

LFC Requester:

Brendon Gray

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2025/2/6

Check all that apply:

Bill Number: SB275

Original x Correction
Amendment Substitute

Sponsor: Sen. Anthony L. Thornton

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: STRATEGIC BITCOIN RESERVE ACT

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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						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: SB275 creates a new act that grants the state treasurer and the state investment council (SIC) the authority to invest in both “bitcoin” and other “digital assets.” This bill allows the state treasurer and SIC to invest in “bitcoin” with funds from any state fund at levels of up to five percent of the total amount of public funds and allows state retirement trust funds to invest in exchange-traded products.

Section 1 titles the act “Strategic Bitcoin Reserve Act.”

Section 2 details the legislative intent of the act stating that bitcoin specifically is “increasingly being viewed by states and other nations as a monetary tool to protect against economic shocks.”

Section 3 provides definitions used in the act. In part, this Section defines “bitcoin” as both the “decentralized digital currency launched in 2009” based on the whitepaper published by the online persona known as Satoshi Nakamoto, and “the digital asset that is the basis of the bitcoin exchange-traded product that is regulated by the federal securities and exchange commission.”

Section 4 grants power to the state treasurer and the SIC to invest in “bitcoin” from the land grant permanent funds, the severance tax permanent fund, the tobacco settlement permanent fund, and “any other state fund deemed appropriate by the [SIC].” The amount of public funds that the state treasurer and SIC is allowed to invest in “bitcoin” is capped at five percent of the total amount of public funds.

Section 5 requires that all taxes or fees paid to the state in bitcoin or any other digital asset shall be transferred to the General Fund and that any digital asset held in that fund shall be converted to “bitcoin” or United States currency pursuant to rules promulgated by the state treasurer.

Section 6 allows for the state retirement trust funds 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.

Section 7 provides the effective date of July 1, 2025.

FISCAL IMPLICATIONS

N/A

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Section 3 of SB275 defines “bitcoin” as both a “decentralized digital currency,” and “the digital asset that is the basis of the bitcoin exchange-traded product,” regulated by the Securities and Exchange Commission. Both the SEC and The International Revenue Service do not recognize “bitcoin” or other “virtual currency” as currency. In 2014, the IRS issued Notice 2014-21, 2014-16 I.R.B. 938, explaining that virtual currency is treated as property for federal income tax purposes and providing examples of how longstanding tax principles applicable to transactions involving property apply to virtual currency. Additionally, the SEC, in a statement regarding its approval of Spot Bitcoin Exchange-Traded Products, characterized them as “non-security commodities.” “Importantly, today’s Commission action is cabined to the ETPs holding one non-security commodity, bitcoin. It should in no way signal the Commission’s willingness to approve listing standards for crypto asset securities.” Defining “bitcoin” as a currency could lead to interpretive conflicts with federal agencies and require court interpretation.

Section 3 of this bill provides definitions of both “bitcoin” and “digital asset” such that a “digital asset” may include the bitcoin but is not limited to bitcoin. SB275 discusses “digital assets” in Sections 3-5; however, this bill only addresses state investment and associated limits in “bitcoin.” Section 4(A)-(C). The language used makes it unclear how the State would acquire “digital assets” and whether the five percent cap on public fund investments in “bitcoin” would apply to said “digital assets.”

Section 4(C)-(D) of this bill allows for investment in “bitcoin” by the “(1) land grant permanent funds; (2) the severance tax permanent fund; (3) the tobacco settlement permanent fund; (4) and any other state fund deemed appropriate by the [SIC].” The language allows for state funds to hold “digital assets” but does not provide for state investment. The definition of “digital asset” includes a broad range of products which are not defined. “Non-fungible tokens” or “NFT” are listed in the definition of “digital asset,” but official definitions of NFTs vary. An internal report published by the National Institute of Standards and Technology in March of 2024 defines NFT as “technology [that] provides a mechanism to enable real assets (both virtual and physical) to be sold and exchanged on a blockchain.” This bill does not address which types of NFTs would be acquired by any of the funds, nor does it outline a process for acquisition of digital assets. This ambiguity may require courts to interpret.

In addition, this Section limits bitcoin investment to five percent of the total amount of public funds, but it does not otherwise limit how the investment might impact either the funds listed or “any other state fund deemed appropriate by the [SIC].” As such, if any state fund constitutes up to 5% of the total amount of public funds, the state treasurer and the SIC could use the entire fund for bitcoin investment and, if such investment were unsuccessful, this could result in a complete exhaustion of a fund under this statute.

Section 4(D) of SB275 allows for the state to loan digital assets “if [they] can be loaned without increasing the financial risk of the state.” The bill also authorizes “the state treasurer or [SIC]” to loan the digital asset. This bill does not address how the financial risk will be assessed and who

will make a final determination that no financial risk will result before the state treasurer promulgates rules.

Section 5 requires all taxes or fees paid to the state in bitcoin or any other digital asset to be transferred to the general fund within sixty days and requires the general fund to “reimburse with United States currency whatever fund from which the qualifying digital asset was transferred.” Additionally, Section 5 requires all digital assets in the general fund that are not bitcoin to be converted to bitcoin. The New Mexico Taxation and Revenue Department accepts payment for taxes in US currency. Bitcoin and other digital assets are not legally considered currency and therefore cannot be used to pay the state for taxes and fees.

Section 6 allows for State retirement trust funds such as PERA to invest in exchange-traded products up to and including Spot Bitcoin Exchange Traded Products. This section does not include protections or limits on the amount of funds that may be invested in these products as it does with other state funds.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

The current language allows for investment in bitcoin, a decentralized, and unregulated digital asset that is not insured by the FDIC. The language in Section 4 that allows the state treasurer and SIC could be changed to allow state funds to be used only to invest in SEC approved Spot Bitcoin Exchange-Traded Products.

Section 2 of SB275 states that “bitcoin” specifically is being used as a monetary tool to protect against economic shocks but goes on to define and include “digital assets” which may include but are not limited to “bitcoin.” The definition of “digital assets” included in the bill is broad and may need to be interpreted by courts. “Digital assets” may be removed from the language of the bill for clarity.

To protect against the potential complete exhaustion of any single state fund (that nonetheless amounts to 5% or less of the total public fund), Section 4 could include language that states that a maximum percentage of any single state fund can be invested in bitcoin.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A