PART I: LIQUOR ENTERPRISE "FRANCHISE TRANSFER AGREEMENT"

BACKGROUND

State government controls the sale and pricing of liquor in Ohio. These business activities, collectively known as the Liquor Enterprise, are operated by the Division of Liquor Control (DLC), which is housed within the Department of Commerce. Among its management and regulatory duties as operator of the Liquor Enterprise, the DLC purchases spirituous liquors from producers, sells it to consumers through licensed retail agents, and sets prices.

The current biennial budget bill, House Bill 153, authorizes the Director of the Office of Budget and Management (OBM), in consultation with the Director of Commerce, to transfer the Liquor Enterprise to JobsOhio to help fund its job-creation efforts. The state will retain all liquor regulatory functions and JobsOhio must contract with the Ohio Department of Commerce to distribute and merchandise liquor [*see Part II fact sheet*].

TERMS OF THE FRANCHISE TRANSFER AGREEMENT (FTA)

The Directors of OBM and Commerce have agreed in principle to the terms and conditions that govern the transfer of the Liquor Enterprise to JobsOhio in the form of a grant of an exclusive, non-transferable 25-year franchise. Major elements of the agreement include:

- JobsOhio Will Hold the Liquor Enterprise Franchise and Receive its Revenue: JobsOhio will be responsible for the Liquor Enterprise for 25 years and receive all the revenues from the Liquor Enterprise for that 25-year period. JobsOhio will pay all expenses of the Liquor Enterprise, pay the DLC to distribute and merchandise liquor, and repay the bonds JobsOhio issues to finance the cost of the franchise.
- JobsOhio Will Pay Ohio a Lump Sum Payment at Closing and Annual Payments Based on Profit Growth: In exchange for receiving the Liquor Enterprise franchise, JobsOhio will pay the state $1.4 billion upon the closing of the transaction. To raise the funds needed to pay the state, JobsOhio will issue long-term bonds backed by future revenue from the franchise. The FTA ensures the debt raised will be a liability of JobsOhio, not the state, and that the state will never assume that debt, even if JobsOhio should go out of business. Funds paid by JobsOhio will include:

  At closing:

  - A one-time, unrestricted payment to the General Revenue Fund of $500 million;
  - Funds to pay off all existing Ohio liquor revenue-backed bonds, estimated at $750 million;
  - $150 million payment to cover "Clean Ohio" economic revitalization projects (currently funded by state liquor revenues) approved by the state prior to July 1, 2012;
  - The state's expenses incurred in connection with this transaction;

  Additional:

  - Additional annual deferred payments over the 25-year term equal to 75 percent of all annual liquor profit growth above a baseline of three percent annual profit growth; and
  - A commitment of up to $43 million per year to fund economic revitalization projects as described in the Ohio Constitution.

- Identifies Specifically What Will be Transferred to JobsOhio and What Will be Retained by the State: Historically, the state has provided both the control (regulatory) and merchandising functions for the Liquor Enterprise. The FTA clearly defines what assets and functions will be transferred to JobsOhio and for clarity, it details those functions (including the regulatory or "control" function) and assets that will remain with the state.
- Ownership and Operation of the Liquor Enterprise: The Franchise and certain assets will be transferred, and will then be owned by JobsOhio during the term of the agreement. Pursuant to the terms of the liquor management contract, DLC will operate the Liquor Enterprise [*see Part II fact sheet*]. The state will continue to oversee regulatory functions currently performed by DLC.
- Allocation of Responsibilities Between the State and JobsOhio During the Term of the Agreement: The term of the agreement is 25 years. Careful attention to the provisions of the agreement was taken so that the state and JobsOhio each commit to perform to the terms and conditions.
- Determination of the Processes/Procedures to be Followed to Execute and Implement the Agreement: The FTA documents a complex commercial transaction. The agreement includes the promises of each party to take certain actions and execute documents before and after closing.
- Causes for Termination of the FTA: While the term of the FTA is 25 years, it may be terminated for cause before that time if:
    - One party were to breach certain essential provisions of the Agreement;
    - If an act were passed by the General Assembly, and signed by the Governor, directing that the Agreement be terminated sooner than 25-year term; or
    - There is clear and convincing evidence of criminal wrongdoing that results in a significant financial loss or materially undermines the effectiveness of JobsOhio. Inquiries into any wrongdoing must be conducted by an investigative authority and reported to the Governor.
- Consequences of Termination of the FTA: If the FTA is terminated for any reason, then the liquor franchise and all assets associated with it revert to the state of Ohio. However, the state will not assume any outstanding debts of JobsOhio.

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