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FISCAL IMPACT REPORT

SPONSOR Castellano/Montoya **ORIGINAL DATE** 02/10/21
RE _____ **LAST UPDATED** _____ **HB** 229 _____
SHORT TITLE Land Grant Natural Resource Protection **SB** _____
ANALYST Hanika-Ortiz _____

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate			Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Energy, Minerals and Natural Resources Department (EMNRD)
 State Land Office (SLO)
 Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Bill 229 (HB229) amends and enacts sections of Chapter 49, Articles 1 and 4 NMSA 1978 to provide and clarify powers of boards of trustees regarding land grant-merced property.

More specifically,

Section 1 amends Section 49-1-1.1 NMSA 1978 by adding definitions for “common lands” and “common waters” used in the bill, to call out what trustees have the control, care, and management over.

Section 2 amends Section 49-1-3 NMSA 1978 to grant new powers to trustees, including the standing to sue to protect common lands and common waters; convey, lease or mortgage common waters; charge for the use of common waters and in the event of default, by prohibiting the use of the common waters; determine land use, local infrastructure and economic development of common waters; acquire real property; and issue citations and prosecute certain violations.

Section 3 amends Section 49-1-11 NMSA 1978 by adding common waters alongside common lands. This would clarify that a land grant's conveyance of common waters is only effective if certain statutory conditions are met, including the right of heirs to protest the proposed sale and appeal to the court.

Section 4 adds a new Section 49-1-11.3 NMSA 1978 to allow criminal misdemeanor prosecutions, penalties, and remedies for illegal removal of natural resources from common lands or common waters.

Sections 5 amends Section 49-4-4.1 NMSA 1978 which governs the Chilili Land Grant-Merced, in the same manner that Section 1 of the bill amends the general land grant statute.

Section 6 amends Section 49-4-5 NMSA 1978 which details the powers of the Chilili Land Grant-Merced, in the same manner that Section 2 of the bill amends the general land grant statute.

Section 7 adds a new section to Section 49-4-12 NMSA 1978 to give the Chilili Land Grant-Merced the same new powers to address illegal removal of resources, as other land grants in Section 4 of the bill.

Section 8 adds a new Section 49-4-12 NMSA 1978 that specifies the Chilili Land Grant-Merced is not subject to adverse possession claims against the common lands it administers after June 15, 2007.

Section 9 amends Section 49-4-16 NMSA 1978 to provide that delinquent heirs who fail to pay assessments or dues also lose the right to use common waters, alongside losing the right to use common lands.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The bill defines the "common waters" of a land grant-merced as "water resources for which a land grant-merced has valid existing water rights and may include points of diversion or storage located on property outside of the common lands" and gives the land grant the power to control and charge for use of its common waters. According to OSE, this could create conflicts between a land grant and an acequia that serves both privately held water rights and water rights held by the land grant.

The bill provides that land grant boards of trustees have the power to issue citations and prosecute criminal complaints in magistrate courts for certain violations of land grant bylaws and rules. In Section 49-1-11.3 NMSA 1978, the bill makes it a misdemeanor to remove "[r]ock products, minerals, timber or other natural resources" from the common lands or common waters in violation of a land grant-merced's bylaws and rules. Such misdemeanor is punishable by a fine between \$300 and \$1,000, or up to six months imprisonment in the county jail, or both. Section 49-1-11.3 NMSA 1978 also give the land grant board of trustees, or their employee, the authority to issue a criminal citation and prosecute such misdemeanors, except that no trial before a jury may be prosecuted by a non-attorney.

AOC reported that any fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, which could require additional resources. In addition, people facing criminal accusations who are indigent are entitled to public defender services.

SIGNIFICANT ISSUES

OSE noted that defining “common waters” as water resources for which the land grant has water rights could be read to encompass the entire water source (i.e., the surface stream or underground water basin) the land grant holds water rights. If that is the case, then it could be interpreted as giving the land grant dominion and control over, and the authority to charge for the use of, waters which belong to the public. This could lead to conflict between the land grant and private parties who have established water rights in the same water source established under state water law.

The bill gives land grants the power to criminally prosecute or bring a civil penalty action against any person for removing “natural resources” either from common lands or common waters. OSE believes its unclear whether the removal of “natural resources” includes water itself. If this is the case, then the land grant would have the power to seek criminal or civil sanctions for use of water contrary to their rules. This becomes problematic if the land grant’s “common waters” includes public waters in which private individuals have established water rights. The land grant could criminally prosecute private individuals for exercising their water rights if the land grant decided that such use of water was contrary to the land grant’s rules. This could exacerbate water conflicts.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB41, which amends other definitions found in Section 49-1-1.1 NMSA 1978

Relates to SB68, which amends other definitions found in Section 49-4-4.1 NMSA 1978 and powers of the board of trustees of the Chilili land grant found in Section 49-4-5 NMSA 1978.

TECHNICAL ISSUES

AOC explained Section 35-3-3 NMSA 1978 and Section 35-3-4 NMSA 1978 establish jurisdiction of magistrate judges which includes some civil and criminal matters in the boundary of the county to which they are elected. Land grant-mercedes are contiguous parcels of land that are not aligned within New Mexico counties, which could create jurisdictional issues for the magistrate courts.

According to AOC, the crimes created in the bill prescribe a “misdemeanor” penalty upon conviction of \$300 to \$1,000 and imprisonment in the county jail for a term of less than 6 months. This is inconsistent with Section 30-1-6 NMSA 1978 which designates a crime as a petty misdemeanor if the conviction will result in a sentence of imprisonment of 6 months or less, and Section 31-19-1 NMSA 1978 which sets the fine for a petty misdemeanor to an amount that is less than \$500 and the fine for a misdemeanor at an amount greater than \$500 but less than \$1,000.

OTHER SUBSTANTIVE ISSUES

OSE explained that Section 3 of the bill imposes restrictions that would include the right of any

heir to protest the proposed sale/transfer and appeal the land grant's decision to the court. If this provision becomes law, OSE reported it would need to ensure that it does not approve applications to transfer land grant water rights until all challenges to the proposed sale/transfer are complete.

AHO/al