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FISCAL IMPACT REPORT

SPONSOR <u>House Taxation and Revenue Committee</u>	LAST UPDATED <u>3/21/2025</u>	ORIGINAL DATE <u>1/28/2025</u>
		<u>CS/House Bill</u>
SHORT TITLE <u>Trade Ports Development Act</u>	BILL NUMBER <u>19/HTRCS/aSTBTC/aSFC</u>	
	ANALYST <u>Rodriguez/Faubion/Gray</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/ Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PRC	\$0.0	\$15.1	\$16.0	\$31.1	Recurring	General Fund
EDD	\$0.0	\$135.0	\$135.0	\$270.0	Recurring	General Fund
TRD	\$50.9	\$0	\$0	\$50.9	Nonrecurring	Nonrecurring
Total	\$50.9	\$150.1	\$151.0	\$352.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to an appropriation in the General Appropriation Act

Sources of Information

LFC Files

Agency Analysis Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Public Regulation Commission (PRC)

New Mexico Finance Authority (NMFA)

New Mexico Border Authority (NMBA)

Economic Development Department (EDD)

Tax and Revenue Department (TRD)

Department of Transportation (DOT)

Agency Analysis was Solicited but Not Received From

New Mexico Attorney General (NMAG)

General Services Department (GSD)

SUMMARY

Synopsis of SFC Amendment for House Bill 19

The Senate Finance Committee (SFC) amendment to House Bill 19 (HB19) adds an exemption to the Procurement Code for agreements and contracts entered pursuant to HB19. The Senate Tax, Business and Transportation committee amended the bill to remove an exemption to the Procurement Code for agreements and contracts entered pursuant to HB19. The SFC amendment

adds the exemption back.

The SFC amendment also adds provisions:

- Authorizing clawbacks,
- Requiring benchmarks or deliverables be met before the disbursement of public funds,
- Giving the Board of Finance final approval authority over trade port projects and the disbursement of public funds,
- Requiring that a private partner in a trade port project not be related to the secretary of the Economic Development Department.

Synopsis of STBTC Amendment for House Bill 19

The Senate Tax, Business and Transportation Committee amendment to House Bill 19 (HB19) strikes the section adding an exemption to the procurement code for agreements and contracts entered into pursuant to HB19.

Synopsis of HTRC Substitute for House Bill 19

The House Taxation and Revenue Committee Substitute for House Bill 19 enacts the Trade Ports Development Act, which enables the state and its political subdivisions (“public partners”) to enter into public-private partnership agreements to help finance and work on trade port projects. The legislation creates a process for designating “trade port districts” that can receive funding for projects through a new trade ports development fund. The Economic Development Department (EDD) may make investments and issue grants to trade port projects from the new fund, which is funded by new revenue distributions from both the motor vehicle excise tax and the gross receipts tax.

Detailed Synopsis. Section 2 of the bill sets forth definitions of terms used in the Trade Ports Development Act. Notably, the bill defines a “trade port” as a multimodal system of facilities and services 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 establishes criteria for designating a specific geographic area as a “trade port district” and Section 4 establishes criteria for trade port projects that the EDD secretary and advisory committee (created in Section 5) should consider when deciding to approve a proposed grant, loan, and agreement. Criteria that should be considered for a trade port district includes, but is not limited to, proximity to a designated federal interstate highway or other four-lane vehicular highway, proximity to an airport that can provide national and international passenger and air freight service, existing infrastructure suitable for redevelopment or expansion through a trade port project, beneficial impact on economically disadvantaged communities, availability of a public partner capable of coordinating development activities, and ability to use economic development incentive programs for projects. Criteria for trade port projects includes, but is not limited to, cost-effectiveness and financial feasibility, technological feasibility, projected time frame, and projected impact on economic development.

Section 5 creates a trade ports advisory committee with members from various state agencies and five members from the public. Section 6 outlines the responsibilities of the advisory committee, which include recommending approval or disapproval of district designations, public-private

partnership agreements, and grants and loans from the trade ports development fund (created in Section 9).

Section 7 outlines the duties of the EDD secretary, such as developing an application for approving public-private partnerships, approving or disapproving trade port districts and trade port projects, and establishing criteria for partnership agreements, grants, and loans.

Section 8 outlines requirements public partners must follow before entering into a public-private partnership agreement, such as undertaking a cost-benefit analysis, conducting a public hearing, demonstrating the project serves a public purpose and fulfills an important public need, and showing the project would comply with state and federal laws. The public-private partnership agreement would require the private partner to provide guarantees, letters of credit or other acceptable forms of security. Additionally, the contract between the parties would have to specify how the revenue would be collected and how debts incurred on behalf of the public partner or private partner would be repaid. The bill also requires agreements to include claw-back provisions to protect public investment and measures for financial accountability, risk-sharing, and project defaults.

Section 9 creates the trade ports development fund, a nonreverting fund administered by EDD to carry out the provisions of HB19. Money in the fund can be used for:

- Grants of up to \$250 thousand to public partners to study the cost and benefits of entering a public-private partnership for a proposed project;
- Grants and loans for financing a trade port project, subject to a private partner match that equals or exceeds the monetary obligation of the public partner;
- Grants or loans to a Native American tribe, nation, or pueblo working with a private partner on a trade port project; and
- Administrative and reimbursable costs incurred by the EDD or the Department of Transportation (DOT).

Section 10 specifies that trade port projects are considered a public work for the purposes of the Public Works Minimum Wage Act, the Subcontractors Fair Practices Act, and the Public Works Apprenticeship and Training Act.

Section 11 requires EDD to provide annual reporting to the governor and the Legislative Finance Committee (LFC) on the status of approved trade port districts and projects, approved grant and loan applications, public-private partnership agreements, and status of the development fund.

Section 12 adds an exemption to the procurement code for agreements and contracts entered into pursuant to the legislation.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

This bill creates a new nonreverting fund administered by EDD to carry out the provisions of the act, including planning, renovation, or construction of trade port and associated facilities and infrastructure.

HB19 allows EDD and DOT to use the trade ports development fund for administrative and reimbursable costs, subject to the legislative appropriation process. However, the use of the fund for programmatic activities and grantmaking is at the discretion of EDD and DOT and is not subject to direct legislative oversight or appropriation.

SIGNIFICANT ISSUES

Economic Development Impact. HB19 raises several concerns regarding the bill’s potential economic development impact. HB19 contemplates creating one of the largest state economic development subsidies but follows few economic development best practices that are generally followed by the state’s other large economic development incentives, like the Local Economic Development Act (LEDA) and Job Training Incentive Program (JTIP).

First, the basis for providing state subsidies is vague. The legislation requires the department to consider “the projected impact of the proposed trade port project on economic development” when making awards of grants or loans. In contrast, a project receiving LEDA funding must create full-time jobs in economic base industries and join an agreement that stipulates how funds can be clawed back if those jobs are not actually created. JTIP has similarly significant safeguards that act to protect taxpayer dollars from being misused. These are provided in statute to ensure legislative intent is met.

Second, the legislation makes no provision to ensure that the subsidized activities would not have occurred but for state support. The department could simply disburse funds to businesses along Interstate-25 or other transit areas that currently meet the definition of a trade port. This would not meaningfully grow the state economy, but it would pass the criteria as established by HB19.

The bill is unlikely to be more cost effective than existing economic development strategies. To be as efficient at job creation as LEDA, the trade port development act would need to create 6.7 thousand new jobs each year, about one-third of the entire wholesale trade industry and about one-third of total statewide employment growth in 2023. This is impractical given labor market constraints.

Lastly, the bill has limited reporting requirements.

The bill requires the following reporting:

- A list of trade port districts and projects,
- A list of approved businesses and their industries,
- The number of grant and loan applications,
- The number of public-private partnership agreements,
- The status of the fund, and
- Recommendations for modifications.

The bill does not require:

- The dollar amount of grants or loans provided by the board,
- The number of jobs created by private entities receiving state subsidies, or
- A regular evaluation of the effectiveness of the state subsidy.

Economic development research offers insights into what are the most effective strategies to support sustainable development. More effective programs are those that provide high quality public services that support business development, such as small business advice, customized training, and workforce development programs. Further, successful economic development tends to avoid focusing on a single industry.

Defining Trade Port Districts. HB19 uses broad language to define the potential areas eligible as a trade port district but does not specify how many of the criteria the proposed area must meet to qualify as one. Section 3 indicates that, “A proposed trade port district shall meet as many of the following criteria as possible at the time of the designation”, which makes it unclear if an area could qualify as a trade port district if it meets just two of the criteria. The listed criteria, such as the availability of a public partner capable of coordinating development activities within the proposed area or the ability to use state economic development incentive programs for trade port projects, would allow for a wide range of areas that to be considered trade port districts.

Electric and Gas Utilities. The Public Regulation Commission (PRC) notes that the bill implies but does not expressly say that electric and gas utilities are eligible to be a part of the public-private partnership. PRC further notes that the bill could use additional language to clarify that investor-owned utilities that provide electric or gas services to a facility, system, or building that comprise a trade port project could be part of a public-private partnership.

Jurisdictional Overlap. The New Mexico Border Authority (NMBA) wrote that the proposed trade ports advisory committee may duplicate roles or create conflicts in project oversight, evaluation, and implementation with NMBA as they are tasked with overseeing infrastructure and economic development at ports of entry, as granted through the Border Development Act (58-27-1 through 58-27-26 NMSA 1978), which could be considered trade port districts. The agency also notes that HB19 gives the EDD secretary the authority to approve trade port projects, which may not align with NMBA’s strategic vision or prioritization. However, Section 4 of the legislation includes criteria the secretary should consider when approving proposed projects which includes whether the project complies with state and federal infrastructure planning.

Tort Claims Act. HB19 provides for the merging of public and private entities into public-private partnerships under public-private partnership agreements. Section 41-4-4 NMSA 1978 (the Tort Claims Act) grants public entities and employees' immunity from liability for tort claims except as waived under the New Mexico Religious Freedom Restoration Act (Sections 28-22-1 to 28-22-5 NMSA 1978) or the Tort Claims Act. However, the Tort Claims Act does not provide a similar exemption for private entities.

HB4 presents a potential issue as to whether this creation of a public-private partnership under public-private partnership agreement nullifies the immunity otherwise available to public utilities, entities, and employees under the Tort Claims Act.

Proprietary Information. Section 8(D)(12) states that a public-private partnership agreement shall “provide for the protection of proprietary information of the private partner.” Because the partnership would involve a private entity, the legislation may require language as to how the proprietary information will be protected under Inspection of Public Records Act (IPRA) requirements that apply to the public entity.

Tribal Sovereign Immunity. Section 9(F) provides for a grant or loan of money in the trade ports development fund to an “Indian nation, tribe or pueblo that has entered into a partnership with a private partner for the development of a trade port project” under enumerated conditions. In *Hamaatsa, Inc. v. Pueblo of San Felipe*, the New Mexico Supreme Court held that dismissal was proper under: “the unequivocal precedent of the United States Supreme Court [which] declares only two exceptions to tribal sovereign immunity—the tribes’ waiver of immunity or congressional authorization— neither of which exists in the instant case.” Additionally, Update of Selected Studies in Transportation Law, citing *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 188 L. Ed. 2d `071 (2014) states: “Sovereign immunity ... extends to commercial activities off of Indian lands and can only be waived by the tribe or Congress.”

Under this precedent, tribal sovereign immunity can only be expressly waived by an authorized member of the Indian nation, tribe, or pueblo or by a Congressional waiver. If not waived, tribal sovereign immunity will apply to judicial actions taken against said entities. An express waiver of tribal sovereign immunity should therefore be included in HB19, and in any related legislation (and agreements) involving the Indian nation, tribe, or pueblo to preserve the state’s pursuit of default and other contract remedies.

ADMINISTRATIVE IMPLICATIONS

HB19 requires the EDD secretary to develop an application for approving public-private partnerships, approve or disapproving trade port districts and trade port projects, promulgate rules for the application process, and establish criteria for partnership agreements, grants, and loans. The secretary or secretary’s designee will also serve on the trade ports advisory committee. Based on the level of responsibility, EDD may need additional staff to comply with the provisions of HB19.

HB19 could have an additional \$352 thousand impact on agency operating budgets in FY26 and FY27 due to additional staff time required to comply and administer the act.

- The Public Regulation Commission (PRC) noted that the act would require a public utility economist to spend on average 5 hours per week with the committee with total fiscal impact of \$31.1 in FY26 and FY27.
- EDD, the agency with the most responsibilities outlined in the bill, states the agency will need 1 FTE paid at a mid-level salary to schedule meetings, review applications, public-private partnership agreements, and the other responsibilities listed in the bill at an annual cost of \$135 thousand.
- TRD estimates HB19 will require the agency to expend approximately \$51 thousand for testing, creating new reports, modifying existing reports, establishing new revenue distributions, and updating information technology systems.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB19 relates to an appropriation in the House passed version of the General Appropriation Act (GAA). The GAA includes \$90 million for the trade ports development fund, contingent on enactment of HB19 or similar legislation.

TECHNICAL ISSUES

In previous analyses on similar public-private partnership bills, the New Mexico Attorney General (NMAG) notes that the clause, “as required by rule” at the end of the sentence in Section 9(D)(1) makes it unclear whether the promulgated rules, established by EDD per Section 7 (E), could waive the preceding provision that obligates a private partner to “provide funds that match or exceed the public partner’s monetary obligations for the cost of a study”.

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