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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Demetriou

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SUMMARY

- Permits the Treasurer of State to invest up to 10% of interim funds from the General Revenue Fund, the Budget Stabilization Fund, and the Deferred Prizes Trust Fund in digital assets.
- Authorizes the Treasurer to invest funds from the State Lottery Gross Revenue Fund that are not needed for immediate use, in digital assets.
- Defines “digital asset” as a virtual currency, cryptocurrency, native electronic asset, stablecoin, nonfungible token, or any other digital-only asset that confers economic, proprietary, or access rights or powers.
- Specifies that the Treasurer may only invest in digital assets that are (1) an exchange-traded product and have (2) the average market capitalization of at least \$750 billion.
- Authorizes the Treasurer to loan the digital assets acquired as an investment for the purpose of bringing increased returns to applicable fund, if the Treasurer determines the loan does not increase the financial risk of the investment.
- Specifies that the state retirement system boards are not prohibited from investing in exchange-traded products.

DETAILED ANALYSIS

Treasurer of State investment of interim funds

The bill expands the Treasurer of State’s investment authority of interim funds. Under continuing law, “interim funds” are public moneys in the state treasury that are not active deposits – meaning that they are not needed to meet current demands and are, therefore, available for investment. Continuing law specifies 14 types of investments the Treasurer can

make with state interim funds. These include, for example, U.S. Treasury bills, government bonds, bank deposits, money market mutual funds, among others listed under law.¹

Digital assets

The bill expands this investment authority by authorizing the Treasurer to invest interim funds from the General Revenue Fund, the Budget Stabilization Fund, and the Deferred Prizes Trust Fund in digital assets. However, these investments in digital assets must not exceed 10%, in aggregate, of the balance of any of the funds at the time of the investment.² In addition, the bill authorizes the Treasurer to invest any portion of the State Lottery Gross Revenue Fund that is not needed for immediate use, in digital assets. Under continuing law, the Treasurer may invest these funds in the same manner as state funds. The bill is unclear as to whether the investment in digital assets from the State Lottery Gross Revenue Fund is subject to the 10% restriction.³

A “digital asset” is defined in the bill as a virtual currency, cryptocurrency, native electronic asset, stablecoin, nonfungible token, or any other digital-only asset that confers economic, proprietary, or access rights or powers.⁴

Digital asset requirements

A digital asset acquired as an investment under the bill must be both (1) an exchange-traded product (ETP) and (2) have an average market capitalization over the preceding 12 months of at least \$750 billion, as determined by the Treasurer using a commercially reasonable method.⁵

The bill defines “ETP” as a security that meets any of the following requirements:

- The security is listed, or authorized for listing, on the New York Stock Exchange, the American Stock Exchange, or the National Market System of the NASDAQ stock market, or any successor to such entities;
- The security is listed, or authorized for listing, on a national securities exchange or system, or on a tier or segment of such exchange or system, designated by the United States Securities and Exchange Commission (SEC);
- The security is listed, or authorized for listing, on a national securities exchange or system, or on a tier or segment of such exchange or system, that has listing standards that the Ohio Division of Securities determines by rule are substantially similar to the listing standards applicable to securities listed, or authorized for listing, on the New York Stock Exchange, the American Stock Exchange, or the National Market System of the NASDAQ stock market, or any successor to those entities;

¹ R.C. 135.01 and 135.143, not in the bill.

² R.C. 135.146(B) and (C).

³ R.C. 3770.06.

⁴ R.C. 135.146(A)(1).

⁵ R.C. 135.146(D).

- The security is a security of the same issuer that is equal in seniority or that is a senior security to a security described above.⁶

Custodial requirements

Once the Treasurer acquires a digital asset as an investment under the bill, it must be held in one of the three following ways:

1. Directly by the Treasurer of State through the use of a “secure custody solution,” meaning a technological product or blended product and service that has all of the following characteristics:
 - a. The private keys that secure digital assets are exclusively known and accessible by the government entity. “Private key” means a unique element of cryptographic data used for signing transactions on a blockchain that is known to the owner of the unique element.
 - b. The private keys that secure digital assets are exclusively contained within an encrypted environment and are accessible only via end-to-end encrypted channels.
 - c. The private keys that secure digital assets are never contained by, accessible by, or controllable via a smartphone.
 - d. Any hardware that contains the private keys that secure digital assets is maintained in at least two geographically diversified specially designated secure data centers.
 - e. The secure custody solution enforces a multi-party governance structure for authorizing transactions, enforces user access controls, and logs all user-initiated actions.
 - f. The provider of the secure custody solution has implemented a disaster recovery protocol that ensures customer access to digital assets in the event the provider becomes unavailable.
 - g. The secure custody solution undergoes regular code audits and penetration testing from audit firms, and any identified vulnerabilities are promptly remedied.
2. On behalf of the state by a “qualified custodian,” which the bill defines as a federal or state-chartered bank, trust company, or an Ohio-regulated company that has custody of a digital asset for an ETP.
3. In the form of an ETP issued by an investment company registered in accordance with Ohio’s securities laws.

⁶ R.C. 135.146(A)(2) and (D)(1).

Digital asset loans

The bill permits the Treasurer to loan digital assets acquired as investments under the bill to bring additional returns to the applicable fund. However, the Treasurer may only do so after determining that the loan does not increase the financial risk of the digital asset.⁷

Administration

The bill authorizes the Treasurer to adopt rules for the purpose of administering the investment provisions described above.⁸

State retirement system investments

The bill specifies that nothing in continuing law governing the state retirement system boards' investment authority prohibits the boards from investing in ETPs. It appears nothing currently prevents the boards from investing in ETPs. Under continuing law, each board has full power to invest the funds created to pay for retirement and other benefits. It must do so, however, according to fiduciary and investment standards prescribed under continuing law. The boards and other fiduciaries must discharge their duties with respect to the funds (1) solely in the interest of participants and beneficiaries, (2) for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the systems, and (3) by diversifying investments to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

The standard under which the boards must make investment decisions is the "prudent expert standard." This standard requires them to act:

[W]ith care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.⁹

Until 1997, the boards' investment authority, though subject to the prudent expert standard, also was limited to a statutory list of permissible investments. That statutory list was eliminated by S.B. 82 of the 121st General Assembly, but S.B. 82 retained the prudent expert standard. Thus, current law does not specify any types of investments in which the boards are permitted to or prohibited from investing. It is possible the bill could create ambiguity regarding the types of permitted investments. By specifying ETPs as permissible investments but remaining silent about other types of investments, the bill could raise a question regarding whether the

⁷ R.C. 135.146(F).

⁸ R.C. 135.146(G).

⁹ R.C. 145.11, 742.11, 3307.15, 3309.15, and 5505.06, by reference to R.C. 135.146.

boards are prohibited from investing in non-ETP investments, such as private equity, in which the boards currently invest.¹⁰

Bill name

The bill is named the Ohio Strategic Cryptocurrency Reserve Act.¹¹

HISTORY

Action	Date
Introduced	01-23-25

ANHB0018IN-136/ts

¹⁰ See *State v. Droste*, 83 Ohio St.3d 36, 39 (1998) (noting that “the expression of one or more items of a class implies that those not identified are to be excluded”) and see, e.g., [Defined Benefit Fund – Private Equity](#), which is available by conducting a keyword “private equity” search on the Public Employees Retirement System website: opers.org.

¹¹ Section 3.