

LFC Requester:

Julisa Rodriguez

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 30, 2025

Check all that apply:

Bill Number: SB 169

Original x Correction
Amendment Substitute

Sponsors : Sen. Michael Padilla, Rep. Meredith A. Dixon, Sen. Craig W. Brandt, Rep. Joshua N. Hernandez

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

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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

SB169 proposes to establish a new act entitled “[t]he Strategic Economic Development Site Readiness Act.” The bill expands the duties of the Secretary of the Economic Development Department as well as establishes a committee to review proposed strategic economic development sites.

Section 2 of the of the bill provides four definitions. “Department” and “Secretary” refer to the Economic Development Department and the Secretary of the Economic Development Department. The phrase “private partner” is broadly defined to include an individual, various corporate and partnership entities, a joint venture, a business trust, a nonprofit entity, an LLC, “or other private business entity or a combination thereof.” Section 2 of the bill broadly defines “public partner” to mean “the state and the state’s branches, agencies, departments, boards, instrumentalities or institutions and all political subdivisions of the state and their agencies, instrumentalities and institutions, including a department, an institution of higher education, a board or a commission.”

Section 3 gives the Department the power to enter into contracts with public partners and private partners “for site characterization studies of proposed economic development sites to determine the suitability of such sites for certification as a strategic economic development site.” The Secretary is granted considerable discretion under Section 3 of the bill. The Secretary “shall” (1) accept for consideration proposals for site characterization studies of proposed economic development sites and (2) decide if a site characterization study will be completed to evaluate a proposed economic development site. Section 3 enumerates that a site characterization study “shall assess the suitability of a proposed economic development site for development by a public or a private partner.” Section 3 sets forth 9 factors a site characterization study “may consider,” which includes the availability of public infrastructure and public utilities, governmental land use restrictions, site ownership, etc.

Section 4 creates the Strategic Economic Development Site Advisory Committee (herein after “committee”). The bill provides that the Department is statutorily responsible for the necessary administrative services of the committee. The bill provides that the committee will be comprised of (1) the secretary of energy, minerals, and natural resources or the secretary’s designee, (2) the secretary of the environment or the secretary’s designee, (3) a representative of the public

regulation commission appointed by the commission, (4) the secretary of transportation or the secretary's designee, (5) the chief executive officer of the New Mexico Finance Authority or the chief executive officer's designee, (6) the director of the economic development division of the department, and (7) five public members to be appointed by the New Mexico legislative council.

Section 4 provides that the members of the committee shall select a chair who shall be a public member. The bill does not enumerate how the vote shall be conducted or the number of votes (e.g. simple majority) necessary for the public member to become the chair of the committee. Section 4F provides that members of the committee shall not participate in or influence a decision by the committee in which that individual committee member has a conflict of interest, pecuniary interest, or other "disqualifying interest" regarding a proposed strategic economic development site. All members of the committee must certify annually in writing that they are in compliance with this requirement.

Section 5 establishes the duties of the committee. The duties of the committee include reviewing and recommending the designation of proposed strategic economic development sites; recommending approval or disapproval of applications for grants or loans from the site readiness fund (the site readiness fund is created in Section 7), the public project revolving fund (the PPRF is a program administered by the New Mexico Finance Authority) and other potential funding sources; recommending the promulgation of rules establishing the application process and criteria regarding strategic economic development sites in accordance with the State Rules Act; and consulting with state agencies on technical issues relevant to proposed strategic economic development sites.

Section 6 of the bill grants the secretary the power to review site characterization studies conducted pursuant to Section 3 of the Act and determine (after considering the recommendations of the committee) whether (1) there needs to be further study of the "characteristics of proposed economic development sites" or (2) whether the proposed economic development site should be designated as a strategic economic development site.

Section 6 also provides that upon designation as a strategic economic development site, the secretary may solicit proposal from public partners and private partners for site pre-development projects that "will enhance the readiness of the strategic economic development site for immediate development." The bill lists examples, including surveying, engineering, environmental assessments and remediation, etc. Furthermore, the secretary (with input from the committee) shall consider which proposed site pre-development projects can be funded (in whole or in part) by "grants and loans from the site readiness fund or should be recommended for funding from the public project revolving fund or other funding resources."

Section 7 creates the "site readiness fund" from the State Treasury. The fund consists of appropriations, gifts, grants, donations, income from investment of the fund, payments of principal and interest on loans made from the fund, and any other money distributed or allocated to the fund. Section 7 provides that the money shall not revert or be transferred to any other fund at the end of the fiscal year. Under Section 7, the Department is responsible for administering the fund. Section 7 provides that "disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development (or the secretary's authorized representative). Money in the site readiness fund may be used to provide grants and loans for financing site pre-development projects. Additionally, money in the fund may be used for administrative and "reimbursable costs incurred by the department[.]"

Section 8 provides that by October 1, 2026 (and October 1st of each year thereafter), the secretary shall provide a report to the governor, the legislative finance committee and the appropriate interim legislative committees. This report would include information such as the number and location of proposed economic development sites that have been approved for site characterization studies.

Section 9 appropriates 24 million dollars from the general fund to the site readiness fund for expenditure in fiscal year 2026 and subsequent fiscal years for the implementation. Section 9 provides that any unexpended balance shall not revert to the general fund.

Section 10 provides that the effective date is July 1, 2025.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The Anti-Donation Clause of the New Mexico Constitution establishes limitations on how state entities can utilize its funding. *See* N.M. Const., art. IX, § 14. The Local Economic Development Act provides that “[t]he purpose of the [Act] is to implement the provisions of the 1994 constitutional amendment to Article 9, Section 14 of the constitution of New Mexico to allow public support of economic development[.]” NMSA 1978, Section 5-10-2(B) (2007), *see also* Section 5-10-4. The definition of public partner implicates a myriad of state entities, and that definition should likely be interpreted with existing statutory requirements under the Local Economic Development Act and the Anti-Donation Clause. (Public partners are allowed to propose site pre-development projects under Section 6B and enter into contracts under Section 3).

Section 4 does not enumerate a procedure for the New Mexico legislative council when selecting the five public members of the committee.

Section 4B of the bill does not explicitly reference a constitutional or statutory provision independent of SB 169 that would require the six government employees to participate (or appoint a designee to participate) in the committee. Furthermore, the language “designee” does not inherently mean that the designee would be an employee of the agency intended to be represented in that committee position.

Section 4 of the Act provides that public members initially appointed to the committee shall “draw lots for staggered terms.” The phrase “draw lots” does not enumerate an exact procedure for the committee to follow when staggering the terms of the initial public members of the committee, and could be interpreted broadly.

Section 4 provides that members of the committee who are not public employees are entitled to per diem and mileage “as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance.” Specifically, the language “as provided” could *potentially* be construed to mean “pursuant to.” The Per Diem and Mileage Act applies to employees defined as “any person who is in the employ of any state agency, local public body... and whose salary is paid either completely or in part from public money.” NMSA 1978, § 10-8-3(C) (2021). It’s possible that Section 4E of the bill could conflict with the Per Diem and Mileage Act.

Section 4F utilizes the language “other disqualifying interest.” This language lacks parameters defining prohibited conduct. Given that New Mexico case law and statutory provisions (e.g., NMSA 1978, Section 46-9A-2 have defined the parameters of fiduciary duties (e.g. the fiduciary duties of good faith and loyalty), tracking language akin to NM case law and/or existing statutory provisions defining fiduciary duties could eliminate the potential vagueness of the language “disqualifying interest.” Furthermore, Section 4F does not mention the Governmental Conduct Act, which enumerates the ethical principles of public services and holds that a public employee “shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.” NMSA 1978, Section 10-16-3(A). Given that Section 4 of the bill would require public employees to be members of the committee (which has powers to select applications for grants or loans under Section 5), there is a potential for conflict with the duties enumerated for public officers and employees under Chapter 10 of the New Mexico Statutes Annotated.

Section 7 does not define what constitutes a “reimbursable cost.”

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS