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HOUSE BILL 120

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Miguel P. Garcia

FOR THE LAND GRANT COMMITTEE

AN ACT

RELATING TO LAND GRANTS; CONFORMING THE GOVERNING STATUTES OF THE TECOLOTE LAND GRANT WITH THE PROVISIONS OF CHAPTER 49, ARTICLE 1 NMSA 1978; PROVIDING PENALTIES; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

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

"49-1-2. APPLICATION.--

A. Sections 49-1-1 through 49-1-18 NMSA 1978 shall apply to all land grants-mercedes confirmed by the congress of the United States or by the court of private land claims or designated as land grants-mercedes in any report or list of land grants prepared by the surveyor general and confirmed by congress, but shall not apply to any land [~~grant~~] grant-merced

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1 that is now managed or controlled in any manner, other than as
2 provided in Sections 49-1-1 through 49-1-18 NMSA 1978, by
3 virtue of any general or special act, unless the land grant-
4 merced complies with the provisions of Subsection B of this
5 section.

6 B. If a majority of the members of the board of
7 trustees of a land grant-merced ~~[covered]~~ governed by specific
8 ~~[legislation]~~ statutes determines that ~~[the specific~~
9 ~~legislation is]~~ those statutes are no longer beneficial to the
10 land grant-merced, the board has the authority to ~~[petition]~~
11 request the legislature to repeal ~~[the legislation]~~ or to amend
12 those statutes to conform with Sections 49-1-1 through 49-1-18
13 NMSA 1978 and to be governed by its bylaws and as provided in
14 Sections 49-1-1 through 49-1-18 NMSA 1978 or the conforming
15 statutes, as the case may be."

16 Section 2. Section 49-10-1 NMSA 1978 (being Laws 1903,
17 Chapter 77, Section 1, as amended) is amended to read:

18 "49-10-1. TECOLOTE LAND GRANT-MERCED--GOVERNANCE.~~--[Sec-~~
19 ~~80. That]~~ The ~~[management]~~ government and control of ~~[that~~
20 ~~certain tract of land]~~ the common lands of the land grant-
21 merced known as the "Ticolote land ~~[grant]~~ grant-merced",
22 situated in the county of San Miguel in the state of New Mexico
23 and patented by the United States to the town of ~~[Ticolote]~~
24 Ticolote, is ~~[hereby]~~ vested in a board of trustees ~~[to be~~
25 ~~elected as hereinafter provided, which said board of trustees~~

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1 ~~shall be a body corporate under the name of the board of~~
2 ~~trustees of the Tecolote land grant, and with full power under~~
3 ~~such name to sue and be sued and with the further powers~~
4 ~~hereinafter enumerated]~~ of five members, to be known officially
5 as "the board of trustees of the Tecolote land grant-merced",
6 who shall manage and control the land grant-merced in
7 accordance with the provisions of Chapter 49, Article 10 NMSA
8 1978."

9 Section 3. A new section of Chapter 49, Article 10 NMSA
10 1978 is enacted to read:

11 "[NEW MATERIAL] DEFINITIONS.--As used in Chapter 49,
12 Article 10 NMSA 1978:

13 A. "board of trustees" means the board of trustees
14 of the Tecolote land grant-merced;

15 B. "heir" means a person who is a descendant of the
16 original grantees and has an interest in the common land of the
17 land grant-merced through inheritance, gift or purchase;

18 C. "land grant-merced" means the grant of land made
19 by the government of Mexico to the town of Tecolote in 1824,
20 which was confirmed by congress in 1858 and issued a patent by
21 the United States in 1902; and

22 D. "qualified voting member" means an heir who is
23 registered to vote in the land grant-merced as prescribed in
24 the land grant-merced bylaws."

25 Section 4. A new section of Chapter 49, Article 10 NMSA

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1 1978 is enacted to read:

2 "[NEW MATERIAL] MANAGEMENT OF GRANT.--The Tecolote land
3 grant-merced shall be controlled and governed by its bylaws, by
4 the Treaty of Guadalupe Hidalgo and as provided in Chapter 49,
5 Article 10 NMSA 1978 as a political subdivision of the state."

6 Section 5. A new section of Chapter 49, Article 10 NMSA
7 1978 is enacted to read:

8 "[NEW MATERIAL] BOARD OF TRUSTEES--MANAGEMENT OF GRANT--
9 POWERS.--The board of trustees shall have the power to:

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

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

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

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

24 E. prescribe the price to be paid for the use of
25 the common lands and resources of the land grant-merced and

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1 prohibit a person failing or refusing to pay that amount from
2 using a portion of the common lands while the person continues
3 in default in those payments; provided that the amount fixed
4 shall be in proportion to the number and kinds of livestock
5 pasturing upon the common lands or to other authorized use of
6 the common lands;

7 F. adopt and use an official seal;

8 G. appoint judges and clerks of election at all
9 elections provided for in Chapter 49, Article 10 NMSA 1978 and
10 canvass the votes cast in those elections;

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

17 I. determine land use, local infrastructure and
18 economic development of the common lands of the land
19 grant-merced; and

20 J. determine zoning of the common lands of the land
21 grant-merced pursuant to a comprehensive plan approved by the
22 local government division of the department of finance and
23 administration that considers the health, safety and general
24 welfare of the residents of the land grant-merced. The
25 department of finance and administration shall act as

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1 arbitrator for zoning conflicts between the land grant-merced
2 and neighboring municipalities and counties."

3 Section 6. A new section of Chapter 49, Article 10 NMSA
4 1978 is enacted to read:

5 "[NEW MATERIAL] BOARD OF TRUSTEES--QUALIFICATIONS.--The
6 board of trustees shall consist of five members. If there is
7 more than one precinct in the land grant-merced, no more than
8 three members shall be residents of the same precinct;
9 provided, however, that if the precinct boundaries do not
10 coincide with the boundaries of the land grant-merced, the
11 board of trustees may create districts that better reflect the
12 distribution of population within the land grant-merced and
13 that any one of which has no more than three members of the
14 board of trustees as residents. A person shall be qualified to
15 be a member of the board if the person is a qualified voting
16 member and is not in default of any dues, rent or other payment
17 for the use of any of the common lands of the land grant-
18 merced."

19 Section 7. A new section of Chapter 49, Article 10 NMSA
20 1978 is enacted to read:

21 "[NEW MATERIAL] ELECTION OF MEMBERS OF BOARD OF TRUSTEES--
22 VOTERS' QUALIFICATIONS--REGISTRATION.--

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

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1 the bylaws of the land grant-merced.

2 B. All qualified voting members of the land
3 grant-merced are qualified to vote and may vote for trustees as
4 specified in the land grant-merced bylaws.

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

10 D. The registration books compiled before each
11 election shall be used at that election. A person shall not
12 vote at the election unless duly registered in the books, and a
13 ballot of any unregistered person shall not be counted or
14 canvassed.

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

23 F. Elections shall be conducted, as nearly as is
24 practicable, in the same manner as provided by law for the
25 holding of general elections in this state. The judges and

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1 clerks of elections shall be appointed and the votes canvassed
2 by the board of trustees."

3 Section 8. A new section of Chapter 49, Article 10 NMSA
4 1978 is enacted to read:

5 "[NEW MATERIAL] ELECTION--CANVASSING VOTES.--The election
6 judges and board of trustees shall meet not later than seven
7 days following the election and canvass the votes cast and
8 issue to each of the five persons having a majority of votes a
9 certificate showing that each one has been duly elected."

10 Section 9. A new section of Chapter 49, Article 10 NMSA
11 1978 is enacted to read:

12 "[NEW MATERIAL] ORGANIZATION OF BOARD--BONDS--VACANCIES.--

13 A. All members of the newly elected board of
14 trustees shall meet no later than seven days after the votes
15 are canvassed and organize themselves by the election of a
16 president, secretary and treasurer. The treasurer shall
17 perform such duties as may be required by the board and shall
18 furnish to the board a good and sufficient surety bond in a sum
19 as set forth in this section, to be conditioned as are the
20 bonds of other public officials handling public money. It is
21 the duty of the treasurer to deposit all the money of the land
22 grant-merced in a bank organized and doing business in New
23 Mexico.

24 B. In the event of the death or resignation of the
25 treasurer, the board shall fill the vacancy by appointing one

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1 of the members of the board as treasurer, who shall, before
2 entering into the performance of the duties as treasurer,
3 execute and furnish to the board a good and sufficient surety
4 bond, similar to the bond entered into by the predecessor.

5 C. The amount of the bond required of the treasurer
6 and the treasurer's successor shall at all times be for a sum
7 of at least double the amount received by and deposited in the
8 bank by the treasurer.

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

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

17 Section 10. A new section of Chapter 49, Article 10 NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] MEETINGS.--Regular meetings of the board
20 of trustees shall be held no less than quarterly and in a
21 public place as the board may determine in accordance with the
22 bylaws. The time and place of regular meetings shall be posted
23 in Spanish and English in a public place within the land grant-
24 merced at least ten days prior to the meeting. Special
25 meetings may be held at any time on call of the president, with

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1 five days' notice being given to each member."

2 Section 11. A new section of Chapter 49, Article 10 NMSA
3 1978 is enacted to read:

4 "[NEW MATERIAL] QUORUM.--A majority of the members of the
5 board of trustees shall constitute a quorum for the transaction
6 of business, and the land grant-merced and its inhabitants
7 shall be bound by the acts of the board pursuant to the
8 provisions of Chapter 49, Article 10 NMSA 1978 and the land
9 grant-merced bylaws."

10 Section 12. A new section of Chapter 49, Article 10 NMSA
11 1978 is enacted to read:

12 "[NEW MATERIAL] SALE OR MORTGAGE OF COMMON LANDS--
13 RESTRICTIONS.--

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

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

19 (2) the conveyance is made for the benefit of
20 the land grant-merced;

21 (3) the board of trustees has approved a
22 resolution to make the conveyance at a regular meeting held in
23 accordance with Sections 10 and 13 of this 2007 act;

24 (4) the board of trustees has petitioned for
25 an order affirming the board's resolution from the district

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1 court of the district in which the property is located; and

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

5 B. An heir may file a written protest of a
6 conveyance with the board of trustees and the district court
7 within thirty days of the date that the resolution approving
8 the conveyance is passed by the board. The board of trustees
9 shall address and make a decision on the protest at a special
10 meeting held in accordance with Sections 10 and 13 of this 2007
11 act within thirty days of receiving the protest.

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

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

20 (2) the notice of appeal may be served in the
21 same manner as a summons in civil actions brought before the
22 district court or by publication in a newspaper printed in the
23 county in which the property is located, once per week for four
24 consecutive weeks. The last publication shall be at least
25 twenty days prior to the date the appeal may be heard. Proof

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1 of service of the notice of appeal shall be made in the same
2 manner as in actions brought in the district court and shall be
3 filed in the district court within thirty days after service is
4 complete. At the time of filing the proof of service and upon
5 payment by the appellant of the civil docket fee, the clerk of
6 the district court shall docket the appeal;

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

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

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

23 E. After the district court issues its order, the
24 board of trustees shall execute the necessary documents in the
25 name and under the seal of the land grant-merced, and all heirs

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1 shall be bound by the board's conveyance."

2 Section 13. A new section of Chapter 49, Article 10 NMSA
3 1978 is enacted to read:

4 "[NEW MATERIAL] MEETINGS TO BE PUBLIC--ANNUAL REPORT.--

5 A. All meetings of the board of trustees shall be
6 held in accordance with the Open Meetings Act. Executive
7 sessions shall not be held except in accordance with the Open
8 Meetings Act. All heirs of the land grant-merced shall have
9 the right to be present at all times when the board of trustees
10 is in session and to be heard on all matters in which they may
11 be interested.

12 B. The board of trustees shall annually make public
13 a report of all its transactions for that year. The report
14 shall include agendas, minutes, any actions taken and all
15 financial transactions. The report shall be maintained in a
16 public place and available for public review.

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

21 Section 14. A new section of Chapter 49, Article 10 NMSA
22 1978 is enacted to read:

23 "[NEW MATERIAL] VACANCIES.--If a vacancy occurs on the
24 board of trustees, the remaining members shall fill the vacancy
25 by appointment made at a regular meeting. The person appointed

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1 shall hold office until the next regular election."

2 Section 15. A new section of Chapter 49, Article 10 NMSA
3 1978 is enacted to read:

4 "[NEW MATERIAL] SALARIES OF TRUSTEES--RECORDS--
5 EXPENDITURES.--

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

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

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

24 Section 16. A new section of Chapter 49, Article 10
25 NMSA 1978 is enacted to read:

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1 "[NEW MATERIAL] REMOVAL FROM LAND GRANT-MERCED--
2 DELINQUENCY--FORFEITURE.--

3 A. If a person holds in possession or claims in
4 private ownership, within the exterior boundaries of the land
5 grant-merced, any tract, piece or parcel of land to which, in
6 the opinion of the board of trustees, the person has no right
7 or title, the board may institute an action of ejectment in
8 district court against the person. If upon the trial it
9 appears that such possession is without right, judgment shall
10 be rendered in favor of the board of trustees for possession
11 of the tract, piece or parcel of land and for such damages as
12 it may have proved for the wrongful detention.

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

17 Section 17. A new section of Chapter 49, Article 10
18 NMSA 1978 is enacted to read:

19 "[NEW MATERIAL] TRESPASS ON COMMON LANDS OR WATERS--
20 INJUNCTIONS.--The courts of this state shall entertain bills
21 of complaint filed by the board of trustees of the land
22 grant-merced to enjoin persons from trespassing upon the
23 common lands or using the common waters within the land
24 grant-merced if it appears that the complainant is without a
25 plain, speedy and adequate remedy at law or that the persons

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1 committing trespass are insolvent or unable to respond in
2 damages."

3 Section 18. A new section of Chapter 49, Article 10
4 NMSA 1978 is enacted to read:

5 "[NEW MATERIAL] PROCESS--HOW SERVED ON BOARD.--Process
6 in all actions or suits against the board of trustees of the
7 land grant-merced shall be served upon the president or, in
8 the president's absence, upon the secretary."

9 Section 19. A new section of Chapter 49, Article 10
10 NMSA 1978 is enacted to read:

11 "[NEW MATERIAL] REGISTRATION.--The board of trustees
12 shall register its bylaws and a list of current officers with
13 the secretary of state in accordance with the provisions of
14 Section 49-1-23 NMSA 1978. The board of trustees shall
15 notify the secretary of state of the names and positions of
16 the land grant-merced's elected or appointed officers upon
17 their election or appointment."

18 Section 20. A new section of Chapter 49, Article 10
19 NMSA 1978 is enacted to read:

20 "[NEW MATERIAL] FAILURE OF TRUSTEE TO PERFORM DUTIES--
21 PENALTY.--Any member of the board of trustees who fails or
22 refuses to perform any of the duties required to be performed
23 by the board of trustees of the land grant-merced by Chapter
24 49, Article 10 NMSA 1978 or by any other law of New Mexico is
25 guilty of a misdemeanor and upon conviction shall be punished

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1 by a fine of not less than twenty-five dollars (\$25.00) nor
2 more than one hundred dollars (\$100) or by imprisonment in
3 the county jail for a period of not less than thirty days nor
4 more than ninety days, or both."

5 Section 21. A new section of Chapter 49, Article 10
6 NMSA 1978 is enacted to read:

7 "[NEW MATERIAL] RIGHTS OF LESSEES AND PURCHASERS.--

8 A. A person who is not an heir and who purchases
9 or leases property within the limits of the land grant-merced
10 shall only have a right to the lands acquired through the
11 purchase or lease but not to any common lands within the land
12 grant-merced.

13 B. The provisions of Chapter 49, Article 10 NMSA
14 1978 shall not diminish, extinguish or otherwise impair any
15 private property interest located within the boundaries of
16 the land grant-merced or be construed to grant the board of
17 trustees regulatory authority over such property interests or
18 lands other than the common lands. As used in this
19 subsection, "property interest" includes valid easements and
20 rights of access, but does not include use rights to the
21 common lands of the land grant-merced."

22 Section 22. REPEAL.--Sections 49-10-2 through 49-10-6
23 NMSA 1978 (being Laws 1903, Chapter 77, Sections 2 through 6,
24 as amended) are repealed.

25 Section 23. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2007.

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