

HOUSE BILL 19

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Patricia A. Lundstrom and Dayan Hochman-Vigil and Raymundo Lara
and Tara L. Lujan and Joy Garratt

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE TRADE PORTS DEVELOPMENT ACT; PROVIDING FOR THE DESIGNATION OF TRADE PORT DISTRICTS; ESTABLISHING CRITERIA FOR APPROVAL OF TRADE PORT PROJECTS; CREATING THE TRADE PORTS ADVISORY COMMITTEE AND SPECIFYING DUTIES; SPECIFYING DUTIES OF THE SECRETARY OF ECONOMIC DEVELOPMENT; ALLOWING PUBLIC PARTNERS TO ENTER INTO PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS TO FACILITATE DEVELOPMENT OF TRADE PORTS; CREATING THE TRADE PORTS DEVELOPMENT FUND; AUTHORIZING GRANTS AND LOANS; PROVIDING FOR DISTRIBUTIONS

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PURSUANT TO THE TAX ADMINISTRATION ACT; CHANGING A DISTRIBUTION OF THE MOTOR VEHICLE EXCISE TAX; ADDING AN EXEMPTION TO THE PROCUREMENT CODE; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through HCEDC→10←HCEDC HCEDC→11←HCEDC of this act may be cited as the "Trade Ports Development Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Trade Ports Development Act:

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

B. "public partner" means the state and its branches, agencies, departments, boards, instrumentalities or institutions and all political subdivisions of the state and their agencies, instrumentalities and institutions, including a department, an agency, an institution of higher education, a board or a commission;

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

D. "public-private partnership agreement" means a

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contract between one or more public partners and one or more private partners in connection with the development of a trade port project;

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

F. "trade port" means 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;

G. "trade port district" means a distinct geographic area subject to the approval of the secretary pursuant to Subsection B of Section 7 of the Trade Ports Development Act within which proposed trade port projects may be approved for grants or loans; and

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

**SECTION 3. [NEW MATERIAL] TRADE PORT DISTRICTS--
DESIGNATION CRITERIA.--**

A. A private partner or a public partner may propose a specific geographic area for designation as a trade

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port district pursuant to Subsection B of Section 7 of the Trade Ports Development Act.

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

- (1) designation by the United States department of transportation as a trade port regional infrastructure accelerator;
- (2) the federal designation as a foreign-trade zone or subzone;
- (3) the availability of services from the United States customs and border protection;
- (4) proximity to a designated federal interstate highway or other four-lane vehicular highway;
- (5) proximity to an established or planned trade port corridor system;
- (6) proximity to a class 1 railroad line providing access to international border crossings and major markets and ports on the west coast, gulf coast and east coast of the United States;
- (7) proximity to an airport that can provide national and international passenger and air freight service;
- (8) existing infrastructure suitable for redevelopment or expansion through a trade port project;
- (9) the availability of a qualified labor pool

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and partnership or collaborative that can address the workforce development needs consistent with job availability within the trade port district, including in a county with an unemployment rate higher than the unemployment rate of New Mexico;

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

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

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

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

- (a) improvement districts pursuant to Chapter 3, Article 33 NMSA 1978;
- (b) the Public Improvement District Act;
- (c) the Tax Increment for Development Act;
- (d) the Industrial Revenue Bond Act;

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(e) the Local Economic Development Act;
and
(f) the Infrastructure Development Zone Act.

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

- A. the extent to which the proposed trade port project will further the development of a trade port;
- B. whether the proposed trade port project complies with state and federal infrastructure planning;
- C. the cost-effectiveness and financial feasibility of the proposed trade port project;
- D. the net environmental impact of the proposed trade port project;
- E. the technological feasibility of the proposed trade port project and the ability of the private partners and public partners to successfully implement the proposed trade port project;
- F. the capacity of the public or private partner to manage the trade port project to completion, including the financial resources to satisfy any funding match requirements;
- G. the projected time frame for completion of the

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proposed trade port project;

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

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

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

SECTION 5. [NEW MATERIAL] TRADE PORTS ADVISORY COMMITTEE--CREATED--MEMBERSHIP.--

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

B. The trade ports advisory committee is composed of:

- (1) the secretary of economic development or the secretary's designee;
- (2) the secretary of finance and administration or the secretary's designee;
- (3) the secretary of energy, minerals and natural resources or the secretary's designee;
- (4) the secretary of environment or the secretary's designee;

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

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

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

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

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

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

E. Members 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.

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

SECTION 6. [NEW MATERIAL] TRADE PORTS ADVISORY

COMMITTEE--DUTIES.--The trade ports advisory committee has the following duties:

A. meet quarterly and at such other times as deemed necessary by the chair;

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

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

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

E. recommend the promulgation of rules establishing the application process and criteria for the approval of public-private partnership agreements in accordance with the

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provisions of the State Rules Act;

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

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

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

SECTION 7. [NEW MATERIAL] POWERS AND DUTIES OF THE SECRETARY.--The secretary has the following powers and duties:

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

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

C. review and approve or disapprove proposed public-private partnership agreements for a trade port project;

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

E. adopt and promulgate rules establishing the application process and criteria for the approval of public-private partnership agreements, grants and loans in accordance

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with the provisions of the State Rules Act;

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

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

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

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

SECTION 8. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS--APPROVAL REQUIREMENTS--RESTRICTIONS.--

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

B. Prior to entering into negotiations regarding the use of a public-private partnership agreement as a method of implementing a proposed trade port project, the public partner shall publish in a newspaper of general circulation its

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interest in considering such an agreement, and such publication shall include a description of the scope of the proposed trade port project.

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

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

(2) conduct a public hearing relating to the proposed public-private partnership held in accordance with the Open Meetings Act;

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

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

D. A public-private partnership agreement shall:

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

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

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

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

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

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

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

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

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

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

(b) terminate the public-private

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partnership and exercise any other rights and remedies that may be available, where such right to terminate may also be exercised by the secretary if the secretary finds it is in the public interest to do so;

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

(11) limit a private partner from seeking injunctive or other equitable relief to in any way restrict a public partner from developing, constructing or maintaining a trade port project, except that the public-private partnership agreement may provide for reasonable compensation to the private partner for an adverse effect resulting from development, construction, operation and maintenance of another trade port project of a public partner;

(12) provide for the protection of proprietary information of the private partner; HCEDC→and←HCEDC

HCEDC→(13) provide that operations and maintenance of a trade port project are to be performed by the public partner except for broadband, telecommunications and energy infrastructure components of a trade port project; and←HCEDC

HCEDC→(13)←HCEDC HCEDC→(14)←HCEDC provide provisions for termination of the public-private partnership agreement, including the cessation of the powers and duties of the private partner.

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E. A public-private partnership agreement for a trade port project shall not become effective until it is approved by the secretary pursuant to Subsection C of Section 7 of the Trade Ports Development Act.

SECTION 9. [NEW MATERIAL] TRADE PORTS DEVELOPMENT FUND CREATED.--

A. The "trade ports development fund" is created in 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 otherwise allocated to the fund. Income from the fund shall be credited to the fund. Money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

B. The economic development department shall administer the fund. Money in the fund is appropriated to the economic development department for the purposes of carrying out the provisions of the Trade Ports Development Act, including the planning, renovation or construction of trade ports and associated facilities and infrastructure. 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.

C. Money in the trade ports development fund may be

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used to make grants of up to two hundred fifty thousand dollars (\$250,000) to a public partner for the purposes of studying the costs and benefits of entering into a public-private partnership for a proposed trade port project.

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

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

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

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

F. Money in the trade ports development fund may be used for grants or loans 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 only if:

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

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

G. Money in the trade ports development fund may be used for administrative and reimbursable costs incurred by the economic development department and the department of transportation, subject to the legislative appropriation process.

HCEDC→SECTION 10. [NEW MATERIAL] APPLICABILITY OF CERTAIN OTHER LAWS.--The construction of a trade port project pursuant to a public-private partnership agreement is a public work for the purposes of the Public Works Minimum Wage Act, the Subcontractors Fair Practices Act and the Public Works Apprentice and Training Act.←HCEDC

SECTION HCEDC→10.←HCEDC HCEDC→11.←HCEDC [NEW MATERIAL] REPORT.--By December 1, 2025, and by December 1 of each year thereafter, the secretary shall provide a report to the governor and the legislative finance committee regarding:

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

B. a description of the businesses and industries participating in each approved trade port district and trade

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port project;

C. grant and loan applications approved by the secretary;

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

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

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

SECTION HCEDC→11.←HCEDC HCEDC→12.←HCEDC A new section of the Tax Administration Act is enacted to read:

"[NEW MATERIAL] DISTRIBUTION--GROSS RECEIPTS TAX--TRADE PORTS DEVELOPMENT FUND.--Prior to July 1, 2035, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the trade ports development fund in an amount equal to one percent of the net receipts attributable to the gross receipts tax after distributions have been made pursuant to Sections 7-1-6.46 and 7-1-6.47 NMSA 1978."

SECTION HCEDC→12.←HCEDC HCEDC→13.←HCEDC Section 7-14-10 NMSA 1978 (being Laws 1988, Chapter 73, Section 20, as amended) is amended to read:

"7-14-10. DISTRIBUTION OF PROCEEDS.--The receipts from the tax and any associated interest and penalties shall be deposited in the "motor vehicle suspense fund", hereby created in the state treasury. As of the end of each month, the net

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receipts attributable to the tax and associated penalties and interest shall be distributed as follows:

A. [fifty-nine] prior to July 1, 2035:

(1) fifty-five and thirty-nine hundredths percent to the general fund;

~~[B-]~~ (2) twenty-one and eighty-six hundredths percent to the state road fund; ~~[and]~~

~~[G-]~~ (3) eighteen and seventy-five hundredths percent to the transportation project fund; and

(4) four percent to the trade ports development fund; and

B. on and after July 1, 2035:

(1) fifty-nine and thirty-nine hundredths percent to the general fund;

(2) twenty-one and eighty-six hundredths percent to the state road fund; and

(3) eighteen and seventy-five hundredths percent to the transportation project fund."

SECTION HCEDC→13.←HCEDC HCEDC→14.←HCEDC Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended by Laws 2023, Chapter 149, Section 2 and by Laws 2023, Chapter 174, Section 1) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal

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property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or services for the governor's mansion and grounds;

C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

E. purchases of books, periodicals, instructional materials and training materials in printed, digital or electronic format from the publishers, designated public-education-department-approved instructional material depositories or copyright holders thereof and purchases of print, digital or electronic format library materials by public, school and state libraries for access by the public;

F. travel or shipping by common carrier or by private conveyance or to meals and lodging;

G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;

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H. contracts with businesses for public school transportation services;

I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to rules adopted by the corrections industries commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

J. purchases not exceeding ten thousand dollars (\$10,000) consisting of magazine subscriptions, web-based or electronic subscriptions, conference registration fees and other similar purchases where prepayments are required;

K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;

L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;

M. contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

N. contracts for maintenance of grounds and facilities at highway rest stops and other employment

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opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;

O. contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;

P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

Q. contracts with professional entertainers;

R. contracts and expenditures for legal subscription and research services and litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;

S. contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978;

T. works of art for museums or for display in

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public buildings or places;

U. contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to the Hospital Funding Act or operation and maintenance of a hospital pursuant to the Special Hospital District Act;

V. purchases of advertising in all media, including radio, television, print and electronic;

W. purchases of promotional goods intended for resale by the tourism department;

X. procurement of printing, publishing and distribution services for materials produced and intended for resale by the cultural affairs department;

Y. procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed

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two hundred thousand dollars (\$200,000);

Z. procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act;

AA. purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973;

BB. procurement, by either the department of health or Grant county or both, of tangible personal property, services or construction that are exempt from the Procurement Code pursuant to Section 9-7-6.5 NMSA 1978;

CC. contracts for investment advisory services, investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employees Retirement Act;

DD. the purchase for resale by the state fair commission of feed and other items necessary for the upkeep of livestock;

EE. contracts entered into by the crime victims reparation commission to distribute federal grants to assist victims of crime, including grants from the federal Victims of Crime Act of 1984 and the federal Violence Against Women Act of 1994;

FF. procurement by or through the early childhood

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education and care department of early pre-kindergarten and pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act;

GG. procurement of services of commissioned advertising sales representatives for New Mexico magazine;

HH. contracts entered into by the forestry division of the energy, minerals and natural resources department to distribute federal grants to nongovernmental entities and individuals selected through an application process conducted by the United States department of agriculture, the United States department of the interior or any division or bureau thereof for programs for wildfire prevention or protection, urban forestry, forest and watershed restoration and protection, reforestation or economic development projects to advance the use of trees and wood biomass for hazardous fuel reduction; ~~and~~

II. agreements and contracts entered into pursuant to the Trade Ports Development Act; and

~~HH.~~ JJ. procurements exempt from the Procurement Code as otherwise provided by law."

SECTION HCEDC→14.←HCEDC HCEDC→15.←HCEDC EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2025.