| LFC Requester: | No request received in 2025 |
|---|---|

**AGENCY BILL ANALYSIS**
**2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

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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}***

*Check all that apply:*

**Original** X **Amendment** ____
**Correction** ____ **Substitute** ____

**Date** 2/4/2025
**Bill No**: HB 130

**Sponsor:** Rep. Roybal Caballero

**Agency Name and Code Number**: Regulation & Licensing/Financial Institutions Division 420

**Person Writing Analysis**: Mark Sadowski, FID Director

**Short Title:** Public Banking Act

**Phone:** 505-476-4566

**Email:** Mark.Sadowski@rld.nm.gov

## SECTION II: FISCAL IMPACT

### APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|
| **FY25** | **FY26** | | |
| NFI | 50,000.0 | Nonrecurring | General Fund |
| | | | |

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|
| **FY25** | **FY26** | **FY27** | | |
| NFI | Indeterminate | Indeterminate | Recurring | State Banking Fund |
| | | | | |

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

| | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| **Total** | NFI | Indeterminate | Indeterminate | Indeterminate | Recurring | General Fund & State Banking Fund |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Legislation proposing a state bank or public bank in New Mexico have been introduced numerous times in recent years but not enacted. [*See* 2024 HB 125 Public Banking Act; Public Banking Act; 2022 HB 75 Public Banking Act; 2021 HB 236 Public Banking Act; 2019 HM 41 Study State-Owned Bank.]
Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

**SECTION III: NARRATIVE**

## BILL SUMMARY

House Bill 130 (HB 130) enacts the Public Banking Act and creates the Public Bank of New Mexico (PBNM) as a governmental instrumentality chartered pursuant to United States law. HB 130 enables the PBNM to make contracts; accept deposits; borrow and lend money; and incur debt. The PBNM shall not make loans to a private individual or private legal entity. The PBNM is initially capitalized with a fifty million dollar ($50 million) non-reverting appropriation from the general fund, of which no more than four millions dollars ($4 million) may be used for establishing and chartering the PBNM and developing lending programs. HB 130 also provides for an additional sixty million dollars ($60 million) non-reverting appropriation to be deposited in the PBMN from the general fund.

HB 130 establishes an eleven (11) member Board of Directors (Board) to govern the PBNM. Four (4) members of the Board are New Mexico Legislative Council appointees, and four (4) members are Governor appointees. The remaining members include the Chief Executive Officer of the New Mexico Finance Authority (NMFA), the State Treasurer, and the Secretary of Economic Development. The Board will hire a chief executive officer (CEO). The CEO is responsible for selecting all bank employees, including a chief risk officer. The CEO must prepare an annual report that is presented to the legislative finance committee, the revenue stabilization and tax policy committee, and "any other appropriate interim legislative committees." The report must also be available to the public via the internet.

HB 130 creates a "state banking fund" that consists of appropriations, capital, retained earnings, deposits, grants and donations, and investment income that shall not revert to the general fund at the end of a fiscal year. All money credited to the fund is appropriated to, and retained by, the PBNM for the purposes of the Act. If enacted, HB 130 would become effective July 1, 2025.

## FISCAL IMPLICATIONS

The Financial Institutions Division (FID) of the Regulation and Licensing Department (RLD) does not anticipate any direct fiscal impact from the implementation of HB 130. Indeterminate additional operating budget impact is noted as the initial appropriation for bank capital may not be sufficient for either the chartering or continued solvency of the PBNM over time. Revenue estimates are indeterminate without proposed and detailed business plans, structure, salaries, level of acceptable risk, and other factors that would directly impact the revenue of the PBNM.

**SIGNIFICANT ISSUES**

Section 7(C) of HB 130 states that the PBNM will be "chartered pursuant to federal law." However, Section 3(L) indicates that records will be maintained "in compliance with state and federal law." This creates ambiguity regarding whether the PBNM will seek a state or federal charter for its operations. In the United States, banks are actively supervised by their chartering authorities, such as the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve, the Office of the Comptroller of the Currency (OCC), or state regulatory bodies. Given this, there is a need to clarify which oversight entity would be responsible for regulating the PBNM. The choice between state and federal chartering could impact regulatory oversight, reporting requirements, and compliance standards for the PBNM.

For the purposes of this FIR, the FID infers that the PBNM shall seek a charter from the FID. The State of New Mexico charters state banks pursuant to the New Mexico Banking Act (Section 58-1-1 to -85 NMSA 1978). Banks chartered by the FID are subject to state laws, but they are also required to comply with certain federal laws. Specifically, Section 3(N) of HB 130 indicates that the PBNM "shall be subject to all applicable regulatory and reporting requirements that allow access to the Federal Reserve…" This suggests that the PBNM will seek access to the U.S. payments system through the Federal Reserve Bank of Kansas City. The PBNM would be subject to regulations set forth by the Federal Reserve for either non-member or member state-chartered banks.

The FID suggests the following non-exclusive list of items/issues be addressed in HB 130.

- The formation of a "bank" being owned/run by any unit of government within the State of New Mexico using public funds to finance the "bank" may conflict with the language and intent of Article IX, Sect. 14 of the New Mexico State Constitution (commonly known as the "Anti-Donation Clause"). Legal certainty should be reached that the proposed structure and funding of the PBNM will not violate the Anti-Donation Clause prior to enactment of the provisions of HB 130.

- Under New Mexico law, all state-chartered banks are required to obtain deposit insurance, and the PBNM would likely be subject to these same requirements. However, HB 130 does not currently include a provision that explicitly exempts or addresses the PBNM's need for deposit insurance. Below are key legal references and considerations related to deposit insurance:
    - §58-1-2(A)(1) NMSA 1978 defines a "bank" as "an 'insured bank' as defined in Section 3(h) of the Federal Deposit Insurance Act," meaning that a state-chartered bank in New Mexico must be insured under the FDIC or another appropriate federal agency.
    - §58-1-61(B) NMSA 1978 requires any bank transacting banking business or accepting deposits to provide "satisfactory proof" that insurance of deposits has been obtained, either through the FDIC or another suitable U.S. government agency.
    - §58-1-70 states that a state bank must obtain deposit insurance from the United States or any agency thereof and may also acquire and hold membership in the

Federal Reserve System.

    - The FDIC's Statement of Policy for Applications for Deposit Insurance raises concerns about banks that are owned by government entities, particularly those controlled by the political process. The FDIC highlights potential risks related to management stability, the bank's business purpose, and its ability to raise true equity capital, rather than relying on government transfers.

- The Bank of North Dakota (BND), a North Dakota publicly owned bank, is often cited as a model for public banking. However, the BND was founded over a century ago under a completely different set of circumstances. The BND has a relationship with the Minneapolis Federal Reserve Bank (Fed), is guaranteed by the full faith and credit of the State of North Dakota, and has experienced weaknesses during economic downturns.
    - Unlike the BND, the PBNM is not explicitly guaranteed by the full faith and credit of the State of New Mexico in HB 130. Without such a guarantee, the PBNM may face increased financial instability, particularly in times of economic stress or unexpected market fluctuations. The absence of a state-backed guarantee could erode confidence in the PBNM's solvency and make it more difficult for the bank to weather financial challenges, potentially leading to insolvency. HB 130 should be amended to include an explicit full faith and credit guarantee from the State of New Mexico for the PBNM. Alternatively, if the state is not prepared to issue such a guarantee, HB 130 should establish a robust alternative financial support mechanism to ensure that the PBNM is not left vulnerable to market volatility or financial difficulties.
    - The PBNM will need sufficient initial capitalization to support its startup costs, anticipated growth, and any unforeseen challenges. Without sufficient capital, the PBNM may struggle to maintain solvency or may be forced to seek emergency funding, which could undermine its financial health. Commercial banks in New Mexico maintain an average total capital ratio of 22.14% (as of September 30, 2024). For a bank projected to hold $1 billion in assets, this equates to $221.4 million in capital. This level of capitalization is well above the minimum federal requirements and reflects the need for banks to maintain significantly higher capital ratios to ensure their stability. HB 130 should ensure that the PBNM is adequately capitalized at inception. The bank should have sufficient capital to support its startup operations, expected growth, and any unforeseen challenges. The capital required should align with industry standards and best practices for risk mitigation. This may require an initial capital infusion that aligns with industry standards, which could range between $200 million and $250 million depending on the size and scope of the PBNM's projected assets. Additionally, the bill should include provisions that allow for regular capital assessments to ensure that the PBNM remains adequately capitalized as it grows and responds to changes in economic conditions.
    - Over time, the PBNM will need to maintain a sustainable capital structure that can absorb financial shocks during periods of economic stress or market fluctuations. As a government-owned institution, it must have structured mechanisms for raising additional capital when necessary, without relying on unsustainable loans or creating long-term solvency risks. HB 130 should include provisions for managing the PBNM's capital in the long term. This could include annual capital reviews to assess the bank's capital adequacy, with triggers for recapitalization if the capital ratio falls below a certain threshold.

- Like any financial institution, the PBNM will need to raise capital during periods of economic prosperity and deplete capital during periods of economic downturn or unexpected losses. This countercyclical nature of capital management is common among private financial institutions, but the PBNM will require clear provisions for managing capital throughout economic cycles. Economic downturns or unanticipated growth may require the PBNM to seek additional capital to maintain solvency. However, during such times, the state may face budgetary constraints, making it difficult to provide the necessary funding. HB 130 should include provisions that define a clear process for seeking additional capital if the PBNM faces financial difficulties. This process should outline specific criteria for when and how the PBNM can request additional funding, ensuring that the bank has access to resources when needed without exposing the state to undue financial risk.
- Section 4(C)(1) of HB 130 states that "any funds provided for the operating budget of the bank shall be provided from bank income and equity." While this provision ensures that the PBNM can operate on its own earnings, it does not account for economic downturns or unexpected financial stresses that may require additional capital appropriations. Without provisions for additional funding, the PBNM may face difficulty maintaining solvency during such periods. HB 130 should clarify that in the event of financial distress, the state can provide additional appropriations to the PBNM if necessary. This provision would ensure that the PBNM is not solely reliant on its own income during periods of economic downturn or unexpected financial losses. The bill should include a mechanism for emergency appropriations or additional funding requests, which would outline the process for the PBNM to request additional support from the state if its operating funds or capital become insufficient to meet financial needs. This provision should include clear guidelines for when such capital injections could occur and ensure that the PBNM remains well-capitalized, even during tough economic times, without jeopardizing the state's broader financial health.
- HB 130 requires the PBNM to be funded with public money that will be "deposited in the fund and shall not revert to the general fund." However, the New Mexico constitution makes clear that no one legislature can bind the authority of a future legislature, especially on the issue of appropriation of funds. Therefore, a subsequent legislature could re-appropriate the PBNM's capital. As a result, it is impossible to accurately calculate the real capital of the PBNM. What is more, a subsequent legislature could re-appropriate all the PBNM's capital thereby making it instantly insolvent.

- For effective oversight, the FID should be able to exercise its supervisory authority independently and must have unrestricted authority to access and review all accounts, books, and records of the PBNM.
    - HB 130 should explicitly grant the FID the unfettered authority to examine the PBNM's records, books, accounts, and transactions. This authority should be independent of any influence from the PBNM's Board, management, or political entities, ensuring that the regulator can act objectively and with full access to necessary information.
    - HB 130 should provide the FID with explicit authority to take enforcement actions against the PBNM, including penalties, corrective measures, and the removal of officers and directors. This authority is essential for ensuring that the PBNM operates in the public interest and remains financially stable. The FID's authority

to act quickly and decisively in situations of financial instability or mismanagement must be clearly outlined in HB 130. This will protect taxpayers by ensuring that the bank's assets are safeguarded, its operations are transparent, and any issues are addressed before they lead to serious financial risks.

  - To ensure that the PBNM operates in a financially sound and compliant manner, the FID must have the tools necessary to seek corrective actions if the PBNM is found to be in violation of regulatory requirements or is experiencing financial distress. These tools should include the authority to impose formal enforcement actions, civil money penalties, and the ability to remove officers and directors of the PBNM if they are found to be failing in their duties or violating applicable regulations. The ability to exercise enforcement powers is critical to maintaining public confidence in the PBNM, particularly given the risks associated with public funds. The PBNM's operations directly impact New Mexico taxpayers, who may ultimately bear the financial burden in the event of insolvency, weak capital protection, or mismanagement.

- A primary objective of all financial institutions regulators is to ensure the safety and soundness of financial institutions through compliance with laws, regulations, and supervisory policy. To maintain this standard, consideration should be given to:
  - The scope of the investment and lending authority of a state-owned bank. This authority should be carefully structured to avoid risks to the solvency of the institution. Federal law requires that appropriate limitations be established on loans to insiders (individuals with power or control within/over the bank) and affiliated entities. Limitations are also required to establish limits on the total amount of funds that may be loaned to one borrower or group of affiliated borrowers.
  - Political influence over lending and investment decisions presents a significant risk to the financial security and long-term viability of a publicly owned bank. Political motivations could lead to lending decisions that prioritize short-term popularity over sound financial judgment, potentially leading to poor-quality loans or investments that undermine the bank's solvency. For example, if the PBNM were to underprice risk or under-collateralize loans for development projects that are politically favored, the financial health of the bank could be at risk, particularly if these loans default.

- When establishing and maintaining a financial institution such as the PBNM, it is crucial to address the risks posed by concentrations of assets and liabilities. Concentrations can arise when a significant portion of the bank's assets or liabilities are tied to a single party, sector, or source. This presents both credit risk and liquidity risk, both of which could jeopardize the long-term viability of the bank.
  - A credit concentration occurs when a large proportion of the bank's loan portfolio or funding commitments is concentrated in a single borrower, group of borrowers, or industry sector. This creates significant credit exposure for the bank, increasing the risk of default or non-repayment. As credit concentrations can be detrimental to the stability of the bank, it is important to consider limitations on the proportion of the PBNM's assets allocated to any single borrower or group of related borrowers. Regulators typically flag credit exposures greater than 25% of total capital as risky. For the PBNM, it would be prudent to adopt similar limits to ensure that no single borrower or group can significantly jeopardize the bank's capital base.

    - A liability concentration occurs when a bank's funding sources are heavily dependent on one or a few depositors, creditors, or government entities. For the PBNM, this risk is particularly pronounced as its entire funding base is tied to state appropriations and government sources. Liability concentration poses significant liquidity risks. Should there be changes in state policy, reductions in state funding, or other challenges to securing government funding, the PBNM could face a liquidity crisis. Regulatory agencies have observed that even a five percent concentration of liabilities with a single or limited group of depositors can trigger elevated liquidity risk, making the institution vulnerable during times of financial stress.
    - Given the concentration risks associated with both assets and liabilities, the PBNM will need to maintain higher levels of capital to absorb any potential losses that could arise from these risks. Regulatory agencies typically recommend that financial institutions with higher concentration risks should hold substantial capital buffers to mitigate the impact of any defaults, liquidity shortages, or other financial challenges. Prudent banking practices dictate that institutions with more concentrated risk profiles should hold capital ratios well above the minimum requirements set by regulators. This additional capital provides a cushion to absorb losses during periods of economic stress. HB 130 should require the PBNM to maintain a higher capital ratio in line with prudent banking practices and to address the inherent concentration risks associated with its unique funding structure.

- Under Federal Banking law, Title 12, USC 503 (Liabilities of directors and officers of member banks) if directors or officers knowingly violate or permit agents, officers, or directors of the bank to violate a multitude of provisions of banking law, "every director and officer participating in or assenting to such violation ***shall be held liable in his personal or individual capacity*** for all damages which the member bank, its shareholders or any other persons shall have sustained in consequences of such violations." (emphasis added). While HB 130 outlines a governance structure for the PBNM, it does not appear to address the potential personal liability of its directors and officers, specifically regarding violations of banking law. Instead, the bill includes a blanket bond for all employees, which may not fully protect the public interest or ensure accountability at the highest levels of governance. Given the significant responsibilities of directors and officers in ensuring the proper functioning of the PBNM, it is critical to consider their personal liability for any intentional or negligent violations of banking laws, especially in light of federal requirements.

- HB 130 does not appear to restrict lending to New Mexico-based entities only. The absence of such a restriction could result in funds being lent to out-of-state borrowers or projects, potentially diverting capital away from local economic development and growth within New Mexico. If the bank were to lend significant funds to out-of-state entities or projects, this could:
    - Limit the impact of the PBNM on local development. Capital that could be used to fund in-state businesses, infrastructure projects, or job creation might be redirected outside the state.
    - Undermine local economic priorities. New Mexico could miss opportunities to strengthen its local industries by not prioritizing loans for in-state development.
    - Weaken state-based economic resilience. Keeping funds within the state can help bolster New Mexico's financial systems during economic downturns or periods of

financial instability. If the bank funds projects outside the state, it could reduce the resilience of the New Mexico economy in times of crisis.

- Prior to submitting its chartering application, the PBNM would need to develop a comprehensive business plan. This plan should address what unmet needs the bank aims to fill, the sectors it intends to serve, the competitive and prudent financial practices it will adhere to, and strategies to ensure its long-term financial sustainability. The business plan should also take into account federal and state regulations regarding public banking operations, ensuring that the PBNM operates within the bounds of applicable laws while still fulfilling its mission.

**PERFORMANCE IMPLICATIONS**

See "Significant Issues" above.

**ADMINISTRATIVE IMPLICATIONS**

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

**TECHNICAL ISSUES**

See "Significant Issues" above.

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

The New Mexico Finance Authority (NMFA) provides loans, bonds, and guarantees for improved infrastructure, water system upgrades, road projects, fire and law enforcement equipment, healthcare facilities, venture capital, economic development, and other needs to business, non-profit, and public entities at competitive interest rates. The NMFA partners with the EDD in creating and operating finance programs that help stimulate the economy through job creation and business growth, particularly in rural and underserved areas of New Mexico. Lending programs developed by and through the PBNM would likely be redundant with what is already offered by the NMFA.

The FID notes that existing financial institutions and enterprises compete for much of the lending business proposed to be entered into by the proposed PBNM. A non-exclusive list of lenders currently available to provide lending options to small, startup, and other existing businesses in New Mexico includes:

- Existing community banks, credit unions, community development financial institutions, national and global banks, and existing government programs. Most banks use lines of credit and loan participation services available through existing relationships with entities such as the Federal Home Loan Banks and other state banks who share similar lending philosophies. Many credit unions likewise engage in loan participation services with other credit unions and other entities with which they have partnered.

- DreamSpring (fka Accion) is an example of a nonprofit organization, which provides small business loans in amounts from $1,000 to $2,000,000, typically to higher risk businesses, which traditional banks or credit unions may not finance without additional collateral securitizing the loan. DreamSpring additionally made Small Business Administration Paycheck Protection Program (PPP) loans up to $250,000 during the COVID-19 pandemic.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

**AMENDMENTS**

To prudently provide direction to the proposed PBNM Board, the FID respectfully recommends that HB 130 be amended to address the multiple concerns described in the "Significant Issues" section, above.