

AN ACT

RELATING TO LAND GRANTS; CONFORMING THE GOVERNING STATUTES OF THE CHILILI LAND GRANT WITH THE PROVISIONS OF CHAPTER 49, ARTICLE 1 NMSA 1978; PROVIDING PENALTIES; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1. Section 49-4-1 NMSA 1978 (being Laws 1876, Chapter 51, Section 1) is amended to read:

"49-4-1. CHILILI LAND GRANT-MERCED--RATIFICATION OF PARTITIONS--GOVERNANCE.--

A. All apportionments or partitions of land on the grant of Chilili made by Inez Armenta as trustee or by his successors as trustees of the grant to the bona fide residents on the grant are hereby confirmed.

B. The government and control of the common lands of the Chilili land grant-merced, also known as la merced del pueblo de Chilili, is vested in five trustees, to be known officially as "the board of trustees of the Chilili land grant-merced", who shall manage and control the land grant-merced in accordance with the provisions of Chapter 49, Article 4 NMSA 1978."

Section 2. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"DEFINITIONS.--As used in Chapter 49, Article 4 NMSA

1978:

A. "board of trustees" means the board of trustees of the Chilili land grant-merced;

B. "common lands" means lands owned by the Chilili land grant for the benefit of the heirs of the land grant-merced;

C. "heir" means a person who is a descendant of the original grantees and has an interest in the common land of the land grant-merced through inheritance, gift or purchase;

D. "land grant-merced" means the grant of land made by the government of Mexico to the town of Chilili in 1841, which was confirmed by congress in 1858 and issued a patent by the United States in 1909; and

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

Section 3. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"MANAGEMENT OF GRANT.--The Chilili land grant-merced shall be controlled and governed by the Treaty of Guadalupe Hidalgo, by the provisions of Chapter 49, Article 4 NMSA 1978 as a political subdivision of the state and by all provisions of its bylaws not in conflict with the Treaty of Guadalupe Hidalgo or state law."

Section 4. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"BOARD OF TRUSTEES--MANAGEMENT OF GRANT--POWERS.--The board of trustees shall have the power to:

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

B. sue and be sued and have the standing to sue in law or equity to protect and expand the common lands of the land grant-merced;

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

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

E. prescribe the price to be paid for the use of the common lands and resources of the land grant-merced and prohibit a person failing or refusing to pay that amount from using a portion of the common lands while the person continues in default in those payments; provided that the amount fixed

shall be in proportion to the number and kinds of livestock pasturing upon the common lands or to other authorized use of the common lands;

F. adopt and use an official seal;

G. appoint judges and clerks of election at all elections provided for in Chapter 49, Article 4 NMSA 1978 and canvass the votes cast in those elections;

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

I. determine land use, local infrastructure and economic development of the common lands of the land grant-merced; and

J. 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 select a qualified arbitrator to arbitrate for zoning conflicts between the land grant-merced and neighboring municipalities and counties."

Section 5. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"BOARD OF TRUSTEES--QUALIFICATIONS.--The board of trustees shall consist of five members. If there is more than one precinct in the land grant-merced, no more than three members shall be residents of the same precinct; provided, however, that if the precinct boundaries do not coincide with the boundaries of the land grant-merced, the board of trustees may create districts that better reflect the distribution of population within the land grant-merced and that any one of which has no more than three members of the board of trustees as residents. 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."

Section 6. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"ELECTION OF MEMBERS OF BOARD OF TRUSTEES--VOTERS' QUALIFICATIONS--REGISTRATION.--

A. Elections for the board of trustees shall be held on the first Monday in April or on a day designated in the bylaws, either every two or every four years as specified in the bylaws of the land grant-merced.

B. All qualified voting members of the land grant-merced are qualified to vote and may vote for trustees as

specified in the land grant-merced bylaws.

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

D. The registration books compiled before each election shall be used at that election. A person shall not vote at the election unless duly registered in the books, and a ballot of any unregistered person shall not be counted or canvassed.

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

F. Elections shall be conducted, as nearly as is practicable, in the same manner as provided by law for the holding of general elections in this state. The judges and clerks of elections shall be appointed and the votes canvassed by the board of trustees."

1978 is enacted to read:

"ELECTION--CANVASSING VOTES.--The election judges and board of trustees shall meet not later than seven days following the election and canvass the votes cast and issue to each of the five persons having a majority of votes a certificate showing that each one has been duly elected."

Section 8. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"ORGANIZATION OF BOARD--BONDS--VACANCIES.--

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 of the land grant-merced in a bank organized and doing business in New Mexico.

B. In the event of the death or resignation of the treasurer, the board shall fill the vacancy by appointing one of the members of the board as treasurer, who shall, before entering into the performance of the duties as treasurer, execute and furnish to the board a good and sufficient surety

bond, similar to the bond entered into by the predecessor.

C. The amount of the bond required of the treasurer and the treasurer's 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.

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

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

Section 9. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"MEETINGS.--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."

Section 10. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"QUORUM.--A majority of the members of the board of trustees shall constitute a quorum for the transaction of business, and the land grant-merced and its inhabitants shall be bound by the acts of the board pursuant to the provisions of Chapter 49, Article 4 NMSA 1978 and the land grant-merced bylaws."

Section 11. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"SALE OR MORTGAGE OF COMMON LANDS--RESTRICTIONS.--

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

- (1) the conveyance is made in accordance with the land grant-merced bylaws and this section;
- (2) the conveyance is made for the benefit of the land grant-merced;
- (3) the board of trustees has approved a resolution to make the conveyance at a regular meeting held in accordance with Sections 9 and 12 of this 2007 act;
- (4) the board of trustees has petitioned for an order affirming the board's resolution from the district court of the district in which the property is located; and
- (5) the district court has issued an order affirming the board of trustees' resolution pursuant to Subsection D of this section.

B. An heir may file a written protest of a conveyance with the board of trustees and the district court within thirty days of the date that the resolution approving the conveyance is passed by the board. The board of trustees shall address and make a decision on the protest at a special meeting held in accordance with Sections 9 and 12 of this 2007 act within thirty days of receiving the protest.

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

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

(2) the notice of appeal may be served in the same manner as a summons in civil actions brought before the district court or by publication in a newspaper printed in the county in which the property is located, once per week for four consecutive weeks. The last publication shall be at least twenty days prior to the date the appeal may be heard. Proof of service of the notice of appeal shall be made in the same manner as in actions brought in the district court and shall be filed in the district court within thirty days after service is complete. At the time of filing the proof of

service and upon payment by the appellant of the civil docket fee, the clerk of the district court shall docket the appeal;

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

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

D. If the district court finds that all requirements of this section have been satisfied and that all protests and appeals are concluded, the court shall issue its order affirming the board of trustees' resolution conveying the property.

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

Section 12. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"MEETINGS TO BE PUBLIC--ANNUAL REPORT.--

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

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

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

Section 13. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"VACANCIES.--If a vacancy occurs on the board of trustees, the remaining members shall fill the vacancy by appointment made at a regular meeting. The person appointed shall hold office until the next regular election."

Section 14. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"SALARIES OF TRUSTEES--RECORDS--EXPENDITURES.--

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

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

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."

Section 15. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"PROTECTION OF COMMON LANDS-- DELINQUENCY--FORFEITURE.--

A. If the board of trustees brings an action in accordance with Subsection B of Section 4 of this 2007 act and judgment is rendered in favor of the board of trustees, the court may award to the board of trustees possession of the

tract, piece or parcel of the land and such damages as it may have proved for the wrongful detention and any other remedy provided for by law.

B. A delinquent heir shall lose all right that the heir may have had to use the common lands of the land grant-merced unless the heir pays in full all legal assessments or dues due by the heir."

Section 16. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"TRESPASS ON COMMON LANDS OR WATERS--INJUNCTIONS.--The courts of this state shall entertain bills of complaint filed by the board of trustees of the land grant-merced to enjoin persons from trespassing upon the common lands or using the common waters within the land grant-merced if it appears that the complainant is without a plain, speedy and adequate remedy at law or that the persons committing trespass are insolvent or unable to respond in damages."

Section 17. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"PROCESS--HOW SERVED ON BOARD.--Process in all actions or suits against the board of trustees of the land grant-merced shall be served upon the president or, in the president's absence, upon the secretary."

Section 18. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"REGISTRATION.--The board of trustees shall register its bylaws and a list of current officers with the secretary of state in accordance with the provisions of Section 49-1-23 NMSA 1978. The board of trustees shall notify the secretary of state of the names and positions of the land grant-merced's elected or appointed officers upon their election or appointment."

Section 19. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"FAILURE OF TRUSTEE TO PERFORM DUTIES--PENALTY.--Any member of the board of trustees who fails or refuses to perform any of the duties required to be performed by the board of trustees of the land grant-merced by Chapter 49, Article 4 NMSA 1978 or by any other law of New Mexico is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days, or both."

Section 20. A new section of Chapter 49, Article 4 NMSA 1978 is enacted to read:

"RIGHTS OF LESSEES AND PURCHASERS.--

A. A person who is not an heir and who purchases or leases property within the limits of the land grant-merced shall only have a right to the lands acquired through the

purchase or lease but not to any common lands within the land grant-merced.

B. The provisions of Chapter 49, Article 4 NMSA 1978 shall not diminish, extinguish or otherwise impair any private property interest located within the boundaries of the land grant-merced or be construed to grant the board of trustees regulatory authority over such property interests or lands other than the common lands held by the land grant-merced. As used in this subsection, "property interest" includes valid easements and rights of access, but does not include use rights to the common lands of the land grant-merced."

Section 21. REPEAL.--Sections 49-4-2 and 49-4-3 NMSA 1978 (being Laws 1876, Chapter 51, Sections 2 and 3, as amended) are repealed.

Section 22. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007. _____