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FISCAL IMPACT REPORT

SPONSOR HJC DATE TYPED 02/04/04 HB HB 141/HJCS

SHORT TITLE Land Grant Boards of Trustees Management SB _____

ANALYST Bransford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
		Indeterminate			

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 142/SCONCS

Responses Received From

Attorney General (AG)

State Land Office (SLO)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

The AG reports the bill would make 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 would (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) prohibit the sale of common lands, (5) 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, (6) provide for notice and other procedures for trustee elections, (7) provide for notice and other procedures for trustee meetings, (8) 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, (9) specify additional duties of officers of the board of trustees, and (10) 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 major changes to the original bill are:

1. The Substitute deletes the exemption from individual liability for land grant trustees acting in their official capacity.
2. The Substitute provides that trustee meetings shall be open not just to the heirs of the land grant but shall be conducted under the Open Meetings Act.
3. The Substitute removes the provision in the original bill that states that land grants governed by separate statute are also subject to non-conflicting provisions of the general land grant statute.
4. The Substitute deletes the penalty of loss of voting privileges for heirs that owe arrears to the land grant. This deleted provision is in the existing law.
5. The Substitute changes the definition of "heir" so that it does not grandfather in persons who are not descendants of the original grantees having purchased an interest in the common lands prior to the effective date of this bill (July 1, 2004).
6. Section 12 of the original bill was extensively rewritten to more clearly set 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.
7. 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.

Significant Issues

The AG raises two 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 land 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

Senate Conservation Committee Substitute for Senate Bill 142 is related to this bill, although it differs from this substitute in that (1) the definition of “heir” grandfathered in persons who are not descendants of the original grantees having purchased an interest in the common lands prior to the effective date of this bill (July 1, 2004); (2) there is an exemption from individual liability for land grant trustees acting in their official capacity; and (3) there is a penalty of loss of voting privileges for heirs that owe arrears to the land grant.

OTHER SUBSTANTIVE ISSUES

The AG believes the following substantive issues from the original bill analysis remain for the Substitute bill:

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, although the bill may well satisfy constitutional requirements. Limiting rights to the common lands to heirs is arguably 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 always difficult to predict how court cases will decide such issues.

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-merced and neighboring municipalities and counties.

The Substitute deletes a portion of the definition of “heir”. The original bill defines two categories of persons that qualify as “heirs”: (1) descendants of the original grantees, and (2) persons who are not descendants of the original grantees who have “an interest in the common land of a land grant-merced by purchase of the interest in the common land prior to July 1, 2004.” The

substitute deletes the second category. The deleted language may have been problematic in that it may have been interpreted by a court to include persons to whom land grants have sold tracts of common land to then hold as their private property. The intention of the bill was probably not to do this, since outright sales of common lands to non-descendants did not historically carry with them rights to participate in the governance of the grant as an “heir”. The probable intention of the second category was to avoid any issue of “takings” where non-descendants had somehow purchased a membership share in the land grant that did carry the same rights as other heirs, i.e., common land use rights and rights to vote and hold office. However, as indicated above, the deleted language probably was too broad and may have had unintended consequences.

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.

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