



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 406
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Rep. Demetriou

Austin C. Strohacker, Chris Edwards, and Andrew Little,
Attorneys

SUMMARY

- Prohibits the state and local governments from impairing the use of digital assets or holding such assets through hardware, self-hosted, or third-party wallets.
- Permits digital asset mining by individuals in residential areas, subject to applicable local ordinances.
- Permits digital asset mining businesses to operate in any area zoned for industrial use.
- Prohibits local governments from adopting noise or zoning regulations specific to digital asset mining.
- Prohibits local governments from rezoning an area used by a digital asset mining business without proper notice and comment, and allows a digital asset mining business to appeal discriminatory zoning actions.
- Excludes asset miners and blockchain node operators from money transmitter, security, and investment laws.
- Specifies that asset miners and blockchain node operators are not civilly or criminally liable in connection with any specific transaction merely for validating that transaction.
- States that the state and local governments with home rule authority may not impose a fee, tax, assessment, or other charge on digital assets used as a method of payment.
- Allows a state income tax deduction for the capital gains from the sale of digital assets used as a method of payment, up to \$200 per transaction, increased annually for inflation.
- Prohibits municipal corporations from subjecting such capital gains to municipal income tax.

- Requires each state retirement system to evaluate the potential risks and benefits of investing in an exchange-traded fund (ETF) that holds digital assets and consult with businesses that offer an approved digital asset ETF.
- Requires each retirement system, by March 1, 2025, to submit to the General Assembly a report on the feasibility and potential risks and benefits of investing in a digital asset ETF and options and recommendations to minimize risk if it invests in one.
- Names the bill the Ohio Blockchain Basics Act.

DETAILED ANALYSIS

Digital asset regulations

Usage regulations

The bill prohibits the state and its political subdivisions from impairing the ability of individuals to (1) use digital assets to purchase legal goods or services, or (2) hold custody of digital assets using a hardware wallet, a self-hosted wallet, or a third-party wallet.¹

Under the bill, a “**digital asset**” includes virtual currency, cryptocurrencies, native electronic assets, such as stablecoins and nonfungible tokens, and other digital-only assets that confer economic, proprietary, or access rights or powers. The bill defines “**hardware wallet**” as a physical device that is not continuously connected to the internet, allows an individual to secure and transfer digital assets, and under which the owner of the digital assets retains independent control over the digital assets. “**Self-hosted wallet**” is defined as a digital interface used to secure and transfer digital assets and under which the owner of the digital assets retains independent control over the digital assets.²

Asset mining regulations

The bill includes certain protections for individuals and businesses engaged in “**digital asset mining**,” which means using electricity to power a computer or node for the purpose of securing a blockchain network. It provides that any person may engage in “**home digital asset mining**” – asset mining in an area zoned for residential use – as long as the person complies with all applicable local ordinances and other regulations, including noise ordinances in residential areas. The bill prohibits political subdivisions from adopting noise ordinances that are specific to home digital asset mining.³

The bill expressly permits “**digital asset mining businesses**” – a group of computers that consume more than one megawatt of electricity for the purpose of securing a blockchain protocol – to operate in any area zoned for industrial use and prohibits political subdivisions

¹ R.C. 1352.02.

² R.C. 1352.01(C), (F), and (J).

³ R.C. 1352.03(A) and (B) and 1352.01(D) and (G).

from enacting ordinances specific to digital asset mining businesses that do not also apply to data centers and other similarly situated businesses. The bill prohibits also political subdivisions from rezoning areas containing digital asset mining businesses without going through the proper notice and comment process. It does not specify what constitutes a “proper notice and comment process.” If a digital asset mining business believes that it was discriminated against in a rezoning process, it may appeal the rezoning to the county’s court of common pleas. If the rezoning is found to be discriminatory, the bill requires the judge to reject the rezoning.⁴

Money transmitter regulations

The bill specifies that individuals engaged in digital asset mining or operating a node or series of nodes on a blockchain protocol are not required to obtain a money transmitter license.⁵ Under continuing law, unchanged by the bill, money transmitters are overseen by the Superintendent of Financial Institutions within the Department of Commerce. Money transmitters are any entity or person that is contracted “to receive, directly or indirectly and by any means, money or its equivalent from a person and to deliver, pay, or make accessible, by any means, method, manner or device, whether or not a payment instrument is used, the money received or its equivalent to the same or another person, at the same or another time, and at the same or another place.” All money transmitters are required to be licensed by the Department of Commerce. Banks, credit unions, savings and loan institutions, and savings banks are exempt from the money transmitter law and the associated license requirement.⁶

The bill defines “**blockchain**” as data that is all of the following:

- Shared across a network to create a ledger of verified transactions or information among network participants;
- Linked using cryptocurrency to maintain the integrity of the ledger and to execute other functions;
- Distributed among network participants in an automated fashion to concurrently update network participants on the state of the ledger and any other functions.

The bill defines “**blockchain protocol**” as any executable software deployed to a blockchain composed of source code that is publicly available and accessible, including a smart contract or network of smart contracts.

“**Node**” is defined by the bill as a computational device that communicates with other devices or participants on a blockchain to maintain consensus and integrity of that blockchain,

⁴ R.C. 1352.03(C) through (F) and 1352.01(E).

⁵ R.C. 1352.04(A).

⁶ R.C. 1315.01(G) and 1315.02(A), not in the bill.

create and validate transaction blocks, contain and update a copy of a blockchain, or any combination of the foregoing.”⁷

Security and investment laws

The bill specifies that a business providing digital asset mining or staking services is not considered to be offering a security or investment contract. “**Staking**” is defined as the act of committing digital assets for a period of time to validate and secure a specific blockchain network.⁸

Liability for validating transactions

Additionally, the bill specifies that anyone engaged in digital asset mining, operating a node or series of nodes, or providing digital asset mining or staking services is not civilly or criminally liable in connection with any specific transaction merely for validating that transaction.⁹

Home rule

If challenged, a court might examine the bill’s provisions that limit local governments’ authority to regulate digital assets and digital asset mining, including through zoning and noise regulations. Under the Home Rule Amendment to the Ohio Constitution, municipal corporations and charter counties have authority to adopt and enforce local police regulations, so long as an ordinance does not conflict with a general state law.¹⁰ In order to be a general law, a statute must satisfy all four prongs of the *Canton* test:

1. It must be part of a statewide and comprehensive legislative enactment;
2. It must apply to all parts of the state alike and operate uniformly throughout the state;
3. It must set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations;
4. It must prescribe a rule of conduct upon citizens generally.¹¹

Prohibited taxes and fees

The bill states that the General Assembly may not enact any bills that propose to impose a fee, tax, assessment, or other charge on digital assets used as a method of payment based on

⁷ R.C. 1352.01(A), (B), and (H).

⁸ R.C. 1352.01(K) and 1352.04(B).

⁹ R.C. 1352.04(C).

¹⁰ Ohio Constitution, Article XVIII, Section 3 and Article X, Section 3. Because limited home rule townships derive their home rule powers statutorily, those powers may be limited statutorily.

¹¹ *Canton v. State*, 95 Ohio St.3d. 149 (2002). For more information about what constitutes a “general state law,” please see [LSC’s Home Rule Members Brief \(PDF\)](#), available at lsc.ohio.gov.

the use of the asset as payment, on the sale, use, or consumption of digital assets, or on the basis of receipts received from the sale of digital assets. The Ohio Constitution does not authorize the General Assembly to bind future General Assemblies by statute.¹² Indeed, a future General Assembly can revise or repeal laws enacted by a prior one.

The bill places a similar prohibition on the legislative authority of charter counties, limited home rule townships, and municipal corporations. Each of those local entities possesses home rule authority (described above). In the case of charter counties and municipal corporations, this authority is granted under the Ohio Constitution and is subject to constitutional considerations, but in the case of limited home rule townships, the authority is statutory and can be limited as desired by the General Assembly. Despite the constitutional source of municipal and charter county home rule, the General Assembly has broad authority to limit local municipal taxation, and Ohio's two charter counties – Cuyahoga and Summit – have limited their taxing authority to only the authority granted by noncharter counties.¹³ It is less clear, in the context of charter counties and municipalities, however, whether and to what extent home rule authority may prevail over a statutory effort to prevent fees or other charges because taxes and fees are legally distinguishable.¹⁴

The bill's prohibitions do not apply to fees, taxes, and assessments or other charges if the same would also apply to a transaction executed with U.S. dollars.

State and municipal income tax deduction for digital asset gains

Continuing law treats capital gains as ordinary income, and they are taxed in the same manner as other income rather than as a separate category of income, as under federal law. The bill provides a personal income tax deduction for the capital gains from the sale of digital assets used as a method of payment, provided the total transaction does not exceed \$200, as adjusted annually to account for the increase in the Consumer Price Index (CPI).¹⁵

The bill similarly prohibits municipal corporations that tax capital gains from taxing the sale of digital assets used as a form of payment as capital gains, so long as the transaction would qualify for the income tax deduction allowed for the state income tax. Current law does not generally allow municipalities to subject capital gains to their income tax, except that it

¹² R.C. 101.88; Ohio Const., art. II, sec. I; *Bd. of Trs. of the Tobacco Use Prevention & Control Found. v. Boyce*, 127 Ohio St. 3d 511, 515 (2010) (“Although the General Assembly’s plenary legislative power is expansive, it is not all-inclusive. It does not include the ability to bind future General Assemblies. ‘No general assembly can guarantee the continuity of its legislation or tie the hands of its successors.’”).

¹³ Ohio Const., art. XIII, sec. 6 and art. XVIII, sec.13; Article I, Section 1.02, Charter of Cuyahoga County and Article I, Section 1.02, Charter of Summit County.

¹⁴ R.C. 301.30, 504.04, and 715.013; see e.g., *Drees Co. v. Hamilton Twp.*, 132 Ohio St.3d 186 (2012).

¹⁵ R.C. 5747.01(A)(44).

does allow two municipalities that had taxed capital gains under previous law – Wyoming and Indian Hills – to continue to do so.¹⁶

These deductions apply to taxable years ending on or after the bill’s 90-day effective date.¹⁷

State retirement systems and digital assets

The bill requires each state retirement system to do both of the following:

- Evaluate the potential risks and benefits of investing assets of the system’s funds in an exchange-traded fund (ETF) that has holdings in digital assets;
- Consult, to the extent practicable, with businesses that have been granted the U.S. Securities and Exchange Commission’s approval to offer a digital asset ETF.

Not later than March 1, 2025, each state retirement system must submit to the General Assembly a report that includes both of the following:

- Information regarding the feasibility and potential risks and benefits of investing in a digital asset ETF;
- Options and recommendations for the retirement system to minimize risk if it invests in a digital asset ETF.

The state retirement systems are the Public Employees Retirement System, Ohio Police and Fire Pension Fund, State Teachers Retirement System, School Employees Retirement System, and State Highway Patrol Retirement System.¹⁸

Name

The bill specifies that it is to be known as the “Ohio Blockchain Basics Act.”¹⁹

HISTORY

Action	Date
Introduced	02-12-24

ANHB0406IN-135/ks

¹⁶ R.C. 718.01(C)(2)(b).

¹⁷ Section 3.

¹⁸ Section 4.

¹⁹ Section 5.