

SENATE BILL 223

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

INTRODUCED BY

Linda M. Lopez

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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

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

[B.] C. "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; [~~and~~]

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

E. "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;

[G.] F. "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. "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) is amended to read:

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"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 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;

C. convey, lease or mortgage the common lands 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 and prohibit a person failing or refusing to pay that amount from using a portion of the common lands while the person continues

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in default in those payments; provided that the amount fixed 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, 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 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 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 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 act as arbitrator for zoning conflicts between land grants-mercedes

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and neighboring municipalities and counties; and

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."

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

"49-1-4. BOARD OF TRUSTEES--QUALIFICATIONS.--The board of trustees shall consist of five members. [~~In land grants-mercedes where there is more than one precinct, no more than three members shall be residents of the same precinct.~~]

SRC→In a land grant-merced with bylaws that include the use of precincts, no more than the apportioned number of members for any given precinct as set forth in the bylaws shall serve on the board of trustees.←SRC A person shall be qualified to be a

member of the board if the person is a qualified voting member and is not in default of any dues, rent or other payment for the use of any of the common lands of the land grant-merced; provided that no person convicted of a felonious or infamous crime, unless the person has been pardoned or restored to political rights, shall be qualified to be elected or appointed to any board of trustees of a land grant-merced."

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

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

A. Elections for the board of trustees shall be held on the first 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 qualified to vote and may vote for trustees as specified in the land grant-merced bylaws.

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

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

E. A candidate for the board of trustees shall file a declaration of candidacy with the secretary of the board of trustees. The period when declarations of candidacy may be

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filed shall begin on the day the proclamation calling the election is published and shall remain open for at least ten days.

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

- (1) the date on which the election will be held;
- (2) the purpose for which the election is called;
- (3) if positions on the board of trustees are to be filled, the date and time by which declarations of candidacy are to be filed;
- (4) if a question is to be voted upon, the text of that question;
- (5) the location of each polling place in the land grant-merced;
- (6) the hours that each polling place will be open; [~~and~~]
- (7) the date and time of the closing of the registration books; and
- (8) the date and time of the meeting to finalize the registration books.

G. Not less than thirty days nor more than forty-

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five days before the date of the election, the board of trustees shall publish in Spanish and English the proclamation in a local newspaper of general circulation available within the boundaries of the land grant-merced and post the proclamation in at least five public places within the land grant-merced.

H. The board of trustees shall appoint one election judge and at least two election clerks for each polling place. The election judge shall also be present for the canvass of the vote. No person shall be qualified for appointment or service as an election clerk or judge, or as a member of a canvassing board, who is a spouse, parent, child [~~brother or sister~~] or sibling of any candidate to be voted for at the election.

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

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

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

A. A person shall be permitted to vote on a provisional paper ballot even though the person's name does not

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appear in the land grant-merced registration book; provided that the person:

- (1) shows proof to the election judge and clerk that the person meets the qualified voting member provisions under Section 49-1-1.1 NMSA 1978 and the land grant-merced bylaws; and
- (2) executes a statement swearing or affirming that to the best of the person's knowledge, the person:
 - (a) is a qualified voting member of the land grant-merced;
 - (b) is currently registered and eligible to vote in the land grant-merced election; and
 - (c) has not yet cast a ballot or voted in the election for which the person is seeking to vote by provisional ballot.

B. A judge or election clerk shall write the person's name on the voter roster, have the voter sign next to the voter's name and issue the voter a provisional paper ballot, an outer envelope and an official inner envelope. The voter shall vote on the provisional paper ballot in secrecy and, when done, place the ballot in the official inner envelope, place the official inner envelope in the outer envelope, sign the outer envelope and return the envelope to the judge or election clerk. The election judge or clerk shall ensure that the required information is completed on the outer

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envelope and will place the envelope in a container designated for provisional paper ballots.

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

- (1) the name and signature of the voter;
- (2) the voter's registered address, both present and former, if applicable;
- (3) the voter's date of birth;
- (4) the reason for using the provisional ballot, including what proof was given to assert land grant-merced qualified voting member status; and
- (5) sufficient space to list the disposition of the ballot after review by the canvassing board.

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

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

F. Upon closing of the polls, provisional ballots shall be kept by the election judge until the canvassing of the votes by the election judge and canvassing board, who shall

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determine if the ballots will be counted prior to certification of the election.

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

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

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

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

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

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

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

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

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

F. The Guadalupe Hidalgo treaty division of the office of the attorney general shall promulgate rules for investigating and deciding the outcome of contested elections,

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which rules shall include:

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

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

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

G. The Guadalupe Hidalgo treaty division of the office of the attorney general shall render a decision on election contests within ninety days of the date on which the election contest was filed. If it is determined that the election requirements were violated, the decision shall include whether the election:

(1) could be remedied and the actions required, including dates of implementation, to SJC→affect←SJC SJC→effect←SJC a remedy; or

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

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

"49-1-13. VACANCIES.--If a vacancy occurs on the board of trustees, the remaining members shall fill the vacancy by appointment made at a regular meeting. The person appointed

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shall hold office [~~until the next regular election~~] for the remainder of the unexpired term of the trustee being replaced."