

| | |
|-----------------------|-------------|
| LFC Requester: | Gray |
|-----------------------|-------------|

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.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}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 1/19/24
Bill No: SB 110

Sponsor: Steinborn
Short Public Banking Act
Title: _____

Agency Name and Code 337 SIC
Number: _____
Person Writing Wollmann
Phone: 505 231 3334 **Email** Charles.wollmann@sic.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------------|---------------------------|---------------------------------|
| FY24 | FY25 | | |
| | \$55,000 | NR | State Banking Fund |
| | \$1,500 | NR | Economic Development Department |
| | (\$21,500) | NR | General Fund |
| | (\$30,000) | NR | State Treasury |

(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: Identical to HB125; Similar to 2022 HB75 & 2021 HB236/SB313

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB110 seeks to enact a Public Banking Act, which would create the Public Bank of New Mexico. The Act would allow for the establishment of an 11-member Board of Directors for the Bank and set board structure and general parameters around types of investments the bank can make and services it can offer, including but not limited to, lending money, taking deposits, buying and selling bonds, and serving as fiscal agent for the state or any of its institutions or local governments. The bill outlines governance structure around the board and the key employees for the bank, including Chief Executive Officer and Chief Risk Officer, and dictates the CEO would be required to develop an annual budget for the bank and maintain periodic reporting and record-keeping of bank activity.

The bank would be funded by a non-reverting general fund appropriation of \$20 million, as well as a required and non-reverting deposit of \$35 million in funds overseen by the State Treasurer. The deposit from STO would be mandatory within 30 days of the bank receiving its formal charter. The Economic Development Department is also appropriated \$1.5 million in non-reverting funds for the purposes of establishing and chartering the public bank of New Mexico. Prior to the awarding of that charter, the State Treasurer would be tasked with carrying out provisions of the Public Banking Act

The bill, if passed, is effective July 1, 2024.

FISCAL IMPLICATIONS

The Public Bank of New Mexico would initially be funded by the \$20 million general fund appropriation and the \$35 million deposit from the State Treasury. The \$35 million cannot be withdrawn, and in addition there is no provision for any income generated by the bank to be returned to the general fund. As such, any benefit to the state will originate only indirectly from increased taxes from new business creation and economic activity linked to bank activity, the odds of which are unknown and speculative. Given that current cash yields are around 5%, there

would be an implied opportunity cost of about \$2.82 million annually on the initial outlay of start-up capital for the bank, though that could likely be partially offset by investments made by the State Treasurer's Office prior to charter approval, and by the bank itself once in operation.

SIGNIFICANT ISSUES

It would appear part of the intent behind a public bank in New Mexico is to improve the state's economy, provide expansion of funding opportunities for under-served businesses and reduce predatory lending practices, all of which are desirable goals. There is also an assumption that a state bank could effectively reduce dollars paid to larger national banks that provide existing custodial services of state dollars, which presumably could help keep those dollars and possibly expertise in state. SB110 offers potential advancement in strides toward these goals, but the complexities of banking in no way make that certain. While the historic performance of the Bank of North Dakota is often discussed as an example New Mexico should emulate, for various factors, no other state has been able to duplicate North Dakota's success, though several have tried.

Along those lines, there is a question whether a NM public bank's efforts would overlap or compete against existing entities in the state's private and government sectors. For example, the New Mexico Finance Authority, the New Mexico Mortgage Finance Authority, the Small Business Investment Corporation and other public entities already provide funding options for in-state businesses. The same goes for the state's community banks, which in the past have voiced concerns about additional or unfair (subsidized) competition that a state bank may create. The ultimate outcomes, positive or negative would be dependent on specific policies established by the bank board, as well as execution of those efforts in practice.

The reasons behind the \$1.5 million appropriation to the New Mexico Economic Development Department are not readily apparent. The bill language calls for EDD to use the money for the purpose of establishing and chartering the public bank and developing the bank's lending programs. The EDD is broad and varied in its talents, but it is not obvious that the agency has requisite technical expertise when it comes to establishing a start-up bank, or for that matter what such efforts might reasonably cost. If the money is intended for marketing purposes to boost interest in greater local participation in the new bank, that might seem to raise the question of whether there is currently enough grassroots demand to justify the creation of a brand new, stand-alone entity, rather than providing greater resources to existing programs or facilities.

PERFORMANCE IMPLICATIONS

Regarding creation of a public bank, the SIC perceives no obvious negative impact on the performance of our agency or the funds we manage.

ADMINISTRATIVE IMPLICATIONS

The bill creates an 11-person board of directors (Board) to govern the bank. The Board is also responsible for exercising all the "functions, powers, and duties" of the bank. The Board will meet quarterly and as called by the chair of the Board. The directors of the Board shall receive no compensation other than per diem and mileage as provided in the Per Diem and Mileage Act.

The Board will consist of 3 *ex officio* members and 8 appointed members. The Governor and the Legislative Council shall each appoint 4 of the 8 members. The *ex officio* members are:

- 1) the chief executive officer of the New Mexico finance authority;
- 2) the state treasurer; and
- 3) the secretary of economic development.

The appointed public board members are to be experienced in the fields of economic development (3 appointees [2 appointed by the Governor and 1 appointed by the Legislative Council]), community development (2 appointees [one each by the Governor and the Legislative Council]) or banking operations (3 appointees, at least one of which must be a different political party than the other two [2 by the Legislative Council and 1 by the Governor]). Directors may serve up to two consecutive terms, and initial terms will be four years for four members and two years for the other four appointees. Directors, as well as bank employees will be governed by provisions in the State Governmental Conduct Act, as well as other applicable statutes. Directors will be subject to the Financial Disclosure Act, and both they and bank employees must disclose in writing any direct or indirect conflicts of interest related to any contract to which the bank is a party. Failure to disclose and recuse in relation to any such conflict would result in a misdemeanor offense, pursuant to Section 31-19-1 NMSA 1978.

These guidelines and requirements for the bank board and its employees are important, but they are not typical of any corporate board, and do raise the question about just who might take on such a significant responsibility for an unpaid and liability-rich position, and what factors beyond public service might motivate them. While the nature of the governance structure does not guarantee political factors or influence, certainly the potential exists.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Identical to HB125

Similar to 2022 HB75, 2021 HB236, SB313

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

Other, previous state bank proposals that have come before the legislature in years past have led to suggestions of a formal study – legislative or otherwise – on the potential effectiveness or specific need for a state bank and whether intended outcomes can be accomplished, assuming successful execution of the ambitious concepts behind the proposal.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS