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HOUSE BILL 144

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MAX COLL

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO THE SEVERANCE TAX PERMANENT FUND; CHANGING
INVESTMENT RESTRICTIONS; AUTHORIZING AND LIMITING NON-UNITED
STATES INVESTMENTS AND VENTURE CAPITAL INVESTMENTS; DECLARING AN
EMERGENCY.

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

Section 1. Section 7-27-5.1 NMSA 1978 (being Laws 1983,
Chapter 306, Section 8, as amended) is amended to read:

"7-27-5.1. MARKET RATE INVESTMENTS. --

~~[A. The severance tax permanent fund may be invested
in the following market rate investments:~~

~~(1) bonds, notes or other obligations of the
United States government, its agencies or instrumentalities and
bonds, notes or other obligations guaranteed by agencies and
instrumentalities of the United States government, including the~~

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[bracketed material] = delete

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1 ~~bureau of Indian affairs;~~

2 ~~(2) bonds, notes, debentures or other~~
3 ~~obligations issued under the act of congress of June 27, 1934~~
4 ~~known as the Federal Farm Loan Act, as amended, and the Farm~~
5 ~~Credit Act of 1933, as amended;~~

6 ~~(3) bonds, notes, debentures or other~~
7 ~~obligations issued or guaranteed by any national mortgage~~
8 ~~association under the act of congress of June 27, 1934 known as~~
9 ~~the National Housing Act, as amended;~~

10 ~~(4) preferred stock, common stock or~~
11 ~~convertible issues of any corporation organized and operating~~
12 ~~within the United States; provided that it shall have a minimum~~
13 ~~net worth of twenty five million dollars (\$25,000,000) and~~
14 ~~securities listed on one or more national stock exchanges or~~
15 ~~included on a nationally recognized list of stocks; and provided~~
16 ~~further that the fund shall not own more than five percent of~~
17 ~~the voting stock of any company. Common stock shall not be~~
18 ~~purchased if, at the time, it will exceed or will with the~~
19 ~~purchase exceed fifty percent of the book value of the severance~~
20 ~~tax permanent fund. Common stocks should represent a~~
21 ~~diversified portfolio with an above average current yield and~~
22 ~~the prospects for dividend increases and capital appreciation;~~

23 ~~(5) bonds, notes, debentures or other evidence~~
24 ~~of indebtedness, excluding commercial paper of any corporation~~
25 ~~organized and operating within the United States; provided that~~

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1 ~~the bonds, notes, debentures or other evidence of indebtedness~~
2 ~~are rated at least Baa or BBB or the equivalent by a national~~
3 ~~rating service. No more than ten percent of the severance tax~~
4 ~~permanent fund shall be invested in bonds, notes, debentures or~~
5 ~~other evidence of indebtedness that are rated Baa or BBB or the~~
6 ~~equivalent by a national rating service;~~

7 ~~(6) commercial paper rated "prime" quality by a~~
8 ~~national rating service, issued by corporations organized and~~
9 ~~operating within the United States;~~

10 ~~(7) prime bankers' acceptances issued by money~~
11 ~~center banks;~~

12 ~~(8) contracts for the present purchase and~~
13 ~~resale at a specified time in the future, not to exceed one~~
14 ~~year, of specific securities at specific prices at a price~~
15 ~~differential representing the interest income to be earned by~~
16 ~~the state. No such contract shall be invested in unless the~~
17 ~~contract is fully secured by:~~

18 ~~(a) obligations of the United States or~~
19 ~~other securities backed by the United States if the obligations~~
20 ~~or securities have a market value of at least one hundred two~~
21 ~~percent of the amount of the contract; or~~

22 ~~(b) A1 or P1 commercial paper, corporate~~
23 ~~obligations rated AA or better and maturing in five years or~~
24 ~~less or asset-backed securities rated AAA with an average life~~
25 ~~of five years or less if the commercial paper, corporate~~

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Underscored material = new
[bracketed material] = delete

1 ~~obligations or asset-backed securities have a market value of at~~
2 ~~least one hundred three percent of the amount of the contract;~~

3 ~~(9) contracts for the temporary exchange of~~
4 ~~state-owned securities for the use of broker-dealers, banks or~~
5 ~~other recognized institutional investors in securities, for~~
6 ~~periods not to exceed one year, for a specified fee rate. No~~
7 ~~such contract shall be invested in unless the contract is fully~~
8 ~~secured by exchange of an irrevocable letter of credit running~~
9 ~~to the state, cash or equivalent collateral of at least one~~
10 ~~hundred two percent of the market value of the securities plus~~
11 ~~accrued interest temporarily exchanged. Such contracts may~~
12 ~~authorize the state investment officer to invest cash collateral~~
13 ~~in instruments or securities that are authorized investments for~~
14 ~~the funds and may authorize payment of a fee from the funds, or~~
15 ~~from income generated by the investment of cash collateral, to~~
16 ~~the borrower of securities providing cash as collateral. The~~
17 ~~state investment officer may enter into a contract that~~
18 ~~apportions income derived from the investment of cash to pay its~~
19 ~~agent in securities lending transactions; and]~~

20 A. Money made available from the severance tax
21 permanent fund for investment for a period in excess of one year
22 in market rate investments may be invested in the following
23 classes of securities and investments:

24 (1) bonds, notes or other obligations of the
25 United States government, its agencies, government-sponsored

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1 enterprises, corporations or instrumentalities and that portion
2 of bonds, notes or other obligations guaranteed as to principal
3 and interest and issued by the United States government, its
4 agencies, government-sponsored enterprises, corporations or
5 instrumentalities or issued pursuant to acts or programs
6 authorized by the United States government;

7 (2) bonds, notes, debentures and other
8 obligations issued by the state of New Mexico or a municipality
9 or other political subdivision of the state that are secured by
10 an investment grade bond rating from a national rating service,
11 pledged revenue or other collateral or insurance necessary to
12 satisfy the standard of prudence set forth in Section 6-8-10
13 NMSA 1978;

14 (3) bonds, notes, debentures, equipment trust
15 certificates, conditional sales agreements or other evidences of
16 indebtedness of any corporation organized and operating within
17 the United States rated not less than Baa or BBB or the
18 equivalent by a national rating service;

19 (4) notes or obligations securing loans or
20 participation in loans to business concerns or other
21 organizations that are obligated to use the loan proceeds within
22 New Mexico, to the extent that loans are secured by first
23 mortgages on real estate located in New Mexico and are further
24 secured by an assignment of rentals, the payment of which is
25 fully guaranteed by the United States in an amount sufficient to

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1 pay all principal and interest on the mortgage;

2 (5) common and preferred stocks and convertible
3 issues of any corporation; provided that it has a minimum net
4 worth of twenty-five million dollars (\$25,000,000) and
5 securities listed on one or more national stock exchanges or
6 included in a nationally recognized list of stocks; and provided
7 further that the fund shall not own more than five percent of
8 the voting stock of any company;

9 (6) securities of non-United States
10 governmental, quasi-governmental or corporate entities, and
11 these may be denominated in foreign currencies; provided:

12 (a) aggregate non-United States
13 investments shall not exceed fifteen percent of the book value
14 of the severance tax permanent fund;

15 (b) for non-United States stocks and non-
16 United States bonds and notes, issues permitted for purchase
17 shall be limited to those issues traded on a national stock
18 exchange or included in a nationally recognized list of stocks
19 or bonds;

20 (c) currency contracts may be used for
21 investing in non-United States securities only for the purpose
22 of hedging foreign currency risk and not for speculation;

23 (d) the investment management services of
24 a trust company or national bank exercising trust powers or of
25 an investment counseling firm may be employed; and

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1 (e) reasonable compensation for
2 investment management services and other administrative and
3 investment expenses related to these investments shall be paid
4 directly from the assets of the fund, subject to budgeting and
5 appropriation by the legislature;

6 (7) stocks or shares of a diversified
7 investment company registered under the federal Investment
8 Company Act of 1940, as amended, and listed securities of long-
9 term unit investment trusts or individual, common or collective
10 trust funds of banks or trust companies that invest primarily in
11 equity securities authorized in Paragraphs (5) and (6) of this
12 subsection; provided that the investment company has total
13 assets under management of at least one hundred million dollars
14 (\$100,000,000); and provided further that the council may allow
15 reasonable administrative and investment expenses to be paid
16 directly from the assets derived from these investments, subject
17 to budgeting and appropriation by the legislature; and

18 [~~(10)~~] (8) participation interests in New
19 Mexico real-property-related business loans. The actual amount
20 invested under this paragraph shall not exceed ten percent of
21 the severance tax permanent fund and shall be included in any
22 minimum amount of severance tax permanent fund investments
23 required to be placed in New Mexico certificates of deposit.
24 Investments authorized in this paragraph are subject to the
25 following:

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1 (a) the state investment officer may
2 purchase from eligible institutions a participation interest of
3 up to eighty percent in any loan secured by a first mortgage or
4 a deed of trust on the real property located in New Mexico of an
5 eligible business entity, or its subsidiary, that is operating
6 or shall use loan proceeds to commence operations within New
7 Mexico plus any other guarantees or collateral that may be
8 judged by the eligible institution or the state investment
9 officer to be prudent. To be eligible for investment the
10 following minimum requirements shall be met: 1) the loan
11 proceeds shall be used exclusively for the purpose of expanding
12 or establishing businesses in New Mexico, including the
13 refinancing of such businesses for expansion purposes only. If
14 a portion of the loan proceeds were used for refinancing or
15 repaying an existing loan and payment of principal and interest
16 to the state has not been made within ninety days from the due
17 date, unless extended pursuant to agreement between the
18 originating institution and the state investment officer, the
19 originating institution shall buy back the state's participation
20 interest in the loan and begin foreclosure proceedings;
21 2) eligible business entities shall not include public utilities
22 or financial institutions or shopping centers, apartment
23 buildings or other such passive investments; 3) the minimum loan
24 amount shall be two hundred fifty thousand dollars (\$250,000)
25 and may be met by packaging up to ten separate loans satisfying

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1 the requirements of this paragraph. The maximum loan amount
2 shall be two million dollars (\$2,000,000); 4) the loan maturity
3 shall be not less than five years or more than thirty years;
4 5) the maximum loan-to-value ratio shall be seventy-five percent
5 and based on current appraisal of the real property by an
6 appraiser who is licensed or certified in New Mexico and
7 approved by the state investment officer, which shall be made
8 not more than one hundred eighty days from the loan origination
9 date; 6) the interest rate of the loan shall be fixed for five
10 years and shall be adjusted at every fifth anniversary of the
11 note to the rate specified in Item 7) of this subparagraph;
12 7) the yield on the state's participation interest shall in no
13 case be less than the greater of the then-prevailing yield on
14 United States treasury securities of five-year maturity plus two
15 and one-half percent or the yield received by the lending
16 institution calculated exclusive of servicing fees; 8) if
17 payment of principal or interest has not been made within one
18 hundred eighty days from the due date, unless extended pursuant
19 to agreement between the originating institution and the state
20 investment officer, the originating institution shall buy back
21 the state's participation interest in the loan, substitute
22 another qualifying loan or begin foreclosure proceedings; and
23 9) if foreclosure proceedings are commenced, the state and the
24 originating institution shall share in proportion to their
25 participation interest, as provided in this subparagraph, in the

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1 legal and other foreclosure expenses and in any loss incurred as
2 a result of a foreclosure sale;

3 (b) a standardized participation
4 agreement, the form of which shall be approved by the attorney
5 general's office, shall be executed between the investment
6 office and each eligible originating institution. The
7 participation agreement shall provide that the originating
8 institution shall not assign its interest in any loan covered by
9 the agreement without the prior written consent of the state
10 investment officer;

11 (c) a formal forward commitment program
12 may be instituted by the state investment officer with the
13 approval of the council;

14 (d) the council shall adopt regulations:
15 1) defining passive investments; 2) establishing underwriting
16 guidelines; 3) ensuring diversification across a variety of
17 types of collateral, types of businesses and regions of the
18 state; and 4) providing for the review by the state investment
19 officer of servicing and other fees that may be charged by the
20 eligible institution;

21 (e) eligible institutions include banks,
22 savings and loan associations and credit unions operating in the
23 state; and

24 (f) real property is defined as land and
25 attached buildings, but excludes all interests that may be

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1 secured by a security interest under Article 9 of the Uniform
2 Commercial Code, and mineral resource values.

3 ~~[B. The collateral required for either of the forms~~
4 ~~of investment specified in Paragraph (8) or (9) of Subsection A~~
5 ~~of this section shall be delivered to the state fiscal agent or~~
6 ~~its designee contemporaneously with the transfer of funds or~~
7 ~~delivery of the securities, at the earliest time industry~~
8 ~~practice permits, but in all cases settlement shall be on a~~
9 ~~same-day basis.~~

10 ~~C. Neither of the contracts specified in Paragraph~~
11 ~~(8) or (9) of Subsection A of this section shall be invested in~~
12 ~~unless the contracting bank, brokerage firm or recognized~~
13 ~~institutional investor has a net worth in excess of five hundred~~
14 ~~million dollars (\$500,000,000) or is a primary broker or primary~~
15 ~~dealer.]~~

16 B. Not more than sixty-five percent of the book
17 value of the severance tax permanent fund shall be invested at
18 any given time in securities described in Paragraphs (5), (6)
19 and (7) of Subsection A of this section, and no more than ten
20 percent of the book value of the severance tax permanent fund
21 shall be invested at any given time in securities described in
22 Paragraph (3) of Subsection A of this section that are rated Baa
23 or BBB. Assets of the severance tax permanent fund may be
24 combined for investment in common pooled funds to effectuate
25 efficient management.

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1 C. Commissions paid for the purchase and sale of any
2 security shall not exceed brokerage rates prescribed and
3 approved by national stock exchanges or by industry practice."

4 Section 2. Section 7-27-5.6 NMSA 1978 (being Laws 1987,
5 Chapter 219, Section 2, as amended) is amended to read:

6 "7-27-5.6. VENTURE CAPITAL INVESTMENTS. --

7 [~~A. No more than one and one-half percent of the~~
8 ~~book value of the severance tax permanent fund may be invested~~
9 ~~in venture capital funds under this section.]~~

10 A. The state investment officer may make commitments
11 to venture capital funds to invest up to three percent of the
12 market value of the severance tax permanent fund in accordance
13 with the provisions of this section. If invested capital should
14 at any time exceed three percent of the market value of the
15 severance tax permanent fund, no further commitments shall be
16 made until the invested capital is less than three percent of
17 the market value of the severance tax permanent fund.

18 B. [~~If an investment is made under this section]~~
19 Not [~~less~~] more than [~~one million dollars (\$1,000,000) or more~~
20 ~~than four million dollars (\$4,000,000)] ten percent of the
21 amount authorized for investment pursuant to Subsection A of
22 this section shall be invested in any one venture capital fund.
23 The amount invested in any one venture capital fund shall not
24 exceed twenty percent of the committed capital of that fund.
25 [~~Investments shall be made only in the initial offering of a~~~~

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1 ~~venture capital fund, provided such investment may be made in~~
2 ~~one or more stages.~~

3 ~~C. Notwithstanding the provisions of Subsection B of~~
4 ~~this section, if an investment is made in any venture capital~~
5 ~~fund organized and operating in New Mexico or in any venture~~
6 ~~capital fund that maintains an active office in New Mexico, the~~
7 ~~maximum amount that may be invested in any one such venture~~
8 ~~capital fund is six million dollars (\$6,000,000). The amount of~~
9 ~~the fund invested in any one venture capital fund pursuant to~~
10 ~~this subsection shall not exceed forty percent of the committed~~
11 ~~capital of that fund.~~

12 ~~D.] C.~~ In making investments pursuant to this
13 section, the state investment officer and the council shall give
14 consideration to investments in venture capital funds whose
15 investments enhance the economic development objectives of the
16 state, provided such investments offer a rate of return and
17 safety comparable to other venture capital investments currently
18 available.

19 ~~[E.] D.~~ The state investment officer shall make
20 investments pursuant to this section only upon approval of the
21 council and upon review of the recommendation of the venture
22 capital investment advisory committee.

23 ~~[F.] E.~~ As used in this section:

24 (1) "committed capital" means the sum of the
25 fixed amounts of money ~~(which)~~ that accredited investors have

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1 obligated for investment in a venture capital fund and which
2 fixed amounts may be invested in that fund in one or more
3 payments over time; and

4 (2) "venture capital fund" means ~~[any]~~ a
5 limited partnership, limited liability company or corporation
6 ~~[organized and operating in the United States]~~ that:

7 (a) has as its primary business activity
8 the investment of funds in return for equity in businesses for
9 the purpose of providing capital for start-up, expansion, new
10 product development or similar business purposes;

11 (b) holds out the prospects for capital
12 appreciation from such investments comparable to similar
13 investments made by other professionally managed venture capital
14 funds;

15 (c) has a minimum committed capital of
16 ~~[five million dollars (\$5,000,000)]~~ ten million dollars
17 (\$10,000,000);

18 (d) accepts investments only from
19 accredited investors, as that term is defined in Section 2 of
20 the Federal Securities Act of 1933, as amended, 15 U. S. C.
21 Section 77(b), and rules and regulations promulgated pursuant to
22 that section; and

23 (e) has full-time management with at
24 least five years of experience in managing venture capital funds
25 [and

1 ~~(f) receives at least forty percent of~~
2 ~~the fund's capital from institutional investors. For purposes~~
3 ~~of this section, "institutional investors" includes pension~~
4 ~~funds, insurance companies, trust funds and financial~~
5 ~~institutions]. "~~

6 Section 3. A new Section 7-27-5.23 NMSA 1978 is enacted to
7 read:

8 "7-27-5.23. [NEW MATERIAL] SHORT-TERM INVESTMENTS--
9 REPURCHASE AGREEMENTS AND SECURITIES LENDING.--

10 A. Money in or derived from the severance tax
11 permanent fund made available for investment for a period of
12 less than one year may be invested in:

13 (1) contracts for the present purchase and
14 resale at a specified time in the future, not to exceed one
15 year, of specific securities at specified prices at a price
16 differential representing the interest income to be earned by
17 the state. No such contract shall be invested in unless the
18 contract is fully secured by:

19 (a) obligations of the United States or
20 other securities backed by the United States if the obligations
21 or securities have a market value of at least one hundred two
22 percent of the amount of the contract; or

23 (b) A1 or P1 commercial paper, corporate
24 obligations rated AA or better and maturing in five years or
25 less or asset-backed securities rated AAA if the commercial

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1 paper, corporate obligations or asset-backed securities have a
2 market value of a least one hundred two percent of the market
3 value of the contract;

4 (2) securities-lending contracts for the
5 temporary exchange of state-owned securities for the use of
6 broker-dealers, banks or other recognized institutional
7 investors in securities, for periods not to exceed one year, for
8 a specified fee rate. No such contract shall be invested in
9 unless the contract is fully secured by exchange of an
10 irrevocable letter of credit running to the state, cash or
11 equivalent collateral of at least one hundred two percent of the
12 market value of the securities plus accrued interest temporarily
13 exchanged. Such contracts may authorize the state investment
14 officer to invest cash collateral in instruments or securities
15 that are authorized investments for the funds and may authorize
16 payment of a fee from the funds, or from income generated by the
17 investment of cash collateral, to the borrower of securities
18 providing cash as collateral. The state investment officer may
19 enter into a contract that apportions income derived from the
20 investment of cash to pay its agent in securities-lending
21 transactions;

22 (3) commercial paper issued by corporations
23 organized and operating within the United States and rated
24 "prime" quality by a national rating service; and

25 (4) prime bankers' acceptances issued by money

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1 center banks.

2 B. The collateral required for either of the forms
3 of investment specified in Paragraph (1) or (2) of Subsection A
4 of this section shall be delivered to the state fiscal agent or
5 its designee contemporaneously with the transfer of funds or
6 delivery of the securities at the earliest time industry
7 practice permits, but in all cases settlement shall be on a
8 same-day basis.

9 C. Neither of the contracts specified in Paragraphs
10 (1) and (2) of Subsection A of this section shall be invested in
11 unless the contracting bank, brokerage firm or recognized
12 institutional investor has a net worth in excess of five hundred
13 million dollars (\$500,000,000) or is a primary broker or primary
14 dealer. "

15 Section 4. EMERGENCY.--It is necessary for the public
16 peace, health and safety that this act take effect immediately.

**State of New Mexico
House of Representatives**

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 7, 1997

Mr. Speaker:

Your TAXATION AND REVENUE COMMITTEE, to whom has
been referred

HOUSE BILL 144

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

Jerry W. Sandel, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HB 144

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Lovejoy, Parsons, Stell

Absent: None

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**State of New Mexico
House of Representatives**

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 25, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred

HOUSE BILL 144

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Max Coll, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 12 For 1 Against

Yes: 12

No: Buffett

Excused: Heaton, Marquardt, Townsend, Watchman

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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March 7, 1997

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10 Mr. President:

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Your WAYS AND MEANS COMMITTEE, to whom has been

12

referred

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HOUSE BILL 144

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16 has had it under consideration and reports same with

17 recommendation that it DO PASS, and thence referred to the

18

FINANCE COMMITTEE.

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Respectfully submitted,

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Carlos R. Cisneros, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 3 Against

Yes: 5

No: Duran, Kidd, McSorley

Excused: Jennings

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 12, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

HOUSE BILL 144

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Ben D. Altamirano, Chairman

Adopted _____ Not Adopted _____

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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(Chief Clerk)

(Chief Clerk)

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Date _____

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9 The roll call vote was 6 For 0 Against

10 Yes: 6

11 No: None

12 Excused: Carraro, Fidel, Ingle, Lyons, McKibben

13 Absent: None

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State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

February 7, 1997

Mr. Speaker:

**Your TAXATION AND REVENUE COMMITTEE, to whom has
been referred**

HOUSE BILL 144

**has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.**

Respectfully submitted,

Jerry W. Sandel, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HB 144

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Lovejoy, Parsons, Stell

Absent: None

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Underscored material = new
~~[bracketed material] = delete~~