



HB 153 Unanswered Questions: Liquor Profits and JobsOhio

House Bill (HB) 153, the state operating budget for fiscal years 2012 and 2013, provides the mechanism for funding JobsOhio, the newly created private nonprofit responsible for handling the state's economic development. HB 153 authorizes the state to transfer the distribution system for spirituous liquor and all its associated assets, defined as the "enterprise acquisition project," to JobsOhio for no more than 25 years. In turn, JobsOhio is expected to issue bonds supported by liquor profits, allowing for a one-time transfer of \$500 million to the General Revenue Fund (GRF) to compensate the state for the transfer of the state's wholesale distribution system. The bonds will also provide JobsOhio with an estimated \$700 million to pay off existing debt and \$300 million to fund undefined economic development programs.

Selling nearly \$7 billion in state assets, which represents the amount of revenue Ohio would receive from liquor profits over a 25 year period, for \$1.5 billion of one-time money is a risky proposition that should be approached cautiously and be fully vetted by the Ohio General Assembly. Thus, Innovation Ohio has compiled a list of policy areas that need to be properly addressed to fully weigh the merits of such a proposal.

Why Should the General Assembly Give Up Its Appropriation Authority for the Next 25 Years to Fund JobsOhio?

Currently, net liquor profits are transferred into the state's GRF after all operating costs and debt service payments are realized, which represents an estimated \$136.3 million in transfers to the GRF in fiscal year 2011. Essentially, the HB 153 liquor enterprise privatization proposal ties the hands of future General Assemblies by transferring 25 years' worth of liquor profits for \$1.5 billion in one-time money and transfers legislators' constitutional right to appropriate that money to JobsOhio.

The excess liquor profits currently deposited into the GRF represent almost the same amount of money the administration hopes to generate from the transfer of the state's liquor profits. Apparently, the new administration does not trust the Ohio General Assembly to commit to job creation in Ohio. The governor, as stated in the executive budget's Reforms Book, says:

"There is currently no single, dedicated, long-term source of revenue to support economic development activities in Ohio. At this time, some of the most effective job creation and retention tools available rely upon state general revenue funding. This connection necessarily and counterproductively results in decreased funding for job creation and economic development efforts during more difficult economic cycles."

If the decision has now been made to fund JobsOhio with public money, wouldn't it be simpler and more transparent for the General Assembly to simply earmark excess liquor

profits for economic development and appropriate it to either the Ohio Department of Development or JobsOhio?

What Happens to the Clean Ohio Revitalization Fund and Programs?

Liquor profits from the state's operation of the wholesale liquor distribution system are currently used to issue debt to fund economic development loans and grants through the Facilities Establishment Fund and the Clean Ohio Revitalization Fund. Specifically, the Clean Ohio Revitalization Fund, as described in the executive budget's The Budget Book, supports projects that provide for "the environmentally safe and productive development and use or reuse of publicly- and privately-owned lands with the state." Ohio voters approved a \$400 million bond program expansion in 2008, understanding that the Clean Ohio Fund was a crucial piece of the Ohio Bipartisan Job Stimulus Plan.

The proposal, as explained in the administration's Reforms Book, foresees a contract between JobsOhio and the state to manage the loan portfolios, allowing JobsOhio to collect repayments and generate new loans. Yet HB 153 appears to lump the Clean Ohio Revitalization Fund into a section with other loan programs that the administration has publicly admitted may not continue to exist after JobsOhio's initial review of state economic development programs.

Voters approved the authority to issue an additional \$400 million in debt to float bonds to pay for this program. If the privatization of the state's liquor enterprise results in the shutting down of this program, does this represent a broken promise to voters?

Why Exempt the Hiring of Financial Consultants from Competitive Bidding Requirements or State Controlling Board Approval?

HB 153 grants the director of budget and management, director of commerce and director of development the authority to hire underwriters, investment bankers and financial advisors without any legislative or government oversight. The purpose behind allowing three appointed officials, who are not accountable to voters, the authority to use public funds to contract with financial consultants without being subject to competitive bidding requirements or the State Controlling Board approval process must be explained.

Without such oversight and transparency, how can Ohioans be assured that the state is being efficient in its expenditure of public funds and contracts are being awarded in a manner that doesn't allow for conflicts of interest?

How Much Is the Privatization Going to Cost the State?

Has the Department of Budget and Management, Commerce or Development determined how much the transfer and transactions associated with issuing JobsOhio bonds backed by the liquor profit revenue stream will cost? How much will the aforementioned financial consultants cost the state in fees? Has Development or any of the associated state agencies budgeted for the transaction costs?

The General Assembly, and the citizens of Ohio, should be put in the position of having to support a blank check without any attempt to demonstrate the viability of the plan. What is

the budget for JobsOhio factoring in the debt service as well as the upfront start-up costs and the ongoing costs of operation moving forward?

Why Does HB 153 Define JobsOhio So Broadly?

Section 4313.01 of HB 153 defines JobsOhio very broadly, stating that it includes “any successor or assignee of that corporation or any such subsidiary if and to the extent permitted by the transfer agreement or Chapter 183 of the Revised Code.” Bondholders are not likely to allow JobsOhio to transfer rights to the revenue stream committed to pay debt service on bonds, so is this language included to allow JobsOhio to further transfer its operations or assets?

Combined with language that also allows JobsOhio to take real and personal property, and interests in that property, and sell or grant it to a third party, it would appear that JobsOhio anticipates spinning off other aspects of its operations. What is the justification for allowing JobsOhio to sell property or assets belonging to either the division of liquor control or the Liquor Control Commission?

Will JobsOhio Be Required to Pay Federal Tax On the Profit Derived from the Operation of the Wholesale Liquor Distribution System?

Obviously, the State of Ohio does not pay federal taxes on the profits derived from its operation of the state’s wholesale liquor enterprise because it is a state function. HB 153 very explicitly exempts JobsOhio from state taxation and maintains that JobsOhio will be taxed in the same manner as the operations of the Department of Commerce’s division of liquor control. However, the Ohio Revised Code cannot trump federal tax statute, wherein some profit generated by nonprofits may be taxable if derived from an unrelated business activity.

Has the administration consulted tax experts on the taxability of the profits JobsOhio would derive from the operation of the state’s spirituous liquor enterprise? The wholesale distribution of liquor may be not sufficiently related to the nonprofit’s primary mission to ensure the activity is tax-exempt, despite its dependence the revenue stream for funding. Furthermore, assuming that JobsOhio seeks federal tax-exempt status under 501(c)(3), what evidence can the administration provide that the entity can withstand scrutiny as an economic development corporation operating for charitable purposes, for example, providing relief for poor and distressed areas, promoting social welfare organizations, or eliminating prejudice and discrimination?