Client Alert: JobsOhio II Legislation Introduced

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Tax and Economic Development Incentives

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On March 22, 2012, House Bill 489 and Senate Bill 314 (collectively, the Bills) were introduced in the General Assembly. The Bills represent the "JobsOhio II legislation," which is follow up legislation to the provisions of House Bill 1, which was enacted in February 2011. The Bills propose some significant changes to the administration of economic development incentives. The purpose of this alert is to briefly describe some of the most significant portions of the Bills.

Development Services Agency:

The Bills officially change the name of the Ohio Department of Development to the Development Services Agency (DSA). The Bills also specify that JobsOhio is required to enter into a contract with DSA, the initial term of which shall not extend beyond June 30, 2013, but which may be extended for subsequent fiscal biennia, for no longer than one fiscal biennium at a time. The purpose of this contract is to provide for the respective roles of JobsOhio and DSA.

Appropriations:

House Bill 153, the biennial budget bill for the current biennium, had set aside a lump sum amount for JobsOhio. The Bills specify that these funds will go to DSA. The Bills appropriate $1.2 billion for DSA for fiscal year 2013, $117.79 million of which would come from the state general fund.

Changes to the Tax Credit Authority and Administration of the Job Creation Tax Credit:

The Bills make changes to the membership of the Ohio Tax Credit Authority (the Authority), specifying that the chief information officer of JobsOhio (CIO) is now a member of the Authority and adding one additional member to the Authority who is a specialist in the development of new technology.

The Bills also make changes to the “major factor” requirement for the job creation tax credit (JCTC). Under current law, JCTC recipients must demonstrate to the Authority that the receipt of the JCTC is a major factor in the decision to construct the project in Ohio. In practical terms, this means that the construction of the project cannot commence until the approval of the JCTC by the Authority. The Bills would change the operation of the major factor requirement by requiring that the requirement be met based on a recommendation of the CIO and the director of DSA. If the taxpayer has already begun the project, the major factor requirement may be met through a recommendation from the CIO and the director of DSA made within six months after the JCTC application was received by the Authority. This is a significant change that would allow for greater flexibility for JCTC recipients than under current law, which relies on the monthly Authority meeting schedule.

Finally, the Bills would change the date from which the JCTC is measured. Under current law, the “baseline income tax revenue” that serves as the base for the JCTC is equal to the income taxes withheld during the 12 months immediately preceding the date on which the Authority approves the JCTC. The Bills would change this language to measure the baseline income tax revenue based on the income taxes withheld during the 12 months immediately preceding the Authority approval date or the date on which the Authority receives the above-described recommendation from the CIO and the director of DSA, whichever occurs first. This change would provide greater flexibility regarding the date from which new income tax revenue that is subject to the JCTC is measured.

Changes to the InvestOhio Program:

The InvestOhio program was established in House Bill 153 and provides for a refundable income tax credit to investors who make “qualifying investments” in certain Ohio “small business enterprises.” The Bills make several changes to the InvestOhio program. First, and most significantly, the Bills specifically exclude from the definition of “qualifying investment” any investment of money that is the basis of a tax credit under any provision of the Revised Code. Second, the Bills prohibit participation in InvestOhio program for entities that owe money to the state. Third, the Bills provide for an application fee to be used for the administration of the InvestOhio program. Finally, the Bills require applicants to provide information about any job creation or retention associated with the qualifying investment.

Public Records Law:

The Bills would add an exception to Ohio public records laws for certain records created or received by JobsOhio that are not designated for public inspection, irrespective of who has custody of the records. The above-described contract between JobsOhio and DSA is required to contain a designation of the records that would be available to the public. The records that are required to be designated for public inspection are limited to JobsOhio’s federal income tax returns, an expenditure report for JobsOhio, the total annual compensation paid to JobsOhio officers and employees, a copy of the financial audit report for JobsOhio, records of any fully executed incentives proposal, records related to the monitoring of incentives commitments and minutes of all JobsOhio public meetings. The Bills would significantly limit the scope of the information that is subject to Ohio public records laws.

Elimination of the Development Financing Advisory Council:

Under current law, the Development Financing Advisory Council (DFAC) must approve all state loans prior to approval of the loans by the Controlling Board. The Bills would eliminate DFAC, thus expediting the approval process for state loans.

Other Miscellaneous Provisions of the Bills:

- Establishment of TourismOhio, which is responsible for overseeing official tourism activities in Ohio, to be funded through a five-year pilot program.
- Addition of the CIO to the Third Frontier Board of Directors.

It is likely that the Bill will be passed before the General Assembly's summer recess. Vorys will continue to monitor the progress of the Bills. In the meantime, if you have any questions about the Bills, or you believe that your company or community could benefit from the language of the Bills, please contact Scott J. Ziance at 614.464.8287; sjziance@vorys.com; or Chris L. Connelly at 614.464.8244; clconnelly@vorys.com.

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