



### Synopsis of Original Bill

The AG reports that the bill makes approximately 35 substantive amendments to the general land grant statute (NMSA 1978, Sections 49-1-1 et seq.) and a number of additional minor and clean-up amendments. The major provisions of the bill: (1) establish community land grants as political subdivisions of the state, (2) define “heir” and establish heirship as the primary requirement for voting for or serving on the governing board of trustees, (3) make explicit that residency within the grant through purchase or lease of a private lands within the grant does not carry with it rights to use of the common lands, (4) eliminate individual liability for trustees acting in an official capacity, (5) prohibit the sale of common lands, (6) specify the powers of the trustees to regulate livestock grazing and access to other resources located on common lands and to undertake zoning and land use planning of the common lands, (7) provide for notice and other procedures for trustee elections, (8) provides that trustees meetings shall be open no just to heirs of the land grant but shall be conducted under the Open Meetings Act, (9) provide for standards and procedures for the conveyance or mortgage of common lands by the trustees, and a right of protest by heirs aggrieved by any such decision, (10) specify additional duties of officers of the board of trustees, and (11) allow a land grant governed by a separate statute to petition the legislature to repeal that statute, thereby bringing that land grant wholly under the general land grant statute.

The AG concludes that land grants governed by separate statute would not also be subject to non-conflicting provisions of the general land grant statute. The bill also more clearly sets forth the chronology for a decision by the board of trustees to convey or mortgage any portion of the common land, including district court affirmation and any protest or appeal by an heir and conveyances of common land to a non-heir are not required to contain a reversion clause.

### Significant Issues

The AG raises two major issues:

1. Whether the status of land grants should be changed to be political subdivisions of the state, and if so, whether that would permit exclusion, in terms of voting, office-holding, and access to common lands, of non-heirs who acquire private parcels of land within lands grants.
2. How to reconcile land grant zoning and land-use regulatory power with that of neighboring municipalities and counties.

### **FISCAL IMPLICATIONS**

DFA reports, “The bill asks DFA to arbitrate zoning disputes between land grant communities and their counties or neighboring municipalities. The exercise of this function could result in an increased appropriation of an estimated \$100 thousand annually for the payment of arbitration.”

### **ADMINISTRATIVE IMPLICATIONS**

The AG is concerned that the bill requires the local government division of the department of finance and administration to approve any master zoning plans formulated by land grants and for DFA to act as arbitrator for zoning conflicts between land grants and neighboring municipalities

and counties.

DFA is concerned because it does not have regulatory authority or guidance, either through statute or regulations, to settle land use disputes through arbitration for any level of local government. In addition, DFA believes it would require one additional FTE.

## **RELATIONSHIP**

House Judiciary Committee Substitute for House Bill 141 is related to this bill, although it differs in that (1) the definition of “heir” does not grandfather in persons who are not descendants of the original grantees having an interest in the common lands prior to the effective date of this bill (July 1, 2004); and (2) the exemption from individual liability for land grant trustees acting in their official capacity has been deleted; and (3) the penalty of loss of voting privileges for heirs that owe arrears to the land grant has been deleted.

## **OTHER SUBSTANTIVE ISSUES**

In addition the AG points out:

The bill establishes community land grants as political subdivisions of the state (page 3, line 3), which more clearly establishes land grants as state actors subject to constitutional and statutory limitations and duties. As a result, classifications elsewhere in the bill that distinguish between heirs and non-heirs residing within the land grant with regard to voting in elections for trustees (page 2, lines 8-10), eligibility to hold the office of trustee, (page 7, lines 2-9) and rights to the common lands of the grant (Section 2 of bill, page 2), would probably be subject to constitutional equal protection challenges. Limiting rights to the common lands to heirs may be a rational basis to ration the use of a limited resource in a growing population to those who the governments of Spain and Mexico intended to be the primary beneficiaries of the grant, and therefore there may be no constitutional “suspect class” problem. There is also arguably no constitutional requirement to automatically confer common land rights to someone simply by virtue of acquiring a private parcel of land within the grant. Since the trustees only have jurisdiction over the common lands and cannot regulate private property within the grant, there should be no constitutional problem with limiting voting privileges for trustee elections to only those with rights to the common lands, i.e., heirs. Similarly, it would appear that the bill can properly limit eligibility to hold the office of trustee to only heirs, but it is difficult to predict how court cases will decide such issues.

The definition of ‘heir’ as a descendant of the original grantees is made prospective by grandfathering into the definition of “heir” non-descendants who have acquired an interest in the common lands under current law (Section 1 of the bill, pages 1-2). Such non-descendants maintain their rights to the common land and to vote and hold office. In this way any issue of “takings” can probably be avoided.

The provision allowing for authority of land grant boards of trustees to engage in land-use planning and zoning of common lands raises the potential of conflict with the same powers held by the counties, or in some cases, municipalities, in which the land grant is situated. The bill provides that “[t]he department of finance and administration shall act as arbitrator for zoning conflicts between land grants-mercedes and neighboring municipalities and counties.

The Substitute resolves the apparent conflict between the provisions in the original bill relating to land grant trustee meetings and the Open Meetings Act.

The Substitute bill deletes Subsection F of Section 12 of the original bill, so that conveyances of common land to a non-heir are not required to contain a reversion clause.

**VB/yr**