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SENATE BILL 223

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Linda M. Lopez

FOR THE LAND GRANT COMMITTEE

AN ACT

RELATING TO LAND GRANTS-MERCEDES; DEFINING TERMS; AMENDING LAND  
GRANT-MERCED ELECTION REQUIREMENTS AND PROCEDURES; PROVIDING  
FOR ADMINISTRATIVE REVIEW OF CONTESTED LAND GRANT-MERCED  
ELECTIONS.

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

**SECTION 1.** Section 49-1-1.1 NMSA 1978 (being Laws 2004,  
Chapter 124, Section 1) 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;

[A.] B. "heir" means a person who is a [descendent]  
descendant of the original grantees and has an interest in the  
common land of a land grant-merced through inheritance, gift or

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1 purchase or as defined in the bylaws of a land grant-merced;

2 ~~[B-]~~ C. "land grant-merced" means a grant of land  
3 made by the government of Spain or by the government of Mexico  
4 to a community, town, colony or pueblo or to a person for the  
5 purpose of founding or establishing a community, town, colony  
6 or pueblo; ~~[and]~~

7 D. "parent" includes a biological, adoptive  
8 or foster parent, a stepparent or an individual who stands in  
9 loco parentis to a child;

10 E. "precinct" means a geographic location such as a  
11 community or town that is guaranteed an apportioned amount of  
12 positions on the board of trustees of a land grant-merced as  
13 defined in the land grant-merced bylaws;

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

17 G. "sibling" includes a stepsibling and a  
18 half-sibling."

19 SECTION 2. Section 49-1-3 NMSA 1978 (being Laws 1907,  
20 Chapter 42, Section 3, as amended) is amended to read:

21 "49-1-3. BOARD OF TRUSTEES--MANAGEMENT OF GRANT--  
22 POWERS.--The management and control of all land grants-mercedes  
23 and tracts of land to which Sections 49-1-1 through 49-1-18  
24 NMSA 1978 are applicable is vested in a board of trustees, to  
25 be known as the "board of trustees of the land grant-merced del

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1 pueblo de \_\_\_\_\_" (designating the name of the town, colony,  
2 pueblo or community), and the board shall have the power to:

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

9 B. sue and be sued under the title as set forth in  
10 this section;

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

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

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

25 F. adopt and use an official seal;

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

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

11           I. determine land use, local infrastructure and  
12 economic development of the common lands of the land grant-  
13 merced;

14           J. determine zoning of the common lands of the land  
15 grant-merced pursuant to a comprehensive plan approved by the  
16 local government division of the department of finance and  
17 administration that considers the health, safety and general  
18 welfare of the residents of the land grant-merced. The  
19 department of finance and administration shall act as  
20 arbitrator for zoning conflicts between land grants-mercedes  
21 and neighboring municipalities and counties; and

22           K. enter into memoranda of understanding, contracts  
23 and other agreements with a local, state or federal government  
24 or a government of a federally recognized Indian nation, tribe  
25 or pueblo, including but not limited to agreements concerning

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1 the protection and maintenance of cultural resources."

2 SECTION 3. Section 49-1-4 NMSA 1978 (being Laws 1907,  
3 Chapter 42, Section 4, as amended) is amended to read:

4 "49-1-4. BOARD OF TRUSTEES--QUALIFICATIONS.--The board of  
5 trustees shall consist of five members. [~~In land grants-~~  
6 ~~merced~~ where there is more than one precinct, no more than  
7 ~~three members shall be residents of the same precinct.~~] A  
8 person shall be qualified to be a member of the board if the  
9 person is a qualified voting member and is not in default of  
10 any dues, rent or other payment for the use of any of the  
11 common lands of the land grant-merced; provided that no person  
12 convicted of a felonious or infamous crime, unless the person  
13 has been pardoned or restored to political rights, shall be  
14 qualified to be elected or appointed to any board of trustees  
15 of a land grant-merced."

16 SECTION 4. Section 49-1-5 NMSA 1978 (being Laws 1907,  
17 Chapter 42, Section 5, as amended) is amended to read:

18 "49-1-5. ELECTION OF MEMBERS OF BOARD OF TRUSTEES--  
19 VOTERS' QUALIFICATIONS--REGISTRATION--PROVISIONAL BALLOTS.--

20 A. Elections for the board of trustees shall be  
21 held on the first Monday in April or on a day designated in the  
22 bylaws, either every two or every four years as specified in  
23 the bylaws of the land grant-merced.

24 B. All qualified voting members of the land grant-  
25 merced are qualified to vote and may vote for trustees as

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1 specified in the land grant-merced bylaws.

2 C. The registration of qualified voting members  
3 shall be conducted in the manner prescribed in the land grant-  
4 merced bylaws. The secretary of the board of trustees shall  
5 maintain the registration books. Registration shall be closed  
6 beginning fifteen days before an election and reopened on the  
7 Monday following the election. The board of trustees shall  
8 meet to finalize the registration books by resolution at least  
9 five days prior to the election.

10 D. The registration books compiled before each  
11 election shall be used at that election. No person shall vote  
12 at the election unless duly registered in the books, and no  
13 ballot of any unregistered person shall be counted or  
14 canvassed.

15 E. A candidate for the board of trustees shall file  
16 a declaration of candidacy with the secretary of the board of  
17 trustees. The period when declarations of candidacy may be  
18 filed shall begin on the day the proclamation calling the  
19 election is published and shall remain open for at least ten  
20 days.

21 F. Whenever an election is to be called or is  
22 required by law, the board of trustees shall by resolution  
23 issue a public proclamation calling the election. The  
24 proclamation shall specify:

25 (1) the date on which the election will be

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1 held;

2 (2) the purpose for which the election is  
3 called;

4 (3) if positions on the board of trustees are  
5 to be filled, the date and time by which declarations of  
6 candidacy are to be filed;

7 (4) if a question is to be voted upon, the  
8 text of that question;

9 (5) the location of each polling place in the  
10 land grant-merced;

11 (6) the hours that each polling place will be  
12 open; ~~and~~

13 (7) the date and time of the closing of the  
14 registration books; and

15 (8) the date and time of the meeting to  
16 finalize the registration books.

17 G. Not less than thirty days nor more than forty-  
18 five days before the date of the election, the board of  
19 trustees shall publish in Spanish and English the proclamation  
20 in a local newspaper of general circulation available within  
21 the boundaries of the land grant-merced and post the  
22 proclamation in at least five public places within the land  
23 grant-merced.

24 H. The board of trustees shall appoint one election  
25 judge and at least two election clerks for each polling place.

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1 The election judge shall also be present for the canvass of the  
2 vote. No person shall be qualified for appointment or service  
3 as an election clerk or judge, or as a member of a canvassing  
4 board, who is a spouse, parent, child [~~brother or sister~~] or  
5 sibling of any candidate to be voted for at the election.

6 I. The board of trustees shall provide in the  
7 bylaws for the forms and procedures by which the land grant-  
8 merced elections are conducted. If the board of trustees  
9 chooses to provide for early or absentee voting, it shall  
10 specify in its bylaws the procedures by which early or absentee  
11 voting shall be conducted."

12 SECTION 5. A new Section 49-1-5.1 NMSA 1978 is enacted to  
13 read:

14 "49-1-5.1. [NEW MATERIAL] PROVISIONAL BALLOTS--  
15 REQUIREMENTS FOR USE--PROCEDURES.--

16 A. A person shall be permitted to vote on a  
17 provisional paper ballot even though the person's name does not  
18 appear in the land grant-merced registration book; provided  
19 that the person:

20 (1) shows proof to the election judge and  
21 clerk that the person meets the qualified voting member  
22 provisions under Section 49-1-1.1 NMSA 1978 and the land  
23 grant-merced bylaws; and

24 (2) executes a statement swearing or affirming  
25 that to the best of the person's knowledge, the person:

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1 (a) is a qualified voting member of the  
2 land grant-merced;

3 (b) is currently registered and eligible  
4 to vote in the land grant-merced election; and

5 (c) has not yet cast a ballot or voted  
6 in the election for which the person is seeking to vote by  
7 provisional ballot.

8 B. A judge or election clerk shall write the  
9 person's name on the voter roster, have the voter sign next to  
10 the voter's name and issue the voter a provisional paper  
11 ballot, an outer envelope and an official inner envelope. The  
12 voter shall vote on the provisional paper ballot in secrecy  
13 and, when done, place the ballot in the official inner  
14 envelope, place the official inner envelope in the outer  
15 envelope, sign the outer envelope and return the envelope to  
16 the judge or election clerk. The election judge or clerk shall  
17 ensure that the required information is completed on the outer  
18 envelope and will place the envelope in a container designated  
19 for provisional paper ballots.

20 C. At a minimum, the following information shall be  
21 printed on the outer envelope for a provisional paper ballot:

22 (1) the name and signature of the voter;

23 (2) the voter's registered address, both  
24 present and former, if applicable;

25 (3) the voter's date of birth;

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1 (4) the reason for using the provisional  
2 ballot, including what proof was given to assert land  
3 grant-merced qualified voting member status; and

4 (5) sufficient space to list the disposition  
5 of the ballot after review by the canvassing board.

6 D. A provisional paper ballot shall not be rejected  
7 for lack of the information required by this section and shall  
8 be qualified as long as the voter provides a valid signature  
9 and sufficient information for the judge and canvassing board  
10 to determine whether the voter is a qualified voting member.

11 E. Knowingly executing a false statement  
12 constitutes perjury as provided in the Criminal Code, and  
13 voting on the basis of such falsely executed statement  
14 constitutes fraudulent voting.

15 F. Upon closing of the polls, provisional ballots  
16 shall be kept by the election judge until the canvassing of the  
17 votes by the election judge and canvassing board, who shall  
18 determine if the ballots will be counted prior to certification  
19 of the election.

20 G. If the voter was registered with the land  
21 grant-merced and the canvassing board determines that the  
22 individual was left off of the registration book in error, the  
23 provisional paper ballot shall be counted; provided that if the  
24 qualified voting member did not sign either the signature  
25 roster or the ballot's envelope, the provisional paper ballot

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1 shall not be counted.

2 H. If there is no record of the voter ever having  
3 been registered with the land grant-merced, the voter shall be  
4 offered the opportunity to register and the provisional paper  
5 ballot shall not be counted."

6 SECTION 6. Section 49-1-7 NMSA 1978 (being Laws 1907,  
7 Chapter 42, Section 7, as amended) is amended to read:

8 "49-1-7. ELECTION--VOTES REQUIRED--CANVASSING VOTES.--

9 A. The candidates receiving the most votes cast for  
10 the open seats on the board of trustees and meeting any  
11 precinct restriction requirements established pursuant to  
12 Section 49-1-4 NMSA 1978 shall be elected to the board.

13 B. The election judges and [~~board of trustees~~] the  
14 canvassing board shall meet not later than seven days following  
15 the election and canvass the votes cast and issue to each  
16 candidate duly elected to a seat on the board a certificate of  
17 election.

18 C. In the event of a tie vote between any  
19 candidates for the board of trustees, the determination of  
20 which of the candidates shall be declared to have been elected  
21 shall be decided by lot. If the method for determining by lot  
22 is not set forth in the bylaws of the land grant-merced, the  
23 method shall be agreed upon by the tied candidates. The  
24 canvassing board shall issue the certificate of election to the  
25 candidate chosen by lot.

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1                   D. Any unsuccessful candidate for election to the  
2 board of trustees or any qualified voting member of a land  
3 grant-merced who believes that any portion of a land  
4 grant-merced election was conducted in violation of any  
5 requirements set forth in Chapter 49, Article 1 NMSA 1978 or  
6 the land grant-merced bylaws may contest the outcome of an  
7 election; provided that the election contest is filed with the  
8 Guadalupe Hidalgo treaty division of the office of the attorney  
9 general within thirty days from the issuance of the certificate  
10 of the election by the canvassing board.

11                   E. In the event that the conduct or outcome of an  
12 election is contested, the person or persons holding a  
13 certificate of election shall take possession of and discharge  
14 the duties of the office until the contest is decided.

15                   F. The Guadalupe Hidalgo treaty division of the  
16 office of the attorney general shall promulgate rules for  
17 investigating and deciding the outcome of contested elections,  
18 which rules shall include:

19                               (1) forms for filing an official contest of an  
20 election;

21                               (2) procedures for conducting investigations  
22 and collecting evidence for contested elections; and

23                               (3) administrative procedures for appealing a  
24 decision made by the division.

25                   G. The Guadalupe Hidalgo treaty division of the

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1 office of the attorney general shall render a decision on  
2 election contests within ninety days of the date on which the  
3 election contest was filed. If it is determined that the  
4 election requirements were violated, the decision shall include  
5 whether the election:

6 (1) could be remedied and the actions  
7 required, including dates of implementation, to affect a  
8 remedy; or

9 (2) is invalidated; provided that if a new  
10 election is required, the decision may include instructions for  
11 holding a new election to correct procedures that caused the  
12 violations."

13 SECTION 7. Section 49-1-13 NMSA 1978 (being Laws 1907,  
14 Chapter 42, Section 13, as amended) is amended to read:

15 "49-1-13. VACANCIES.--If a vacancy occurs on the board  
16 of trustees, the remaining members shall fill the vacancy by  
17 appointment made at a regular meeting. The person appointed  
18 shall hold office [~~until the next regular election~~] for the  
19 remainder of the unexpired term of the trustee being replaced."