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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.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}

Date Prepared: Feb 10 2025 *Check all that apply:*
Bill Number: SB 275 Original Correction
 Amendment Substitute

Sponsor: Sen. Thornton **Agency Name and Code** 337 State Investment Council
Short Title: Strategic Bitcoin Reserve Act **Number:** _____
Title: _____ **Person Writing** Wollmann
Phone: 5052313334 **Email** charlesw@state.nm.us

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 | | |
| NFI | NFI | NFI | NR | LGPF, STPF, Tobacco Settlement PF |
| | | | | |

(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 | | | | | | |

(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:

SB 275 seeks to enact the Strategic Bitcoin Reserve Act, establishing relevant definitions regarding bitcoin and digital assets and the ways those assets are to be obtained securely. Regarding state investments in bitcoin, the bill states that the State Treasurer and the State Investment Council (SIC) may invest in bitcoin, specifically the Land Grant Permanent Fund, Severance Tax Permanent Fund, the Tobacco Settlement Permanent Fund and any other state fund deemed appropriate for this investment by the SIC. The bill states that the State Treasurer and the SIC investments in bitcoin shall not exceed five-percent of its fund assets overall. The bill notes that any digital assets acquired by the SIC or Treasurer are to be held securely by a qualified custodian or via an exchange-traded product issued by an investment firm and regulated by the Securities and Exchange Commission or the federal commodity futures trading commission. The bill allows for digital assets to be loaned if it can be done for profit “without increasing the financial risk of the state”, under rules to be promulgated by the State Treasurer. The bill indicates that all taxes or fees paid to the state in bitcoin or other digital assets shall be transferred to the general fund in exchange for US currency or bitcoin pursuant to rules promulgated by the Treasurer. The bill also allows for the state pensions – both Education Retirement Board (ERB) and the Public Employees Retirement Association (PERA) to invest in “...exchange-traded products that have been registered by either the federal securities and exchange commission, the United States commodity futures trading commission or the securities division of the regulation and licensing department.” The bill’s effective date if passed is July 1, 2025.

FISCAL IMPLICATIONS

SB275 is permissive in its language, indicating that the State Treasurer, SIC, ERB and PERA “may” invest in this emerging asset class of digital assets if deemed appropriate. Currently the SIC has no direct investment in Bitcoin or other cryptocurrencies.

Under current law, the SIC, ERB & PERA are governed under the Uniform Prudent Investor Act (UPIA), Section 45-7-601 to 45-7-612 NMSA 1978, which stipulates that trustees must manage trust assets as a prudent investor would, taking into consideration the purpose and goals of the trust when investing with “reasonable care, skill and caution”. Unlike the older “prudent man” rule, UPIA allows individual investments to be evaluated for prudence not in isolation, but in the context of the individual investment and its role as part of a full portfolio and its overall long-term goals in supporting trust beneficiaries.

An argument can be made that the state’s investment funds already have the ability to invest in bitcoin and other digital currencies under the UPIA, as no type or class of investment is specifically banned under UPIA, and therefore this legislation may have the unintended effect of limiting investments at the 5% allocation, rather than providing investment agencies a legislative mandate regarding these types of investment.

A similar argument could be made that the asset class is too new and lacks a sufficient track record of returns across multiple market cycles for it to be invested in prudently. Investors still debate whether bitcoin is better defined as a currency or an asset, or potentially neither. Bitcoin, and other cryptocurrencies, do not have cash flows to support its valuation like a stock, bond or real asset, with its primary attributes being its role as an alternative payments mechanism outside the existing fiat currency system, and as a vehicle for speculative trading. Supporters argue that it acts as both a store of value like metals and other commodities, though finite commodities like gold and oil usually have underlying uses (i.e. jewelry, energy respectively) that would prevent their value from ever going to zero, whereas bitcoins themselves as digital tokens have less intrinsic value or alternative uses. The underlying technology of Bitcoin – a blockchain distributed ledger – may be developed into additional applications around trading, and certainly it seeks to bypass traditional financial middlemen (like banks) and creating efficiencies. Bitcoin itself however, may be too volatile in its pricing to serve as an alternative currency during times of financial stress, and as an investment, digital currencies and their investment returns are definitely highly correlated with stocks and other risk market performance. Bitcoin’s market capitalization is today approaching \$2 trillion, while the second largest crypto-asset Ethereum has a current market cap of \$317 billion.

SIGNIFICANT ISSUES

The current U.S. administration has announced an intent to create a national bitcoin reserve, and several US states are looking at participating in or creating their own digital currency reserves in the wake of crypto-friendly policies in Washington.

Among New Mexico’s neighbors in the west:

- Arizona’s legislature is weighing a proposal to dedicate 10% of public investment funds into bitcoin and other cryptocurrencies.
- Texas’s Lieutenant Governor calls establishing a Bitcoin reserve a top 40 legislative priority, with proponents claiming it will position the Lone Star State as a leader in the digital economy and fostering growth.
- Utah is also considering creating a Bitcoin reserve currently, having had a digital asset task force in place and working on related policies since 2022.
- Another ~20 states are working on Bitcoin/crypto legislation including Florida, Indiana, Alabama, Massachusetts, Kentucky, Montana, North Carolina, New Hampshire, North Dakota, Oklahoma, Ohio, South Dakota, Maryland, Wyoming and Kansas; indeed, there appears to be a race among some legislatures to be the first to invest public dollars into Bitcoin and cryptocurrencies.

PERFORMANCE IMPLICATIONS

Given the permissive rather than required mandate of the bill, it’s not clear that the legislation would have any specific performance implications. Although passage of the bill would certainly imply a legislative mandate for the SIC & others to pursue, the decision to invest or not would still have to be established by the fiduciary boards and investment professionals directing policy and investments, and the ultimate performance of those investments would drive performance one way or another. The SIC funds specifically named in the bill (LGPF, STPF & TSPF) are valued at \$43.82 billion as of 12/31/24, and a 5% allocation would be approximately \$2.19

billion.

The bill indicates that SIC investments would have to be through a secure custody solution or through a regulated exchange-traded-fund, neither of which would be an obvious concern. The Council would need to establish additional guidelines in its investment policy statement prior to making any cryptocurrency investments.

ADMINISTRATIVE IMPLICATIONS

Additional costs around managing and placing a new investment strategy with a secure custodian are likely, as expertise in Bitcoin trading and related cryptocurrency investments are highly specialized, often requiring an additional premium for such services. A determination would have to be made of risk levels for such investments, and then a comparison would be made for cost against more traditional investments with similar risk profiles that would be replaced by Bitcoin. Standard fees to private market managers will range between 1-2% of the investment and typically include a profit-sharing. Public manager fees are substantially less at ~0.5% or even lower, though they can increase based on the level of manager specialization. A cryptocurrency portfolio manager would likely fall closer to the 1%+ range. One-percent of a \$1B investment would be \$10 million annually.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

Cryptocurrency exchanges are targets for computer hackers, with a recent thefts of several hundred million in Q2 and Q3 of 2024, and an estimated \$5.8 billion lost from exchanges and custodians since 2009. Those numbers have increased rapidly over the past several years as Bitcoin has seen broader adoption, its interest from criminal opportunists has risen accordingly.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS