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Office of Research and Drafting

Legislative Budget Office

H.B. 312
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the Senate

Primary Sponsor: Rep. Powell

Local Impact Statement Procedure Required: No

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Highlights

Intrastate equity crowdfunding

- The Division of Securities within the Department of Commerce may have to purchase new technology to oversee intrastate equity crowdfunding in Ohio. The costs that the Division incurs for overseeing this niche "OhioInvests" marketplace will at least be partially offset by issuer and portal operator filing fees deposited into the Division of Securities Fund (Fund 5500).
- 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 purchaser. Portal operators would pay an annual $100 license fee if the operator is not a licensed securities dealer. Both fees would be deposited into Fund 5500.
- 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).

Supplemental Appropriations – Development Services Agency

- The bill provides $105.2 million in supplemental FY 2021 appropriations to the Development Services Agency (DSA). All of the appropriations will go toward additional loans under existing DSA loan programs that support capital investment projects undertaken by businesses.

Detailed Analysis

Intrastate equity crowdfunding

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 offerings, 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 purchasers 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.

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 2020, a total of $19.3 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 13 website operators have filed with the state since January 2014.[1] As of June 2016, the North American Securities Administrators Association reported that there had been 179 such investment offerings nationally.[2]

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

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[1] State of Michigan, Intrastate Equity Crowdfunding, August 7, 2019, https://www.michigan.gov/lara/0,4601,7-154-89334_61343_32915-319233--,00.html (accessed October 23, 2019).

[2] North American Securities Administrators Association, NASAA Intrastate Crowdfunding Update, November 15, 2016, http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2014/12/NASAA-Intrastate-Crowdfunding-Update-11-14-16.pdf (accessed October 23, 2019).

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).

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.

Supplemental appropriations to Development Services Agency

The bill provides supplemental appropriations totaling $105.2 million in FY 2021 using three funds in the Facilities Establishment Fund Group under the budget of the Development Services Agency (DSA). The appropriations come under three DSA line items: (1) $70.0 million under Facilities Establishment Fund (Fund 7037) line item 195615, Facilities Establishment, (2) $30.0 million under Research and Development Loan Fund (Fund 7010) line item 195665, Research and Development, and (3) $5.2 million under Innovation Ohio Loan Fund (Fund 7009) line item 195664, Innovation Ohio. In conjunction with this last change, the bill amends Section 259.50 of H.B. 166 of the 133rd General Assembly to shift an earmark from FY 2020 to FY 2021. The earmark allows up to $5.2 million for a loan to the Ohio State University to develop and evaluate the efficacy of a nonopiate, nonaddictive pharmaceutical treatment.

The Facilities Establishment Fund Group is used by DSA to award loans under several loan programs, most of which go to businesses to expand or locate facilities in Ohio. Typically, businesses can use these loans to purchase machinery and equipment, land and buildings, or make other eligible capital improvements. Loan sizes vary by program type, but usually range from $100,000 to $10 million. The various funds within the fund group were originally capitalized by bonds issued by the state and backed by spirituous liquor profits. Now, however, funding is derived from loan repayments.

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