LFC Requester:	Jorgenson

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 x **Amendment** ____
Correction ___ **Substitute** ____

Date Feb 1, 2024
Bill No: SB247

Sponsor: Senators Hickey, Munoz
Short Title: Bioscience Company Investments

Agency Name and Code Number: 337 SIC
Person Writing Wollmann
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
	($25,000)	NR	General Fund
	$25,000	NR	NM Bioscience Authority

(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: SB247 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 other investors to be chosen by the 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 cost. 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 approve any repayment 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 FY25 and subsequent years. The bill if passed will become law July 1, 2024.

FISCAL IMPLICATIONS

The goal of SB247 would appear to be increasing investment capital that is 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 ~$800 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 and its investment managers; the State Small Business Credit Initiative (SSBCI) which has approximately $60M to be dedicated in the next several years to VCs 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 recent commitments to Tramway Ventures, Cottonwood Venture Fund, and Anzu Ventures, all of which have expertise in the bioscience sector and have made previous commitments to NM biotech start-ups.

It is worth noting that 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 in exchange for the accompanying job creation such investments will bring to the state. 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 opportunities a challenge for BA, given the sector-specific and geographically constrained conditions in which it will be investing.

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 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 in all likelihood 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 are limited to only the most desperate companies 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

It is not abundantly clear what role UNM's purchasing office will play in choosing co-investors for the BA, or what a competitive selection process would be in this instance. 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 may also result in adverse selection.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Section 2E 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 the claw back provision here may serve an intended role in keeping value within New Mexico borders, it is not clear why the SIC would 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. 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 the BA itself be responsible for such assessments, as it will be the one enforcing the terms to claw back its capital from the company or its acquirer that wants to move, typically for business reasons.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS