

1 AN ACT
2 RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE TRADE PORTS
3 DEVELOPMENT ACT; PROVIDING FOR THE DESIGNATION OF TRADE PORT
4 DISTRICTS; ESTABLISHING CRITERIA FOR APPROVAL OF TRADE PORT
5 PROJECTS; CREATING THE TRADE PORTS ADVISORY COMMITTEE AND
6 SPECIFYING DUTIES; SPECIFYING DUTIES OF THE SECRETARY OF
7 ECONOMIC DEVELOPMENT; ALLOWING PUBLIC PARTNERS TO ENTER INTO
8 PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS TO FACILITATE
9 DEVELOPMENT OF TRADE PORTS; CREATING THE TRADE PORTS
10 DEVELOPMENT FUND; AUTHORIZING GRANTS AND LOANS; AMENDING A
11 SECTION OF THE PROCUREMENT CODE; PROVIDING DUTIES OF THE
12 STATE BOARD OF FINANCE; MAKING AN APPROPRIATION.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. SHORT TITLE.--Sections 1 through 13 of this
16 act may be cited as the "Trade Ports Development Act".

17 SECTION 2. DEFINITIONS.--As used in the Trade Ports
18 Development Act:

19 A. "private partner" means an individual, a
20 foreign or domestic corporation, a general partnership, a
21 limited liability company, a limited partnership, a joint
22 venture, a business trust, a public benefit corporation, a
23 nonprofit entity or other private business entity or
24 combination thereof;

25 B. "public partner" means the state and its

1 branches, agencies, departments, boards, instrumentalities or
2 institutions and all political subdivisions of the state and
3 their agencies, instrumentalities and institutions, including
4 a department, an agency, an institution of higher education,
5 a board or a commission;

6 C. "public-private partnership" means an
7 arrangement between one or more public partners and one or
8 more private partners for the development of a trade port
9 project pursuant to the Trade Ports Development Act;

10 D. "public-private partnership agreement" means a
11 contract between one or more public partners and one or more
12 private partners in connection with the development of a
13 trade port project;

14 E. "secretary" means the secretary of economic
15 development;

16 F. "trade port" means a multimodal system of
17 facilities and services in a given location with the
18 logistical capacity to efficiently manage cargo and enhance
19 national supply chain resiliency by facilitating the movement
20 and redistribution of goods and commodities to other
21 locations;

22 G. "trade port district" means a distinct
23 geographic area subject to the approval of the secretary
24 pursuant to Subsection B of Section 7 of the Trade Ports
25 Development Act within which proposed trade port projects may

1 be approved for grants or loans; and

2 H. "trade port project" means a project subject to
3 the approval of the secretary pursuant to Subsection C of
4 Section 7 of the Trade Ports Development Act creating or
5 modifying infrastructure for the construction of buildings or
6 other facilities that support the functions of a trade port
7 within an approved trade port district.

8 SECTION 3. TRADE PORT DISTRICTS--DESIGNATION
9 CRITERIA.--

10 A. A private partner or a public partner may
11 propose a specific geographic area for designation as a trade
12 port district pursuant to Subsection B of Section 7 of the
13 Trade Ports Development Act.

14 B. A proposed trade port district shall meet as
15 many of the following criteria as feasible at the time of
16 designation:

17 (1) designation by the United States
18 department of transportation as a trade port regional
19 infrastructure accelerator;

20 (2) the federal designation as a
21 foreign-trade zone or subzone;

22 (3) the availability of services from the
23 United States customs and border protection;

24 (4) proximity to a designated federal
25 interstate highway or other four-lane vehicular highway;

1 (5) proximity to an established or planned
2 trade port corridor system;

3 (6) proximity to a class 1 railroad line
4 providing access to international border crossings and major
5 markets and ports on the west coast, gulf coast and east
6 coast of the United States;

7 (7) proximity to an airport that can provide
8 national and international passenger and air freight service;

9 (8) existing infrastructure suitable for
10 redevelopment or expansion through a trade port project;

11 (9) the availability of a qualified labor
12 pool and partnership or collaborative that can address the
13 workforce development needs consistent with job availability
14 within the trade port district, including in a county with an
15 unemployment rate higher than the unemployment rate of New
16 Mexico;

17 (10) the beneficial impact of a trade port
18 district designation on an economically disadvantaged or
19 distressed community, including a county with a poverty rate
20 greater than the poverty rate of New Mexico;

21 (11) the availability of land in a county
22 with a population of one hundred thousand or fewer according
23 to the most recent federal decennial census in parcels large
24 enough to accommodate sufficient trade port projects to
25 constitute an economically viable trade port;

1 (12) the availability of a public partner
2 capable of coordinating development activities within the
3 proposed trade port; and

4 (13) the ability to use state economic
5 development incentive programs for trade port projects
6 pursuant to:

7 (a) improvement districts pursuant to
8 Chapter 3, Article 33 NMSA 1978;

9 (b) the Public Improvement District
10 Act;

11 (c) the Tax Increment for Development
12 Act;

13 (d) the Industrial Revenue Bond Act;

14 (e) the Local Economic Development Act;
15 and

16 (f) the Infrastructure Development Zone
17 Act.

18 SECTION 4. TRADE PORT PROJECTS--CRITERIA FOR
19 APPROVAL.--For all proposed trade port projects, in deciding
20 whether to approve a proposed grant, loan and public-private
21 partnership agreement, the secretary shall consider at least
22 the following criteria:

23 A. the extent to which the proposed trade port
24 project will further the development of a trade port;

25 B. whether the proposed trade port project

1 complies with state and federal infrastructure planning;

2 C. the cost-effectiveness and financial
3 feasibility of the proposed trade port project;

4 D. the net environmental impact of the proposed
5 trade port project;

6 E. the technological feasibility of the proposed
7 trade port project and the ability of the private partners
8 and public partners to successfully implement the proposed
9 trade port project;

10 F. the capacity of the public or private partner
11 to manage the trade port project to completion, including the
12 financial resources to satisfy any funding match
13 requirements;

14 G. the projected time frame for completion of the
15 proposed trade port project;

16 H. the potential qualification of the proposed
17 trade port project for state and federal grants, loans and
18 tax incentives;

19 I. the projected impact of the proposed trade port
20 project on economic development within the state and relevant
21 municipalities and counties; and

22 J. the possibility of state investment in the
23 proposed trade port project pursuant to Section 7-27-5.15
24 NMSA 1978.

25 SECTION 5. TRADE PORTS ADVISORY COMMITTEE--CREATED--

1 MEMBERSHIP.--

2 A. The "trade ports advisory committee" is
3 created. The economic development department shall provide
4 necessary administrative services to the committee.

5 B. The trade ports advisory committee is composed
6 of:

7 (1) the secretary of economic development or
8 the secretary's designee;

9 (2) the secretary of finance and
10 administration or the secretary's designee;

11 (3) the secretary of energy, minerals and
12 natural resources or the secretary's designee;

13 (4) the secretary of environment or the
14 secretary's designee;

15 (5) a representative of the public
16 regulation commission appointed by the commission;

17 (6) the secretary of transportation or the
18 secretary's designee;

19 (7) the chief executive officer of the New
20 Mexico finance authority or the chief executive officer's
21 designee; and

22 (8) five public members appointed by the New
23 Mexico legislative council who shall have experience in law,
24 architecture, planning, utilities, transportation or economic
25 development.

1 C. The public members appointed initially shall
2 draw lots for staggered terms in such a way that two members
3 shall serve for six years, two members shall serve for four
4 years and one member shall serve for two years. Thereafter,
5 the public members shall serve for six-year terms. A vacancy
6 in a term of a public member of the trade ports advisory
7 committee shall be filled by the New Mexico legislative
8 council for the remainder of the original term.

9 D. The members shall select a chair, who shall be
10 a public member and who shall serve a term of two years.

11 E. Members who are not public employees are
12 entitled to per diem and mileage as provided in the Per Diem
13 and Mileage Act but shall receive no other compensation,
14 perquisite or allowance.

15 F. A member of the trade ports advisory committee
16 shall not participate in or influence a decision by the
17 committee in which that member has a conflict of interest,
18 pecuniary interest or other disqualifying interest respecting
19 a public-private partnership agreement or a trade port
20 project that is considered by the committee. All members of
21 the committee shall certify annually and in writing
22 compliance with this subsection.

23 SECTION 6. TRADE PORTS ADVISORY COMMITTEE--DUTIES.--The
24 trade ports advisory committee has the following duties:

25 A. meet quarterly and at such other times as

1 deemed necessary by the chair;

2 B. review and recommend approval, modification or
3 disapproval of specific geographic areas to be designated as
4 trade port districts;

5 C. review and recommend approval, modification or
6 disapproval of proposed public-private partnership agreements
7 for a trade port project;

8 D. recommend modification or termination of
9 existing approvals or designations for failure to meet the
10 requirements of the Trade Ports Development Act;

11 E. recommend the promulgation of rules
12 establishing the application process and criteria for the
13 approval of public-private partnership agreements in
14 accordance with the provisions of the State Rules Act;

15 F. recommend approval or disapproval of
16 applications for grants or loans from the trade ports
17 development fund for trade port projects;

18 G. consult with state agencies on technical issues
19 relevant to the trade ports advisory committee's
20 consideration of an application; and

21 H. request updates to any technical information,
22 including any annual certification, provided in connection
23 with an approved application or designation.

24 SECTION 7. POWERS AND DUTIES OF THE SECRETARY.--The
25 secretary has the following powers and duties:

1 A. develop forms of application for approval of
2 public-private partnerships;

3 B. review and approve, modify or disapprove
4 specific geographic areas to be designated as trade port
5 districts;

6 C. review and approve or disapprove proposed
7 public-private partnership agreements for a trade port
8 project, subject to final approval by the state board of
9 finance;

10 D. modify or terminate existing approvals or
11 designations for failure to meet the requirements of the
12 Trade Ports Development Act;

13 E. adopt and promulgate rules establishing the
14 application process and criteria for the preliminary approval
15 of public-private partnership agreements, grants and loans in
16 accordance with the provisions of the State Rules Act;

17 F. approve or disapprove applications for grants
18 or loans from the trade ports development fund for trade port
19 projects;

20 G. consult with the department of transportation
21 on technical issues relevant to the secretary's consideration
22 of an application, including compliance with the statewide
23 transportation improvement program;

24 H. request updates to any technical information,
25 including any annual certification, provided in connection

1 with an approved application or designation; and

2 I. take all other actions necessary to implement
3 the Trade Ports Development Act, including entering into
4 joint powers agreements and retaining legal counsel and
5 experts when appropriate.

6 SECTION 8. PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS--
7 APPROVAL REQUIREMENTS--RESTRICTIONS.--

8 A. To provide economic and administrative
9 efficiencies in connection with the development of trade port
10 projects, a public partner is authorized to enter into
11 public-private partnership agreements.

12 B. Prior to entering into negotiations regarding
13 the use of a public-private partnership agreement as a method
14 of implementing a proposed trade port project, the public
15 partner shall publish in a newspaper of general circulation
16 its interest in considering such an agreement, and such
17 publication shall include a description of the scope of the
18 proposed trade port project.

19 C. Prior to entering into a public-private
20 partnership agreement, a public partner shall:

21 (1) undertake a cost-benefit analysis of a
22 public-private partnership trade port project in comparison
23 with a traditional public-partner-managed project;

24 (2) conduct a public hearing relating to the
25 proposed public-private partnership held in accordance with

1 the Open Meetings Act;

2 (3) demonstrate that the proposed trade port
3 project serves an important public purpose and fulfills an
4 important public need; and

5 (4) demonstrate that the proposed trade port
6 project will comply with applicable state and federal law.

7 D. A public-private partnership agreement shall:

8 (1) define the roles and responsibilities of
9 the public partners and the private partners;

10 (2) provide clawback or recapture provisions
11 that protect the public investment in the event of a default
12 on the agreement;

13 (3) provide a finance plan detailing the
14 financial contributions and obligations of the public
15 partners and the private partners;

16 (4) require a private partner to provide, or
17 cause to be provided, performance and payment bonds as
18 required pursuant to Section 13-4-18 NMSA 1978;

19 (5) require a private partner to provide
20 guarantees, letters of credit or other acceptable forms of
21 security, the amount of which may be less than one hundred
22 percent of the value of the proposed trade port project based
23 on the determination of the public partner or, for public-
24 private partnership agreements requiring approval pursuant to
25 the Trade Ports Development Act, based on the determination

1 by the secretary;

2 (6) specify how revenue will be collected,
3 accounted for and audited;

4 (7) specify how debts incurred on behalf of
5 the public partner or private partner will be repaid;

6 (8) address how the public partners and
7 private partners will share the management and risks of the
8 trade port project;

9 (9) provide that, in the event of an uncured
10 default, the public partner may:

11 (a) elect to take over the trade port
12 project, including the succession of all right, title and
13 interest in or to the project, subject to any liens on
14 revenue previously granted by the private partner; and

15 (b) terminate the public-private
16 partnership and exercise any other rights and remedies that
17 may be available, where such right to terminate may also be
18 exercised by the secretary if the secretary finds it is in
19 the public interest to do so;

20 (10) specify the term of the public-private
21 partnership agreement, which shall not exceed thirty years;

22 (11) limit a private partner from seeking
23 injunctive or other equitable relief to in any way restrict a
24 public partner from developing, constructing or maintaining a
25 trade port project, except that the public-private

1 partnership agreement may provide for reasonable compensation
2 to the private partner for an adverse effect resulting from
3 development, construction, operation and maintenance of
4 another trade port project of a public partner;

5 (12) provide for the protection of
6 proprietary information of the private partner;

7 (13) provide that operations and maintenance
8 of a trade port project shall be performed by the public
9 partner, except for broadband, telecommunications and energy
10 infrastructure components of the trade port project;

11 (14) provide provisions for termination of
12 the public-private partnership agreement, including the
13 cessation of the powers and duties of the private partner;
14 and

15 (15) provide project benchmarks or
16 deliverables that must be satisfied prior to the disbursement
17 of public funds.

18 E. A public-private partnership agreement for a
19 trade port project shall not become effective until it
20 receives preliminary approval by the secretary, pursuant to
21 Subsection C of Section 7 of the Trade Ports Development Act,
22 and final approval by the state board of finance.

23 F. The attorney general shall, as requested by the
24 secretary, enforce a clawback or recapture provision in a
25 public-private partnership agreement in the event of a

1 default on the agreement.

2 SECTION 9. TRADE PORTS DEVELOPMENT FUND CREATED.--

3 A. The "trade ports development fund" is created
4 in the state treasury. The fund consists of appropriations,
5 gifts, grants, donations, income from investment of the fund,
6 payments of principal and interest on loans made from the
7 fund and any other money distributed or otherwise allocated
8 to the fund. Income from the fund shall be credited to the
9 fund. Money in the fund shall not revert or be transferred
10 to any other fund at the end of a fiscal year.

11 B. The economic development department shall
12 administer the fund. Money in the fund is appropriated to
13 the economic development department for the purposes of
14 carrying out the provisions of the Trade Ports Development
15 Act, including the planning, renovation or construction of
16 trade ports and associated facilities and infrastructure.
17 Disbursements from the fund shall be made by warrant of the
18 secretary of finance and administration pursuant to vouchers
19 signed by the secretary of economic development or the
20 secretary's authorized representative.

21 C. Money in the trade ports development fund may
22 be used to make grants of up to two hundred fifty thousand
23 dollars (\$250,000) to a public partner for the purposes of
24 studying the costs and benefits of entering into a public-
25 private partnership for a proposed trade port project.

1 D. Money in the trade ports development fund may
2 be used to provide grants and loans for financing a trade
3 port project through a public-private partnership agreement;
4 provided that:

5 (1) the private partner shall provide funds
6 that match or exceed the public partner's monetary obligation
7 for the public-private partnership agreement, as provided by
8 rule; and

9 (2) the public partner certifies to the
10 secretary that the public partner has taken all action
11 necessary to approve the public-private partnership agreement
12 and that the agreement contains all terms and conditions
13 required by Subsection D of Section 8 of the Trade Ports
14 Development Act.

15 E. Money in the trade ports development fund may
16 be used pursuant to Subsections B and C of this section only
17 for grants or loans to a public partner for a trade port
18 project.

19 F. Money in the trade ports development fund may
20 be used for grants or loans to an Indian nation, tribe or
21 pueblo that has entered into a partnership with a private
22 partner for the development of a trade port project only if:

23 (1) the agreement between the Indian nation,
24 tribe or pueblo and the private partner is approved by the
25 secretary; and

1 (2) the grant or loan application is
2 approved by the secretary.

3 G. Money in the trade ports development fund may
4 be used for administrative and reimbursable costs incurred by
5 the economic development department, the state board of
6 finance and the department of transportation, subject to the
7 legislative appropriation process.

8 SECTION 10. APPLICABILITY OF CERTAIN OTHER LAWS.--The
9 construction of a trade port project pursuant to a
10 public-private partnership agreement is a public work for the
11 purposes of the Public Works Minimum Wage Act, the
12 Subcontractors Fair Practices Act and the Public Works
13 Apprenticeship and Training Act.

14 SECTION 11. EMPLOYMENT RESTRICTIONS.--

15 A. A private partner shall:

16 (1) have no employee related to the
17 secretary or another employee of the economic development
18 department responsible for reviewing public-private
19 partnership agreements; and

20 (2) not hire the secretary or another
21 employee of the economic development department responsible
22 for reviewing public-private partnership agreements within
23 two years of separation from employment by the department.

24 B. Any person who knowingly and willfully violates
25 the provisions of Subsection A of this section is guilty of a

1 misdemeanor and shall be sentenced pursuant to the provisions
2 of Subsection B of Section 30-1-6 NMSA 1978. An alleged
3 violation of Subsection A of this section may be reported to
4 the attorney general or a district attorney for enforcement.

5 **SECTION 12. POWERS AND DUTIES OF THE STATE BOARD OF**
6 **FINANCE.**--The state board of finance shall have the following
7 powers and duties pursuant to the Trade Ports Development
8 Act:

9 A. the review and provision of final approval or
10 disapproval of all public-private partnership agreements,
11 pursuant to the requirements of Subsection D of Section 8 of
12 that act;

13 B. approval of the disbursement of public funds
14 from the trade ports development fund for a trade port
15 project based on the private partner's satisfaction of
16 project benchmarks or deliverables; and

17 C. promulgation of rules to carry out its duties
18 pursuant to that act.

19 **SECTION 13. REPORT.**--By December 1, 2025, and by
20 December 1 of each year thereafter, the secretary shall
21 provide a report to the governor and the legislative finance
22 committee regarding:

23 A. trade port districts and trade port projects
24 approved by the secretary;

25 B. a description of the businesses and industries

1 participating in each approved trade port district and trade
2 port project;

3 C. grant and loan applications approved by the
4 secretary;

5 D. public-private partnership agreements approved
6 by the secretary;

7 E. the status of the trade ports development fund;
8 and

9 F. any recommended changes to the Trade Ports
10 Development Act.

11 SECTION 14. Section 13-1-150 NMSA 1978 (being Laws
12 1984, Chapter 65, Section 123, as amended) is amended to
13 read:

14 "13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--

15 A. A multi-term contract for items of tangible
16 personal property, construction or services except for
17 professional services, in an amount under twenty-five
18 thousand dollars (\$25,000), may be entered into for any
19 period of time deemed to be in the best interests of the
20 state agency or a local public body not to exceed four years;
21 provided that the term of the contract and conditions of
22 renewal or extension, if any, are included in the
23 specifications and funds are available for the first fiscal
24 period at the time of contracting. If the amount of the
25 contract is twenty-five thousand dollars (\$25,000) or more,

1 the term shall not exceed ten years, including all extensions
2 and renewals, except that for a contract entered into
3 pursuant to the Public Facility Energy Efficiency and Water
4 Conservation Act, the term shall not exceed twenty-five
5 years, including all extensions and renewals. Payment and
6 performance obligations for succeeding fiscal periods shall
7 be subject to the availability and appropriation of funds
8 therefor. If the contract is pursuant to a public-private
9 partnership agreement pursuant to the Trade Ports Development
10 Act, the contract term shall not exceed thirty years,
11 including all extensions and renewals.

12 B. A contract for professional services may not
13 exceed four years, including all extensions and renewals,
14 except for the following:

15 (1) services required to support or operate
16 federally certified medicaid, financial assistance and child
17 support enforcement management information or payment
18 systems;

19 (2) services to design, develop or implement
20 the taxation and revenue information management systems
21 project authorized by Laws 1997, Chapter 125;

22 (3) a multi-term contract for the services
23 of trustees, escrow agents, registrars, paying agents, letter
24 of credit issuers and other forms of credit enhancement and
25 other similar services, excluding bond attorneys,

1 underwriters and financial advisors with regard to the
2 issuance, sale and delivery of public securities, may be for
3 the life of the securities or as long as the securities
4 remain outstanding;

5 (4) services relating to the implementation,
6 operation and administration of the Education Trust Act;

7 (5) services relating to measurement and
8 verification of conservation-related cost savings and utility
9 cost savings pursuant to the Public Facility Energy
10 Efficiency and Water Conservation Act;

11 (6) services relating to the design and
12 engineering of a state public works project:

13 (a) for a period not to exceed the
14 requisite time for project completion and a subsequent
15 warranty period; and

16 (b) upon approval of the secretary of
17 finance and administration;

18 (7) services relating to the design and
19 engineering of a regional water project with an estimated
20 cost of more than five hundred million dollars
21 (\$500,000,000):

22 (a) for a period not to exceed the
23 requisite time for project completion and a subsequent
24 warranty period; and

25 (b) upon approval of the secretary of

1 finance and administration; and

2 (8) a contract for services pursuant to a
3 public-private partnership agreement pursuant to the Trade
4 Ports Development Act, which contract shall not exceed thirty
5 years, including all extensions and renewals."

6 SECTION 15. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2025. _____

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