



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 10 of the 132nd G.A.
(L_132_0053-2)

Status: In House Financial Institutions, Housing, and Urban
Development

Sponsor: Rep. Arndt

Local Impact Statement Procedure Required: No

Subject: Permits intrastate equity crowdfunding

State Fiscal Highlights

- **Intrastate equity crowdfunding.** The bill allows for an exemption under Ohio Securities Law to permit intrastate equity crowdfunding. The Division of Securities within the Department of Commerce enforces the Ohio Securities Law.
- **OhioInvests issuer fee.** The bill requires equity crowdfunding issuers to be an OhioInvests issuer and pay a \$50 filing fee. This fee will likely be deposited into the Division of Securities Fund (Fund 5500).
- **Portal operator fee.** The bill requires these sales of securities through an OhioInvests portal, to be operated by a portal operator. Portal operators, if not a licensed dealer, must be licensed with the Division and pay an annual \$100 filing fee.
- **Division of Securities expenses.** The Division may have to purchase new technology to oversee intrastate equity crowdfunding. However, this cost will at least be partially offset by issuer and portal operator filing fees likely deposited into Fund 5500.
- **Civil penalties.** The bill establishes civil penalties to be awarded to successful action by an investor against any person or entity engaging in crowdfunding and requires that 50% of penalties be deposited into the GRF and used for payment of outstanding direct obligation bond debt service.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Overview

The bill permits intrastate equity crowdfunding by allowing for an exemption under the Ohio Securities Law. Equity crowdfunding is regulated under both state and federal security laws, requiring registration under both sets of laws unless an exemption applies. Currently, federal security law contains an exemption from registration for intrastate offerings. To qualify for the Ohio exemption created by the bill, an offering and sale of securities must meet the bill's requirements for an "OhioInvests offering." For more detail on the bill's provisions, please consult the LSC Bill Analysis. The provisions that have a fiscal effect are discussed below.

Fiscal effects

Division of Securities

The bill requires that the equity crowdfunding issuer be an OhioInvests issuer. In order to be an issuer, an entity must provide the Division of Securities within the Department of Commerce (COM) with (1) a notice of a claim of exemption from registration, (2) a copy of the disclosure document that will be given to prospective purchasers, and (3) a \$50 filing fee. Additionally, the bill requires that the sale of securities must be conducted exclusively through an OhioInvests portal, a website that is operated by a qualified portal operator. A qualified portal operator must be licensed with the Division of Securities or currently licensed as a dealer under the Ohio Securities Law. An entity other than a licensed dealer wishing to be a portal operator must file a license application with the Division and pay a \$100 filing fee, with an annual renewal fee of \$100.

As a result, the Division will incur some additional costs to administer the bill's provisions. According to COM, the Division may have to purchase new technology for overseeing this type of activity. However, this cost will at least be partially offset by issuer and portal operator filing fees mentioned above. These filing fees will likely be deposited into the Division of Securities Fund (Fund 5500).

The number of issuers and portal operators will ultimately depend on the number of startup and small businesses seeking to raise funds through crowdfunding. One hundred seventy nine total offerings have been filed as of June 2016 in the 32 states that permit intrastate crowdfunding according to the latest information available from the North American Securities Administrators Association. In FY 2016, \$19.1 million was deposited into Fund 5500, a 3.2% increase from FY 2015 revenues of approximately \$18.5 million. Actual spending in FY 2016 was approximately \$4.2 million, a 5.0% increase from FY 2015 spending of \$4.0 million.

Enforcement of violations

The bill establishes procedures permitting an investor to commence a civil action on his or her own behalf as well as other current or former investors when any provision of the Revised Code provides (1) for a civil claim on behalf of Ohio or any investor, or (2) for a penalty to be assessed and collected by any state agency or employee against any person or entity engaging in crowdfunding.

The bill establishes the following civil penalties for a successful action by an investor: (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 50% of these civil penalties awarded to an investor be deposited into the GRF and set aside for payment of outstanding direct obligation bond debt service of the state. The remaining 50% of these civil penalties go to the investor. As a result, 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 establishes steps for an investor alleging a violation to commence a civil action if he or she is not seeking a civil penalty as listed above. First, the investor must provide notice to the Attorney General of the alleged violation. Second, the investor must receive notice from the Attorney General in regards to whether it intends to investigate the alleged violation. Should the Attorney General choose to investigate the alleged violation, that office may incur some additional costs. However, any costs would be minimal, based on the relatively low number of crowdfunding offerings nationwide up to this point.

Synopsis of Fiscal Effect Changes

The substitute bill (L_132_0053-2) modifies the filing fee amount for both an OhioInvests issuer and portal operator. The OhioInvests issuer fee is changed to \$50, compared to \$300 under the As Introduced version. The substitute bill changes the portal operator license application fee and annual renewal fee to \$100, compared to \$200 under the As Introduced version.

The substitute bill establishes civil penalties for violations, based on the size of the crowdfunding offering (\$100 per violation for crowdfunding campaigns of under \$25,000; \$250 for offerings equal to or over that amount). It requires that 50% of civil penalties that are awarded to investors be deposited into the GRF and set aside for payment of outstanding direct obligation bond debt service.