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F I S C A L I M P A C T R E P O R T

SPONSOR Sanchez, B. **ORIGINAL DATE** 01/25/10 **LAST UPDATED** 01/27/10 **HB**

SHORT TITLE Land Grants As Political Subdivisions **SJM** 16

ANALYST Pava

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	**FY11**		
	NFI	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

COMPANION to HB 28 – Land Grants As Cultural Properties

SOURCES OF INFORMATION
LFC Files

Responses Received From
Dept. of Finance & Administration (DFA)
Department of Cultural Affairs (DCA)

Responses Not Received From
Attorney General Office (AGO)

SUMMARY

Synopsis of Bill

Senate Joint Memorial 16 clarifies that it was not the intent of the Legislature to classify the common lands of land grant-mercedes as state land when declaring land grants as political subdivisions of the state as amended by 2004 Chapter 49, Article 1 NMSA 1978 recognizing certain community land grants-mercedes as political subdivisions of the state in Laws 2004, Chapter 124, Section 3.

FISCAL IMPLICATIONS

There is no appropriation or fiscal impact.

SIGNIFICANT ISSUES

SJM 16 states that common lands of all land grants-mercedes are treated as private property by and subject to property taxes pursuant to the Constitution of New Mexico and neither the legislature nor any executive agency is authorized to designate the common lands of the land grants-mercedes as state lands by statute or rule.

The DCA Historic Preservation Division's (HPD) statutory mission is to identify and protect New Mexico's unique historic places, sites and structures and it maintains the State and National Historic Registers. The Cultural Properties Act, the Prehistoric and Historic Sites Preservation Act, and the Cultural Properties Protection Act support this responsibility.

DCA – HPD indicates the following:

> This memorial raises the question, are common lands of a community land grant-merced that is governed as a political subdivision of the state private or state lands under the New Mexico Constitution and state law?
>
> The Cultural Properties Act (18-6-1 et seq. NMSA 1978), the Prehistoric and Historic Sites Preservation Act (18-8-1 et seq. NMSA 1978) and the Cultural Properties Protection Act (18-6A-1 et seq. NMSA 1978) were enacted to promote the state's and the public's interest in the identification, protection and preservation of significant historic and cultural properties. In Section 18-6-2 NMSA 1978, the legislature declared that the historical and cultural heritage of the state is one of the state's most valued and important assets. The purpose of the Cultural Properties Act is to provide for the preservation, protection and enhancements of structures, sites and objects of historical significance within the state in a manner conforming with but not limited by the provisions of the National Historic Preservation Act.

Cultural or historic properties are afforded protection under these laws when there is a public nexus—either public funding or a decision made by a public entity. Political subdivisions of the state are identified as public entities under these statutes (along with state agencies, departments and institutions have responsibilities under these laws for these entities to consider the effects of publicly funded or approved projects on registered cultural properties):

- Section 18-6-3 of the Cultural Properties Act, NMSA 1978 defines **state land** as "property owned, controlled or operated by a department, agency, institution or political subdivision of the state."
- Section 18-6A-2 of the Cultural Properties Protection Act, NMSA 1978 defines **state land** as "property owned, controlled or operated by a state agency" and the definition of state agency under that act is "a department, agency, institution or political subdivision of the state."
- The concept of state land is not referenced in the Prehistoric and Historic Sites Preservation Act, NMSA 1978 (18-8-1 et seq.). Section 18-8-7 NMSA 1978 (Preservation of significant prehistoric or historic sites) states that "no public funds of the state or any of its agencies or political subdivisions shall be spent on any program or project that requires the use of any portion of or any land from a significant prehistoric or historic site (defined as properties listed in either the State Register or National Register) unless there is no feasible and prudent alternative to such use, and unless the program or project includes all possible planning to preserve and protect and to minimize harm to the significant site. In 4.10.12 NMAC, the rule implementing this act, use is defined as an "adverse effect on a significant historic or prehistoric site or lands of that site, including but not limited to, partial or complete physical alteration or destruction; isolation of the site from its historic setting; the introduction of physical, audible, visual or atmospheric elements that substantially impair the historic character or significance of the site ...".

DFA indicates the following:

> It is very important to make the connection between "state land" and "political subdivision". For example under the Cultural Properties Act, under 18-6-3 (Definitions), under E "State land" means property owned, controlled or operated by a department, agency, institution or political subdivision of the state.
>
> Companion SJM-16 indicates that common lands of all land grants-mercedes are treated as private property by and subject to property taxes pursuant to the constitution of the New Mexico. Therefore, neither the legislature nor any executive agency is authorized to designate the common lands of land grants-mercedes as state lands by statute or rule. The purpose of enacting the Laws of 2004, Chapter 124 was not to treat the common lands of land grants-mercedes as state land.
>
> SJM-16 as proposed, clarifies that the actions taken by the Cultural Affairs Department and the Cultural Properties Review Committee, in carrying out the provisions of the Cultural Properties Act (18-6-A-1-5), the Cultural Properties Protection Act (18-6-1-24) and the New Mexico Prehistoric and Historic Sites Preservation Act (18-8-1), which resulted in nineteen thousand acres of the Cebolleta Land Grant being treated as state land, were based on misinterpretation and reading of the law.
>
> SJM-16 is an attempt to respond and overturn the Cultural Properties Review Committee's designation of approximately 500,000 acres in the Mt. Taylor region as traditional cultural property, which included some 19,000 acres of common lands of the Cebolleta Land Grant. The Cultural Properties Review Committee by unanimous vote listed the Mt. Taylor Traditional Cultural Property on the State Register on a permanent basis at its June 5th, 2009 meeting. The final order for approving the nomination for listing the property came on September 14, 2009.
>
> According to the Department of Cultural Affairs, state agencies and political subdivisions under state law must consider the effects of their projects and decisions on registered cultural properties. This means that the political subdivision must afford the State Historic Preservation Office a reasonable and timely opportunity to participate in planning to preserve, protect and minimize adverse effects to the property. It is extremely important to understand that state laws do not require that a project be denied because of cultural property concerns. In addition, state laws require that when state agencies, departments, institutions and political subdivisions of the state expend public funds or make decisions on exploration, drilling or other development projects, they take registered cultural properties into consideration. This is significant because there are uranium exploration and mining interests in the 19,000 acres of the common lands of the Cebolleta Land Grant.

ADMINISTRATIVE IMPLICATIONS

If this joint memorial passes, the Cultural Properties Review Committee (CPRC), working with HPD, would need to determine whether it should amend listings made to the State Register of Cultural Properties that include common lands owned or controlled by land grants-mercedes administered as political subdivisions of the state. HPD would need to conduct research to determine what listings are affected.

COMPANIONSHIP

HB 28 proposes revisions to the Cultural Properties Act (18-6-1 et seq.), the Cultural Properties Protection Act (18-6A-1 et seq.) and the Prehistoric and Historic Sites Protection Act (18-8-1 et seq.) so that common lands of land grants-mercedes shall not be considered state land for purposes of the statutes.

TECHNICAL ISSUES

The AGO should review the language in this joint memorial and provide an opinion on whether common lands-mercedes are considered private and/or state land under state laws and how to reconcile with the purpose and intent of the Cultural Properties Act (18-6-1 et seq.), the Cultural Properties Protection Act (18-6A-1 et seq.) and the Prehistoric and Historic Sites Protection Act (18-8-1 et seq.).

OTHER SUBSTANTIVE ISSUES

DFA notes: Lovington District Court has been asked to overturn the Cultural Properties Review Committee Final Order. The matter has been transferred to the U.S. District Court based on the federal claims made by the plaintiffs. One of the plaintiffs includes the Cebolleta Land Grant. Although passage of companion SJM-16 may clarify the intent of the law, it does not change the law.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Common lands owned or controlled by land grants-mercedes that are administered as political subdivisions of the state will continue to be considered "state land" for purposes of the referenced cultural properties acts.

DFA notes: If SJM-16 is not enacted, the actions taken by the Cultural Properties Review Committee to designate 19,000 acres of the Cebolleta Land grant as Traditional Cultural Property will remain in place. Other land grants-merced will be subject to those same actions in the future.

CP/mt