

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2013 REGULAR SESSION**

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

**LFC@NMLEGIS.GOV**

*And*

**DFA@STATE.NM.US**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**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**        **Amendment**      
**Correction**        **Substitute**   

**Date** 2-12-13  
**Bill No:** HB240 (A)--305

**Sponsor:** Brian Egolf / HBIC                      **Reviewing**    Attorney General's Office  
**Short**        Small Business Development            **Person Writing**    M. Reynolds  
**Title:**        Fund Act    **Phone:** 827-7416            **Email** mreynolds@nmag.gov

**SECTION II: FISCAL IMPACT \*\*\*\*FOR LFC OFFICIAL PURPOSES\*\*\*\***  
**AGO STAFF SHOULD LEAVE SHADED AREAS BLANK**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

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

	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to an agency’s, committee’s or legislator’s request.

**BILL SUMMARY**

HBIC Amendment

The HBIC amendment to HB 240 removes the legislative findings and purpose section of the bill.

Summary Synopsis:

HB 240 enacts the Small Business Development Fund Act which creates the New Mexico Small Business Development Fund, its Board and provides it with certain powers and duties. The purpose of the Fund is to encourage and promote economic development, commerce and industry. Section 4(A).

HB 240 allows up to \$100 million of the severance tax permanent fund to be invested in the Small Business Development Fund. Up to \$5 million of this amount may be used to start-up the Fund.

**FISCAL IMPLICATIONS WITH ENACTING THIS BILL**

**SIGNIFICANT LEGAL ISSUES**

Legislative findings and purpose language in a law, like that deleted by the HBIC amendment to HB240, is often useful to the public and the courts in determining legislative intent in the event of legal dispute. Without such language, the courts must simply attempt to divine legislative intent using the language of the rest of the bill

Section 5(D) gives the Fund the power to acquire, hold, improve, mortgage, lease and dispose of real property for its public purpose. This would presumably be subject to NMSA 1978, Section 13-6-1 to -8 which pertains to the disposition of state property. Also, real property belonging to the state falls under the jurisdiction of the Property Control Division. See NMSA 1978, § 15-3B-4. However, Section 4(D) of HB 240 states that “[t]he development fund shall not be subject to the supervision or control of any other board, bureau, department or agency of the state except as specifically provided” in the Act. Therefore, this section might exempt the Bank from the jurisdiction of property control. Language to clarify this issue may be helpful.

Section 5(F)(3) gives the Fund the authority to prosecute and enforce judgments. The Fund may need a Commission from the Attorney General for its attorneys to commence such litigation.

Section 5(K) allows the Fund to invest its money in community banks. The Fund should be aware of anti-donation issues associated with such investments. See N.M. Const. art. IX § 14.

Section 6 of HB 240 contains conflict of interest provisions for board members. These would be in addition to the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 to -18.

Section 9 should be read in conjunction with the Tort Claims Act. See Section 4(D)

## **PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL**

## **ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION**

## **TECHNICAL ISSUES OR DRAFTING ERROR**

## **OTHER SUBSTANTIVE LEGAL ISSUES**

## **ALTERNATIVES TO ENACTING THIS BILL**

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

## **AMENDMENTS NEEDED TO IMPROVE THIS BILL**