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FISCAL IMPACT REPORT

ORIGINAL DATE 01/13/17

SPONSOR Garcia, M/Salazar, T LAST UPDATED _____ HB 66

SHORT TITLE Certain Land Grant Regulation Restrictions SB _____

ANALYST Graeser/Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance & Administration (DFA)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 66 amends the section of existing law which provides that statutes governing the operation and management of land grants apply to the Town of Atrisco Land Grant-Merced. The amendment repeals the current proviso that excepts real property which is owned by any person or entity other than the land grant from the regulatory jurisdiction of the Town of Atrisco land grant's board of trustees.

The effective date of this bill is July 1, 2017.

FISCAL IMPLICATIONS

No fiscal impact to the state is anticipated.

SIGNIFICANT ISSUES

DFA provides this background on the Atrisco land grant-merced:

The Atrisco land grant-merced is located in the Atrisco Valley, south of Albuquerque and lies within Bernalillo County, New Mexico. It is one of the oldest land grant-mercedes in New Mexico. Federal patent was issued on May 5, 1905 and the land grant had

jurisdiction of approximately 83,000 acres. A large portion of the original land grant was sold to private developers in 2006, and this bill gives the land grant board of trustees regulatory jurisdiction over that portion of land now held by private owners.

During the 2011 Regular Legislative Session, HB 278 made the Town of Atrisco land grant-merced a political subdivision of the State of New Mexico. But because of the sale of land to a private developer in 2006, when the political subdivision status was granted in 2011 the statute restricted the land grant's regulation or private property owners.

Under current law, the Atrisco board of trustees shall not have regulatory jurisdiction over, and the provisions of 49-1 NMSA 1978, shall not apply to or govern any lands or interests in real property the title to which is held by any other person, including a public or private corporation or limited liability company. This restriction protects other property owners. House Bill 66 restores the board of trustees regulatory jurisdiction over land and real property interests held by other parties. It would also grant the Atrisco land grant-merced full local governmental authority and give them the ability to go before the Bernalillo County Commission as well as other governmental entities to make requests regarding the Atrisco land grant-merced, which would include other property owners.

DFA explains the impact of HB 66:

Currently the majority of the Atrisco land grant property, which includes approximately 53,000 acres, is owned by Western Albuquerque Land Holdings (WALH), which is primarily owned by Barclay's Bank. The property was acquired by WALH through foreclosure from the previous property owners (Westland DevCo). WALH reports that this bill would jeopardize its property rights along with the property rights of other individuals whose properties were once a part of the original Atrisco land grant-merced.

The town of Atrisco land grant-merced does not own any common lands, and the intent of the bill may be to remove restrictions on land regulation and so the land-grant merced then can try to acquire the property from WALH.

The AGO provides this legal analysis:

Restoring the regulatory jurisdiction of the board of trustees over property held by third parties and currently excluded from the Atrisco land grant-merced may be viewed as jeopardizing the property rights of individuals and give rise to legal challenges on the grounds that any action by the board of trustees may amount to an unlawful taking. Issues of title to private property within Atrisco land grant-merced's original boundaries may be challenged as recovery of traditional lands is part of the Comprehensive Plan of the Town of Atrisco. (see *Town of Atrisco Comprehensive Plan*, section 5A Land Recovery, presented to the Land Grant Committee, August 1, 2016). However, it should also be noted that the Atrisco Land Grant-Merced also states in its comprehensive plan that it has "no intention of infringing upon existing governance, ownership of land or business, or regulation of lawful development of real-estate, or other assets within the boundaries of the Atrisco Land Grant," (see *Town of Atrisco Comprehensive Plan*, section 5A. Land Recovery, presented to the Land Grant Committee, August 1, 2016).

The AGO also warns that another issue that may arise is the interplay among political subdivisions (municipalities, counties and land grants-mercedes) when their jurisdictions overlap, which may need to be explored further.

OTHER SUBSTANTIVE ISSUES

DFA advises that in 2008, the State Board of Finance approved a dedication of the State's gross receipts tax increment to several Tax Increment Development Districts (TIDDs) formed by Bernalillo County in conjunction with developers Westland DevCo. Commonly known as "Sunca" or the "Upper Petroglyph" TIDDs, Westland DevCo planned to develop the property and pay for public infrastructure using state and county gross receipts tax (GRT)/property tax revenues dedicated to the TIDDs. However, the development was not started before Westland DevCo's creditors foreclosed upon the property. Current owners, WALH, plan to continue developing the land using the TIDD mechanism.

The legislature has never authorized the issuance of bonds in these TIDDs. DFA reports that WALH, the current owner of the TIDD land, has argued that it could "direct pay" for infrastructure using GRT and property tax distributions to the TIDD absent legislative approval to issue bonds. DFA notes there is currently no clear legal decision from the courts whether this is the case.

A provision in the TIDD enabling legislation authorizes an imposition of a gross receipts tax increment attributable to the imposition of the state gross receipts tax within a district to be dedicated for the purpose of securing gross receipts tax increment bonds, subject to the agreement of the state board of finance. See Section 5-15-15(F), NMSA 1978. LFC staff interprets this to mean, as to the state GRT increment, that those monies may not be used directly to reimburse the developer for public projects, absent express authorization of the bonds by the Legislature. See Section 5-5-15-21, NMSA 1978.

DFA also advises that according to Jerome Padilla, who is associated with the Town of Atrisco Land Grant Board of Trustees, there is an active board of trustees. In addition, he indicates that the Atrisco land grant-merced should be treated like any other land grant-merced with full rights and privileges guaranteed under the Treaty of Guadalupe Hidalgo and the U.S. Constitution. The 2011 restriction amendment restricting regulation of privately owned land, which was supported by former Senator Bernadette Sanchez, was intended to protect heirs' title and property rights. What resulted was language that was misinterpreted.