

LFC Requester:

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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: January 28, 2025

Check all that apply:

Bill Number: HB 19

Original X Correction
Amendment Substitute

Sponsor: Rep. Patricia Lundstrom, Rep. Dayan Hochman-Vigil, Rep. Raymundo Lara, Rep. Tara Lujan, Rep. Joy Garratt

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

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Short Title: Trade Ports Development 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: The Trade Ports Development Act provides for the designation of “trade port districts” and the creation of the “Trade Ports Advisory Committee.” Pursuant to this bill public and private entities may enter into agreements in order to undertake “trade port projects” reviewed by the Committee and approved by the Secretary of Economic Development. Such projects are intended to promote economic development within designated “trade port districts.”

Section 2 defines terms used in the Trade Ports Development Act including: private partner, public partner, public-private partnership, public-private partnership agreement, secretary, trade port, trade port district, and trade port project. The Bill defines “trade port” as “a multimodal system of facilities and services in a given location with the logistical capacity to efficiently manage cargo and enhance national supply chain resiliency by facilitating the movement and redistribution of goods and commodities to other locations.”

Section 3 outlines criteria for trade port districts, stating proposals “shall meet as many of the following criteria as feasible at the time of designation.” Such criteria include proximity to transportation services, existing infrastructure, labor pool, and economic development potential.

Section 4 establishes criteria for trade port projects such as potential economic development impacts of the project, feasibility of the project, environmental impacts, capacity, and qualification for grants or other incentives.

Section 5 creates the Trade Port Advisory committee and Section 6 outlines its duties. Such duties include recommending approval or disapproval of district designations, public-private partnership agreements, and grants and loans from the trade ports development fund.

Section 7 outlines the duties of the Secretary of Economic Development including approving or disapproving of district designations, public-private partnership agreements, and grants and loans from the trade ports development fund as well as promulgating rules for the application process, and establishing criteria for partnership agreements, grants, and loans.

Section 8 establishes requirements for public-private partnership agreements. Generally,

these requirements are required of the public partner and include undertaking a cost-benefit analysis, public notice and hearing, demonstration of service to a public purpose and public need, and conformity with existing law.

Section 9 creates the trade port development fund, a fund to be administered by the Economic Development Department. This fund may be used for grants related to the trade port projects and administrative and reimbursement costs.

Section 10 requires a report to the Governor and Legislative Finance Committee and the status of actions taken under the Act including approvals and disapprovals of districts, projects, partnership agreements, and grants.

Sections 11 and 12 both amend existing tax distribution provisions to provide for funding to the trade port developments fund, such distributions end on July 1, 2035.

Section 13 adds agreements and contracts pursuant to the Trade Ports Development Act to the list of exemptions from the procurement code.

FISCAL IMPLICATIONS

None noted.

SIGNIFICANT ISSUES

Various points throughout the Bill lack clarity and may benefit from revision to better communicate the Bill's intent. Examples of such instances include:

- Section 2(D) defines "public-private partnership agreement" and throughout the Bill there are several references to such agreements being formed in relation to a "trade port project," defined by Section 2(H). Both these agreements and projects require review and approval. As currently drafted, the Bill potentially lacks clarity as to whether one must be approved prior to commencement of creating, reviewing, and approving the other or if the process is simultaneous. Section 8(E) states "a public-private partnership agreement for a trade port project shall not become effective until it is approved by the secretary." It is unclear whether that means the project and the agreement are so closely connected they must be approved simultaneous. Potential issues could arise if a partnership agreement was approved, but the project contemplated by that agreement is not approved.
- Section 2(F) defines "trade port," and some clauses of this definition are rather broad or subject to interpretation such as "enhance national supply chain resiliency." As currently drafted the ambiguity in the definition of "trade port" impacts the totality of the Bill as other Definitions stem from the definition of "trade port."
- Section 3(B) lacks clarity and in its current form leaves both the Trade Ports Advisory Committee and the Secretary vulnerable to potential challenges for arbitrary denial of proposals for trade port district designations. Other terms throughout the criteria defined in Section 3, such as "proximity" and "beneficial impact," may also benefit from further elaboration to ensure that Committee and Secretary have clear guidance for approvals and denials.
- Section 9(B) lacks clarity as to whether money from the Fund may be used solely for a "trade port project" as defined by Section 2(H) or for the purpose of carrying out **any** provision of the Act.

Sections 6 and 7 of the Bill address the authority of the Trade Ports Advisory Committee and Secretary of Economic Development respectively. When these two Sections are read together, there is potential ambiguity as to the proper process for creating necessary applications and the promulgation of rules establishing such process. For example, in subsection E of both sections, there is a reference to “criteria” it is unclear is that is new criteria, or the same criteria discussed elsewhere in the Bill such as in Sections 8 and 9.

Furthermore, as it is currently drafted it is possible the authority of the Committee and the Secretary respectively is unclear. Section 6 does not make clear whether the Committee is to provide its recommendations to the Secretary. Furthermore, it is not clear if the Secretary may only act if they have received Committee recommendations or if they may act in the absence of such recommendations.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This Bill potentially overlaps or conflicts with, Sections 58-27-1 to 26 NMSA 1978, the Border Development Act. Both aim to encourage economic development, and while the present Act is not necessarily aimed at international ports of entry, several criteria listed in Section 4 would indicate that international ports may be implicated by the passage of HB19. International ports and their economic development, as well as an advisory committee and fund to implement such development, have already been created by the Border Development Act.

This Bill would create a fund from which grants for financing a trade port project may be given. Such projects, based on the rest of the bill, can include private entities. Proper consideration should be given to ensure such grants do not violate the Anti-Donation Clause of the New Mexico Constitution.

TECHNICAL ISSUES

Section 8(D)(9)(a) on page 13 line 19 of the Bill text -- consider changing linking conjunction from “;and” to “;or”.

OTHER SUBSTANTIVE ISSUES

Section 4(D) instructs the Secretary to consider the “net environmental impact of the proposed trade port project.” Consideration should be given to whether this adequately complies with other potential requirements for environmental impact statements.

Section 7(I) refers to “joint powers agreements” which is defined by Section 11-1-2(B) NMSA 1978. This definition could be added by incorporation to Section 2.

Section 8 describes a process for public notice and hearing regarding new public-private partnership agreements. As currently drafted, it is unclear how public comment or objections is taken into account, or if either is required to be taken into account, by the Committee or Secretary.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A