



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

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(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:

House Bill 240 (HB 240), the Small Business Development Fund Act (Act), establishes the Small Business Development Fund (Fund) and a board of directors with staggered terms to oversee the Fund. HB 240 also enacts a new section of the Severance Tax Bonding Act codified at, NMSA 1978, 7-27-1 through 7-27-48, which allows up to one hundred million dollars (\$100,000,000.00) to be invested in the Fund from the severance tax permanent fund. Up to five million dollars (\$5,000,000.00) of that investment is designated to provide for the establishment and the operation of the Fund, including the construction of a facility to house the Fund; the remainder is to be used to fund the Act's loan program, which will provide economic development loans. HB 240 further provides that the Fund's purposes do not include making a profit.

HB 240 further creates the Small Business Development Fund Board (Board) to govern the Fund. The Board is comprised of seven members, all residents of the New Mexico with expertise in banking, lending and finance. Three of the members are to be appointed by the Governor; and, three members are to be from the Legislative Council. The six appointed members elect the seventh member, with similar expertise, to serve as chair. The Board also has the power to appoint and prescribe the duties of an executive director and other officers as it sees fit. None of these positions are subject to the Personnel Act. In addition, the Fund is not subject to supervision or control by any other board, bureau, department, or agency of the state except as specifically provided in this Act.

HB 240 provides the Board with the necessary powers to independently operate the Fund as it sees fit, subject to any agreement it may make and the limitation imposed by the Act itself. These powers include, but are not limited to: (1) make, alter or repeal rules; (2) make, service and renegotiate loans; (3) prosecute and enforce judgments; (4) sell loans at public or private sale; (5) invest Fund monies not required for immediate use; and (6) do any and all things necessary to carry out its functions and duties in furtherance of the Act.

The Act requires that all Fund loans: (1) be to a New Mexico resident or business; (2) be in the form of loan participation agreements with community banks, financing up to 49 percent of the total individual project; (3) have rates equal to those of the participating bank unless New Mexico law provides for a lower rate; (4) provide that the Fund and the bank note holder have an equal security interest; (5) have a maximum term of 25 years if the loan is for real estate; (6)

have a maximum term of 10 years if the loan is for personal property, including operating capital; and (7) be for an economic development project.

## **FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

Section 5(D) gives the Fund the power to acquire, hold, improve, mortgage, lease, and dispose of real property for its public purpose. Real property belonging to the state falls under the jurisdiction of the Property Control Division. But, Section 3(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 Fund from the jurisdiction of the Property Control Division. Language to clarify this issue may be helpful.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

## **TECHNICAL ISSUES**

Section 4(B) provides that the board is composed of seven members; six are appointed and it appears those six elect a seventh member to serve as chair, modifying the language to read something like, “...the board shall elect the seventh member, who shall serve as chair...” would provide more clarity.

## **OTHER SUBSTANTIVE ISSUES**

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.

## **ALTERNATIVES**

N/A

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

Status Quo

**AMENDMENTS**

N/A