

LFC Requester:	Rodriguez
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(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}

Date Prepared: Feb 26 2025 *Check all that apply:*
Bill Number: SB 119 Original Correction
 Amendment Substitute

Sponsor: Sen. Munoz, Sen. Hickey, Rep. Dixon **Agency Name and Code** 337 State Investment Council
Short Title: Investment in Bioscience Companies **Number:** _____
Person Writing Wollmann **Phone:** 5052313334 **Email** charlesw@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
	\$25,000	NR	Bioscience Development Fund
	(\$25,000)	NR	General Fund

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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

As Amended by SJC:

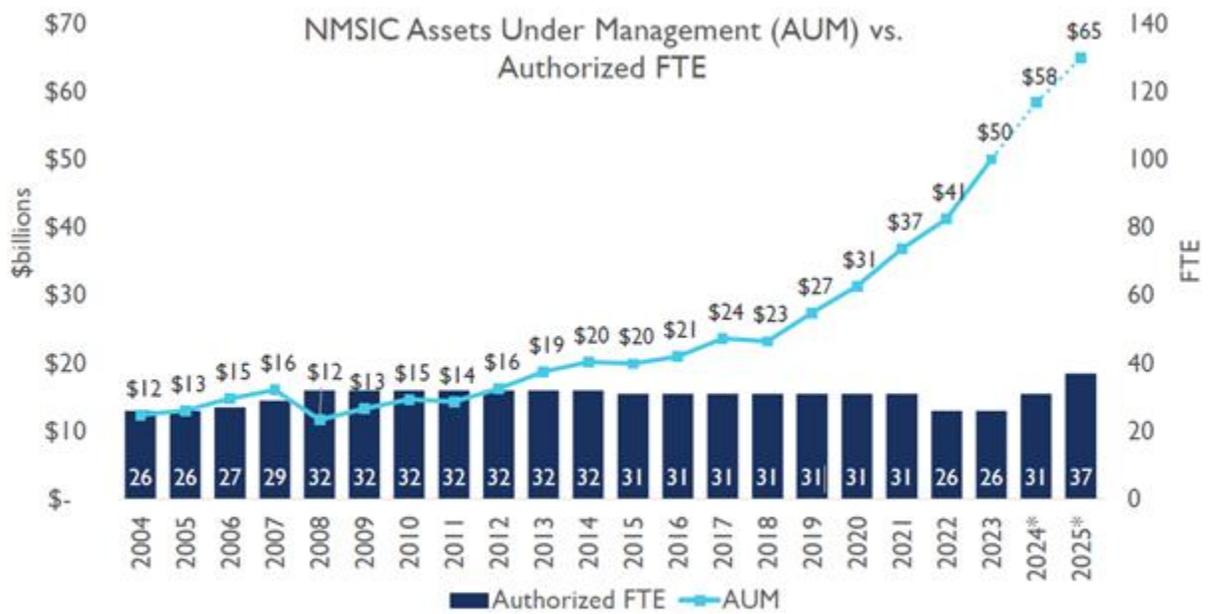
Amendments by SJC addressed small technical concerns, adjusting a minimum salary metric to reflect a median rather than average salary; addition of a claw-back valuation metric requirement; and upgrading legal punishment to a fourth-degree felony for anyone who would use the program for corrupt or self-dealing purposes.

However, the amendments do not address a critical concern the SIC will again highlight, which is the SIC's proposed role as a gatekeeper in the Bioscience Authority's investment process. As we perceive the Council's intended role in the legislation, the SIC would enter the BA's investment process at the 11th hour to "approve" (or alternatively deny):

- a funding/investment claw-back triggered by a BA company's failure to meet prior contractual obligations
- a company's documentation that it has previously provided sufficient economic benefits to the state, exceeding the original investment
- the sale of a BA company to another entity for equity or an exchange of stock
- recoveries to the BA through a bankruptcy proceeding

Requiring SIC approval is potentially problematic for many reasons, including:

- The SIC would be coming into the process with very little in the way of context, history or understanding of each situation, relying primarily on information provided by the BA.
- Such a public approval process (the SIC would have to vote for an approval/denial at a public meeting) is potentially damaging to the underlying company or asset that is being acquired, relocated or punished for contractual shortcomings.
- The SIC would be asked to take on a watchdog role for another entity's work, which is outside of its primary mission of ethically optimizing investment returns for the state's ~\$61 billion in permanent, endowment, reserve and governmental funds.
- The SIC is already facing severe resource shortages in maintaining its core mission of investing the state's money, monitoring those investments and performing related due diligence on new investment opportunities. The chart below shows how the SIC's assets have quadrupled in value over the past 15 years, while staffing has remained relatively flat, creating systemic and procedural stress if not substantial portfolio risk.



*Estimated AUM
 Note: AUM reflects total assets under management, including all permanent endowment trust funds, reserve funds, and third party client assets. AUM reported as of calendar year end, except 2004-2007 which reflect fiscal year end balances for TSFF, WTF, and third party clients. FTE reported as of fiscal year end.
 Source: NMSIC files, RVK, LFC Volume II reports

Synopsis: SB119 seeks to amend the Bioscience Development Act and establish framework around how and under what guidelines the Bioscience Authority (BA) can make investments in New Mexico-based bioscience companies. The bill adds definition to what “New Mexico business” would qualify for investment, specifically a corporation or limited liability company with its principal office and a majority of full-time employees located in New Mexico, or a business with its principal office and at least 80% of assets located in New Mexico. For a NM business to qualify for Bioscience Authority investment, it must have and maintain a minimum NM workforce of five, with a minimum average salary of \$60,000. Similarly, businesses that agree to move here to qualify for investment must meet the same employment and salary requirements.

The bill further stipulates that the BA must assess potential investments for market opportunity, financial stability of the business, its sector expertise, business plan and strategy, the business’ advantage due to intellectual property, the projected economic benefits the business may create over the next five years, and projected social benefits the business’ work may deliver “in accordance with procurement preferences” provided in state or federal law.

Investments must be made as co-investments with a “co-investing organization” selected by BA in consultation with the University of New Mexico’s purchasing office via a competitive process, from among co-investors qualified by at least five years’ experience of investing in bioscience companies, or 10 years of investing in start-ups. The BA’s investment cannot be more than 1/3 of the combined investment of the BA and its co-investor in that business within a 12-month period.

In an effort that appears to be aimed at ensuring the recipient company remains in the state, the bill requires that companies failing to meet their contractual obligations must either reimburse the BA development fund’s cost basis, or document to the BA’s satisfaction that

the company has delivered economic benefits to the state in excess of the BA's costs. Similarly, businesses that are acquired must ensure their obligations are continued by the acquiring entity, and in a bankruptcy action, the BA must have seniority in securing potential repayment of the original investment. The bill also requires that in an acquisition event resulting in the company moving out of state, that the State Investment Council shall approve any repayment terms to the BA involving stock from the acquiring in lieu of cash.

The bill requests a non-reverting \$25 million appropriation from the general fund to the Bioscience Authority for such investments in FY26 and subsequent years. The bill if passed will become law July 1, 2025.

The bill makes efforts to prevent any investments being tainted by nepotism, mandating that any investment entity benefitting from contracts or co-investment from BA cannot have employees related to anyone on the BA board of directors, and that the recipient company may also not hire any BA employee or board member for a one-year period following that employees end of service to the BA. Any willful violation of this provision faces a fourth degree felony under provisions of Section 31-18-15, NMSA 1978.

Public reporting on all BA co-investments are required to be made to the BA board of directors on a quarterly basis and shall be available for inspection pursuant to the Open Meetings Act.” The bill also requires that BA provide annual reporting of the co-investments to the Governor and appropriate legislative committees.

FISCAL IMPLICATIONS

The intended goal of SB119 would appear to be increasing investment capital available for New Mexico-based bioscience and biotech firms by adding the Bioscience Authority to the current group of existing funds and investors assessing and making investments in NM companies. Currently that list in the start-up and bioscience focused New Mexico eco-system includes but is not limited to, the State Investment Council and its ~\$900 million NM Private Equity Investment Programs (NMPEIP) and several local, regional and national venture capital funds (VCs) that it has funded to make such investments; the NM Finance Authority's relatively new \$50M venture capital program, which includes VCs and Impact investment managers; the State Small Business Credit Initiative (SSBCI) which – as of the end of 2024 - has approximately \$50M to be dedicated in the next several years to VCs and impact managers selected by NMFA and the Economic Development Department. It is important to note that of the above-mentioned funding sources, only a small portion of investment will likely be focused on bioscience-related businesses. The SIC's program, which is well established, includes past commitments to Tramway Ventures, Cottonwood Venture Fund, and Anzu Ventures, Builders VC, J2 Ventures, and Lux Ventures, all of which have expertise in the bioscience sector and/or have made previous commitments to NM biotech start-ups.

It should be noted that there is some speculation that the ~\$50M remaining in SSBCI commitments could be frozen or withdrawn by the new federal administration.

Regarding New Mexico-focused investing programs, the SIC, NMFA and SSBCI programs all have some statutory or rule-based component that allows them to make these investments at a differential – or “below market” – rate, with the expectation that the lower financial returns will

be replaced by broader economic benefits like job and industry creation in New Mexico. The proposal here does not appear to allow for investments to be made with such allowances and expectations, which could make finding strictly market-rate financial opportunities a challenge for BA, given the sector-specific and geographically-constrained conditions in which it will be invested.

In general, because of their very complex and sometimes highly regulated products, bioscience-based companies often require very long, multi-year horizons before a successful exit/acquisition can hopefully be achieved. While such investments can be highly lucrative, they are also in a highly competitive space and often require very capital-intensive commitments which can easily exceed \$25 million.

From the book *Boulevard of Broken Dreams: Why Public Efforts to Boost Entrepreneurship and Venture Capital Have Failed – And What to Do About It*, by Josh Lerner, 2009: “49 of 50 US states have started major programs to promote the biotech industry, when realistically only a handful of these states had the base of scientific resources and supporting infrastructure to support a successful cluster, so the bulks of these funds were wasted. When these programs did support a promising firm, in many cases it rapidly moved to a region more conducive to biotech entrepreneurship.”

Along those lines, the bill’s stipulations requiring invested companies to stay in New Mexico with certain minimum employment and salary restrictions have the potential to not deliver the intended result. For example, a company that is invested in by the BA but that ultimately fails, will potentially be unable to return any significant dollars once the company goes out of business. On the other hand, a company that is succeeding to such a high degree that it needs to expand outside New Mexico’s ecosystem and population of 2.1 million people, may actually be incentivized to move its headquarters for prudent and strategic business reasons, as the penalty of repaying BA’s investment costs (not current valuations) may not be enough of a “stick” to make the company avoid having to return the original “carrot” investment. An argument can be made that companies willing to accept such out-of-market investment terms and long-tailed contractual requirements could result in adverse selection by BA, where opportunities could be limited to only the most desperate companies that are still willing accept the investment, regardless of onerous terms or potential future consequences.

Ultimately, the skill of the investors choosing the companies, the selected companies’ abilities to execute their business plans, and certainly market and competitive forces (that may be largely out of their control) will determine whether such early-stage investments can succeed, and high-risk/high-reward investments like these are among the most challenging to make.

SIGNIFICANT ISSUES

Section 5E stipulates: “...When a portfolio business must compensate the authority (BA) pursuant to this section due to an acquisition by another entity or relocation outside of the state, **upon approval of the state investment council (SIC)**, the authority may accept stock in the acquiring entity or in the relocated business in lieu of a cash payment.”

While a “claw back” provision may be intended to keep investment value within New Mexico borders, its structure is found more commonly in economic development incentives, and is not typical in most start-up investing, as it often puts the company being invested in at a competitive disadvantage with its peers.

It is not clear to SIC why it would suddenly be involved only at the very end of this investment process, having not participated in the original due diligence, monitoring or other strategic assistance along the way. The SIC itself relies heavily upon its staff and professional consultants for guidance in determining such separation events, which are rare, and usually occur when a company is failing and is being sold for whatever assets or intellectual property remains, or the company is forced to move to more attractive circumstances for competitive reasons.

Further, unless the acquiring entity was publicly traded, it is not clear whether the SIC would have enough access, resources and information to be able to make a meaningful assessment regarding the fairness of a stock in lieu of cash exchange. SIC would suggest that it cannot realistically add a layer of reassurance to the bill's proposed processes as currently structured, and that the BA itself – or its co-investment entity – should be responsible for such fiduciary assessments, as it/they will be the one enforcing the terms to claw back its capital from the company or its acquirer that wants to move.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

The function of UNM's purchasing office in choosing co-investors for the BA is unique, though the specific value it can bring to a competitive selection process is not clear. Institutional co-investors are highly valued as they should be providing outside validation for BA's investment choices after performing their own independent due diligence on the investment opportunity and the company's forward path to success.

Good co-investors also do far more than just writing a check for a business, bringing domain expertise and knowledge, strategic investment experience and resources in the sector, as well as networking abilities that will provide value-add to the complex process of helping such small technical companies find the right C-suite leadership to grow and succeed. An RFP or similar process to determine qualified co-investors is outside of market norms and may also result in adverse selection.

ALTERNATIVES

As referenced above, the SIC would recommend that the SIC be removed from the proposed process of approving any Bioscience Authority investment business relocations or exchange of value for BA portfolio companies moving out of state.

While SIC, NMFA, and EDD all bring various levels of expertise and insight to the challenging

process of start-up investing in New Mexico, and all three currently informally collaborate on ideas, strategies and best-practices, the various programs are operated independently of one another due to the varied long-term goals of each program.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS