

A BRIEF FROM:

POLICY MATTERS OHIO

SAFEGUARDS FOR ISSUE 1

JON HONECK, PH.D.
ZACH SCHILLER

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The General Assembly soon will take up legislation to implement Issue 1, the constitutional amendment passed by Ohio voters on Nov. 8. To ensure that government funds are spent in the most effective manner and provide the greatest benefit to Ohioans, the implementing legislation should ensure the accountability of all public funds used for Third Frontier projects by all levels of government, universities and other nonprofits, and the private sector.

The amendment says that the General Assembly shall provide for ensuring the accountability of all state funding provided for the purposes described in the amendment. The bipartisan Agreement in Principle reached last summer by the legislative leadership on the implementing legislation for the amendment calls for “accountability, integrity and transparency with respect to the disbursement of funds for the three components of this bond issuance...” The amendment itself also instructs the General Assembly to include “economically disadvantaged businesses and individuals in all areas of this state” in its implementation. The General Assembly should enact legislation consistent with these provisions and the Agreement in Principle, which contained six issues to be addressed in the implementing legislation.

In order to ensure accountability and maximize benefits, the legislature should also consider the following recommendations:

- Disclosure rules that provide a full accounting for the progress being made by beneficiaries of the program, as well as public access to records and meetings;
- Periodic outside review of the program by the Auditor of State;
- Availability to the State of Ohio and local governments at favorable terms of products and services commercialized using Third Frontier funds;
- A transparent and competitive selection process for loans, grants, and all other forms of assistance;
- Competitive bidding for all contracts let by the Ohio Department of Development (ODOD) and other state agencies for program administration and requirements for the review of potential conflicts-of-interest by contractors and their employees;
- Expansion of the Third Frontier Advisory Board in keeping with the amendment’s promise to include economically disadvantaged businesses and individuals and to better reflect the broad range of policy issues affected by the program; and
- A thorough, outside review of the issues raised by public funding of the creation, use, and disposition of intellectual property, which will serve as the basis for a legislative study committee on this topic.

Disclosure

State and local public moneys, including the proceeds of bonds, notes or other obligations, used to support research and development purposes described in division (A) (2) of the amendment should be disclosed.

Disclosure rules should cover not only the state but all others (e.g. municipalities, universities, and community improvement corporations) that issue bonds, make investments or otherwise use the authority of the new amendment. Third Frontier grant agreements currently call for grantees to make quarterly progress reports and annual

reports. Applicants for programs generally must report economic impacts during the course of the grants and afterwards.

All recipients of public funds distributed for research and development purposes should publicly report quarterly to ODOD how they are performing compared to milestones or metrics laid out in grant/loan requests. Current reporting requirements should be broadened and at least annually should include specifics on progress made toward the enumerated job, income, revenue and other economic goals. They should also include: Products and services sold commercially for the first time by program beneficiaries; the number of new jobs created; median pay and benefits of such jobs; the race of job holders, as well as whether they are of Hispanic origin and whether they are disadvantaged persons under Ohio Administrative Code Section 122.7-1-01(D); and minority ownership of private for-profit grantees. Where relevant, the report also should include the amount of investment by the grantee itself in the project.

The Ohio Department of Development should prepare and make available on its web site an annual report covering the above measures reported by beneficiaries to the agency. All entities using the authority of the amendment should maintain records of enforcement actions taken for those beneficiaries not in compliance with program rules. Political subdivisions, universities or others using the authority of the new amendment for research and development purposes likewise should require beneficiaries to report on the same measures as reported to the ODOD. These reports should be publicly available on the ODOD web site together with the agency's own annual report.

Some penalties already exist for recipients that don't meet requirements. The legislature should ensure that if a beneficiary does not meet the annual reporting requirements, or is clearly not performing under the terms of the agreement, the state will terminate the assistance and require the return of funds already provided, with interest.

Availability of products and services

When products or services are developed with the use of grant money or other sources of funds made available because of the new amendment, the seller must sell such products or services to the State of Ohio at the lowest, best price they are sold to any purchaser. In particular, any medical therapies that become commercially available and were developed with use of Third Frontier funds should be sold to the state for use by its Medicaid and other health programs at terms as good or better than to any other purchaser.

Access

Meetings of the Third Frontier Commission, the Third Frontier Advisory Board and other bodies involved in the appropriation of public monies for the research and development purposes described in the amendment should be open, as they have been to date. Public records requirements similarly should apply to these bodies and to agreements that they make. Such requirements also should apply to the maximum extent possible to submissions by applicants for funds and evaluations of those applicants.

Competitive bidding

The state should follow a transparent, competitive process for all awards and for hiring of any contractor that would evaluate applicants or otherwise help determine the distribution of Third Frontier/Issue 1 funds. The same should also apply to all others using the authority of the new amendment.

Conflict of interest

The Ohio Department of Development uses contractors to review and screen proposals for certain Third Frontier programs. At present, conflict of interest concerns are handled through contractual commitments between the ODOD and the contractor. The General Assembly should provide for those who review and score applicants for Third Frontier funding, including contractors and their employees, to be covered by the same Ethics Law disclosure rules currently required for members of the Third Frontier Advisory Board (they must file, but their disclosure statements are not public). The Ohio Ethics Commission should review the disclosures and the recommendations made by such contractors annually for potential conflicts of interest. The legislation should provide for similar disclosure and review of local governments, universities, and non-profit agencies designed as their agents or instrumentalities.

Ohio venture capital investment

Venture capital companies that receive public funds should disclose the ultimate recipients of these funds and the performance of those investments, including subsequent investment by others. The Ohio Department of Development's loan and grant report should include the ultimate recipients of venture capital investments.

Membership in Third Frontier Advisory Board

At present, the Third Frontier Advisory Board is comprised of sixteen members. Nine members represent business, five represent research organizations, and two are legislators. The size of the board should be expanded for two reasons. First, Issue 1 specifically requires that the state make an effort to include economically disadvantaged businesses and individuals in Third Frontier funding, and the Agreement in Principle calls for an outreach effort to minority businesses and individuals. Second, the present composition of the board does not adequately reflect the broad range of issues it faces.

In order to address these issues, the implementing legislation should add four board members. These members should be selected as follows:

- One owner or representative of an Ohio-based minority-owned business;
- One expert in community economic development from a non-profit organization that works with economically and socially disadvantaged individuals to provide training or support for entrepreneurship;
- One expert from a non-profit environmental advocacy organization with a background in regulatory affairs, and
- One representative from a labor organization.

Intellectual Property

Until recently, most state economic development programs focused on capital equipment, buildings and infrastructure. Financing research and development that results in intellectual property (i.e., intangible property such as patents) raises some new concerns and some potential opportunities for the state to share in any financial gains. The General Assembly should authorize a study, to be done over a four-month period, of intellectual property issues raised by the new amendment. This study should examine how to ensure that the state and other investors of public money in the research and development purposes specified in the amendment should benefit, while guarding against conflicts of interest. It should examine possible ownership interests, licensing arrangements and safeguards on commercialization of research to ensure a maximum of Ohio benefits from public investments, while allowing the free flow of scientific knowledge. An outside vendor with no recent Third Frontier contracts should be selected competitively to perform this study, which should review the law and practices in other states. A study committee of the General Assembly then should hear public comment and recommend policy.

Periodic outside review of program

The Auditor of State or her designee should conduct periodic performance reviews of Third Frontier programs at intervals no longer than three years, and county auditors should do the same for local governments. If the legislation authorizes direct equity investments, annual financial reviews should be required of such investments or other forms of profit or revenue sharing.



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2912 EUCLID AVENUE • CLEVELAND, OHIO, 44115 • 216-931-9922
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