

LFC Requester:	Julisa Rodriguez
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date January 18, 2024
Bill No: HB 125

Sponsor: Rep. Patricia Roybal Caballero **Agency Name and Code** 394 - State Treasurer
Short Title: Public Banking Act **Number:** _____
Title: _____ **Person Writing** John Kreienkamp
Phone: 505-795-3141 **Email:** jerri.mares@sto.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
	\$20,000.	Nonrecurring	GF
	\$1,500.	Nonrecurring	GF

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB125 proposes to establish a “Public Bank of New Mexico” through the creation of a new “Public Banking Act.” Among its other statutorily authorized activities, the bank would be authorized to accept deposits, invest, and reinvest a new “state banking fund,” make, hold, and purchase certain types of loans, acquire and dispose of property, and purchase bonds issued by governmental entities. However, the bank would be prohibited from making loans to “a private individual or private legal entity.” The bill proposes a non-reverting \$20 million appropriation for the initial capitalization of the bank, as well as a required \$35 million deposit from the Office of the State Treasurer (“STO”) once the bank is formally chartered. In addition, the bill would provide a separate non-reverting \$1.5 million appropriation to the Economic Development Department (“EDD”) for the purpose of establishing and chartering the bank. HB125 also requires that any further funds used for the operating budget of the bank would need to be derived from bank income and equity. Until the bank is chartered, STO would be responsible for administering and disbursing the new state banking fund.

HB125 also contains provisions for the governance of the new bank, which would be created as a “governmental instrumentality.” The bank would be led by an 11-member board of directors, including the Chief Executive Officer of the New Mexico Finance Authority, the State Treasurer, the Secretary of Economic Development, four members appointed by the New Mexico Legislative Council, and four members appointed by the Governor. The board would be responsible for hiring a Chief Executive Officer with experience in investments, corporate governance, accounting, or finance. In turn, the Chief Executive Officer would be responsible for hiring bank staff, including a chief risk officer.

The bill contains an effective date of July 1, 2024.

FISCAL IMPLICATIONS

HB 125 proposes to appropriate \$1.5 million to the EDD for the purposes of “establishing and chartering the public bank.” However, page 11, lines 4-11 provides that STO is responsible for administering and expending the funds and carrying out the provisions of the Public Banking Act until the bank is chartered. It is unclear what the full responsibilities of STO are during the time of incorporation and establishing the charter for the public bank and may represent a sizeable increase in the Office’s workload without sufficient FTE’s.

SIGNIFICANT ISSUES

There may be confusion as to the governance of and division of responsibilities regarding the public bank during the period between the initial creation of the public bank (scheduled by the bill to occur on July 1, 2024) and the bank's official chartering. While the bill provides that the chief executive officer of the bank "shall direct the affairs and business of the bank, subject to the policies, control and direction of the board," it also provides that the state banking fund is appropriated to STO "to be used for the purpose of carrying out the provisions of the Public Banking Act" until the bank is chartered. Further, during this same period, disbursements could only be made pursuant to vouchers signed by the State Treasurer or her authorized representative. As STO could not expend funds or authorize such expenditures without confidence in the legality and propriety of the purchases, this may create some confusion as to decision-making authority prior to the chartering of the public bank. Clarity could be provided by adding the clause "After the chartering of the public bank," on page 6, line 7, prior to "The chief executive officer."

Section 8 of the bill provides that STO "shall make a deposit into the public bank" of \$35 million, which would not be withdrawable. This deposit of state funds would differ significantly from STO's other bank deposits, which are governed by both Chapter 6, Article 10 NMSA 1978 and the administrative rules of the State Board of Finance. As drafted, the bill would exempt the public bank from these legal requirements, as well as the requirement in Section 6-10-18 NMSA 1978 and 2.60.4.8 NMAC to enter into a written depository agreement prior to receiving deposits of state funds from STO. This creates four interrelated issues:

1. The bill is silent as to the source of this \$35 million deposit from STO. Although presumably the intent of the bill is to deposit money from the general fund into the bank, this is not stated. If the funds are to be deposited from the general fund liquidity core, there needs to be additional consideration for STO's debt service payments.
2. The bill is also silent as to the interest required to be earned on STO's initial \$35 million deposit in the bank. This would result in lost earnings to the state if the public bank does not provide an interest rate on this deposit of public funds.
3. HB 125's provision allowing the public bank to invest and reinvest the assets of the fund raises the question as to the types of investments that would be permitted. STO's investments of public funds are strictly regulated by Chapter 6, Article 10 NMSA 1978, unlike the State Investment Council which can invest longer-term with higher risk.
4. Finally, there is a degree of risk associated with depositing \$35 million in state funds in the public bank due to Section 8(A)'s exemption of the public bank from the requirements of Chapter 6, Article 10 NMSA 1978. Among other statutory provisions, Chapter 6, Article 10 NMSA 1978 imposes collateral requirements on banks to ensure the safety of state funds and requires all depositories of state funds to enter into written depository agreements with the state. Because the public bank cannot pledge collateral, this would pose a risk to the safety of the state's \$35 million deposit.

PERFORMANCE IMPLICATIONS

As drafted, the bill appropriates the new “state banking fund” to STO for the purposes of carrying out the bill’s purposes prior to the chartering of the public bank. This may affect STO’s performance-based targets.

ADMINISTRATIVE IMPLICATIONS

The bill’s appropriation of the new “state banking fund” to STO prior to the chartering of the public bank, as well as its requirement that disbursements be made in that time period pursuant to vouchers signed by the State Treasurer or her authorized representative, may represent a sizeable increase in the Office’s workload without an appropriation to offset the increase.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

The bill contains a typographical error on page 12, line 3: the word “expect” should be “except.”

OTHER SUBSTANTIVE ISSUES

Several provisions of the bill may create confusion as to the extent to which the new public bank, as well as its board of directors, is subject to state law. In particular, Section 3 of the bill expressly creates the bank as a “governmental instrumentality” subject to the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 to -18 (1967, as amended through 2023), the Audit Act, NMSA 1978, Sections 12-6-1 to -15 (1969, as amended through 2019), and the Financial Disclosure Act, NMSA 1978, Sections 10-16A-1 to -9 (1993, as amended through 2021). However, the bill’s specific provisions for the applicability of these laws may create some question as to other state laws about which the bill is silent. Other laws potentially applicable to the bank and its board would include the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013), the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2023), and the Gift Act, NMSA 1978, Sections 10-16B-1 to -5 (2007, as amended through 2019). The bill could create greater clarity by expressly establishing the bank as a political subdivision of the state.

As drafted, HB 125 provides STO minimal oversight over the public bank after its chartering, while being required to deposit \$35 million in state funds. STO’s statutory and constitutional purpose is to ensure the safety of state funds, a mission somewhat hindered by possession of only a single seat on an 11-member board of directors. Additionally, HB 125 provides that eight members of the board of directors would be appointed by the Legislative Council and the Governor (four members each, respectively) “with input from the public.” It is unclear what process or procedures would need to be followed to secure such public input.

The chartering of a new bank—a process that could take up to several years—does not appear to fall within the purpose or expertise of the EDD under Section 9-15-2 NMSA 1978. It is unclear whether EDD would be the appropriate governmental entity to shepherd the public bank through this process.

HB125 expressly permits the bank to make loans to 501(c)(3) organizations (p. 8, ll. 16-21), but prohibits making loans “to a private individual or private legal entity” (p. 9, ll. 17-18) which may

raise the question of the meaning of the phrase “private legal entity.” To provide clarity, this term should be defined.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A