

1 HOUSE BILL 229

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Ambrose Castellano and Roger Montoya

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10 AN ACT

11 RELATING TO LAND GRANTS-MERCEDES; AMENDING AND ENACTING  
12 SECTIONS OF CHAPTER 49, ARTICLE 1 NMSA 1978; DEFINING TERMS;  
13 PROVIDING AND CLARIFYING POWERS OF BOARDS OF TRUSTEES REGARDING  
14 LAND GRANT-MERCED PROPERTY AND THE PROTECTION OF NATURAL  
15 RESOURCES; PROVIDING FOR CIVIL AND CRIMINAL ACTIONS AND  
16 PENALTIES; UPDATING PROVISIONS OF CHAPTER 49, ARTICLE 4 NMSA  
17 1978 SO THAT THE DEFINITIONS, POWERS OF THE BOARD OF TRUSTEES  
18 REGARDING PROPERTY AND THE PROTECTION OF NATURAL RESOURCES AND  
19 PROVISIONS FOR CIVIL AND CRIMINAL ACTIONS AND PENALTIES ARE  
20 SUBSTANTIALLY SIMILAR TO THE SAME DEFINITIONS, POWERS AND  
21 PROVISIONS FOR LAND GRANTS-MERCEDES GOVERNED PURSUANT TO  
22 CHAPTER 4, ARTICLE 1 NMSA 1978.

23  
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

25 SECTION 1. Section 49-1-1.1 NMSA 1978 (being Laws 2004,

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1 Chapter 124, Section 1, as amended) is amended to read:

2 "49-1-1.1. DEFINITIONS.--As used in Chapter 49 NMSA 1978:

3 A. "child" means a biological, adopted or foster  
4 child, a stepchild, a legal ward or a child of a person  
5 standing in loco parentis;

6 B. "common lands" means lands owned by a land  
7 grant-merced for the benefit of the heirs of the land grant-  
8 merced;

9 C. "common waters" means water resources for which  
10 a land grant-merced has valid existing water rights and may  
11 include points of diversion or storage located on property  
12 outside of the common lands;

13 [~~B.~~] D. "heir" means a person who is a descendant  
14 of the original grantees and has an interest in the common  
15 [~~land~~] lands and common waters of a land grant-merced through  
16 inheritance, gift or purchase or as defined in the bylaws of a  
17 land grant-merced;

18 [~~C.~~] E. "land grant-merced" means a grant of land  
19 made by the government of Spain or by the government of Mexico  
20 to a community, town, colony or pueblo or to a person for the  
21 purpose of founding or establishing a community, town, colony  
22 or pueblo;

23 [~~D.~~] F. "parent" includes a biological, adoptive or  
24 foster parent, a stepparent or an individual who stands in loco  
25 parentis to a child;

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1           ~~[E-]~~ G. "precinct" means a geographic location such  
2 as a community or town that is guaranteed an apportioned amount  
3 of positions on the board of trustees of a land grant-merced as  
4 defined in the land grant-merced bylaws;

5           ~~[F-]~~ H. "qualified voting member" means an heir who  
6 is registered to vote in a land grant-merced as prescribed in  
7 the land grant-merced bylaws; and

8           ~~[G-]~~ I. "sibling" includes a stepsibling and a  
9 half-sibling."

10           SECTION 2. Section 49-1-3 NMSA 1978 (being Laws 1907,  
11 Chapter 42, Section 3, as amended by Laws 2019, Chapter 213,  
12 Section 1 and by Laws 2019, Chapter 248, Section 2) is amended  
13 to read:

14           "49-1-3. BOARD OF TRUSTEES--MANAGEMENT OF GRANT--  
15 POWERS.--The management and control of all land grants-mercedes  
16 and tracts of land to which Sections 49-1-1 through 49-1-18  
17 NMSA 1978 are applicable is vested in a board of trustees, to  
18 be known as the "board of trustees of the land grant-merced del  
19 pueblo de \_\_\_\_\_" (designating the name of the town, colony,  
20 pueblo or community), and the board shall have the power to:

21           A. control, care for and manage the land grant-  
22 merced and real estate, prescribe the terms and conditions  
23 under which the common lands and common waters may be used and  
24 enjoyed and make all necessary and proper ~~[bylaws]~~ rules ~~[and~~  
25 ~~regulations]~~ that shall be in substantial compliance with

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1 applicable statutes for the government thereof;

2 B. sue and be sued under the title as set forth in  
3 this section and have the standing to sue in law or equity to  
4 protect the common lands and common waters;

5 C. convey, lease or mortgage the common lands or  
6 common waters of the land grant-merced in accordance with the  
7 land grant-merced bylaws;

8 D. determine the number of animals that may be  
9 permitted to graze upon the common lands and determine other  
10 uses of the common lands that may be authorized;

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

20 F. adopt and use an official seal;

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

25 H. make bylaws [~~rules and regulations~~] and rules

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1 not in conflict with the constitution and laws of the United  
2 States or the state of New Mexico, as may be necessary for the  
3 protection, improvement, [~~and~~] management, use and enjoyment of  
4 the common lands, common waters and real estate [~~and for the~~  
5 ~~use and enjoyment of the common lands and of the common waters~~]  
6 of the land grant-merced;

7 I. determine land use, local infrastructure and  
8 economic development of the common lands or common waters of  
9 the land grant-merced;

10 J. determine zoning of the common lands of the land  
11 grant-merced pursuant to a comprehensive plan approved by the  
12 board of trustees that considers the health, safety and general  
13 welfare of the residents and heirs of the land grant-merced;  
14 [~~and~~]

15 K. enter into memoranda of understanding, contracts  
16 and other agreements with a local, state or federal government  
17 or a government of a federally recognized Indian nation, tribe  
18 or pueblo, including but not limited to agreements concerning  
19 the protection and maintenance of cultural resources;

20 L. acquire real property; and

21 M. issue citations and prosecute criminal  
22 complaints in the magistrate courts for certain violations of  
23 the bylaws and rules of the land grant-merced as permitted  
24 pursuant to Section 49-1-11.3 NMSA 1978."

25 SECTION 3. Section 49-1-11 NMSA 1978 (being Laws 1907,

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1 Chapter 42, Section 11, as amended) is amended to read:

2 "49-1-11. SALE OR MORTGAGE OF COMMON LANDS OR COMMON  
3 WATERS--RESTRICTIONS.--

4 A. A conveyance of a portion or of all of the  
5 common lands or common waters of a land grant-merced shall be  
6 effective only if:

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

9 (2) the conveyance is made for the benefit of  
10 the land grant-merced;

11 (3) the board of trustees of the land grant-  
12 merced has approved a resolution to make the conveyance at a  
13 regular meeting held in accordance with Sections 49-1-9 and  
14 49-1-12 NMSA 1978;

15 (4) the board of trustees has petitioned for  
16 an order affirming the board's resolution from the district  
17 court of the district in which the property is located; and

18 (5) the district court has issued an order  
19 affirming the board of trustees' resolution pursuant to  
20 Subsection [E] D of this section.

21 B. An heir may file a written protest of a  
22 conveyance with the board of trustees of the land grant-merced  
23 and the district court within thirty days of the date that the  
24 resolution approving the conveyance is passed by the board.

25 The board shall address and make a decision on the protest at a  
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1 special meeting held in accordance with Sections 49-1-9 and  
2 49-1-12 NMSA 1978 within thirty days of receiving the protest.

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

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

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

22 (3) costs shall be taxed in the same manner as  
23 in cases brought in the district court and bond for costs may  
24 be required upon proper application; and

25 (4) the proceeding upon appeal shall be

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

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

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

17 SECTION 4. A new Section 49-1-11.3 NMSA 1978 is enacted  
18 to read:

19 "49-1-11.3. [NEW MATERIAL] ILLEGAL REMOVAL OF RESOURCES--  
20 CERTAIN PROSECUTIONS AUTHORIZED IN MAGISTRATE COURT--NON-  
21 ATTORNEY REPRESENTATION OF BOARD--PENALTIES AND REMEDIES--  
22 ATTORNEY FEES.--

23 A. Rock product, minerals, timber or other natural  
24 resources shall not be removed from the common lands or common  
25 waters in violation of the land grant-merced's bylaws and

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1 rules.

2 B. A board of trustees, or an employee of a land  
3 grant-merced authorized by a board of trustees, may issue a  
4 criminal citation to any person who is in violation of  
5 Subsection A of this section and file a criminal complaint in  
6 the magistrate court of any county in which the violation  
7 occurs. The district attorney or a member of the board of  
8 trustees or an employee of the land grant-merced expressly  
9 authorized by the board of trustees may appear and prosecute  
10 any misdemeanor proceeding under Subsection A of this section,  
11 except that no land grant-merced may prosecute a case that is  
12 tried before a jury through a non-attorney.

13 C. When a land grant-merced employee or member of a  
14 board of trustees is authorized pursuant to Subsections A and B  
15 of this section to prosecute citations, the employee or board  
16 member shall be permitted to testify and present evidence to  
17 the court. The court shall have the discretion to permit the  
18 employee or board member to ask questions of witnesses, either  
19 directly or through the court and to bring pertinent facts and  
20 legal authorities to the court's attention.

21 D. A person who violates Subsection A of this  
22 section is guilty of a misdemeanor and shall be fined not less  
23 than three hundred dollars (\$300) nor more than one thousand  
24 dollars (\$1,000) or sentenced to up to six months imprisonment  
25 in the county jail, or both.

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1           E. A board of trustees for a land grant-merced may  
2 file a civil complaint seeking a civil penalty for knowingly,  
3 intentionally or willfully violating the provisions of  
4 Subsection A of this section. A civil award made pursuant to  
5 this subsection shall not exceed five thousand dollars (\$5,000)  
6 and shall be paid to the board of trustees.

7           F. The remedies provided for in this section shall  
8 not be construed to limit the right of a board of trustees from  
9 seeking any other damages authorized by law. In addition to  
10 the remedies provided in this section, the district attorney or  
11 the board of trustees may apply on behalf of the board of  
12 trustees and the heirs of the land grant-merced to the district  
13 court of the county where the violation occurred for an  
14 injunction restraining any person from violating or continuing  
15 to violate the provisions of Subsection A of this section.

16           G. In a civil suit filed pursuant to this section  
17 in which the board of trustees of a land grant-merced is the  
18 prevailing party, the board of trustees shall be entitled to an  
19 award of reasonable court costs and attorney fees."

20           SECTION 5. Section 49-4-4.1 NMSA 1978 (being Laws 2007,  
21 Chapter 145, Section 2) is amended to read:

22           "49-4-4.1. DEFINITIONS.--As used in Chapter 49, Article 4  
23 NMSA 1978:

24           A. "board of trustees" means the board of trustees  
25 of the Chilili land grant-merced;

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1           B. "common lands" means lands owned by the Chilili  
2 land grant for the benefit of the heirs of the land grant-  
3 merced;

4           C. "common waters" means water resources to which a  
5 land grant-merced has valid existing water rights, and may  
6 include points of diversion or storage located on property  
7 outside of the common lands;

8           ~~[C.]~~ D. "heir" means a person who is a descendant  
9 of the original grantees and has an interest in the common  
10 ~~[land]~~ lands or common waters of the land grant-merced through  
11 inheritance, gift or purchase;

12           ~~[D.]~~ E. "land grant-merced" means the grant of land  
13 made by the government of Mexico to the town of Chilili in  
14 1841, which was confirmed by congress in 1858 and issued a  
15 patent by the United States in 1909; and

16           ~~[E.]~~ F. "qualified voting member" means an heir who  
17 is registered to vote in the land grant-merced as prescribed in  
18 the land grant-merced bylaws."

19           SECTION 6. Section 49-4-5 NMSA 1978 (being Laws 2007,  
20 Chapter 145, Section 4) is amended to read:

21           "49-4-5. BOARD OF TRUSTEES--MANAGEMENT OF GRANT--  
22 POWERS.--The board of trustees shall have the power to:

23           A. control, care for and manage the land grant-  
24 merced and real estate owned by the land grant-merced;  
25 prescribe the terms and conditions under which the common lands

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1 may be used and enjoyed; and make all necessary and proper  
2 bylaws and rules [~~and regulations~~] that shall be in substantial  
3 compliance with applicable statutes for the government thereof;

4 B. sue and be sued and have the standing to sue in  
5 law or equity to protect and expand the common lands and common  
6 waters of the land grant-merced;

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

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

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

23 F. adopt and use an official seal;

24 G. appoint judges and clerks of election at all  
25 elections provided for in Chapter 49, Article 4 NMSA 1978 and

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1 canvass the votes cast in those elections;

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

9 I. determine land use, local infrastructure and  
10 economic development of the common lands or common waters of  
11 the land grant-merced; [~~and~~]

12 J. determine zoning of the common lands of the land  
13 grant-merced pursuant to a comprehensive plan approved by the  
14 local government division of the department of finance and  
15 administration that considers the health, safety and general  
16 welfare of the residents of the land grant-merced; [~~The~~  
17 ~~department of finance and administration shall select a~~  
18 ~~qualified arbitrator to arbitrate for zoning conflicts between~~  
19 ~~the land grant-merced and neighboring municipalities and~~  
20 ~~counties]~~

21 K. acquire real property; and

22 L. issue citations and prosecute criminal  
23 complaints in the magistrate courts for certain violations of  
24 the bylaws and rules of the land grant-merced as permitted  
25 pursuant to Section 49-4-12.1 NMSA 1978."

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1           SECTION 7. A new Section 49-4-12.1 NMSA 1978 is enacted  
2 to read:

3           "49-4-12.1. [NEW MATERIAL] ILLEGAL REMOVAL OF RESOURCES--  
4 CERTAIN PROSECUTIONS AUTHORIZED IN MAGISTRATE COURT--NON-  
5 ATTORNEY REPRESENTATION OF BOARD--PENALTIES AND REMEDIES--  
6 ATTORNEY FEES.--

7           A. Rock product, minerals, timber or other natural  
8 resources shall not be removed from the common lands or common  
9 waters in violation of the land grant's bylaws and rules.

10          B. The board of trustees, or an employee of the  
11 land grant-merced authorized by the board of trustees, may  
12 issue a criminal citation to any person who is in violation of  
13 Subsection A of this section and file a criminal complaint in  
14 the magistrate court of any county in which the violation  
15 occurred. The district attorney or a member of the board of  
16 trustees or an employee of the land grant expressly authorized  
17 by the board of trustees may appear and prosecute any  
18 misdemeanor proceeding under Subsection A of this section,  
19 except that no land grant may prosecute a case that is tried  
20 before a jury through a non-attorney.

21          C. When a land grant employee or member of a board  
22 of trustees is authorized pursuant to Subsections A and B of  
23 this section to prosecute citations, the employee or board  
24 member shall be permitted to testify and present evidence to  
25 the court. The court shall have the discretion to permit the

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1 employee or board member to ask questions of witnesses, either  
2 directly or through the court, and to bring pertinent facts and  
3 legal authorities to the court's attention.

4 D. A person who violates Subsection A of this  
5 section is guilty of a misdemeanor and upon conviction shall be  
6 fined not less than three hundred dollars (\$300) nor more than  
7 one thousand dollars (\$1,000) or sentenced to up to six months  
8 imprisonment in the county jail, or both.

9 E. A board of trustees may file a civil complaint  
10 seeking a civil penalty for knowingly, intentionally or  
11 willfully violating the provisions of Subsection A of this  
12 section. A civil award made pursuant to this subsection shall  
13 not exceed five thousand dollars (\$5,000) and shall be paid to  
14 the board of trustees.

15 F. The remedies provided for in this section shall  
16 not be construed to limit the right of the board of trustees  
17 from seeking any other damages authorized by law. In addition  
18 to the remedies provided in this section, the district attorney  
19 or the board of trustees may apply on behalf of the board of  
20 trustees and the heirs of the land grant to the district court  
21 of the county where the violation occurred for an injunction  
22 restraining any person from violating or continuing to violate  
23 the provisions of Subsection A of this section.

24 G. In a civil suit filed pursuant to this section,  
25 in which the board of trustees of a land grant-merced is the

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1 prevailing party, the board of trustees shall be entitled to an  
2 award of reasonable court costs and attorney fees."

3 SECTION 8. A new Section 49-4-12.2 NMSA 1978 is enacted  
4 to read:

5 "49-4-12.2. [NEW MATERIAL] ADVERSE POSSESSION.--The  
6 Chilili land grant-merced shall not be subject to adverse  
7 possession claims to or defenses against the common lands it  
8 administers, provided that those claims or defenses have not  
9 vested prior to June 15, 2007."

10 SECTION 9. Section 49-4-16 NMSA 1978 (being Laws 2007,  
11 Chapter 145, Section 15) is amended to read:

12 "49-4-16. PROTECTION OF COMMON LANDS--DELINQUENCY--  
13 FORFEITURE.--

14 A. ~~[If the board of trustees brings an action in~~  
15 ~~accordance with Subsection B of Section 4 of this 2007 act and~~  
16 ~~judgment is rendered in favor of the board of trustees, the~~  
17 ~~court may award to the board of trustees possession of the~~  
18 ~~tract, piece or parcel of the land and such damages as it may~~  
19 ~~have proved for the wrongful detention and any other remedy~~  
20 ~~provided for by law.] If a person holds in possession or claims~~  
21 ~~in private ownership within the exterior boundaries of the~~  
22 ~~Chilili land grant-merced any tract, piece or parcel of land to~~  
23 ~~which, in the opinion of the board of trustees, the person has~~  
24 ~~no right or title, the board of trustees may institute an~~  
25 ~~action of ejectment in district court against the person. If~~

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1 upon the trial it is determined that such possession is without  
2 right, judgment shall be rendered in favor of the board for  
3 possession of the tract, piece or parcel of land and for such  
4 damages as it may have proved for the wrongful detention.

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