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AN ACT

RELATING TO LAND GRANTS-MERCEDES; DEFINING TERMS; AMENDING
LAND GRANT-MERCED ELECTION REQUIREMENTS AND PROCEDURES;
PROVIDING FOR ADMINISTRATIVE REVIEW OF CONTESTED LAND GRANT-
MERCED ELECTIONS.

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

SECTION 1. Section 49-1-1.1 NMSA 1978 (being Laws 2004,
Chapter 124, Section 1) is amended to read:

"49-1-1.1. DEFINITIONS.--As used in Chapter 49 NMSA
1978:

A. "child" means a biological, adopted or
foster child, a stepchild, a legal ward or a child of a
person standing in loco parentis;

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

C. "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;

D. "parent" includes a biological, adoptive
or foster parent, a stepparent or an individual who stands in

1 loco parentis to a child;

2 E. "precinct" means a geographic location such as
3 a community or town that is guaranteed an apportioned amount
4 of positions on the board of trustees of a land grant-merced
5 as defined in the land grant-merced bylaws;

6 F. "qualified voting member" means an heir who is
7 registered to vote in a land grant-merced as prescribed in
8 the land grant-merced bylaws; and

9 G. "sibling" includes a stepsibling and a
10 half-sibling."

11 SECTION 2. Section 49-1-3 NMSA 1978 (being Laws 1907,
12 Chapter 42, Section 3, as amended) is amended to read:

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

21 A. control, care for and manage the land
22 grant-merced and real estate, prescribe the terms and
23 conditions under which the common lands may be used and
24 enjoyed and make all necessary and proper bylaws, rules and
25 regulations that shall be in substantial compliance with

1 applicable statutes for the government thereof;

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

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

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

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

18 F. adopt and use an official seal;

19 G. appoint judges and clerks and a canvassing
20 board of election at all elections provided for in Sections
21 49-1-1 through 49-1-18 NMSA 1978, subsequent to the first,
22 and canvass the votes cast in those elections;

23 H. make bylaws, rules and regulations, not in
24 conflict with the constitution and laws of the United States
25 or the state of New Mexico, as may be necessary for the

1 protection, improvement and management of the common lands
2 and real estate and for the use and enjoyment of the common
3 lands and of the common waters of the land grant-merced;

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

7 J. determine zoning of the common lands of the
8 land grant-merced pursuant to a comprehensive plan approved
9 by the local government division of the department of finance
10 and administration that considers the health, safety and
11 general welfare of the residents of the land grant-merced.

12 The department of finance and administration shall act as
13 arbitrator for zoning conflicts between land grants-mercedes
14 and neighboring municipalities and counties; and

15 K. enter into memoranda of understanding,
16 contracts and other agreements with a local, state or federal
17 government or a government of a federally recognized Indian
18 nation, tribe or pueblo, including but not limited to
19 agreements concerning the protection and maintenance of
20 cultural resources."

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

23 "49-1-4. BOARD OF TRUSTEES--QUALIFICATIONS.--The board
24 of trustees shall consist of five members. In a land
25 grant-merced with bylaws that include the use of precincts,

1 no more than the apportioned number of members for any given
2 precinct as set forth in the bylaws shall serve on the board
3 of trustees. A person shall be qualified to be a member of
4 the board if the person is a qualified voting member and is
5 not in default of any dues, rent or other payment for the use
6 of any of the common lands of the land grant-merced; provided
7 that no person convicted of a felonious or infamous crime,
8 unless the person has been pardoned or restored to political
9 rights, shall be qualified to be elected or appointed to any
10 board of trustees of a land grant-merced."

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

13 "49-1-5. ELECTION OF MEMBERS OF BOARD OF TRUSTEES--
14 VOTERS' QUALIFICATIONS--REGISTRATION--PROVISIONAL BALLOTS.--

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

19 B. All qualified voting members of the land
20 grant-merced are qualified to vote and may vote for trustees
21 as specified in the land grant-merced bylaws.

22 C. The registration of qualified voting members
23 shall be conducted in the manner prescribed in the land
24 grant-merced bylaws. The secretary of the board of trustees
25 shall maintain the registration books. Registration shall be

1 closed beginning fifteen days before an election and reopened
2 on the Monday following the election. The board of trustees
3 shall meet to finalize the registration books by resolution
4 at least five days prior to the election.

5 D. The registration books compiled before each
6 election shall be used at that election. No person shall
7 vote at the election unless duly registered in the books, and
8 no ballot of any unregistered person shall be counted or
9 canvassed.

10 E. A candidate for the board of trustees shall
11 file a declaration of candidacy with the secretary of the
12 board of trustees. The period when declarations of candidacy
13 may be filed shall begin on the day the proclamation calling
14 the election is published and shall remain open for at least
15 ten days.

16 F. Whenever an election is to be called or is
17 required by law, the board of trustees shall by resolution
18 issue a public proclamation calling the election. The
19 proclamation shall specify:

20 (1) the date on which the election will be
21 held;

22 (2) the purpose for which the election is
23 called;

24 (3) if positions on the board of trustees
25 are to be filled, the date and time by which declarations of

1 candidacy are to be filed;

2 (4) if a question is to be voted upon, the
3 text of that question;

4 (5) the location of each polling place in
5 the land grant-merced;

6 (6) the hours that each polling place will
7 be open;

8 (7) the date and time of the closing of the
9 registration books; and

10 (8) the date and time of the meeting to
11 finalize the registration books.

12 G. Not less than thirty days nor more than
13 forty-five days before the date of the election, the board of
14 trustees shall publish in Spanish and English the
15 proclamation in a local newspaper of general circulation
16 available within the boundaries of the land grant-merced and
17 post the proclamation in at least five public places within
18 the land grant-merced.

19 H. The board of trustees shall appoint one
20 election judge and at least two election clerks for each
21 polling place. The election judge shall also be present for
22 the canvass of the vote. No person shall be qualified for
23 appointment or service as an election clerk or judge, or as a
24 member of a canvassing board, who is a spouse, parent, child
25 or sibling of any candidate to be voted for at the election.

1 I. The board of trustees shall provide in the
2 bylaws for the forms and procedures by which the land
3 grant-merced elections are conducted. If the board of
4 trustees chooses to provide for early or absentee voting, it
5 shall specify in its bylaws the procedures by which early or
6 absentee voting shall be conducted."

7 SECTION 5. A new Section 49-1-5.1 NMSA 1978 is enacted
8 to read:

9 "49-1-5.1. PROVISIONAL BALLOTS--REQUIREMENTS FOR USE--
10 PROCEDURES.--

11 A. A person shall be permitted to vote on a
12 provisional paper ballot even though the person's name does
13 not appear in the land grant-merced registration book;
14 provided that the person:

15 (1) shows proof to the election judge and
16 clerk that the person meets the qualified voting member
17 provisions under Section 49-1-1.1 NMSA 1978 and the land
18 grant-merced bylaws; and

19 (2) executes a statement swearing or
20 affirming that to the best of the person's knowledge, the
21 person:

22 (a) is a qualified voting member of the
23 land grant-merced;

24 (b) is currently registered and
25 eligible to vote in the land grant-merced election; and

1 (c) has not yet cast a ballot or voted
2 in the election for which the person is seeking to vote by
3 provisional ballot.

4 B. A judge or election clerk shall write the
5 person's name on the voter roster, have the voter sign next
6 to the voter's name and issue the voter a provisional paper
7 ballot, an outer envelope and an official inner envelope.
8 The voter shall vote on the provisional paper ballot in
9 secrecy and, when done, place the ballot in the official
10 inner envelope, place the official inner envelope in the
11 outer envelope, sign the outer envelope and return the
12 envelope to the judge or election clerk. The election judge
13 or clerk shall ensure that the required information is
14 completed on the outer envelope and will place the envelope
15 in a container designated for provisional paper ballots.

16 C. At a minimum, the following information shall
17 be printed on the outer envelope for a provisional paper
18 ballot:

- 19 (1) the name and signature of the voter;
20 (2) the voter's registered address, both
21 present and former, if applicable;
22 (3) the voter's date of birth;
23 (4) the reason for using the provisional
24 ballot, including what proof was given to assert land
25 grant-merced qualified voting member status; and

1 (5) sufficient space to list the disposition
2 of the ballot after review by the canvassing board.

3 D. A provisional paper ballot shall not be
4 rejected for lack of the information required by this section
5 and shall be qualified as long as the voter provides a valid
6 signature and sufficient information for the judge and
7 canvassing board to determine whether the voter is a
8 qualified voting member.

9 E. Knowingly executing a false statement
10 constitutes perjury as provided in the Criminal Code, and
11 voting on the basis of such falsely executed statement
12 constitutes fraudulent voting.

13 F. Upon closing of the polls, provisional ballots
14 shall be kept by the election judge until the canvassing of
15 the votes by the election judge and canvassing board, who
16 shall determine if the ballots will be counted prior to
17 certification of the election.

18 G. If the voter was registered with the land
19 grant-merced and the canvassing board determines that the
20 individual was left off of the registration book in error,
21 the provisional paper ballot shall be counted; provided that
22 if the qualified voting member did not sign either the
23 signature roster or the ballot's envelope, the provisional
24 paper ballot shall not be counted.

25 H. If there is no record of the voter ever having

1 been registered with the land grant-merced, the voter shall
2 be offered the opportunity to register and the provisional
3 paper ballot shall not be counted."

4 SECTION 6. 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--VOTES REQUIRED--CANVASSING VOTES.--

7 A. The candidates receiving the most votes cast
8 for the open seats on the board of trustees and meeting any
9 precinct restriction requirements established pursuant to
10 Section 49-1-4 NMSA 1978 shall be elected to the board.

11 B. The election judges and the canvassing board
12 shall meet not later than seven days following the election
13 and canvass the votes cast and issue to each candidate duly
14 elected to a seat on the board a certificate of election.

15 C. In the event of a tie vote between any
16 candidates for the board of trustees, the determination of
17 which of the candidates shall be declared to have been
18 elected shall be decided by lot. If the method for
19 determining by lot is not set forth in the bylaws of the land
20 grant-merced, the method shall be agreed upon by the tied
21 candidates. The canvassing board shall issue the certificate
22 of election to the candidate chosen by lot.

23 D. Any unsuccessful candidate for election to the
24 board of trustees or any qualified voting member of a land
25 grant-merced who believes that any portion of a land

1 grant-merced election was conducted in violation of any
2 requirements set forth in Chapter 49, Article 1 NMSA 1978 or
3 the land grant-merced bylaws may contest the outcome of an
4 election; provided that the election contest is filed with
5 the Guadalupe Hidalgo treaty division of the office of the
6 attorney general within thirty days from the issuance of the
7 certificate of the election by the canvassing board.

8 E. In the event that the conduct or outcome of an
9 election is contested, the person or persons holding a
10 certificate of election shall take possession of and
11 discharge the duties of the office until the contest is
12 decided.

13 F. The Guadalupe Hidalgo treaty division of the
14 office of the attorney general shall promulgate rules for
15 investigating and deciding the outcome of contested
16 elections, which rules shall include:

17 (1) forms for filing an official contest of
18 an election;

19 (2) procedures for conducting
20 investigations and collecting evidence for contested
21 elections; and

22 (3) administrative procedures for appealing
23 a decision made by the division.

24 G. The Guadalupe Hidalgo treaty division of the
25 office of the attorney general shall render a decision on

1 election contests within ninety days of the date on which the
2 election contest was filed. If it is determined that the
3 election requirements were violated, the decision shall
4 include whether the election:

5 (1) could be remedied and the actions
6 required, including dates of implementation, to effect a
7 remedy; or

8 (2) is invalidated; provided that if a new
9 election is required, the decision may include instructions
10 for holding a new election to correct procedures that caused
11 the violations."

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

14 "49-1-13. VACANCIES.--If a vacancy occurs on the board
15 of trustees, the remaining members shall fill the vacancy by
16 appointment made at a regular meeting. The person appointed
17 shall hold office for the remainder of the unexpired term of
18 the trustee being replaced." _____