

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: 1/30/2025

Check all that apply:

Bill Number: HB 159

Original Correction
Amendment Substitute

Sponsor: Rep. Alan T. Martinez, Rep.
Debra M. Sariñana, Sen.
Harold Pope

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

Person Writing

Short Title: Energy Project Siting and
Military Bases

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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/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:

Section 1 of the bill creates a new section of Chapter 9, Article 15 NMSA 1978. Section 1(a) requires a developer or owner of a project involving a “wind energy conversion device, solar collector or other facility” to inform the chair of the military base planning commission within ten days of submitting a notice to the FAA to initiate the approval process by the Clearinghouse. The developer would also be required to describe the project to the chair. The military base planning commission was established by Section 9-15-49, NMSA 1978, and is administratively connected to the New Mexico Economic Development Department.

Section 1(B) requires that the developer or owner provide notice to the military base planning commission within 10 days of receiving either an approval or a finding of adverse impact from the Clearinghouse.

Section 2 of the bill states that the effective date of the legislation would be July 1, 2025.

This is a short bill that ordinarily would not need much explanation. However, it references complicated federal statutes, involving two federal cabinet level departments. Thus, some background is probably necessary for understanding the bill. Pursuant to 49 U.S.C. § 44718, under certain circumstances further described in regulations and orders, the Secretary of Transportation, through the Federal Aviation Administration, requires public notice of the proposed construction, alteration, establishment, or expansion of a structure or sanitary landfill. The notice is required when it “will promote safety in air commerce, the efficient use and preservation of the navigable airspace and of airport traffic capacity at public use airports, or the interests of national security, as determined by the Secretary of defense.” 49 U.S.C. § 44718(a). If the FAA determines that there is a potential concern, it will conduct a study. This study will include findings made by the Defense Department, so the matter would be referred to that Department.

If the project in question concerns an “energy project,” defined as “a project that provides for the generation or transmission of electrical energy,” or an antenna structure project, then the Military Aviation and Installation Assurance Clearinghouse” handles the DOD’s review of the project. 10 U.S.C. § 183a(b)(1) & 183a(h)(4). The clearinghouse will not object to an energy project or antenna structure project unless it determines that it “would result in an unacceptable

risk to the national security of the United States.” 10 U.S.C. § 183a(e). If it objects, “the Clearinghouse shall issue to the applicant a notice of presumed risk that describes the concerns identified by the Department in the preliminary review and requests a discussion of possible mitigation actions.” 10 U.S.C. § 183a(c)(2)(A). If it has no objection, then “the Clearinghouse shall communicate to the [FAA] in writing, not later than five business days after making such finding, the following: ‘No Part 77 concerns, national security review ongoing.’” 10 U.S.C. § 183a(c)(2)(C)(8).

FISCAL IMPLICATIONS

Does not have a fiscal implication for the Department of Justice.

SIGNIFICANT ISSUES

None are apparent.

PERFORMANCE IMPLICATIONS

None are apparent.

ADMINISTRATIVE IMPLICATIONS

None are apparent.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

No apparent conflict or duplication. This appears to be a companion to HB 158, which concerns, more generally, the economic impact of federal decisions pertaining to military bases. HB 158 was introduced by the same three sponsors.

TECHNICAL ISSUES

The term “or other facility,” as used in the bill, is somewhat vague.

The initial submission of notice to the FAA is not necessarily to “initiate the approval process” by the Clearinghouse, as described in Section One. This is an independent requirement, under certain circumstances, for the developer of a project. The FAA may or may not refer the matter to the Clearinghouse. Some clarification may be useful.

Under the federal statute, the Clearinghouse would not submit an approval directly to the applicant, as described in Section 1(B). Rather, the Clearinghouse would submit the approval to the FAA, which would use it in its evaluation.

The reference to the specific name of the “military aviation and installation assurance siting clearinghouse” is a little bit risky. The federal agency may change its name. This is, of course, out of the control of the State of New Mexico. When it was created in 2011, the agency was originally called the “DOD Siting Clearinghouse.” This was changed to the current name in 2018.

The military base planning commission is the product of sunset legislation, and is currently scheduled to cease operations effective July 1, 2028. Section 9-15-51.1, NMSA 1978

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

None