



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: S.B. 268 of the 132nd G.A.

Status: As Passed by the House

Sponsor: Sen. Wilson

Local Impact Statement Procedure Required: No

Subject: Establishes framework for regulating intrastate crowdfunding and increases penalties for theft in office

The bill contains provisions dealing with intrastate crowdfunding and penalties for theft in office. The provisions are described in the sections below.

Section 1: Intrastate Crowdfunding

State Highlights

- **Department of Commerce – Division of Securities.** The Division may have to purchase new technology to oversee intrastate equity crowdfunding in Ohio. The costs that the Division of Securities incurs for overseeing this niche "OhioInvests" marketplace will at least be partially offset by issuer and portal operator filing fees deposited into Fund 5500.
- **Issuer and portal operator fees.** The bill requires intrastate equity crowdfunding issuers to pay a \$50 per offering filing fee. The bill also requires these forms of securities to be sold exclusively through web portals, serving as intermediaries between the issuer and buyer. Portal operators would pay an annual \$100 license fee if the operator is not a licensed securities dealer. Both fees will be deposited into the Division of Securities Fund (Fund 5500).
- **Penalties.** The bill establishes civil penalties that apply to certain violations under the bill. Of those penalties, 25% of the total amount awarded must be deposited into the GRF to pay for debt service on bonds. Administrative penalties that the Division may assess under the bill would be deposited into the Securities Investor Education and Enforcement Expense Fund (Fund 5GK0).

Detailed Fiscal Analysis

Overview

The Division of Securities within the Department of Commerce oversees the traditional securities marketplace in Ohio. The bill exempts intrastate equity crowdfunding securities, referred to as OhioInvests securities, from registration requirements that apply to the traditional forms of securities that are sold in Ohio. Instead, the bill establishes separate regulations that apply to issuers, intermediaries,

and buyers in the OhioInvests marketplace. Consequently, the Division of Securities would incur some additional costs for overseeing this investment market niche. These costs would at least be partly recouped through the fees that apply to issuers and OhioInvests web portal operators under the bill.

The bill includes specific requirements that apply to issuers, intermediaries, and buyers of OhioInvests securities. Specifically, to participate in the OhioInvests market, qualified issuers must have at least 80% of their assets located in Ohio and derive at least 80% of gross revenues from their operations in Ohio. Further, the bill applies an annual \$5 million cap on the aggregate amount that any one issuer can raise through intrastate equity crowdfunding. It also limits the amount that an OhioInvests buyer can invest to \$10,000 in aggregate annually. These offerings would be available only to Ohio residents and may only be sold via the Internet by intermediaries that operate OhioInvests web portals.

Impact on Division of Securities

The Division of Securities will incur some additional costs to regulate the OhioInvests investment market. These costs will include purchasing new technology for overseeing this investment business. However, these costs will at least be partially offset by issuer and portal operator filing fees contained in the bill. These fees include a \$50 per offering filing fee and a \$100 application and annual renewal fee to be paid by OhioInvests portal operators who are not also licensed dealers under the Ohio Securities Law. These filing fees will be deposited into the Division of Securities Fund (Fund 5500). The fees would likely be a small share of overall licensing receipts deposited into Fund 5500. In FY 2017, a total of \$18.9 million was deposited into Fund 5500.

The number of OhioInvests issuers and portal operators will ultimately depend on the number of startup and small businesses seeking to raise funds through crowdfunding. This appears to be a small but growing niche market, attractive to business owners seeking to raise money in ways other than relying on traditional capital markets. Under Michigan's intrastate equity crowdfunding program, Michigan Invests Locally Exemption (MILE), 16 issuers and 12 web operators have filed with the state since January 2014. As of June 2016, the North American Securities Administrators Association reported that there had been 179 such investment offerings nationally.

Port authorities and community improvement corporations

The bill allows port authorities and community improvement corporations to operate web portals where OhioInvests offerings may be sold to investors. The bill allows them to collect fees for doing so, but specifies that the fee must be of a fixed rate, a variable rate based on the length of time the offering is available on the portal, or some combination thereof. Consequently, port authorities and community improvement corporations may see some small additional amount of revenue if they choose to operate these web portals.

Violations

The bill allows for purchasers to commence individual or class action lawsuits and seek civil penalties under the Securities Law for disputes concerning the sale of securities that are issued by an OhioInvests issuer and are sold through an OhioInvests portal. The bill establishes the following civil penalties for a successful action by a purchaser: (1) \$100 per violation if the total amount of money raised by the crowdfunding person or entity is less than \$25,000, or (2) \$250 per violation if the total amount of money raised by the crowdfunding person or entity is equal to or greater than \$25,000. The bill then requires that 25% of these civil penalties awarded to a purchaser be deposited into the GRF and set aside for payment of outstanding direct obligation bond debt service of the state. The remaining 75% of these civil penalties go to the purchaser. This could result in some very small gain in revenue deposited into the GRF to pay outstanding direct obligation bond debt service.

Additionally, the bill permits the Division of Securities to assess an administrative penalty of up to \$1,000 per violation to a person who has committed a violation of the bill's provisions after a notice and hearing, provided that the total penalty shall not exceed the total amount of the OhioInvests offering or offerings involved in the violation. The bill requires that these administrative penalties be deposited into the Division of Securities Investor Education and Enforcement Expense Fund (Fund 5GK0).

Section 2: Theft in Office

Local Fiscal Highlights

- The bill increases the felony penalties for theft in office based upon the amount of property stolen. Because the bill would not result in any new cases, any additional costs to county courts of common pleas would likely be minimal.
- Increasing the felony penalties for these offenses could allow county courts of common pleas to receive some additional fine revenues associated with these cases.
- The bill allows the costs of financial audits to political subdivisions or state agencies to be added to restitution amounts that can be recovered under a theft in office penalty, up to the amount of restitution imposed for all property or services. This would allow applicable state agencies or political subdivisions to recover these costs.
- The bill also allows port authorities and community improvement corporations to act as web portal operators (i.e., the intermediaries between issuers and buyers) in the OhioInvests marketplace. The fees collected would depend on how often these particular types of investments are offered.
- The bill makes modifications to the process of expungement of records and sealing of ex parte protection orders. These changes appear to have no fiscal impact.

Detailed Fiscal Analysis

Theft in office penalties

Current law states that theft in office, in general, is a fifth degree felony. Additionally, theft in office is a fourth degree felony if the value of property stolen is \$1,000 or more and less than \$7,500. Theft in office is a third degree felony if the amount stolen is more than \$7,500. The bill expands these penalties in the following manner: (1) if the value of property stolen is greater than \$7,500 and less than \$150,000, it is a third degree felony, (2) if the value of property stolen is \$150,000 or more and less than \$750,000, theft in office is a second degree felony, and (3) if the value of the property stolen is \$750,000 or more, theft in office is a first degree felony. The bill does not create any new offenses, and therefore will not result in any additional criminal cases. Because the current penalties are already felonies, any additional costs to county courts of common pleas to prosecute these cases would likely be minimal. However, the penalty enhancements in the bill could increase fine revenues imposed by the courts, which could generate additional revenues. These revenues, if any, would go to the applicable county court of common pleas. However, any such fine revenue would depend on the ability of the individual to pay.

Restitution payments

The bill requires an offender convicted of theft in office to pay restitution for the costs of auditing any of the public entities that suffered loss as a result of the offense. This includes the costs for any accounting or auditing done to determine the extent of loss. The amount of the audit cost that can be reimbursed is limited to the amount of the restitution imposed for all of the property or service that is the subject of the offense. Currently, political subdivisions pay all the associated costs of a financial audit conducted by the Auditor of State. The Auditor of State charges political subdivisions a rate of \$41 per hour to conduct performance audits. Likewise, state agencies pay the Auditor for financial audits. State agencies are billed under the Statewide Cost Allocation Plan. The current hourly rate under this plan is \$68 per hour. Ultimately, this provision of the bill could allow impacted state agencies or political subdivisions to recoup some costs of financial audits conducted as a result of the theft offense. However, any such restitution would depend on the ability of the individual to pay.