Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Am. Sub. S.B. 223 of the 129th G.A. **Date**: February 15, 2012

Status: As Enacted **Sponsor**: Sen. Bacon

Local Impact Statement Procedure Required: No

Contents: Telecommunications fraud

State Fiscal Highlights

- The Office of the Attorney General will likely experience an increase in operating costs as a result of the bill's enactment, the annual magnitude of which is uncertain because the investigative authority prescribed by the bill will become part of a larger initiative that the Attorney General is implementing to investigate and prosecute white collar crime.
- The Department of Rehabilitation and Correction's GRF-funded annual incarceration costs may increase, the annual magnitude of which will depend on the number of additional felony offenders sentenced to prison and their lengths of stay, both of which are uncertain.

Local Fiscal Highlights

- Counties: (1) may realize a minimal annual savings if the Attorney General takes the lead in investigating and prosecuting telecommunications fraud cases, or (2) may experience a minimal annual expenditure increase to process (adjudicate and possibly prosecute) the additional cases that could be filed as a result of the Attorney General's investigations. Additional revenue in the form of court costs and fines may be generated, but the amount for counties generally is uncertain.

Detailed Fiscal Analysis

The bill modifies the penalties associated with telecommunications fraud. Under current law, telecommunications fraud is already a prosecutable criminal offense. The bill provides for certain penalty enhancements that are tied to the monetary value of the theft. The penalties under current law and the bill's proposed modifications are outlined in the table below.

Proposed Penalty Modifications for Telecommunications Fraud			
Current Law	**Offense Level**	**Prison Term**	**Fine**
If value of theft is less than $5,000	F5	6, 7, 8, 9, 10, 11, or 12 months	Not more than $2,500
If value is $5,000 - $99,999	F4	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months	Not more than $5,000
If value is $100,000 or more	F3	1, 2, 3, 4, or 5 years	Not more than $10,000
Proposed Law			
If value of theft is less than $1,000	F5	6, 7, 8, 9, 10, 11, or 12 months	Not more than $2,500
If value is $1,000 - $7,499	F4	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months	Not more than $5,000
If value is $7,500 - $149,999	F3	1, 2, 3, 4, or 5 years	Not more than $10,000
If value is $150,000 - $999,999	F2	2, 3, 4, 5, 6, 7, or 8 years	Not more than $15,000
If value is $1 million or more	F1	3, 4, 5, 6, 7, 8, 9, or 10 years	Not more than $20,000

Office of the Attorney General enforcement costs

The bill gives the Office of the Attorney General authority to criminally investigate telecommunications fraud. Under current law, the Attorney General may perform investigations under the Consumer Sales Practices Act (CSPA), but enforcement is limited to civil penalties alone. Criminal investigations and prosecutions must be completed by local law enforcement and county prosecutors' offices. Staff of the Attorney General has indicated that criminal prosecutions are rare due to workload and budgetary constraints at the local level. Subsequent to the bill's enactment, the Attorney General intends to take the lead in investigating allegations of telecommunications fraud and to assist in prosecution if requested by the local prosecuting attorney.

Staff of the Attorney General has indicated additional staff will be needed to perform these investigation and prosecution duties with regard to telecommunications fraud, but that they will be part of a larger staff expansion and initiative by the Attorney General to investigate and prosecute white collar crimes generally. Thus, it is uncertain how many additional staff will be needed as a direct result of the bill's enactment, and at what cost. Some of these costs could be partially offset by revenues deposited into the existing Telemarketing Fraud Enforcement Fund (Fund 5A90).

The bill broadens the use of the Telemarketing Fraud Enforcement Fund by allowing the Attorney General to use its money for any expenses incurred by the Consumer Protection Section in the investigation or prosecution of criminal behavior. The fund derives its revenue from registration fees paid by telephone solicitors and under current law can only be used for enforcement of the state's telephone solicitor registration program and for educational purposes associated with that program. Historic revenue trends for the fund have been low, though, with just a few thousands of dollars being deposited annually.

State incarceration expenditures

If, after the bill's enactment, there are more successful prosecutions of telecommunications fraud, it is possible that additional felony offenders will be sentenced to prison, with some likely receiving longer prison terms than might otherwise have been the case under current law. Such an outcome will increase the Department of Rehabilitation and Correction's GRF-funded incarceration costs. The potential magnitude of that increase in incarceration costs annually is uncertain, as the number of additional felony convictions and associated lengths of stay in prison are unknown. The average annual cost to incarcerate an offender in an Ohio prison is currently around $25,065, with the marginal cost of adding an offender estimated at between $4,000 and $5,000.

State and local revenues

If additional felony offenders are successfully prosecuted, counties could gain revenue in the form of court costs and fines that the court is generally required to impose on those convicted of a criminal offense. Any given county may occasionally collect additional revenue from such cases, but the magnitude of the collections is unknown.

The state might also gain a negligible amount of revenue in the form of locally collected court costs that are forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). In the case of a felony, the court is generally required to impose state court costs totaling $60 for a felony, divided as follows: $30 to Fund 5DYO and $30 to Fund 4020.

Local criminal justice system expenditures

If more criminal cases are filed as a result of the Attorney General's involvement in investigating allegations of telecommunications fraud, courts of common pleas, public defenders, and possibly county prosecutors, will incur additional work to process those cases. The associated costs for any given county are anticipated to be minimal on an ongoing basis, as the number of additional telecommunications fraud cases is likely to be relatively small in the context of the overall local criminal justice system.

It is also possible that some local prosecutors and law enforcement agencies may experience a cost savings if they choose to rely on the Attorney General to investigate and prosecute cases that, under current law and practice, they would have handled themselves. However, since existing evidence seems to indicate that the number of investigations and prosecutions statewide is fairly low, any savings would likely be minimal for most counties.

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