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FISCAL IMPACT REPORT

SPONSOR Muñoz/Hickey/Dixon LAST UPDATED _____
ORIGINAL DATE 2/1/2025
BILL
SHORT TITLE Investment in Bioscience Companies NUMBER Senate Bill 119
ANALYST Fischer

APPROPRIATION* (dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	\$25,000.0	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

New Mexico Attorney General (NMAG)

State Investment Council (SIC)

Economic Development Department (EDD)

University of New Mexico (UNM)

SUMMARY

Synopsis of Senate Bill 119

Senate Bill 119 (SB119) amends the existing state Bioscience Development Act and appropriates \$25 million from the general fund to the bioscience development fund for expenditure in FY26 and subsequent fiscal years for investments pursuant to the Bioscience Development Act. The bill also amends the current statute to make the bioscience development fund nonreverting.

Other amendments to the Bioscience Development Act add several new guardrails to the process by which the New Mexico Bioscience Authority invests in businesses. The bill adds definitions of a New Mexico business and limits the types of New Mexico bioscience businesses the authority can invest in, as well as the level to which it can invest in a single business. The bill requires the authority to make specific assessments of the business before investment and to make investments alongside a co-investing organization selected through a competitive process in consultation with the University of New Mexico. The bill requires the co-investor invest at least twice the amount of the investment made by the authority.

The bill provides for clawbacks when Bioscience Authority investment businesses do not meet the contractual obligations of the investment and provides for the assurance or recoupment of

benefits in the case of acquisition, relocation, bankruptcy, or liquidation of an investment business.

The bill restricts entities receiving investments or other benefits from the Bioscience Authority from (1) employing individuals related to authority board members and (2) hiring former board members or authority employees within one year of their departure. Under SB119, violating these restrictions would be a fourth-degree felony.

This bill also clarifies that all earnings from investments made by the Bioscience Authority be deposited into the bioscience development fund. Finally, the bill requires that the Bioscience Authority's annual report be posted to its website and that quarterly reports for all investments be presented to the authority's board of directors in public meetings. The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

The appropriation of \$25 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY26 would not revert and be available for expenditure in future years.

The bill creates a new felony, but that charge would likely be unusual, and the costs are not included in the fiscal impact estimate.

SIGNIFICANT ISSUES

The bill adds definitions of a New Mexico business and a portfolio business of the fund. Under the new definition, "New Mexico business" means, in the case of a corporation or limited liability company, a business with the business's principal office and a majority of the business's full-time employees located in New Mexico or, in the case of a limited partnership, a business with the business's principal place of business and at least 80 percent of the business's assets located in New Mexico. For a New Mexico business to qualify for Bioscience Authority investment, it must have and maintain a minimum New Mexico workforce of five, with a minimum average salary of \$60 thousand a year. Similarly, businesses that agree to move here to qualify for investment must meet the same employment and salary requirements.

The State Investment Council (SIC) notes the Bioscience Authority is one of several existing funds and investors available to New Mexico companies, including the SIC's \$900 million New Mexico Private Equity Investment Programs and the several local and national venture capital funds (VCs) that it has funded to make such investments; the New Mexico Finance Authority's (NMFA) relatively new \$50 million venture capital program, which includes VCs and impact investment managers; the state Small Business Credit Initiative (SSBCI) which, as of the end of 2024, has approximately \$50 million to be dedicated in the next several years to VCs and impact managers selected by NMFA; and the Economic Development Department. SIC further notes its program includes past commitments to Tramway Ventures, Cottonwood Venture Fund, Anzu Ventures, Builders VC, J2 Ventures, and Lux Ventures, all of which have expertise in the bioscience sector or have made previous commitments to New Mexico biotech start-ups.

The SIC, NMFA and SSBCI programs all have some statutory or rule-based component that allows them to make these investments at a below-market rate, with the expectation that broader economic benefits, like job and industry creation in New Mexico, will replace the lower financial returns. SB119 does not appear to allow for investments with such allowances and expectations, which could make finding strictly market-rate financial opportunities challenging, given the sector-specific and geographically constrained conditions in which it will be invested.

SIC further notes SB119's requirement for invested companies to remain in New Mexico with specific employment and salary conditions may not achieve its intended goals. If a funded company fails, it may be unable to return any significant funds. Conversely, a highly successful company may find it strategically beneficial to relocate because the penalty of repaying the initial investment may not be a strong enough deterrent. This could lead to adverse selection, where only struggling companies willing to accept restrictive investment terms agree to participate, potentially limiting the quality of opportunities for the authority.

Finally, SIC expresses concern about the stipulation in section 5E that it should be included in clawbacks. Section 5E allows the authority to accept stock instead of cash when a company relocates or is acquired, with SIC approval. While this clawback provision aims to retain investment value in New Mexico, SIC notes it is more typical of economic development incentives than start-up investing, where it may disadvantage companies competitively. Given its lack of prior involvement in due diligence or oversight, SIC questions why it would be involved only at the end of the process. Additionally, SIC notes it may lack the resources to fairly assess stock-for-cash exchanges, especially if the acquiring entity is not publicly traded. SIC suggests the authority or its co-investment partner, rather than SIC, should handle these fiduciary decisions because they are responsible for enforcing capital recovery terms.

TECHNICAL ISSUES

The New Mexico Attorney General notes the Open Meetings Act, NMSA 1978, Sections (10-15-1 to 10-15-4), does not require a public body to provide reports in a specific manner, and Section 7 could be modified to provide information about where the reports might be found.

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