



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

SENATE BILL NO. 1045

PRINTERS NO. 1510

PRIME SPONSOR: White

### COST / (SAVINGS)

| FUND                                     | FY 2013/14 | FY 2014/15    |
|--|------------|---------------|
| General Fund                             | \$0        | (\$1,044,010) |
| Securities Operations Restricted Account | \$0        | \$0           |
| Securities Regulation Restricted Account | \$0        | (\$5,500,000) |

**SUMMARY:** Updates and modernizes the Pennsylvania Securities Act of 1972 and provides for new compliance assessments. This legislation would take effect in 60 days.

**ANALYSIS:** This legislation amends the PA Securities Act as follows:

**Department merger:** The legislation updates the act to reflect the merger of the Securities Commission and the Department of Banking into the Department of Banking and Securities (DOBS).

**Exempt Securities:** The exemption for securities issued or guaranteed by a railroad, other common carrier, public utility or public utility holding company is clarified to reflect federal law and the Uniform Securities Act generated by the Uniform Law Commission.

**Exempt Transactions:** The small issuer exemption is amended to clarify that the exception does not apply if there has been a general solicitation through media, mass mailing, internet or other means. An exemption is added for securities related to the merger of bank holding companies, as these transactions are already regulated by the SEC and the Federal Reserve.

The exemption for securities that will only be offered to accredited investors is amended to require that any resale of the securities within 12 months of the date of purchase must be either registered or that the resale must be to other accredited investors. The issuer of exempt securities sold to accredited investors must reasonably believe that the purchasers are purchasing for investment and not with the view to distribute or resell the securities.

**Retroactive Registration:** The legislation clarifies that DOBS may establish procedures by regulation to allow an issuer of securities to register retroactively when there is an effective registration statement on file with the SEC for the same securities.

**Federally Covered Securities:** Language is added to clarify that failure to file or timely file documents with DOBS related to federally covered securities or to pay or timely pay a filing fee does not create a cause for action.

**Federal JOBS Act:** Language is added to make the act compatible with the crowdfunding provisions of the federal Jumpstart Our Business Startups Act (JOBS). Notably:

- Language is added to create an exemption from registration for crowdfunding transactions that are exempt under federal law;
- The issuer of a federally covered security must file copies of the documents filed with the SEC, if the issuer's principle place of business is in PA, or more than 50% of the securities sold by the issuer of a federally covered offering are PA residents. There is no fee to file the documents with DOBS;
- Crowdfunding offers and sales are exempt from registration with DOBS.
- State-level regulation of funding portals must be consistent with the rules established by the SEC. Funding portals will fall under the authority of DOBS as follows:
  - DOBS will have examination power over a funding portal with its principle place of business in the state; and
  - DOBS can bring an administrative proceeding against a funding portal for fraud, deceit or unlawful conduct.

**Enforcement:** DOBS is authorized to use continuing education (approved by the SEC and a self-regulatory organization) requirements to discipline an agent or investment adviser representative. A 10-year statute of limitations is also placed on enforcement actions by DOBS.

A person who controls another person (directly or indirectly) who is subject to a DOBS enforcement action can be subject to the same discipline, unless the controlling person did not know and could not have known of the controlled person's conduct.

**Assessments:** The compliance assessments under Section 602.1 of the act are updated and increased periodically as follows:

- Agents and investment adviser representatives:
  - Initial license assessment:
    - \$45 - until 6/30/16
    - \$50 - 7/1/16 - 6/30/19
    - \$55 - 7/1/19 and after
  - Renewal license assessment:
    - \$30 - until 6/30/16
    - \$35 - 7/1/16 - 6/30/19
    - \$40 - 7/1/19 and after
- Broker-dealer (initial and renewal license assessment):
  - \$175 - until 6/30/19
  - \$200 - 7/1/19 and after
- Investment advisers (initial and renewal license):
  - \$100 - until 6/30/19
  - \$125 - 7/1/19 and after

Language is added to clarify that DOBS can impose an administrative penalty against a licensee for dishonest or unethical practices, taking unfair advantage of a customer or failure to supervise agents or employees.

**Method of Payments:** DOBS is authorized to designate the receipt of payments by any means (credit card, debit card, wire transfer, etc.), and through any medium (phone, fax, email, internet, etc.).

**Securities Regulation Account:** The Securities Regulation Account is established as a restricted account within the General Fund. For the first fiscal year the account is established, funds from the auction rate securities settlement (federal penalty funds that are distributed to the states) will be placed in the account. For each fiscal year afterward, an amount approved by the Governor may be transferred from the General Fund, until the account reaches a balance of \$12.5 million. To request funds for the Securities Regulation Account, DOBS must submit an annual estimate to the Governor, based on an assessment of prevailing economic and regulatory conditions and the amount of assessments fees and administrative penalties that DOBS has transferred to the General Fund.

The Securities Regulation Account is appropriated to DOBS for:

- Special initiatives and regulatory needs;
- Investor and entrepreneurial education and outreach;
- Unanticipated adverse industry circumstances that require enhanced investor protection activities.

**FISCAL IMPACT:** According to the Department of Banking and Securities and the Governor's Budget Office, this legislation would result in about \$1.04 million in additional revenue in both Fiscal Year 2014-15 and Fiscal Year 2015-16 to the General Fund. Please see chart below for a 6-year revenue estimate. Revenues from current compliance assessments total about \$5.3 million annually. The department also indicates that the legislation would result in about \$5.5 million being deposited in the newly established Securities Regulation Restricted Account from monies received from the auction rate securities settlement. The legislation would have no fiscal impact on the Securities Operations Restricted Account. The department shall continue to receive the necessary appropriation intended to meet its expenses to administer the provisions of the Pennsylvania Securities Act as delineated under section 602.1(e).

|                      | Current   | 2014-15   | 2015-16   | 2016-17   | 2017-18   | 2018-19   | 2019-20   |
|----------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| <b>Total Revenue</b> | 5,286,045 | 6,330,055 | 6,330,055 | 7,297,165 | 7,297,165 | 7,297,165 | 8,341,175 |
| <b>New Revenue</b>   | -         | 1,044,010 | 1,044,010 | 2,011,120 | 2,011,120 | 2,011,120 | 3,055,130 |

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House Appropriations Committee (R)

**DATE:** May 30, 2014

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*