LFC Requester:	Rodriguez

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 21, 2025*
Bill Number: *SB 460*

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

Sponsor: Sen. Pinto
Short Title: Film loans to certain projects

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		
NA	NA	NR	Severance Tax Permanent Fund

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
	Indeterminate, but negative due to differential nature of proposal's returns		Recurring	Severance Tax Permanent Fund

	Assuming some level of SIC investment, returns below market rate will eventually result in lower STPF distributions		Recurring	Severance Tax Permanent Fund

(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:
SB460 seeks to expand existing statute regarding the State Investment Council's powers to invest in NM film and television projects, including "independent New Mexico film projects". The bill seeks to enshrine in law the Council's ability to invest via an interest free production loan, or to invest up to 80% of a production's expected claim on film production tax credits.
The bill is without an emergency clause, so if signed, it would become law 60 days following the session, or June 20, 2025.

FISCAL IMPLICATIONS

Re-starting the NM Loan Program, which has been dormant since 2008, would entail substantial new expense, both in administrative and opportunity costs, assuming the Council finds it a prudent investment option and decides to pursue this mandate (the bill is permissive in nature, so there is no guarantee the Council would invest as authorized by SB460).

The proposed statutory changes would appear to be similar to the film program operated by the state investment council from 2001-2008, which was directed by policy to allow for interest free loans in exchange for a negotiated percentage of profit sharing via a production's post-break-even-revenues.

While that program arguably helped New Mexico in the 2000's to build its production crews and industry credibility as it ramped up its film industry to become a major location choice for film producers nationwide, from a financial/investment perspective the program was not a success, with only 1 of 25 loans made achieving any positive returns.

The lack of financial profits led to the State Investment Council changing its investment policy in 2011 from "interest-free in lieu of participation" to a required "market-rate" of interest to be charged for film loans. The action had the consequence of making the program less attractive as an economic development incentive, and the change effectively ended interest from most film & television producers in seeking funding in this manner.

SIC would note that though no film loans have been made in 17 years, this change did little to slow New Mexico's momentum as a top location for film and television production, which continues today, relying on production tax credits, excellent NM film crews, and a substantial existing infrastructure of studio and production support resources instead of loan financing incentives.

Of the 25 film and television projects invested in via SIC's interest free loans 2001-2008, only one – the very last one - *The Book of Eli* - delivered any profit-sharing residuals to the state of New Mexico, while the first 24 projects only paid back the principal investment amount. Given that there were irrevocable guarantees of repayment built into these loans, the opportunity cost of not having the money invested elsewhere was conservatively estimated to be ~$31 million had the loan dollars otherwise been invested in relatively risk-free US Treasury Notes. Standard Severance Tax Permanent Fund Investments from that time period were even higher, with annual returns of 6.5% for the 10-year period ending 2013, which includes the years the program would have paid interest and when the film program was most active with large loan amounts outstanding. More than $300 million was loaned across the 25 productions during the program's run.

Other expenses from the loan program included a professional film advisor, who helped negotiate film loan terms and minimize risks of loan default. During the multi-year course of the program, the advisor and related legal costs topped $5 million in additional expenses outside the opportunity cost.

Profit sharing through the old program proved to be difficult for several reasons:

- Larger, high-profile studio productions rarely if ever participated in the program as loans were capped at $15M, which would not cover a film's production budget in full and those larger productions were more likely to be profitable, and did not want to share those profits even for an interest-free loan.
- Profits to be shared were based on net or "post-break-even" film revenues, never the film's gross. Hollywood's reputation for having notoriously complex measurements and accounting treatments around what constitutes "profit" proved to be a factor in some productions that showed some measure of box-office success, but not ever enough for SIC to see a share.
- Most of the 25 productions were low-budget and failed to gain much traction at the domestic box office, internationally or through DVD and secondary broadcast sales. Since that time, the film distribution process has rapidly evolved, so it is unclear whether the same or similar financing and distribution circumstances exist today regarding film and TV profit sharing structures.

For the record, SIC continues to collect small residual payments related to *Book of Eli*, which reportedly grossed $157 million at the box office, and has received a total of more than $2 million in profit sharing as of the end of 2023.

SIGNIFICANT ISSUES

SB460 also explicitly states the State Investment Officer/Council may make a loan at 0% interest for a loan of up to 80% of an expected film production tax credit it will receive from the state.

In its new definition, the bill defines a film project filmed wholly in New Mexico with a majority of the production crew being residents and that the project is not produced or distributed by a major motion picture studio, a network or cable television company or multinational streaming service.

While the intent would seem to be to provide New Mexico filmmakers more state-resources, there are potential concerns here as well. In practice, the SIC made two previous “film production tax credit advance loans” (as proposed here) separate from the 25 “interest free” loans allowed by the main program. These were made to reputable film makers, and not independent NM based firms. The first such loan, to a film called “The Flock”, was paid back early. The second such loan was larger and went to a production called “Bordertown.” Bordertown’s film tax credit advance loan unfortunately claimed it would spend at a far greater level than what it actually did in New Mexico, so when it came time to pay back the loan from the state’s awarded tax credit, there were insufficient funds to cover the loan, which had already been spent. This was despite a thorough review by the NM Film Office in estimating the expected tax credit based on Bordertown’s expected spend in-state.

The loan went into default, and it took both highly negative media coverage and SIC threats of litigation before the loan was repaid months after the fact. The Council then removed such advance-loans from its policy, ending this option for future filmmakers.

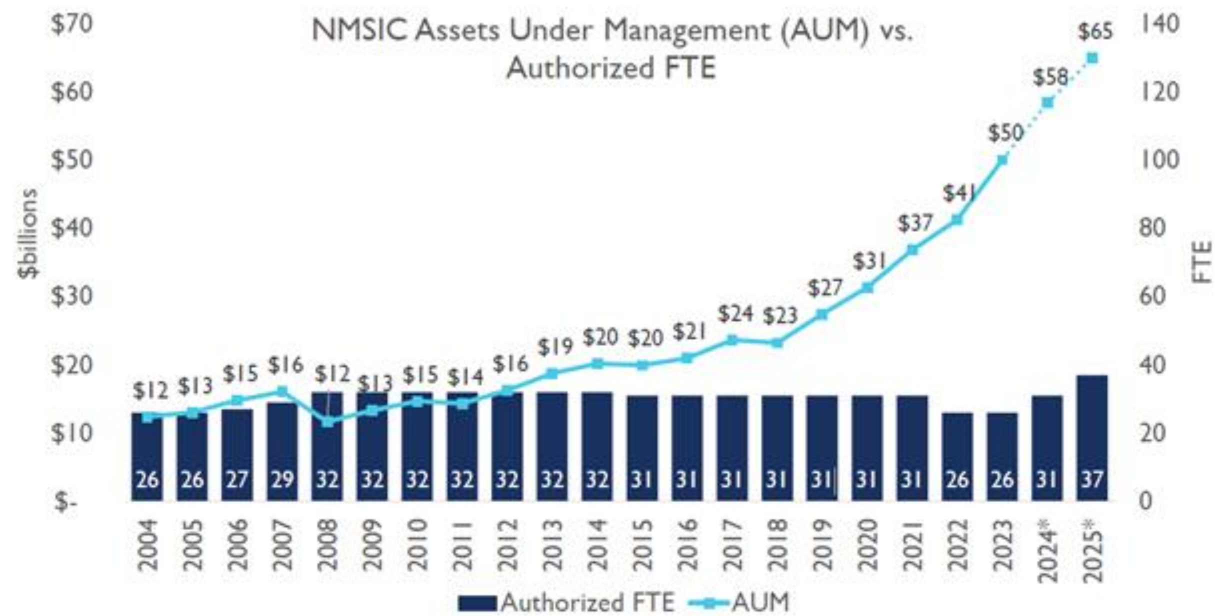
It is not clear that the Council would make such loans again, given the poor track record, and concerns over the prudency of such arrangements. The same can be said for the entirety of film loans covered under 7-27-5.26, NMSA 1978.

PERFORMANCE IMPLICATIONS

Economically targeted investments have historically been a noted factor in the underperformance of the STPF relative to the LGPF. This has led to Council and legislative concerns- resulting in proposed legislation to curb the largest of the state’s differential rate ETI (economically targeted investment) programs, the NM Private Equity Investment Program (SB162). Film loans – especially 0% loans – would definitely increase the drag on STPF returns to some degree depending on the amount loaned in total. As intended, there would be some economic development offset such loans would provide to the state’s economy, though there is no clear way to estimate how much increased film production would result.

ADMINISTRATIVE IMPLICATIONS

Already facing a growing roster of a dozen funds, 25 governmental clients, and rapidly growing total assets and increasing numbers of investments that must be vetted, invested, and monitored, the SIC has flagged for the legislature that its current staffing needs are significant and require substantial additional resources to avoid taking on improper levels of risk. The following chart below shows the SIC's recent history of unprecedented fund growth in recent years, and growth of staff, which has not come close to keeping up.



*Estimated AUM
Note: AUM reflects total assets under management, including all permanent endowment trust funds, reserve funds, and third party client assets. AUM reported as of calendar year end, except 2004-2007 which reflect fiscal year end balances for TSPF, WTF, and third party clients. FTE reported as of fiscal year end.
Source: NMSIC files, RVK, LFC Volume II reports

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to SB413, which seeks to raise the NM PE program from 11% of the STPF to 14%.
Related to SB162, which seeks to cap the NM PE program in combination with SBIC and the legislature's Small Business Recovery Act Loan Program to $700 million in aggregate.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS