available to the public by the contract under division (B) (2) of this section.~~ 385
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(D) Any contract executed under authority of this section 394
shall not negate, impair, or otherwise adversely affect the 395

obligation of this state to pay debt charges on securities	396
executed by the director or issued by the treasurer of state,	397
Ohio public facilities commission, or any other issuing	398
authority under Chapter 122., 151., 165., or 166. of the Revised	399
Code to fund economic development programs of the state, or to	400
abide by any pledge or covenant relating to the payment of those	401
debt charges made in any related proceedings. As used in this	402
division, "debt charges," "proceedings," and "securities" have	403
the same meanings as in section 133.01 of the Revised Code.	404
(E) Nothing in this section, other than the requirement of	405
controlling board approval, shall prohibit the agency from	406
contracting with JobsOhio to perform any of the following	407
functions:	408
(1) Promoting and advocating for the state;	409
(2) Making recommendations to the agency;	410
(3) Performing research for the agency;	411
(4) Establishing and managing programs or offices on	412
behalf of the agency, by contract;	413
(5) Negotiating on behalf of the state.	414
(F) Nothing in this section, other than the requirement of	415
controlling board approval, shall prohibit the agency from	416
compensating JobsOhio from funds currently appropriated to the	417
agency to perform the functions described in division (E) of	418
this section.	419
<u>(G) (1) JobsOhio shall prepare an annual financial report</u>	420
<u>under section 117.38 of the Revised Code, that is prepared</u>	421
<u>according to generally accepted accounting principles, and that</u>	422
<u>is certified by the board of directors of the corporation or its</u>	423

treasurer or other chief fiscal officer to the best knowledge 424
and belief of those persons certifying the report. The audited 425
financial report shall be published on the corporation's web 426
site, or if the corporation does not have a web site, on the web 427
site of the county in which the corporation is located. 428

(2) JobsOhio shall submit to audits by the auditor of 429
state under section 117.561 of the Revised Code. 430

Section 2. That existing sections 117.01, 117.10, 187.01, 431
and 187.04 of the Revised Code are hereby repealed. 432

Section 3. Section 117.10 of the Revised Code is presented 433
in this act as a composite of the section as amended by both Am. 434
Sub. H.B. 59 and Am. S.B. 67 of the 130th General Assembly. The 435
General Assembly, applying the principle stated in division (B) 436
of section 1.52 of the Revised Code that amendments are to be 437
harmonized if reasonably capable of simultaneous operation, 438
finds that the composite is the resulting version of the section 439
in effect prior to the effective date of the section as 440
presented in this act. 441