

LFC Requester: _____

**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 1/23/2024

Bill No: SB 162

Sponsor: G. Munoz
Short **STATE AGENCY**
Title: **INSUFFICIENT BALANCES**

Agency Name and Code Number: DFA: Financial Control Division-341
Person Writing: Mark Melhoff, State Controller
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
n/a	n/a	0	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
n/a	n/a	n/a	0	n/a

(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: Senate Bill 162 proposes language prohibiting the drawing or payment of a warrant by an employee of a state agency when there is an insufficient balance. This bill also prescribes penalties to include criminal infractions, fines, and loss of employment.

FISCAL IMPLICATIONS

There are no direct fiscal implications as the bill does not contain an appropriation. The indirect fiscal implications of passing a bill of this nature include:

- Inability to meet state payroll costs. State employees would not be paid if the fund were deemed to have “insufficient balances”, or “employees” could lose their jobs and be fined for ensuring staff was paid.

Legal liability for non-payment. Third-party vendors may not be compensated for goods or services, leading to possible legal liability for non-payment. 3rd party vendors may also lose confidence in doing business with the state of New Mexico. Under the fear of losing jobs or being fined, employees may become unwilling to process accounts payable payments given most employees at this level, would not be familiar with cash balances. These lower-level staff are responsible for creating purchase orders and processing invoices, but they are not accountants or budget professionals and typically do not understand cash management. This could also lead to higher vacancy rates, limit the state’s ability to recruit qualified individuals, and reduce services to the public.

SIGNIFICANT ISSUES

In addition to the concerns noted above, the bill does not make clear whether this “insufficient balance” is defined as budgetary control or cash balance. The terms “unexpended and unencumbered” seem to dictate budgetary control, but there is no definition of either term. The bill also does not define the term “employee”, which is very concerning. Under New Mexico law, the administrative head of each state agency is responsible for ensuring the administrative head’s agency is using accounting practices that comply with the DFA Financial Control Division’s model accounting practices, § 6-5-2 , *NMSA 1978*. Providing the responsibility and authority of the administrative head of each state agency to other undefined “employees” within an agency is inconsistent with § 6-5-2, *NMSA 1978*.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

§ 8-6-7, *NMSA 1978* provides penalties for wrongful drawing of any warrant where there is an insufficient expended or unencumbered balance available. This responsibility lies with the State Treasurer and the DFA Cabinet Secretary. With that, DFA believes § 8-6-7 is adequate.

§ 6-4-6, *NMSA 1978* allows for the payment of current expenses and obligations of state government using amounts that have been appropriated for “general government purposes” when “it may reasonably be expected that at the end of the fiscal year, the balances in that fund or account will be fully restored.” This means, § 6-4-6 permits the expenditure of cash balances across multiple funds or accounts, provided the balances in that fund or account are “reasonably expected” to be completely restored by the end of a fiscal year. As written, SB162 contradicts 6-4-6 because SB162 provides a strict prohibition on any payment of current expenses and obligations of the state government, regardless of any reasonable expectation that the fund or account will be full restored at the end of the fiscal year.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS