

# Proposed amendments to Chapter 49

## **49-1-1.1. Definitions - amend definition of Heir**

**Issue:** Current definition is too narrow thus causing conflict between statute and historical practice.

**Current language:** "heir" means a person who is a descendent of the original grantees and has an interest in the common land of a land grant-merced through inheritance, gift or purchase;

**Suggested language change:** "heir" means a person who is a descendent of the original grantees or is a descendent of any individual that was born within the present boundaries of the State of New Mexico and resided in a Spanish or Mexican land grant community as of February 2, 1848 or any individual that meets the definition of an heir as specified in the bylaws of a land grant-merced;

## **Add definition of common land**

**Issue:** No definition currently exists in statute.

**Suggested language:** D. "common land" means any land owned by a land grant-merced, located within its historic boundaries, managed by the Board of Trustees for the use and benefit of the heirs of the land grant-merced, and is not opened to the general public unless formerly authorized by the Board of Trustees.

## **49-1-3(J). Board of trustees; management of grant; powers - amend comprehensive plan requirements**

**Issue:** Since passage of original statute, the Local Government Division of the Department of Finance and Administration has changed its organizational structure and no longer has a planner on staff. In ten years since passage of statute LGD-DFA has never had to act as arbitrator for any zoning conflicts.

**Current language:** 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 and neighboring municipalities and counties; and

**Suggested language change:** determining zoning of the common lands of the land grant-merced pursuant to the adoption of a comprehensive plan by the board of trustees that considers the health, safety and general welfare of land grant-merced heirs.

#### **49-1-4. Board of trustees; qualifications - amend language to exclude reference to precincts and replace with reference to voting districts**

**Issue:** Current language that references precincts lacks clarity and has lead to confusing between a land grant created district and a county voting precinct also is difficult to implement until after election takes place wherefore a candidate that gets the most votes in an election may not be eligible to serve if existing members from same precinct.

**Current language:** 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. 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.

**Suggested language change:** The board of trustees shall consist of five members. 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. In land grants-mercedes with established voting districts, candidates for the board of trustees must run within the district which they qualify for as prescribed within the bylaws of the land grant-merced.

#### **49-1-5. Election of members of board of trustees; voters' qualifications; registration; - add section on voting districts and section on procedures for cancelation of election and vote by acclamation**

**Issue:** Some land grants currently recognize districts for voting purposes but it is unclear as to whether or not those voting districts meet judicially recognized standards of districting to ensure voter equality protections.

**Add new section:** J. A board of trustees may establish voting districts, provided that the voting district boundaries are within the historic boundaries of a land grant-merced, are geographically compact and contiguous, protect communities of interest and are prescribed in the land grant merced bylaws. the bylaws of a land grant-merced with voting districts shall include provisions prescribing how qualified-voting members of the land grant-merced, that do not reside within the historic boundaries of the land grant-merced, shall be allowed to participate in land grant-merced elections. In land grants-mercedes where there are five voting districts the number of qualified voting members within the each voting district shall be relatively equal in number so that the difference between the voting district with the largest number of qualified-voting members is no more that ten percent larger than voting district with the smallest number of qualified voting members. In land grants-mercedes with 4 or less voting districts the number of board of trustee seats allocated to a given district shall be proportionately equal to the

ratio of qualified voting members within a voting district to the total number of qualified-voting members within the entire land grant-merced.

**Issue:** Land Grant-mercedes have no options to cancel traditional elections and appoint candidates by acclamation when the number of board positions available is equal to the number of candidates up for election.

**Add new section:** K. In land grant-merced elections held at large where the number of qualified candidates that file a declaration of candidacy, within the prescribed deadline, is equal to the number of seats available for election to the board of trustees, the board of trustees may by resolution issue an official proclamation canceling the election and appointing those candidates seeking office to the board of trustees, provided that the proclamation is published in Spanish and English 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 within no less than 5 days prior to the scheduled election date. In land grant merced elections held within land grant-mercedes that have established voting districts, the cancelation of an election as prescribed above can only take place if all voting districts have only one qualified candidate per district that have filed a declaration of candidacy.

#### **49-1-8(A) & (C). Organization of board; bonds; vacancies - amend language requiring deposit of land grant-merced funds in bank.**

**Issue:** Rigidity of statute does not allow a land grant to open an account in a local credit union.

#### **Current language:**

A. All members of the newly elected board of trustees shall meet no later than seven days after the votes are canvassed and organize themselves by the election of a president, secretary and treasurer. The treasurer shall perform such duties as may be required by the board and shall furnish to the board a good and sufficient surety bond in a sum as set forth in this section, to be conditioned as are the bonds of other public officials handling public money. **It is the duty of the treasurer to deposit all the money coming into his hands as treasurer in a bank organized and doing business in New Mexico**

C. The amount of the bond required of the treasurer and his successor shall at all times be for a sum of at least double the amount received by and deposited in the bank by the treasurer.

#### **Suggested language change:**

A. All members of the newly elected board of trustees shall meet no later than seven days after the votes are canvassed and organize themselves by the election of a president, secretary and treasurer. The treasurer shall perform such duties as may be

required by the board and shall furnish to the board a good and sufficient surety bond in a sum as set forth in this section, to be conditioned as are the bonds of other public officials handling public money. It is the duty of the treasurer to deposit all the money coming into his hands as treasurer in a **financial institution** organized and doing business in New Mexico.

C. The amount of the bond required of the treasurer and his successor shall at all times be for a sum of at least double the amount received by and deposited in the **financial institution** by the treasurer.

#### **49-1-9. Meetings. - allow for special meetings to be called by members of the board of trustees**

**Issue:** Under current statute if a president of a board of trustees is unable or unwilling to conduct a special meeting to address a pending issue there is no provision allow for other members of the board of trustees to convene a special meeting.

**Current language:** Regular meetings of the board of trustees shall be held no less than quarterly and in a public place as the board may determine in accordance with the bylaws. The time and place of regular meetings shall be posted in Spanish and English in a public place within the land grant-merced at least ten days prior to the meeting.

**Special meetings may be held at any time on call of the president, with five days' notice being given to each member.**

**Suggested language change:** Regular meetings of the board of trustees shall be held no less than quarterly and in a public place as the board may determine in accordance with the bylaws. The time and place of regular meetings shall be posted in Spanish and English in a public place within the land grant-merced at least ten days prior to the meeting. Special meetings may be held at any time on call of the president or on the call of any two members of the board of trustees, provided that the other members of the board of trustees be given five days notice and a meeting notice is posted in Spanish and English in a public place within the land grant-merced at least five days prior to the meeting.

#### **49-1-12(B) - Annual report - require annual report to be filed with land grant council as part of the land grant registry**

**Issue:** Although statute requires a land grant to be maintained in a public place most land grants do not have administrative facilities that could qualify as a public place.

**Current language:** B. The board of trustees shall annually make public a report of all its transactions for that year. The report shall include agendas, minutes, actions taken and all financial transactions. **The report shall be maintained in a public place and available for public review.**

**Suggested language change:** The board of trustees shall annually make public a report of all its transactions for that year. The report shall include agendas, minutes, actions taken and all financial transactions. The report shall be filed with the Land Grant Council in the New Mexico community land grant registry and available for public review.

#### **49-1-14 (C). Expenditures - amend written check and voucher use requirement**

**Issue:** Current statute only allows for a land grant to make payments by check, advancing in banking methods require more flexibility. Also use of vouchers is an additional step for which most land grant boards of trustees do not have the capacity or time to properly implement.

**Current language:** C. The board of trustees and the treasurer shall keep permanent and legible records capable of audit, and no money or funds shall be paid by the board of trustees or by any person authorized to expend money except by written check drawn upon vouchers.

**Suggested language change:** C. The board of trustees and the treasurer shall keep permanent and legible records capable of audit, and no money or funds shall be paid by the board of trustees or by any person authorized to expend money unless the expenditure is approved by the board of trustees and is supported by an invoice or receipt.

#### **Additional consideration:**

#### **10-9-21. Prohibited acts (Personnel Act) - clarify that land grant-merced boards of trustees are exempt from this provision.**

**Issue:** Questions have been raised as to whether or not the Personnel Act prohibits state employees from serving on a land grant board of trustees, particularly if the land grant has a designated party system for land grant elections.

**Current language:** B. No person in the personnel office or employee in the service shall hold political office except for a non-partisan county or municipal office or be an officer of a political organization during his employment. **For the purposes of the Personnel Act, being a local school board member or an elected board member of any post-secondary educational institution shall not be construed to be holding political office, and being an election official shall not be construed to be either holding political office or being an officer of a political organization.** Nothing in the Personnel Act shall deny employees the right to vote as they choose or to express their opinions on political subjects and candidates.

**Suggested language change:** No person in the personnel office or employee in the service shall hold political office except for a non-partisan county or municipal office or

be an officer of a political organization during his employment. For the purposes of the Personnel Act, being a local school board member, an elected board member of any post-secondary educational institution or **an elected member of a land grant-merced board of trustees** shall not be construed to be holding political office, and being an election official shall not be construed to be either holding political office or being an officer of a political organization. Nothing in the Personnel Act shall deny employees the right to vote as they choose or to express their opinions on political subjects and candidates.