

Gallup-Mckinley County TradePort Authority comments on proposed new rules relating to the Trade Ports Development Act, Laws 2025, Ch. 86 (House Bill Approved April 8, 2025)

GENERAL COMMENTS AND MATTERS NOT ADDRESSED IN THE RULE THAT NEED TO BE ADDRESSED:

1. Finance is not promulgating rules through this rulemaking notwithstanding the fact it has authority to do so under 9-15F-12 of the Act. Coordination between EDD and Finance is required to avoid conflict and jurisdictional issues.
2. References to policies that may be established by the secretary at some future point are better detailed in the rule, or it should be clear where such policies may be located. The Rule must capture the policy. In addition, the Rule should set forth the process the Secretary will use to establish policies in certain areas, including for the prioritization of loan and grant applications, and whether there will be an opportunity to comment on the prioritization policies, including whether prioritization will weigh the needs of the trade port districts that serve disadvantaged communities.
3. The Act, e.g. Section 7(C), displays fundamental ambiguity regarding whether a trade port project can occur without a p3 agreement.
4. Does the Act permit a trade port project to be undertaken only by a public entity (i.e., with no p3 agreement as a component)? See, compare, and contrast Sections 2(H), 4(E), 7(C), 8(C)(1), 8(C)(4), 8(D)(11), and 9(E).
5. Additional content should be provided for the definition of a trade port. For example, whether two modes sufficient for the “multimodal system”? Likewise, by what criteria is “logistical capacity” to be judged?
6. What is the difference between an “arrangement” in Section 2(C) and an “agreement” in Section 2(D)? Presumably, the legislature intended there to be a difference because it used different words. The definitions of public-private partnership and public-private partnerships agreement again raise the question of whether there can be a trade port project without a p3 agreement.
7. It would be helpful to make clear that political subdivisions of the state include counties and cities.
8. Clarification is needed as to whether the cost-benefit analysis must show that the p3 agreement will be less expensive, more efficient, or otherwise superior to a traditional public-partner-managed project.
9. The rule should address Section 8(D)(5) “other acceptable forms of security” and clarify what, if any, public-private partnership agreements don’t require approval from the secretary.
10. Clarification is needed as to when Section 8(D)(11) anti-competition component is triggered.
11. Section 9(D)(1) of the Act provides that “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.**” Nowhere in the proposed rule is the match identified, including what counts toward the match.

12. The proposed rule does not address whether money in the fund may be used for a public-only project. See Section 9(D) of the Act.

12.13.1.1 ISSUING AGENCY and 12.13.1.2 SCOPE

Because the issuing agency (economic development department) is not the state board of finance, none of the rules can be deemed to be issued in accordance with Section 12 of the Act. Additional areas of conflict may exist between the secretary’s preliminary approval (Section 7(E)) and state board of finance final approval (Section 12(A)). Other needs for coordination between the EDD and Finance as evidenced by the subtle distinction of fund administration by EDD (Section 9(B)) and Finance disbursement approval based on benchmark satisfaction (Section 12(B)).

The phrase “strategic economic development” is not used in the Act. Its use could be misleading, and could skew prioritization as between districts or projects deemed “strategic.” In sum, the term should be removed or fully and neutrally defined.

The scope should cross-reference specific provisions of EDD’s rulemaking authority in the Act, including application criteria for *preliminary* approval of p3 agreements, grants and loans under Section 7(E), and private partner matching requirements under Section 9(D)(1).

EDD’s statutory authority for rulemaking is not found in 9-15F-6, but rather Sections 7(E) and 9(D)(1).

12.13.1.5 EFFECTIVE DATE

The effective date must comply with the State Rules Act.

12.13.1.6 OBJECTIVE

Unclear what the objective of the Rules are from the summary of the statutory text and certain operative provisions of the Act. The objectives should be more clearly stated and defined. Certain paraphrases are incomplete and potentially misleading, for example Act defines a district as a “distinct geographic area” compared to a “specific geographic area” and the Rules don’t make clear if distinct and specific are synonymous or different. The significant conflict of interest rule at Section 5(F) should be highlighted. Additionally, the authority granted to the secretary is preliminary approval (state board of finance has final approval), and the secretary’s modification authority is omitted.

12.13.1.7 DEFINITIONS

Terms defined in the Act itself should not be reiterated – G, H, I, J, K, M, P, and Q are all definitions found in the Act and can be cross-referenced

B. Strike and replace “**Application**” to mean a written request to EDD or Finance to take action in accordance with the authority under the Act, including but not limited to grants and loans from the Fund for trade port projects.

C. Strike and replace “**Committee**” to mean the trade ports advisory committee.

E. Strike and replace “**Feasibility Study Grant**” to mean a grant award made pursuant to Section 9(C) of the Act.

F. Strike and replace “**Match requirement**” to mean a private partner’s monetary obligation that matches or exceeds a public partner’s monetary obligation for a p3 agreement.

N. Strike and replace “**Trade port corridor system**” to mean a route or network that facilitates the efficient movement of goods or services across borders, with additional clarification as to what is meant by “borders.”

R. Cite to the definition provided by the U.S. Department of Transportation or don’t define and rely on Section 3(B)(1) as USDOT makes the designation

12.13.1.8 ELIGIBILITY AND PRIORITIZATION POLICIES

The first sentence should be deleted, if not the entire section.

The committee does not have any decision-making authority, its role is advisory. Furthermore, Sections 8 and 3 of the Act are mandatory criteria and prioritization is impossible.

There is also nothing in the Act regarding prioritization of grants and loans, see Section 9. Prioritization may infringe upon Finance’s final approval authority.

12.13.1.9 PRE-APPLICATION AND APPLICATION PROCESS

A. The pre-application conference purpose should be confined to the application criteria, completing the application, and otherwise ensuring the application is ready for submission. All other purposes raise significant questions of lobbying, bias, discrimination, etc. that undermine satisfying the criteria embedded in the Act and may lead to unfair advantage. The act contemplates that all applicants should have the same opportunities. Concerns regarding the inclusion of confidential business information in the application process should be addressed, including the mechanisms that will be used to ensure state agency staff and outside consultants do not disclose confidential information. Further, if non-state agency personnel are to be involved their role should be clearly defined. Finally, pre-application conferences should be available for trade port designation applications, applications for grants or loans, or p3 agreements, i.e., the pre-application process should be applied across the board.

C. The committee’s function under Section 6 is to review and recommend secretarial action on applications. That is, the committee is the body to review and evaluate each completed application. The rule should make clear whether the committee is subject to the Open Meetings Act.

12.13.1.10 REVIEW AND APPROVAL PROCESS

This should be folded into the prior section – pre-application, application, review, recommendation and approval process – to encompass the respective duties and authorities of the applicant, the committee, the secretary, and Finance. Other than the final approval authority, there seems to be no justification to differentiate the process for public-private partnerships, district designations, grants and loans, p3 agreements (linked to projects in the Act, see Section 7(C)).

The rule should make clear the secretary’s action is governed by the Act, in certain cases subject to final approval by Finance.

Under the Act, a trade port project does not need to be approved, the p3 agreement does. This

distinction is important. A trade port project by itself and uncoupled from a p3 agreement does not require approval – it is only when a project is to occur through or in conjunction with a p3 arrangement that secretarial approval is required under Section 7(C).

Finally, trade port district designation and trade port project funding both require submission of an application to for review by both the committee and the secretary. These appear to be time-consuming processes that may hinder the timely expenditure of funding allocated to trade ports and related projects, and jeopardize any allocation of additional future funding. Consolidation of the processes should be considered.

12.13.1.11 TRADE PORT DISTRICT PROPOSAL, etc.

General Comment: How will the criterion listed in section 12.13.1.11 Trade Port District Designation be weighted and applied? Specifically, how will "Beneficial Impact on economically disadvantaged communities" be measured? This criterion was specifically listed in the act.

B. Insert following “the” “criteria set forth in the Act and policies established consistent with the Act.”

C. “Public partner partnership” does not exist; furthermore, only a public partner or private partner may propose a district designation as set forth in Section 3(A) of the Act. “Certain” may be inconsistent with “specific” as used in the Act. Section 3(B) of the Act specifies the factors and criteria to meet and many of the factors in this section C go beyond the criteria or risk conflict and confusion, for example:

(1) and (2) are vague and examples of helpful information should be provided;

(3) missing USDOT designation, foreign-trade zone or subzone, and other criteria from Section 3(B) of the Act;

(5)(e) and (f), (6), and (9) should be omitted to avoid mixing apples (project) and oranges (designation criteria);

(7) the meaning of “partnership” is unclear; and

(8) the meaning of “impact” and its relation to Section 3(B)(9) criteria is unclear.

Also, it should be noted the 5(a) legal description of the land for purposes of a district designation may involve substantial cost.

In (10), “relevant to criteria as established by the act” should be inserted following “documentation” and preceding “as.”

D. The Act states the committee will recommend approval, modification, or disapproval of the designation. The secretary will then either approve, modify, or disapprove. The secretary may consult with the department of transportation, request updates to any technical information, and take all other actions necessary as set forth in Sections 7(G) through (I) of the Act. The inclusion of experts without first retaining them as required by Section 7(I) raises transparency concerns. A final decision is subject to the secretary’s modification and termination authority under Section 7(D) of the Act.

12.13.1.12 TRADE PORT PROJECTS, REVIEW AND APPROVAL PROCESS

This section seems irrelevant if no more than the minimum criteria set forth in Section 4 of the Act will be relied upon for consideration. If additional criteria are to be considered, then they should be elaborated in the rule.

12.13.1.13 PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS, etc.

This section should address the procedures and criteria by which the secretary gives preliminary approval.

A. Use plural nouns and conform grammar accordingly. The Section 8(B) publication requirement and Section 8(C) pre-agreement requirements are missing.

B. Any additional claw-back policies should be expressly established within the Rule. Furthermore, if form claw-back or recapture provisions are to be required, the same should be addressed and approved by the attorney general as they are charged with enforcing.

C and D reiterate the statute and it's unclear why the same was not done for other provisions of Section 8 of the Act.

12.13.1.14 TRADE PORTS DEVELOPMENT FUND APPLICATIONS, REVIEW

Money in the fund is restricted for use by public partners, the Act does not permit use of the fund by a public private partnership. Does this mean that the public private partnership may request the funds only for the use by the public partner? The rule provides no clear answer how this will work given the stated restriction. Furthermore, if the fund may be used for a trade port project that does not include a p3 agreement, the rule should make this clear.

The application contents are dependent on the entity (public partner or public private partnership) applying for the funds, and contents applicable to each should be clearly defined.

The rule is titled "review" but the rule does not contain provisions for the review process, including for example timeframe for committee review and committee review and recommendation. Similar to comment for 12.13.1.12 including whether there will be additional criteria.

12.13.1.15 ADMINISTRATIVE COSTS

Language is inconsistent with the Act. Omit "fees" and replace "approval" with "appropriation."

12.13.1.16 ADMINISTRATION OF THE TRADE PORTS DEVELOPMENT FUND

The rule reiterates the Act and fails to address administration of the fund.

12.13.1.17 REPORTING

"Beginning December 1, 2026" violates the Act on its face. Replace "beginning" with "on."

12.13.1.18 AMENDMENT OF RULES

Strike and replace with "This rule or any provision of this rule may be amended, supplemented or repealed by the department, subject to the State Rules Act."