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AN ACT

RELATING TO LAND GRANTS; DEFINING TERMS; REVISING GOVERNANCE,  
ELECTIONS AND MEETINGS OF THE BOARD OF TRUSTEES AND  
MANAGEMENT OF LAND GRANTS-MERCEDES; AMENDING, REPEALING AND  
ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of Chapter 49, Article 1 NMSA  
1978 is enacted to read:

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

A. "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;

B. "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

C. "qualified voting member" means an heir who is  
registered to vote in a land grant-merced as prescribed in  
the land grant-merced bylaws."

Section 2. A new section of Chapter 49, Article 1 NMSA  
1978 is enacted to read:

"RIGHTS OF LESSEES AND PURCHASERS.--A person who is not  
an heir and who has purchased or leased property within the

1 limits of a land grant-merced shall only have a right to the  
2 lands acquired through the purchase or lease but not to any  
3 common lands within the land grant-merced."

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

6 "49-1-1. MANAGEMENT OF SPANISH AND MEXICAN GRANTS.--All  
7 land grants-mercedes in the state or land grants-mercedes  
8 described in Section 49-1-2 NMSA 1978 shall be managed,  
9 controlled and governed by their bylaws, by the Treaty of  
10 Guadalupe Hidalgo and as provided in Sections 49-1-1 through  
11 49-1-18 NMSA 1978 as political subdivisions of the state."

12 Section 4. Section 49-1-2 NMSA 1978 (being Laws 1907,  
13 Chapter 42, Section 2, as amended) is amended to read:

14 "49-1-2. APPLICATION.--

15 A. Sections 49-1-1 through 49-1-18 NMSA 1978 shall  
16 apply to all land grants-mercedes confirmed by the congress  
17 of the United States or by the court of private land claims  
18 or designated as land grants-mercedes in any report or list  
19 of land grants prepared by the surveyor general and confirmed  
20 by congress, but shall not apply to any land grant that is  
21 now managed or controlled in any manner, other than as  
22 provided in Sections 49-1-1 through 49-1-18 NMSA 1978, by  
23 virtue of any general or special act.

24 B. If a majority of the members of the board of  
25 trustees of a land grant-merced covered by specific

1 legislation determines that the specific legislation is no  
2 longer beneficial to the land grant-merced, the board has the  
3 authority to petition the legislature to repeal the  
4 legislation and to be governed by its bylaws and as provided  
5 in Sections 49-1-1 through 49-1-18 NMSA 1978."

6 Section 5. Section 49-1-3 NMSA 1978 (being Laws 1907,  
7 Chapter 42, Section 3, as amended) is amended to read:

8 "49-1-3. BOARD OF TRUSTEES--MANAGEMENT OF GRANT--  
9 POWERS.--The management and control of all land  
10 grants-mercedes and tracts of land to which Sections 49-1-1  
11 through 49-1-18 NMSA 1978 are applicable is vested in a board  
12 of trustees, to be known as the "board of trustees of the  
13 land grant-merced del pueblo de \_\_\_\_\_" (designating the name  
14 of the town, colony, pueblo or community), and the board  
15 shall have the power to:

16 A. control, care for and manage the land  
17 grant-merced and real estate, prescribe the terms and  
18 conditions under which the common lands may be used and  
19 enjoyed and make all necessary and proper bylaws, rules and  
20 regulations that shall be in substantial compliance with  
21 applicable statutes for the government thereof;

22 B. sue and be sued under the title as set forth in  
23 this section;

24 C. convey, lease or mortgage the common lands of  
25 the land grant-merced in accordance with the land

1 grant-merced bylaws;

2 D. determine the number of animals that may be  
3 permitted to graze upon the common lands and determine other  
4 uses of the common lands that may be authorized;

5 E. prescribe the price to be paid for the use of  
6 the common lands and resources of the land grant-merced and  
7 prohibit a person failing or refusing to pay that amount from  
8 using a portion of the common lands while the person  
9 continues in default in those payments; provided that the  
10 amount fixed shall be in proportion to the number and kinds  
11 of livestock pasturing upon the common lands or to other  
12 authorized use of the common lands;

13 F. adopt and use an official seal;

14 G. appoint judges and clerks of election at all  
15 elections provided for in Sections 49-1-1 through 49-1-18  
16 NMSA 1978, subsequent to the first, and canvass the votes  
17 cast in those elections;

18 H. make bylaws, rules and regulations, not in  
19 conflict with the constitution and laws of the United States  
20 or the state of New Mexico as may be necessary for the  
21 protection, improvement and management of the common lands  
22 and real estate and for the use and enjoyment of the common  
23 lands and of the common waters of the land grant-merced;

24 I. determine land use, local infrastructure and  
25 economic development of the common lands of the land

1 grant-merced; and

2 J. determine zoning of the common lands of the  
3 land grant-merced pursuant to a comprehensive plan approved  
4 by the local government division of the department of finance  
5 and administration that considers the health, safety and  
6 general welfare of the residents. The department of finance  
7 and administration shall act as arbitrator for zoning  
8 conflicts between land grants-mercedes and neighboring  
9 municipalities and counties."

10 Section 6. Section 49-1-4 NMSA 1978 (being Laws 1907,  
11 Chapter 42, Section 4, as amended) is amended to read:

12 "49-1-4. BOARD OF TRUSTEES--QUALIFICATIONS.--The board  
13 of trustees shall consist of five members. In land  
14 grants-mercedes where there is more than one precinct, no  
15 more than three members shall be residents of the same  
16 precinct. A person shall be qualified to be a member of the  
17 board if the person is a qualified voting member and is not  
18 in default of any dues, rent or other payment for the use of  
19 any of the common lands of the land grant-merced."

20 Section 7. Section 49-1-5 NMSA 1978 (being Laws 1907,  
21 Chapter 42, Section 5, as amended) is amended to read:

22 "49-1-5. ELECTION OF MEMBERS OF BOARD OF TRUSTEES--  
23 VOTERS' QUALIFICATIONS--REGISTRATION.--

24 A. Elections for the board of trustees shall be  
25 held on the first Monday in April or on a day designated in

1 the bylaws, either every two or every four years as specified  
2 in the bylaws of the land grant-merced.

3 B. All qualified voting members of the land  
4 grant-merced are qualified to vote and may vote for trustees  
5 as specified in the land grant-merced bylaws.

6 C. The registration of qualified voting members  
7 shall be conducted in the manner prescribed in the Election  
8 Code, substituting the words "board of trustees" and  
9 "secretary" wherever the words "county commission" and  
10 "county clerk" are used in that code.

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

16 E. The board of trustees of each land grant-merced  
17 shall give public notice in Spanish and English of the time  
18 of the election and fix and give notice of the polling places  
19 in each precinct by handbills posted in at least five public  
20 places in each precinct at least fifteen days prior to the  
21 election. Notice shall also be given by publication fifteen  
22 days prior to the election in a newspaper in general  
23 circulation within the land grant-merced if there is one.

24 F. Elections shall be conducted, as nearly as is  
25 practicable, in the same manner as provided by law for the

1 holding of general elections in this state. The judges and  
2 clerks of elections shall be appointed and the votes  
3 canvassed by the board of trustees."

4 Section 8. Section 49-1-7 NMSA 1978 (being Laws 1907,  
5 Chapter 42, Section 7, as amended) is amended to read:

6 "49-1-7. ELECTION--CANVASSING VOTES.--The election  
7 judges and board of trustees shall meet not later than seven  
8 days following the election and canvass the votes cast and  
9 issue to the five persons having a majority of votes a  
10 certificate showing they have been duly elected."

11 Section 9. Section 49-1-8 NMSA 1978 (being Laws 1907,  
12 Chapter 42, Section 8, as amended) is amended to read:

13 "49-1-8. ORGANIZATION OF BOARD--BONDS--VACANCIES.--

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

25 B. In the event of the death or resignation of the

1 treasurer, the board shall fill the vacancy by appointing one  
2 of the members of the board as treasurer, who shall, before  
3 entering into the performance of his duties as treasurer,  
4 execute and furnish to the board a good and sufficient surety  
5 bond, similar to the bond entered into by his predecessor.

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

10 D. In the event the board of trustees delegates  
11 any other of its members to collect money due the land  
12 grant-merced, that person shall be bonded in the same manner  
13 as is provided in this section for the bonding of the  
14 treasurer.

15 E. Those authorized to collect money shall give  
16 receipts for the money collected, which receipts shall be in  
17 the form prescribed by the board of trustees in the bylaws as  
18 an official receipt."

19 Section 10. Section 49-1-9 NMSA 1978 (being Laws 1907,  
20 Chapter 42, Section 9, as amended) is amended to read:

21 "49-1-9. MEETINGS.--Regular meetings of the board of  
22 trustees shall be held no less than quarterly and in a public  
23 place as the board may determine in accordance with the  
24 bylaws. The time and place of regular meetings shall be  
25 posted in Spanish and English in a public place within the



1 land grant-merced at least ten days prior to the meeting.  
2 Special meetings may be held at any time on call of the  
3 president, with five days' notice being given to each  
4 member."

5 Section 11. Section 49-1-10 NMSA 1978 (being Laws 1907,  
6 Chapter 42, Section 10, as amended) is amended to read:

7 "49-1-10. QUORUM.--A majority of the board of trustees  
8 shall constitute a quorum for the transaction of business,  
9 and the land grant-merced and its inhabitants shall be bound  
10 by the acts of the board done pursuant to the provisions of  
11 Sections 49-1-1 through 49-1-18 NMSA 1978 and the land  
12 grant-merced bylaws."

13 Section 12. Section 49-1-11 NMSA 1978 (being Laws 1907,  
14 Chapter 42, Section 11, as amended) is amended to read:

15 "49-1-11. SALE OR MORTGAGE OF COMMON LANDS--  
16 RESTRICTIONS.--

17 A. A conveyance of a portion or of all of the  
18 common lands of a land grant-merced shall be effective only  
19 if:

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

22 (2) the conveyance is made for the benefit  
23 of the land grant-merced;

24 (3) the board of trustees of the land  
25 grant-merced has approved a resolution to make the conveyance

1 at a regular meeting held in accordance with Sections 49-1-9  
2 and 49-1-12 NMSA 1978;

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

6 (5) the district court has issued an order  
7 affirming the board of trustees' resolution pursuant to  
8 Subsection E of this section.

9 B. An heir may file a written protest of a  
10 conveyance with the board of trustees of the land  
11 grant-merced and the district court within thirty days of the  
12 date that the resolution approving the conveyance is passed  
13 by the board. The board shall address and make a decision on  
14 the protest at a special meeting held in accordance with  
15 Sections 49-1-9 and 49-1-12 NMSA 1978 within thirty days of  
16 receiving the protest.

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

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

24 (2) the notice of appeal may be served in  
25 the same manner as a summons in civil actions brought before

1 the district court or by publication in a newspaper printed  
2 in the county in which the property is located, once per week  
3 for four consecutive weeks. The last publication shall be at  
4 least twenty days prior to the date the appeal may be heard.  
5 Proof of service of the notice of appeal shall be made in the  
6 same manner as in actions brought in the district court and  
7 shall be filed in the district court within thirty days after  
8 service is complete. At the time of filing the proof of  
9 service and upon payment by the appellant of the civil docket  
10 fee, the clerk of the district court shall docket the appeal;

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

14 (4) the proceeding upon appeal shall be  
15 de novo as cases originally docketed in the district court.  
16 Evidence taken in a hearing before the board may be  
17 considered as original evidence subject to legal objection,  
18 the same as if the evidence was originally offered in the  
19 district court. The court shall allow all amendments that  
20 may be necessary in furtherance of justice and may submit any  
21 question of fact to a jury or to one or more referees at its  
22 discretion.

23 D. If the district court finds that all  
24 requirements of this section have been satisfied and that all  
25 protests and appeals are concluded, the court shall issue its

1 order affirming the board of trustees' resolution conveying  
2 the property.

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

7 Section 13. Section 49-1-12 NMSA 1978 (being Laws 1907,  
8 Chapter 42, Section 12, as amended) is amended to read:

9 "49-1-12. MEETINGS TO BE PUBLIC--ANNUAL REPORT.--

10 A. All meetings of the board of trustees shall be  
11 held in accordance with the Open Meetings Act. Executive  
12 sessions shall not be held except in accordance with the Open  
13 Meetings Act. All heirs of the land grant-merced shall have  
14 the right to be present at all times when the board is in  
15 session and to be heard on all matters in which they may be  
16 interested.

17 B. The board of trustees shall annually make  
18 public a report of all its transactions for that year. The  
19 report shall include agendas, minutes, actions taken and all  
20 financial transactions. The report shall be maintained in a  
21 public place and available for public review.

22 C. The secretary of the board shall reduce to  
23 writing, in a book kept for that purpose, minutes of the  
24 business transacted at each meeting of the board."

25 Section 14. Section 49-1-13 NMSA 1978 (being Laws 1907,

1 Chapter 42, Section 13, as amended) is amended to read:

2 "49-1-13. VACANCIES.--If a vacancy occurs on the board,  
3 the remaining members shall fill the vacancy by appointment  
4 made at a regular meeting. The person appointed shall hold  
5 office until the next regular election."

6 Section 15. Section 49-1-14 NMSA 1978 (being Laws 1907,  
7 Chapter 42, Section 14, as amended) is amended to read:

8 "49-1-14. SALARIES OF TRUSTEES--RECORDS--EXPENDITURES.--

9 A. The board of trustees may fix in the land  
10 grant-merced bylaws and pay to its members a salary not to  
11 exceed two hundred dollars (\$200) to any member in one month.  
12 The salary as fixed shall be in full as compensation for the  
13 duties performed by the board or the individual members  
14 within the exterior boundaries of the land grant-merced and  
15 for attendance at regularly scheduled meetings. The  
16 secretary of the board may be allowed a salary not to exceed  
17 two hundred twenty-five dollars (\$225) in one month.

18 B. Board members may be authorized per diem and  
19 mileage pursuant to the Per Diem and Mileage Act.

20 C. The board of trustees and the treasurer shall  
21 keep permanent and legible records capable of audit, and no  
22 money or funds shall be paid by the board of trustees or by  
23 any person authorized to expend money except by written check  
24 drawn upon vouchers."

25 Section 16. Section 49-1-15 NMSA 1978 (being Laws 1907,

1 Chapter 42, Section 15, as amended) is amended to read:

2 "49-1-15. REMOVAL FROM LAND GRANT-MERCED--DELINQUENCY--  
3 FORFEITURE.--

4 A. If a person holds in possession or claims in  
5 private ownership, within the exterior boundaries of a land  
6 grant-merced, any tract, piece or parcel of land to which, in  
7 the opinion of the board of trustees, he has no right or  
8 title, the board may institute an action of ejectment against  
9 the person. If upon the trial it appears that such  
10 possession is without right, judgment shall be rendered in  
11 favor of the board for possession of the tract, piece or  
12 parcel of land and for such damages as it may have proved for  
13 the wrongful detention.

14 B. Any delinquent heir shall lose all right or  
15 interest that the heir may have had in the common lands of  
16 the land grant-merced unless the heir pays in full all legal  
17 assessments or dues due by the heir."

18 Section 17. Section 49-1-16 NMSA 1978 (being Laws 1907,  
19 Chapter 42, Section 16, as amended) is amended to read:

20 "49-1-16. TRESPASS ON COMMON LANDS OR WATERS--  
21 INJUNCTIONS.--The courts of this state shall entertain bills  
22 of complaint filed by the board of trustees of a land  
23 grant-merced to enjoin persons from trespassing upon the  
24 common lands or using the common waters within the land  
25 grant-merced if it appears that the complainant is without a

1 plain, speedy and adequate remedy at law or that the persons  
2 committing trespass are insolvent or unable to respond in  
3 damages."

4 Section 18. Section 49-1-17 NMSA 1978 (being Laws 1907,  
5 Chapter 42, Section 17, as amended) is amended to read:

6 "49-1-17. PROCESS--HOW SERVED ON BOARD.--Process in all  
7 actions or suits against a board of trustees of a land  
8 grant-merced shall be served upon the president or, in his  
9 absence, upon the secretary."

10 Section 19. Section 49-1-18 NMSA 1978 (being Laws 1907,  
11 Chapter 42, Section 19, as amended) is amended to read:

12 "49-1-18. CONSTRUCTION.--Sections 49-1-1 through  
13 49-1-18 NMSA 1978 shall not be construed as applying to any  
14 land grant-merced that is managed or controlled in any manner  
15 other than that provided in Section 49-1-2 NMSA 1978."

16 Section 20. Section 49-1-19 NMSA 1978 (being Laws 1933,  
17 Chapter 164, Section 6) is amended to read:

18 "49-1-19. FAILURE OF TRUSTEE TO PERFORM DUTIES--  
19 PENALTY.--Any member of the board of trustees who fails or  
20 refuses to perform any of the duties required to be performed  
21 by the board of trustees of the land grant-merced or any  
22 member of the board pursuant to Sections 49-1-1 through  
23 49-1-18 NMSA 1978 or by any other law of New Mexico is guilty  
24 of a misdemeanor and upon conviction shall be punished by a  
25 fine of not less than twenty-five dollars (\$25.00) nor more

1 than one hundred dollars (\$100) or by imprisonment in the  
2 county jail for a period of not less than thirty days nor  
3 more than ninety days, or both."

4 Section 21. REPEAL.--Section 49-1-6 NMSA 1978 (being  
5 Laws 1907, Chapter 42, Section 6, as amended) is repealed.

6 Section 22. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2004. \_\_\_\_\_

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