HOUSE BILL 229

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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AN ACT

RELATING TO LAND GRANTS-MERCEDES; AMENDING AND ENACTING
SECTIONS OF CHAPTER 49, ARTICLE 1 NMSA 1978; DEFINING TERMS;
PROVIDING AND CLARIFYING POWERS OF BOARDS OF TRUSTEES REGARDING
LAND GRANT-MERCEDEZ PROPERTY AND THE PROTECTION OF NATURAL
RESOURCES; PROVIDING FOR CIVIL AND CRIMINAL ACTIONS AND
PENALTIES; UPDATING PROVISIONS OF CHAPTER 49, ARTICLE 4 NMSA
1978 SO THAT THE DEFINITIONS, POWERS OF THE BOARD OF TRUSTEES
REGARDING PROPERTY AND THE PROTECTION OF NATURAL RESOURCES AND
PROVISIONS FOR CIVIL AND CRIMINAL ACTIONS AND PENALTIES ARE
SUBSTANTIALLY SIMILAR TO THE SAME DEFINITIONS, POWERS AND
PROVISIONS FOR LAND GRANTS-MERCEDES GOVERNED PURSUANT TO
CHAPTER 4, ARTICLE 1 NMSA 1978.

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

SECTION 1. Section 49-1-1.1 NMSA 1978 (being Laws 2004,
.218378.4
Chapter 124, Section 1, as amended) is amended to read:

   "49-1-1.1.  DEFINITIONS.--As used in Chapter 49 NMSA 1978:
   A.  "child" means a biological, adopted or foster
   child, a stepchild, a legal ward or a child of a person
   standing in loco parentis;
   B.  "common lands" means lands owned by a land
   grant-merced for the benefit of the heirs of the land grant-merced;
   C.  "common waters" means water resources for which
   a land grant-merced has valid existing water rights and may
   include points of diversion or storage located on property
   outside of the common lands;
   D.  "heir" means a person who is a descendant
   of the original grantees and has an interest in the common
   lands and common waters of a land grant-merced through
   inheritance, gift or purchase or as defined in the bylaws of a
   land grant-merced;
   E.  "land grant-merced" means a grant of land
   made by the government of Spain or by the government of Mexico
   to a community, town, colony or pueblo or to a person for the
   purpose of founding or establishing a community, town, colony
   or pueblo;
   F.  "parent" includes a biological, adoptive or
   foster parent, a stepparent or an individual who stands in loco
   parentis to a child;
[E.] G. "precinct" means a geographic location such as a community or town that is guaranteed an apportioned amount of positions on the board of trustees of a land grant-merced as defined in the land grant-merced bylaws;

[F.] H. "qualified voting member" means an heir who is registered to vote in a land grant-merced as prescribed in the land grant-merced bylaws; and

[G.] I. "sibling" includes a stepsibling and a half-sibling."

SECTION 2. Section 49-1-3 NMSA 1978 (being Laws 1907, Chapter 42, Section 3, as amended by Laws 2019, Chapter 213, Section 1 and by Laws 2019, Chapter 248, Section 2) is amended to read:

"49-1-3. BOARD OF TRUSTEES--MANAGEMENT OF GRANT--POWERS.--The management and control of all land grants-mercedes and tracts of land to which Sections 49-1-1 through 49-1-18 NMSA 1978 are applicable is vested in a board of trustees, to be known as the "board of trustees of the land grant-merced del pueblo de ____" (designating the name of the town, colony, pueblo or community), and the board shall have the power to:

A. control, care for and manage the land grant-merced and real estate, prescribe the terms and conditions under which the common lands and common waters may be used and enjoyed and make all necessary and proper [bylaws] rules [and regulations] that shall be in substantial compliance with
applicable statutes for the government thereof;

B. sue and be sued under the title as set forth in this section and have the standing to sue in law or equity to protect the common lands and common waters;

C. convey, lease or mortgage the common lands or common waters of the land grant-merced in accordance with the land grant-merced bylaws;

D. determine the number of animals that may be permitted to graze upon the common lands and determine other uses of the common lands that may be authorized;

E. prescribe the price to be paid for the use of the common lands and resources of the land grant-merced. A person failing or refusing to pay that amount may be prohibited from using a portion of the common lands while the person continues in default in those payments; provided that the amount fixed for use of the common lands shall be in proportion to the number and kinds of livestock pasturing upon the common lands or to other authorized use of the common lands;

F. adopt and use an official seal;

G. appoint judges and clerks and a canvassing board of election at all elections provided for in Sections 49-1-1 through 49-1-18 NMSA 1978, subsequent to the first, and canvass the votes cast in those elections;

H. make bylaws [and rules and regulations] and rules
not in conflict with the constitution and laws of the United States or the state of New Mexico, as may be necessary for the protection, improvement, [and] management, use and enjoyment of the common lands, common waters and real estate [and for the use and enjoyment of the common lands and of the common waters] of the land grant-merced;

I. determine land use, local infrastructure and economic development of the common lands or common waters of the land grant-merced;

J. determine zoning of the common lands of the land grant-merced pursuant to a comprehensive plan approved by the board of trustees that considers the health, safety and general welfare of the residents and heirs of the land grant-merced;

K. enter into memoranda of understanding, contracts and other agreements with a local, state or federal government or a government of a federally recognized Indian nation, tribe or pueblo, including but not limited to agreements concerning the protection and maintenance of cultural resources;

L. acquire real property; and

M. issue citations and prosecute criminal complaints in the magistrate courts for certain violations of the bylaws and rules of the land grant-merced as permitted pursuant to Section 49-1-11.3 NMSA 1978."

SECTION 3. Section 49-1-11 NMSA 1978 (being Laws 1907, .218378.4
Chapter 42, Section 11, as amended) is amended to read:

"49-1-11. SALE OR MORTGAGE OF COMMON LANDS OR COMMON WATERS--RESTRICTIONS.--

A. A conveyance of a portion or of all of the common lands or common waters of a land grant-merced shall be effective only if:

1. the conveyance is made in accordance with the land grant-merced bylaws and this section;
2. the conveyance is made for the benefit of the land grant-merced;
3. the board of trustees of the land grant-merced has approved a resolution to make the conveyance at a regular meeting held in accordance with Sections 49-1-9 and 49-1-12 NMSA 1978;
4. the board of trustees has petitioned for an order affirming the board's resolution from the district court of the district in which the property is located; and
5. the district court has issued an order affirming the board of trustees' resolution pursuant to Subsection [E] D of this section.

B. An heir may file a written protest of a conveyance with the board of trustees of the land grant-merced and the district court within thirty days of the date that the resolution approving the conveyance is passed by the board. The board shall address and make a decision on the protest at a
special meeting held in accordance with Sections 49-1-9 and
49-1-12 NMSA 1978 within thirty days of receiving the protest.

C. An heir dissatisfied with a decision of the
board of trustees may appeal to the district court of the
county in which property is located in the following manner:

(1) appeals to the district court shall be
taken by serving a notice of appeal upon the board within
thirty days of the decision. If an appeal is not timely taken,
the action of the board is conclusive;

(2) the notice of appeal may be served in the
same manner as a summons in civil actions brought before the
district court or by publication in a newspaper printed in the
county in which the property is located, once per week for four
consecutive weeks. The last publication shall be at least
twenty days prior to the date the appeal may be heard. Proof
of service of the notice of appeal shall be made in the same
manner as in actions brought in the district court and shall be
filed in the district court within thirty days after service is
complete. At the time of filing the proof of service and upon
payment by the appellant of the civil docket fee, the clerk of
the district court shall docket the appeal;

(3) costs shall be taxed in the same manner as
in cases brought in the district court and bond for costs may
be required upon proper application; and

(4) the proceeding upon appeal shall be
de novo as cases originally docketed in the district court.
Evidence taken in a hearing before the board may be considered
as original evidence subject to legal objection, the same as if
the evidence was originally offered in the district court. The
court shall allow all amendments that may be necessary in
furtherance of justice and may submit any question of fact to a
jury or to one or more referees at its discretion.

D. If the district court finds that all
requirements of this section have been satisfied and that all
protests and appeals are concluded, the court shall issue its
order affirming the board of trustees' resolution conveying the
property.

E. After the district court issues its order, the
board of trustees shall execute the necessary documents in the
name and under the seal of the land grant-merced, and all heirs
shall be bound by the board's conveyance."

SECTION 4. A new Section 49-1-11.3 NMSA 1978 is enacted
to read:

"49-1-11.3. [NEW MATERIAL] ILLEGAL REMOVAL OF RESOURCES--
CERTAIN PROSECUTIONS AUTHORIZED IN MAGISTRATE COURT--NON-
ATTORNEY REPRESENTATION OF BOARD--PENALTIES AND REMEDIES--
ATTORNEY FEES.--

A. Rock product, minerals, timber or other natural
resources shall not be removed from the common lands or common
waters in violation of the land grant-merced's bylaws and
rules.

B. A board of trustees, or an employee of a land grant-merced authorized by a board of trustees, may issue a criminal citation to any person who is in violation of Subsection A of this section and file a criminal complaint in the magistrate court of any county in which the violation occurs. The district attorney or a member of the board of trustees or an employee of the land grant-merced expressly authorized by the board of trustees may appear and prosecute any misdemeanor proceeding under Subsection A of this section, except that no land grant-merced may prosecute a case that is tried before a jury through a non-attorney.

C. When a land grant-merced employee or member of a board of trustees is authorized pursuant to Subsections A and B of this section to prosecute citations, the employee or board member shall be permitted to testify and present evidence to the court. The court shall have the discretion to permit the employee or board member to ask questions of witnesses, either directly or through the court and to bring pertinent facts and legal authorities to the court's attention.

D. A person who violates Subsection A of this section is guilty of a misdemeanor and shall be fined not less than three hundred dollars ($300) nor more than one thousand dollars ($1,000) or sentenced to up to six months imprisonment in the county jail, or both.
E. A board of trustees for a land grant-merced may file a civil complaint seeking a civil penalty for knowingly, intentionally or willfully violating the provisions of Subsection A of this section. A civil award made pursuant to this subsection shall not exceed five thousand dollars ($5,000) and shall be paid to the board of trustees.

F. The remedies provided for in this section shall not be construed to limit the right of a board of trustees from seeking any other damages authorized by law. In addition to the remedies provided in this section, the district attorney or the board of trustees may apply on behalf of the board of trustees and the heirs of the land grant-merced to the district court of the county where the violation occurred for an injunction restraining any person from violating or continuing to violate the provisions of Subsection A of this section.

G. In a civil suit filed pursuant to this section in which the board of trustees of a land grant-merced is the prevailing party, the board of trustees shall be entitled to an award of reasonable court costs and attorney fees."

SECTION 5. Section 49-4-4.1 NMSA 1978 (being Laws 2007, Chapter 145, Section 2) is amended to read:

"49-4-4.1. DEFINITIONS.--As used in Chapter 49, Article 4 NMSA 1978:

A. "board of trustees" means the board of trustees of the Chilili land grant-merced;
B. "common lands" means lands owned by the Chilili
land grant for the benefit of the heirs of the land grant-
merced;

C. "common waters" means water resources to which a
land grant-merced has valid existing water rights, and may
include points of diversion or storage located on property
outside of the common lands;

[D.] D. "heir" means a person who is a descendant
of the original grantees and has an interest in the common
[land] lands or common waters of the land grant-merced through
inheritance, gift or purchase;

[E.] E. "land grant-merced" means the grant of land
made by the government of Mexico to the town of Chilili in
1841, which was confirmed by congress in 1858 and issued a
patent by the United States in 1909; and

[F.] F. "qualified voting member" means an heir who
is registered to vote in the land grant-merced as prescribed in
the land grant-merced bylaws."

SECTION 6. Section 49-4-5 NMSA 1978 (being Laws 2007,
Chapter 145, Section 4) is amended to read:

"49-4-5. BOARD OF TRUSTEES--MANAGEMENT OF GRANT--
POWERS.--The board of trustees shall have the power to:

A. control, care for and manage the land grant-
merced and real estate owned by the land grant-merced;

prescribe the terms and conditions under which the common lands

.218378.4

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may be used and enjoyed; and make all necessary and proper
bylaws and rules [and regulations] that shall be in substantial
compliance with applicable statutes for the government thereof;

B. sue and be sued and have the standing to sue in
law or equity to protect and expand the common lands and common
waters of the land grant-merced;

C. convey, lease or mortgage the common lands or
common waters of the land grant-merced in accordance with the
land grant-merced bylaws;

D. determine the number of animals that may be
permitted to graze upon the common lands and determine other
uses of the common lands or common waters that may be
authorized;

E. prescribe the price to be paid for the use of
the common lands, [and] common waters or other resources of the
land grant-merced. [and prohibit] A person failing or refusing
to pay that amount may be prohibited from using a portion of
the common lands or common waters while the person continues in
default in those payments; provided that the amount fixed for
use of the common lands shall be in proportion to the number
and kinds of livestock pasturing upon the common lands or to
other authorized use of the common lands;

F. adopt and use an official seal;

G. appoint judges and clerks of election at all
elections provided for in Chapter 49, Article 4 NMSA 1978 and
.218378.4
canvass the votes cast in those elections;

    H. make bylaws and rules, not in conflict with the constitution and laws of the United States or the state of New Mexico, as may be necessary for the protection, improvement and management of the common lands, common waters and real estate and for the use and enjoyment of the common lands and of the common waters of the land grant-merced;

    I. determine land use, local infrastructure and economic development of the common lands or common waters of the land grant-merced; [and]

    J. determine zoning of the common lands of the land grant-merced pursuant to a comprehensive plan approved by the local government division of the department of finance and administration that considers the health, safety and general welfare of the residents of the land grant-merced; [The department of finance and administration shall select a qualified arbitrator to arbitrate for zoning conflicts between the land grant-mercéd and neighboring municipalities and counties]

    K. acquire real property; and

    L. issue citations and prosecute criminal complaints in the magistrate courts for certain violations of the bylaws and rules of the land grant-merced as permitted pursuant to Section 49-4-12.1 NMSA 1978."
SECTION 7. A new Section 49-4-12.1 NMSA 1978 is enacted to read:

"49-4-12.1. [NEW MATERIAL] ILLEGAL REMOVAL OF RESOURCES--CERTAIN PROSECUTIONS AUTHORIZED IN MAGISTRATE COURT--NON-ATTORNEY REPRESENTATION OF BOARD--PENALTIES AND REMEDIES--ATTORNEY FEES.--

A. Rock product, minerals, timber or other natural resources shall not be removed from the common lands or common waters in violation of the land grant's bylaws and rules.

B. The board of trustees, or an employee of the land grant-merced authorized by the board of trustees, may issue a criminal citation to any person who is in violation of Subsection A of this section and file a criminal complaint in the magistrate court of any county in which the violation occurred. The district attorney or a member of the board of trustees or an employee of the land grant expressly authorized by the board of trustees may appear and prosecute any misdemeanor proceeding under Subsection A of this section, except that no land grant may prosecute a case that is tried before a jury through a non-attorney.

C. When a land grant employee or member of a board of trustees is authorized pursuant to Subsections A and B of this section to prosecute citations, the employee or board member shall be permitted to testify and present evidence to the court. The court shall have the discretion to permit the
employee or board member to ask questions of witnesses, either
directly or through the court, and to bring pertinent facts and
legal authorities to the court's attention.

D. A person who violates Subsection A of this
section is guilty of a misdemeanor and upon conviction shall be
fined not less than three hundred dollars ($300) nor more than
one thousand dollars ($1,000) or sentenced to up to six months
imprisonment in the county jail, or both.

E. A board of trustees may file a civil complaint
seeking a civil penalty for knowingly, intentionally or
willfully violating the provisions of Subsection A of this
section. A civil award made pursuant to this subsection shall
not exceed five thousand dollars ($5,000) and shall be paid to
the board of trustees.

F. The remedies provided for in this section shall
not be construed to limit the right of the board of trustees
from seeking any other damages authorized by law. In addition
to the remedies provided in this section, the district attorney
or the board of trustees may apply on behalf of the board of
trustees and the heirs of the land grant to the district court
of the county where the violation occurred for an injunction
restraining any person from violating or continuing to violate
the provisions of Subsection A of this section.

G. In a civil suit filed pursuant to this section,
in which the board of trustees of a land grant-merced is the
prevailing party, the board of trustees shall be entitled to an
award of reasonable court costs and attorney fees."

SECTION 8. A new Section 49-4-12.2 NMSA 1978 is enacted
to read:

"49-4-12.2. [NEW MATERIAL] ADVERSE POSSESSION.--The
Chilili land grant-merced shall not be subject to adverse
possession claims to or defenses against the common lands it
administers, provided that those claims or defenses have not
vested prior to June 15, 2007."

SECTION 9. Section 49-4-16 NMSA 1978 (being Laws 2007,
Chapter 145, Section 15) is amended to read:

"49-4-16. PROTECTION OF COMMON LANDS--DELINQUENCY--
FORFEITURE.--

A. [If the board of trustees brings an action in
accordance with Subsection B of Section 4 of this 2007 act and
judgment is rendered in favor of the board of trustees, the
court may award to the board of trustees possession of the
tract, piece or parcel of the land and such damages as it may
have proved for the wrongful detention and any other remedy
provided for by law.] If a person holds in possession or claims
in private ownership within the exterior boundaries of the
Chilili land grant-merced any tract, piece or parcel of land to
which, in the opinion of the board of trustees, the person has
no right or title, the board of trustees may institute an
action of ejectment in district court against the person. If

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upon the trial it is determined that such possession is without
right, judgment shall be rendered in favor of the board for
possession of the tract, piece or parcel of land and for such
damages as it may have proved for the wrongful detention.

B. A delinquent heir shall lose all right that the
heir may have had to use the common lands or common waters of
the land grant-merced unless the heir pays in full all legal
assessments or dues due by the heir."