LFC Requester:	**Gray**

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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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}

Date Prepared: *Feb 20 2025*
Bill Number: *SB 162*

Check all that apply:
Original __ Correction __
Amendment _x Substitute __

Sponsor: Sen. Campos
Short Title: Severance Tax Permanent Fund Investments

Agency Name and Code Number: 337 State Investment Council
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(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				Indeterminate but substantial, see fiscal implications	Recurring	STPF

					Recurring	General Fund

(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 seeks to amend 7-27-5.15 NMSA 1978, capping the amount of investments that the State Investment Officer & Council (SIC) can make in New Mexico private equity funds or New Mexico businesses at $700 million in aggregate, revising that number down from the existing 11% of the Severance Tax Permanent Fund (STPF) cap in current law.

The bill also removes language that makes it clear that other requirements in this section of law are separate from the SIC's 11% STPF maximum investment in NM private equity and/or NM businesses. This includes the legislatively required Economically Targeted Investment (ETI) of 2% of the STPF to be invested in the NM Small Business Investment Corporation (SBIC), as well as the up to $500 million STPF allocation to NM Finance Authority for the management of the Small Business Recovery and Stimulus Act that originated and operated during the pandemic and still awaits repayment. The statutory language change may have unintended consequences of those other ETI programs also being counted as part of the whole new $700 million maximum investment, due to their operations clearly benefitting New Mexico businesses – see significant issues.

AS AMENDED

SB162 as amended by STBTC clarifies that bill only seeks to cap the amount of STPF investments the State Investment Council may make in New Mexico Private Equity; The bill no longer limits the existing statutory STPF 2% allocation to the Small Business Investment Corporation, and no longer limits any investments made through the legislatively-authorized $500 million Small Business Recovery Act Loan Program which reside in the same section of law.

The amendment to SB162 raises the proposed cap of $700 million to $1 billion as it applies to the New Mexico Private Equity Investment Program (NMPEIP), which is currently limited by an 11% allocation of the $10.6 billion STPF by statute, and 9% via policy set by the State Investment Council as fiduciary overseers of these many investments.

As proposed, the amendment, as well as the legislation itself remain potentially problematic if not clearly unconstitutional. As cited in the original analysis, the New Mexico Constitution, Article II, Section 19 states that "No ex post facto law, bill of attainder nor law impairing the obligation of contracts shall be enacted by the legislature."

The SIC's current NMPEIP valuation as of 1/31/25 is $495.0 million, or 0.82% of the total assets managed by the SIC. Specific to the STPF, that amount is 4.67% compared to the 9% policy target. However, that number does not include the majority of approximately $774 million that the Council has committed to over the past ~27 months across more than 20 different funds that are actively sourcing deal flow and investments in New Mexico. The basic math of current holdings added to future commitments would indicate that the $1B cap may be insufficient, and that the SIC potentially would have to freeze some portion of existing contractual investment commitments, violating the Constitution, or alternatively sell-off certain investments through the secondary market. Secondary sales in such scenarios typically come at a deep discount, which would compound the potential losses SB162 is attempting to mitigate.

There is a potential secondary concern with the $1B program cap, which could also severely impede any successes or progress the investments achieve. With success comes higher valuations, meaning the cap could be breached if successful companies are sold at a valuation that exceeds current book values – which is ideally the very goal set forth in current law.

Even as amended, the bill at best is somewhat arbitrarily attempting to solve a very complex, multi-faceted problem for which the Council has already been working to remedy for several years through structural and strategic changes. At worst, the bill could be counterproductive in its implication that New Mexico should *not* be investing in its own entrepreneurs, founders, and scientists who are steadfastly working to create new and groundbreaking opportunities to deliver a more promising future for all of New Mexico's citizens and the broader world.

Potential alternatives to setting a dollar-specific cap, which will likely have to be addressed legislatively in the future assuming existing program reforms already underway are successful, the legislature could:

- Cap the program at a percentage of the STPF lower than the current statutory 11%
- End authorization for future NM investments – as indicated above, this would end the program that has existed since the early 1990s, allow greater focus on financial returns while losing NM-specific economic benefits and opportunities the program drives; as indicated above, this solution brings its own set of different but serious problems.
- Address the concern long-term through a sunset provision that would allow policy makers to either continue or end the program at some future date after more data becomes available relative to the Council's strategy and structural changes focusing on financial returns which it has already enacted but will take time to become apparent, as is the nature of venture capital investing.

FISCAL IMPLICATIONS

SB162 if passed would have both immediate and broad negative impacts on not only future commitments made by the SIC in support of New Mexico businesses, but it could also impact existing *contractual commitments* (for more on this potential constitutional conflict, see significant issues) that the SIC has currently with investment funds, and which could hamper ongoing indirect investments made in New Mexico start-ups – regardless of the investment's potential or the substantial knock-down effects an investment freeze could have on dozens of portfolio companies. The concept of capping economically targeted investment/incentive programs – film production tax credits for example - has in the past resulted in a chilling effect that arguably has not produced beneficial headlines or effects for the state.

The specific intent of the bill is not stated, but a reasonable assumption is that it is intended to legislatively force the lowering of the state's primary ETI investment exposure as a way to address the current financial underperformance of the STPF relative to the flagship Land Grant Permanent Fund. Historically and over the past 10 years, that underperformance of the STPF compared to the LGPF has been about 1%, but more recently that delta has increased to -1.8% per annum over the previous 5-years. For both the 10-year period and for returns since inception, the NM Private Equity Investment Program (NMPEIP) has delivered slightly negative investment returns.

As of 11/30/24	Fund Value	Performance % (Net of fees)				
		1 year	3-years	5-years	7-years	10-years
Total Fund	$ 59,215,023,575.00	11.14	4.65	7.07	6.72	6.72
LGPF	$ 32,911,839,927.00	11.6	5.11	7.7	7.18	7.04
STPF	$ 9,976,449,593.00	10.33	3.51	5.9	5.81	6.08
NM Private Equity	$ 492,302,661.00	-11.44	-11.69	-7.9	-3.34	-0.4
Other NM ETIs (SBIC & NMFA Recovery Act Loans)	$ 269,785,494.00	-6.85	-4.19	-3.21	-3.32	-1.57

SIC recognizes that this is a legitimate concern which has been elevated by 2023's passage of SB26, as starting in FY25 it will begin to deliver hundreds of millions and eventually in subsequent years, projected billions of additional state dollars to the STPF, which will then in turn deliver hundreds of millions and eventually billions to the state's general fund as part of its ~4.7% distributions annually. The LFC has estimated that market underperformance of the STPF relative to the LGPF could result in billions less for New Mexicans than hoped.

However, there is more nuance to the story than just return numbers, and more than one factor that is contributing to investment underperformance, as well as offsetting and mitigating characteristics that ETI investments are intentionally designed to deliver around NM job and industry creation.

In the chart above, you can see investment returns for the LGPF, STPF and total funds managed by SIC. The primary difference in performance between LGPF and STPF are the ETI programs that allow for STPF to be invested at a differential, or below-market rate when the investment is expected to offset lower financial returns by creating jobs and spending here in New Mexico. While ETIs underperform due to the characteristics of the particular investment structure as well as geographic limitations of investing from a concentrated pool of companies, those investments are also taking the place of higher-performing investments with similar risk profiles, compounding the effects of STPF underperformance.

There are three programs currently managed by SIC or drawing from the STPF that fit this criteria:

- NM Private Equity/Venture Capital Funds (NMPEIP) & indirect investments into NM companies (statutorily up to 11% of the ~$10B STPF allowed, 9% target by SIC policy)
- The Small Business Investment Corporation (2% required allocation from the STPF, valued at $156.9 million as of 6/30/24)
- Recovery Act Loans (legislatively mandated COVID loan program – Section 6-32-3 NMSA 1978 overseen by New Mexico Finance Authority (NMFA), $500M authorized, ~$187M deployed, most current value $110M)

Prospects for expected future returns for the three ETI programs varies greatly. The SBIC's programs have been stable for many years, and its loans have helped support more than 25,000 jobs since inception about 25 years ago. Last year (FY24) SBIC reports it and its lending partners made 120 loans of $34 million, supporting 588 jobs. However, by design, those loans are low cost to support businesses and will not result in financial returns higher than 2%/year, which falls short of the STPF's long-term investment return target of 6.75%.

The Recovery Act Loans, administered by NMFA, originally drew down about $187 million from the STPF for loans to NM small businesses. However, those legislatively-mandated loans did not require repayment guarantees or substantial underwriting, and as of November due to already realized and expected loan defaults, that ~$187 million is currently carried at $110.6 million valuation, or a loss of about 40% since implementation in 2020 and 2021. The loans can be paid back over a 10-year period, creating both a current and a future long-tail of unavoidable investment underperformance for its portion of the STPF.

The last and largest of the ETI programs is the NM Private Equity Investment Program, which was established under 7-27-5.15 in the early 1990s and has the greatest chance of achieving market-rates of return, long-term. The program has undergone various iterations in structure and strategic evolution during those three decades, most recently around 2019 when it shifted away from a dedicated co-investment strategy to increase portfolio diversification and increase the number of managers and total companies being created through these early-stage venture capital (VC) investments intended to facilitate technology transfer and commercialization from NM's National Laboratories and research universities.

While not abandoning those existing co-investments, which have proved to be overly concentrated among a handful of NM companies that once had high expectations but have sometimes struggled (and continue to do so in some cases), the Council's new strategy pivot has resulted in both hiring a new consultant that has operated a similar program in Utah with success (Mercer), and a fresh wave of SIC fund commitments to both NM-based VCs and also more proven regional and national investors with strong track records and domain expertise, while we build out a supportive venture infrastructure to benefit companies at every stage of development.

The following chart shows the Council's NMPEIP commitments from the STPF since late 2022:

Date	Fund Selected	Commitment ($) up to:	Domain Expertise	Investment Stages
November 2022:	Roadrunner Fund I	$50 million	Deep Tech*	Venture Studio Incubation, pre-seed to Series A
November 2022:	Crosslink Ventures X/Endeavor	$35 million	Generalist, w/expertise Deep Tech	Seed to Early Growth
March 2023:	Lux Ventures VIII	$62.5 million	Multi-sector firm with expertise in physical sciences, life sciences, and computational sciences	Company Creation to Growth
March 2023:	Playground Ventures II	$35 million	Quantum, next-gen computing, decarbonization, multi-sector firm	Seed to Early Growth
August 2023:	Antler US II	$40 million	Generalist Start-Up Accelerator	Pre-Seed to Seed
August 2023:	Thayer Ventures IV	$10 million	Travel & Transportation	Seed to Early Growth
August 2023:	Tramway Ventures III	$20 million	Life Sciences, excluding biopharma	Seed to Early Growth
September 2023:	At One Ventures	$20 million	Climate Tech	Seed to Series A
November 2023:	Khosla Ventures VIII	$75 million	Multi-Sector firm with expertise in Deep Tech	Seed to Growth
November 2023:	Dangerous Ventures I	$10 million	Sustainable & Climate Tech	Pre-seed to Series A
January 2024:	Next Frontier Ventures IV	$10 million	Climate Tech, AI, Fin Tech, Software	Seed to Early
February 2024:	Airbus Ventures IV	$20 million	Aerospace, Advanced Materials, Manufacturing	Seed to Early Growth
February 2024:	Upfront VIII	$50 million	Multi-sector firm with expertise in space & hard tech, sustainability & climate, and cyber security & AI	Seed to Early Growth
March 2024:	DCVC Climate	$50 million	Climate Tech, Energy Tech	Mid-Stage
May 2024:	J2 Ventures Argonne	$14.5 million	Focus on dual-use (civilian and military) technologies across four areas – advanced computing, cybersecurity, infrastructure, and health technology	Seed to Series B
August 2024:	Frontier Fund I Alpha	$50 million	Deep Tech	Late Seed to Early Growth
August 2024:	Outlander 3 Magellan	$30 million	Generalist Pre-Seed	Pre-seed to Series A
September 2024:	Builders VC III	$62 million	Agriculture, Healthcare, Industrial Tech Modernization	Series A
September 2024:	TK Media Tech Ventures	$15 million	Media & Entertainment Tech	Seed to Series A
October 2024:	Antler US New Mexico	$15 million	Generalist Post-Accelerator	Seed
October 2024:	Anzu North America Tech Leaders	$20 million	Energy and sustainability, materials, Manufacturing, aerospace, automotive, and AI & hardware biomanufacturing	Early Growth
November 2024:	UP.Abundance I, UP.Labs I, UP.ventures II	$80 million	Climate Tech with focus on mobility & transportation	Corporate venture lab & Post-accelerator Program; Seed & Series A

In aggregate, these recent commitments to these fund managers who will make prudent investments in New Mexico start-up companies, total $774 million across more than 20 different NM, regional & national venture funds, to be drawn down contractually over investment periods of about 5-years, with another five or more years to be "harvested" usually through a merger/acquisition or initial public offering (IPO). These are long-term commitments that, while promising and well-considered at this time, will take several years to prove successful or not.

Embedded in this strategy are different platforms to help grow NM start-up businesses, including venture studios, venture labs, traditional accelerator programs, post-accelerator programs, and traditional support funds for pre-seed, seed, series A and multi-stage investments.

This newly refined approach supports local company founders while importing external strategic and domain expertise from investors who have "been there, done that" successfully. Of the ~20 new managers, all will actively source deals in New Mexico, pursuant to statute, while at least eight have committed to also establishing offices or personnel who based in the state.

While the SIC recognizes the fiscal concern about reducing the delta in investment performance between the LGPF and STPF, it has already worked toward this goal in the actions it has taken the past several years, which have also leaned into NM's strengths – namely, expertise in hard science, "frontier technologies" including Artificial Intelligence, Microelectronics, Energy, Climate Technology, Quantum, Advanced Manufacturing & Synthetic Biology.

This latest SIC pivot into improving this investment plan for focusing on New Mexico opportunities relies on the current statutory guardrails established by the legislature and overseen by the Council. Reversing that course mid-stream could have substantial unintended consequences and would seem to be an abrupt departure from previous legislative mandates, including changes approved by the legislature in 2020 which increased the NMPEIP statutory cap from 9% to 11% of the STPF, and more recently, the 2022 & 2023 establishment of a similar NM-focused venture investing program through a $50,000,000 total appropriation to the NM Finance Authority (NMFA). The SIC works consistently, though informally, with NMFA and the Economic Development Department (which oversees the similar ~$74M State Small Business Credit Initiative with NMFA, involving federal investment/impact funds) so our strategies do not significantly overlap as we pursue the same base goal – successfully investing in NM start-up companies to produce financial returns while creating jobs and industry.

The long and multi-year horizon and structure of these types of investments, however, make it difficult to discern the effects of SIC's policy pivot on performance, the proof of which could take years to completely assess. From SIC's perspective, this bill is seeking to solve a problem that the Council has already been actively working to address for the past several years, and which could take additional years to firmly evaluate for success or failure.

SIGNIFICANT ISSUES

The New Mexico Constitution, Article II, Section 19 states that "No ex post facto law, bill of attainder nor law impairing the obligation of contracts shall be enacted by the legislature."

Should SB162 be passed and signed, the law would almost certainly impair the contractual obligations and financial commitments the SIC has already entered into with the 20+ venture firms listed previously (see the table above), as well as many others that pre-date those commitments. To be clear, only a small portion of the $774 million in recent commitments has been drawn by our managers for investment as of today, but the SIC legal and contractual obligations to comply with future capital calls remain.

Assuming passage, and in attempting to remedy such a scenario, there are somewhat limited options for the SIC, but the obvious solutions should the program be cut to $700 million from the 11% STPF existing statutory cap would be drastic and costly. SIC potentially would have to sell existing investments on the secondaries market to reduce our existing and future allocation to this strategy. Secondary market sales often come at a deep discount (10-50%) to the seller, assuming there is any market demand to be had at all for New Mexico-specific start-up investments. Another alternative solution would be the SIC breaking its contractual requirements with fund general partners, which creates legal liabilities as well as reputational damage to the SIC as an institution and to the state itself. While there may be some other creative legal solutions that could be explored, this would seem to be a case where the cure may be worse than the disease, especially since a course of treatment has already been prescribed by the SIC and is already in process.

There is a secondary serious concern SIC identifies that would compound this potential constitutional problem, due to the way we read the changes to be brought about through eliminating "…In addition to the investments required by subsections F and G of this section…" (see page 1, lines 20&21, see page 5, lines 17&18, and page 6 lines 11&12). These sections involve the stipulations related to the SBIC and the NMFA's Recovery Loans, which in our opinion, under the bill's proposal would result in the new $700 million cap being inclusive of all three programs in aggregate.

As seen in the charts above, the current market value for the SIC, SBIC & NMFA programs under 7.27.5-15 have a market value of $762 million as of November 2024, a total that both exceeds the bill's new proposed cap level, and which also does not include the majority of the additional $774 million in NMPEIP investment commitments the SIC has made over the past two years. SIC's pacing is based on both perceived investment opportunities, and the expectations that NMPEIP's existing investments will eventually exit and return capital that would in turn be placed with these new commitments as they occur over the next five years. The changes to the NMPEIP should this bill pass would be dramatic and potentially un-do to the state's emerging national reputation of supporting a growing and in many strategic ways, dynamic and vastly improved homegrown entrepreneurial ecosystem.

While SIC acknowledges that past investment performance under previous strategies have resulted in subpar returns in the near-term due to the concentrated nature of the portfolio and other factors, we believe the Council's work to remedy this shared concern has now put the NMPEIP investment program on the right track, at an attractive point in time where the federal government is pushing to protect the US's intellectual capital, re-invest in American progress and re-shore domestic manufacturing, three pillars that should provide greater opportunity to this investment strategy and lean in to New Mexico's strengths.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

While a reduction in the cap percentage dedicated to NM start-up investments to the 2020 level of 9% by statute, could potentially, though not easily, be accommodated by the SIC, we would caution that it also sends a discouragingly bleak message that New Mexico lacks legitimate venture and investment opportunities, and that we should not invest in our own state, which is a position with which the Council strongly disagrees.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS