

1 AN ACT
2 RELATING TO LAND GRANTS; DEFINING TERMS; REVISING GOVERNANCE,
3 ELECTIONS AND MEETINGS OF THE BOARD OF TRUSTEES AND
4 MANAGEMENT OF LAND GRANTS-MERCEDES; AMENDING, REPEALING AND
5 ENACTING SECTIONS OF THE NMSA 1978.

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

8 Section 1. A new section of Chapter 49, Article 1 NMSA 1978 is enacted to
9 read:

10 "DEFINITIONS.--As used in Chapter 49 NMSA 1978:

11 A. "heir" means a person who is a descendent of the original
12 grantees and has an interest in the common land of a land grant-merced through
13 inheritance, gift or purchase;

14 B. "land grant-merced" means a grant of land made by the
15 government of Spain or by the government of Mexico to a community, town, colony
16 or pueblo or to a person for the purpose of founding or establishing a community,
17 town, colony or pueblo; and

18 C. "qualified voting member" means an heir who is registered to vote
19 in a land grant-merced as prescribed in the land grant-merced bylaws."

20 Section 2. A new section of Chapter 49, Article 1 NMSA 1978 is enacted to
21 read:

22 "RIGHTS OF LESSEES AND PURCHASERS.--A person who is not an heir
23 and who has purchased or leased property within the limits of a land grant-merced
24 shall only have a right to the lands acquired through the purchase or lease but not
25 to any common lands within the land grant-merced."

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

1 "49-1-1. MANAGEMENT OF SPANISH AND MEXICAN GRANTS.--All land
2 grants-mercedes in the state or land grants-mercedes described in Section 49-1-2
3 NMSA 1978 shall be managed, controlled and governed by their bylaws, by the
4 Treaty of Guadalupe Hidalgo and as provided in Sections 49-1-1 through 49-1-18
5 NMSA 1978 as political subdivisions of the state."

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

8 "49-1-2. APPLICATION.--

9 A. Sections 49-1-1 through 49-1-18 NMSA 1978 shall apply to all
10 land grants-mercedes confirmed by the congress of the United States or by the
11 court of private land claims or designated as land grants-mercedes in any report or
12 list of land grants prepared by the surveyor general and confirmed by congress, but
13 shall not apply to any land grant that is now managed or controlled in any manner,
14 other than as provided in Sections 49-1-1 through 49-1-18 NMSA 1978, by virtue of
15 any general or special act.

16 B. If a majority of the members of the board of trustees of a land
17 grant-merced covered by specific legislation determines that the specific legislation
18 is no longer beneficial to the land grant-merced, the board has the authority to
19 petition the legislature to repeal the legislation and to be governed by its bylaws and
20 as provided in Sections 49-1-1 through 49-1-18 NMSA 1978."

21 Section 5. Section 49-1-3 NMSA 1978 (being Laws 1907, Chapter 42,
22 Section 3, as amended) is amended to read:

23 "49-1-3. BOARD OF TRUSTEES--MANAGEMENT OF GRANT--

24 POWERS.--The management and control of all land

25 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

1 name of the town, colony, pueblo or community), and the board shall have the
2 power to:

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

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

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

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

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

21 F. adopt and use an official seal;

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

25 H. make bylaws, rules and regulations, 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

1 and real estate and for the use and enjoyment of the common lands and of the
2 common waters of the land grant-merced;

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

5 J. determine zoning of the common lands of the land grant-merced
6 pursuant to a comprehensive plan approved by the local government division of the
7 department of finance and administration that considers the health, safety and
8 general welfare of the residents. The department of finance and administration
9 shall act as arbitrator for zoning conflicts between land grants-mercedes and
10 neighboring municipalities and counties."

11 Section 6. Section 49-1-4 NMSA 1978 (being Laws 1907, Chapter 42,
12 Section 4, as amended) is amended to read:

13 "49-1-4. BOARD OF TRUSTEES--QUALIFICATIONS.--The board of
14 trustees shall consist of five members. In land
15 grants-mercedes where there is more than one precinct, no more than three
16 members shall be residents of the same precinct. A person shall be qualified to be
17 a member of the board if the person is a qualified voting member and is not in
18 default of any dues, rent or other payment for the use of any of the common lands
19 of the land grant-merced."

20 Section 7. Section 49-1-5 NMSA 1978 (being Laws 1907, Chapter 42,
21 Section 5, as amended) is amended to read:

22 "49-1-5. ELECTION OF MEMBERS OF BOARD OF TRUSTEES--VOTERS'
23 QUALIFICATIONS--REGISTRATION.--

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

B. All qualified voting members of the land grant-merced are

1 qualified to vote and may vote for trustees as specified in the land grant-merced
2 bylaws.

3 C. The registration of qualified voting members shall be conducted
4 in the manner prescribed in the Election Code, substituting the words "board of
5 trustees" and "secretary" wherever the words "county commission" and "county
6 clerk" are used in that code.

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

10 E. The board of trustees of each land grant-merced shall give public
11 notice in Spanish and English of the time of the election and fix and give notice of
12 the polling places in each precinct by handbills posted in at least five public places
13 in each precinct at least fifteen days prior to the election. Notice shall also be given
14 by publication fifteen days prior to the election in a newspaper in general circulation
15 within the land grant-merced if there is one.

16 F. Elections shall be conducted, as nearly as is practicable, in the
17 same manner as provided by law for the holding of general elections in this state.
18 The judges and clerks of elections shall be appointed and the votes canvassed by
19 the board of trustees."

20 Section 8. Section 49-1-7 NMSA 1978 (being Laws 1907, Chapter 42,
21 Section 7, as amended) is amended to read:

22 "49-1-7. ELECTION--CANVASSING VOTES.--The election judges and
23 board of trustees shall meet not later than seven days following the election and
24 canvass the votes cast and issue to the five persons having a majority of votes a
25 certificate showing they have been duly elected."

Section 9. Section 49-1-8 NMSA 1978 (being Laws 1907, Chapter 42,
Section 8, as amended) is amended to read:

1 "49-1-8. ORGANIZATION OF BOARD--BONDS--VACANCIES.--

2 A. All members of the newly elected board of trustees shall meet no
3 later than seven days after the votes are canvassed and organize themselves by
4 the election of a president, secretary and treasurer. The treasurer shall perform
5 such duties as may be required by the board and shall furnish to the board a good
6 and sufficient surety bond in a sum as set forth in this section, to be conditioned as
7 are the bonds of other public officials handling public money. It is the duty of the
8 treasurer to deposit all the money coming into his hands as treasurer in a bank
9 organized and doing business in New Mexico.

10 B. In the event of the death or resignation of the treasurer, the board
11 shall fill the vacancy by appointing one of the members of the board as treasurer,
12 who shall, before entering into the performance of his duties as treasurer, execute
13 and furnish to the board a good and sufficient surety bond, similar to the bond
14 entered into by his predecessor.

15 C. The amount of the bond required of the treasurer and his
16 successor shall at all times be for a sum of at least double the amount received by
17 and deposited in the bank by the treasurer.

18 D. In the event the board of trustees delegates any other of its
19 members to collect money due the land
20 grant-merced, that person shall be bonded in the same manner as is provided in
21 this section for the bonding of the treasurer.

22 E. Those authorized to collect money shall give receipts for the
23 money collected, which receipts shall be in the form prescribed by the board of
24 trustees in the bylaws as an official receipt."

25 Section 10. Section 49-1-9 NMSA 1978 (being Laws 1907, Chapter 42,
Section 9, as amended) is amended to read:

"49-1-9. MEETINGS.--Regular meetings of the board of trustees shall be

1 held no less than quarterly and in a public place as the board may determine in
2 accordance with the bylaws. The time and place of regular meetings shall be
3 posted in Spanish and English in a public place within the land grant-merced at
4 least ten days prior to the meeting. Special meetings may be held at any time on
5 call of the president, with five days' notice being given to each member."

6 Section 11. Section 49-1-10 NMSA 1978 (being Laws 1907, Chapter 42,
7 Section 10, as amended) is amended to read:

8 "49-1-10. QUORUM.--A majority of the board of trustees shall constitute a
9 quorum for the transaction of business, and the land grant-merced and its
10 inhabitants shall be bound by the acts of the board done pursuant to the provisions
11 of Sections 49-1-1 through 49-1-18 NMSA 1978 and the land
12 grant-merced bylaws."

13 Section 12. Section 49-1-11 NMSA 1978 (being Laws 1907, Chapter 42,
14 Section 11, as amended) is amended to read:

15 "49-1-11. SALE OR MORTGAGE OF COMMON LANDS--
16 RESTRICTIONS.--

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

19 (1) the conveyance is made in accordance with the land
20 grant-merced bylaws and this section;

21 (2) the conveyance is made for the benefit of the land grant-
22 merced;

23 (3) the board of trustees of the land
24 grant-merced has approved a resolution to make the conveyance at a regular
25 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

1 located; and

2 (5) the district court has issued an order affirming the board
3 of trustees' resolution pursuant to Subsection E of this section.

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

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

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

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

25 (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

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

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

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

14 Section 13. Section 49-1-12 NMSA 1978 (being Laws 1907, Chapter 42,
15 Section 12, as amended) is amended to read:

16 "49-1-12. MEETINGS TO BE PUBLIC--ANNUAL REPORT.--

17 A. All meetings of the board of trustees shall be held in accordance
18 with the Open Meetings Act. Executive sessions shall not be held except in
19 accordance with the Open Meetings Act. All heirs of the land grant-merced shall
20 have the right to be present at all times when the board is in session and to be
21 heard on all matters in which they may be interested.

22 B. The board of trustees shall annually make public a report of all its
23 transactions for that year. The report shall include agendas, minutes, actions taken
24 and all financial transactions. The report shall be maintained in a public place and
25 available for public review.

C. The secretary of the board shall reduce to writing, in a book kept
for that purpose, minutes of the business transacted at each meeting of the board."

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

3 "49-1-13. VACANCIES.--If a vacancy occurs on the board, the remaining
4 members shall fill the vacancy by appointment made at a regular meeting. The
5 person appointed shall hold office until the next regular election."

6 Section 15. Section 49-1-14 NMSA 1978 (being Laws 1907, Chapter 42,
7 Section 14, as amended) is amended to read:

8 "49-1-14. SALARIES OF TRUSTEES--RECORDS--EXPENDITURES.--

9 A. The board of trustees may fix in the land grant-merced bylaws
10 and pay to its members a salary not to exceed two hundred dollars (\$200) to any
11 member in one month. The salary as fixed shall be in full as compensation for the
12 duties performed by the board or the individual members within the exterior
13 boundaries of the land grant-merced and for attendance at regularly scheduled
14 meetings. The secretary of the board may be allowed a salary not to exceed two
15 hundred twenty-five dollars (\$225) in one month.

16 B. Board members may be authorized per diem and mileage
17 pursuant to the Per Diem and Mileage Act.

18 C. The board of trustees and the treasurer shall keep permanent
19 and legible records capable of audit, and no money or funds shall be paid by the
20 board of trustees or by any person authorized to expend money except by written
21 check drawn upon vouchers."

22 Section 16. Section 49-1-15 NMSA 1978 (being Laws 1907, Chapter 42,
23 Section 15, as amended) is amended to read:

24 "49-1-15. REMOVAL FROM LAND GRANT-MERCED--DELINQUENCY--
25 FORFEITURE.--

A. If a person holds in possession or claims in private ownership,
within the exterior boundaries of a land grant-merced, any tract, piece or parcel of

1 land to which, in the opinion of the board of trustees, he has no right or title, the
2 board may institute an action of ejectment against the person. If upon the trial it
3 appears that such possession is without right, judgment shall be rendered in favor
4 of the board for possession of the tract, piece or parcel of land and for such
5 damages as it may have proved for the wrongful detention.

6 B. Any delinquent heir shall lose all right or interest that the heir may
7 have had in the common lands of the land grant-merced unless the heir pays in full
8 all legal assessments or dues due by the heir."

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

11 "49-1-16. TRESPASS ON COMMON LANDS OR WATERS--
12 INJUNCTIONS.--The courts of this state shall entertain bills of complaint filed by the
13 board of trustees of a land
14 grant-merced to enjoin persons from trespassing upon the common lands or using
15 the common waters within the land grant-merced if it appears that the complainant
16 is without a plain, speedy and adequate remedy at law or that the persons
17 committing trespass are insolvent or unable to respond in damages."

18 Section 18. Section 49-1-17 NMSA 1978 (being Laws 1907, Chapter 42,
19 Section 17, as amended) is amended to read:

20 "49-1-17. PROCESS--HOW SERVED ON BOARD.--Process in all actions
21 or suits against a board of trustees of a land
22 grant-merced shall be served upon the president or, in his absence, upon the
23 secretary."

24 Section 19. Section 49-1-18 NMSA 1978 (being Laws 1907, Chapter 42,
25 Section 19, as amended) is amended to read:

"49-1-18. CONSTRUCTION.--Sections 49-1-1 through
49-1-18 NMSA 1978 shall not be construed as applying to any land grant-merced

1 that is managed or controlled in any manner other than that provided in Section 49-
2 1-2 NMSA 1978."

3 Section 20. Section 49-1-19 NMSA 1978 (being Laws 1933, Chapter 164,
4 Section 6) is amended to read:

5 "49-1-19. FAILURE OF TRUSTEE TO PERFORM DUTIES--PENALTY.--

6 Any member of the board of trustees who fails or refuses to perform any of the
7 duties required to be performed by the board of trustees of the land grant-merced or
8 any member of the board pursuant to Sections 49-1-1 through
9 49-1-18 NMSA 1978 or by any other law of New Mexico is guilty of a misdemeanor
10 and upon conviction shall be punished by a fine of not less than twenty-five dollars
11 (\$25.00) nor more than one hundred dollars (\$100) or by imprisonment in the
12 county jail for a period of not less than thirty days nor more than ninety days, or
13 both."

14 Section 21. REPEAL.--Section 49-1-6 NMSA 1978 (being Laws 1907,
15 Chapter 42, Section 6, as amended) is repealed.

16 Section 22. EFFECTIVE DATE.--The effective date of the provisions of this
17 act is July 1, 2004.

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