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SENATE BILL 80

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Linda M Lopez

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

RELATING TO FINANCE; AMENDING THE NEW MEXICO FINANCE AUTHORITY ACT TO RESTRICT THE POWER OF THE AUTHORITY TO MAKE GRANTS FROM THE PUBLIC PROJECT REVOLVING FUND; DECLARING AN EMERGENCY.

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

Section 1. Section 6-21-2 NMSA 1978 (being Laws 1992, Chapter 61, Section 2, as amended) is amended to read:

"6-21-2. LEGISLATIVE FINDINGS--DECLARATION OF PURPOSE. --

A. The legislature finds that:

(1) there are necessary state and local capital improvement and infrastructure needs that cannot be met with existing capital financing methods and funding sources;

(2) there is no coordinating entity or process for accomplishing long-term state and local capital

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1 planning, needs assessment or inventory of needs; setting
2 priorities; and making more effective use of existing capital
3 financing methods and funding sources;

4 (3) the uncertain nature of revenues
5 available from the proceeds of severance tax bonds and other
6 state and local revenues have frustrated state and local
7 government efforts to finance needed state and local capital
8 projects; and

9 (4) in order to meet public capital and
10 infrastructure needs, a central state mechanism to coordinate
11 the planning and financing of public projects is necessary.

12 B. It is the purpose of the New Mexico Finance
13 Authority Act to create a governmental instrumentality to
14 coordinate the planning and financing of state and local
15 public projects, to provide for long-term planning and
16 assessment of state and local capital needs and to improve
17 cooperation among the executive and legislative branches of
18 state government and local governments in financing public
19 projects.

20 C. It is the further purpose of the New Mexico
21 Finance Authority Act to provide financing for public projects
22 in a manner that will not impair the capacity of the public
23 project revolving fund to provide future financing to
24 qualified entities for public projects. Funding shall not be
25 provided from the public project revolving fund unless

. 125751. 2

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1 revenues in an amount sufficient to avoid any negative impact
2 on the financing capacity of the public project revolving fund
3 are contemporaneously pledged or dedicated for deposit to the
4 public project revolving fund. Pursuant to Section 6-21-6.1
5 NMSA 1978, the authority may provide funding from the public
6 project revolving fund for the purposes of the Wastewater
7 Facility Construction Loan Act, the Rural Infrastructure Act,
8 the Solid Waste Act or the Drinking Water State Revolving Loan
9 Fund Act. "

10 Section 2. Section 6-21-5 NMSA 1978 (being Laws 1992,
11 Chapter 61, Section 5) is amended to read:

12 "6-21-5. POWERS OF THE AUTHORITY. --The authority is
13 granted all powers necessary and appropriate to carry out and
14 effectuate its public and corporate purposes, including but
15 not limited to the following powers:

- 16 A. to sue or be sued;
- 17 B. to adopt and alter an official seal;
- 18 C. to make and alter bylaws for its organization
19 and internal management and to adopt subject to the review and
20 approval of the New Mexico finance authority oversight
21 committee such regulations as are necessary and appropriate to
22 implement the provisions of the New Mexico Finance Authority
23 Act;
- 24 D. to appoint officers, agents and employees,
25 prescribe their duties and qualifications and fix their

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1 compensation;

2 E. to make, enter into and enforce all contracts,
3 agreements and other instruments necessary, convenient or
4 desirable in the exercise of the authority's powers and
5 functions and for the purposes of the New Mexico Finance
6 Authority Act;

7 F. to acquire, construct, hold, improve, mortgage,
8 sell, lease, convey or dispose of real and personal property
9 for its public purposes;

10 G. to make loans and purchase securities and
11 contract to make loans and purchase securities;

12 H. to make grants to qualified entities to finance
13 public projects, provided that such grants are not made out of
14 money in the public project revolving fund;

15 I. to procure insurance to secure payment on any
16 loan, lease or purchase payments owed to the authority by a
17 qualified entity in such amounts and from such insurers,
18 including the federal government, as it may deem necessary or
19 desirable and to pay any premiums for such insurance;

20 J. to fix, revise from time to time, charge and
21 collect fees and other charges in connection with the making
22 of loans and any other services rendered by the authority;

23 K. to accept, administer, hold and use all funds
24 made available to the authority from any sources;

25 L. to borrow money and to issue bonds and provide

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1 for the rights of the holders of the bonds;

2 M to establish and maintain reserve and sinking
3 fund accounts to insure against and have funds available for
4 maintenance of other debt service accounts;

5 N. to invest and reinvest its funds and to take
6 and hold property as security for the investment of such funds
7 as provided in the New Mexico Finance Authority Act;

8 O. to employ attorneys, accountants, underwriters,
9 financial advisers, trustees, paying agents, architects,
10 engineers, contractors and such other advisors, consultants
11 and agents as may be necessary and to fix and pay their
12 compensation;

13 P. to apply for and accept gifts or grants of
14 property, funds, services or aid in any form from the United
15 States, any unit of government or any person and to comply,
16 subject to the provisions of the New Mexico Finance Authority
17 Act, with the terms and conditions of the gifts or grants;

18 Q. to maintain an office at any place in the state
19 it may determine;

20 R. subject to any agreement with bondholders, to:
21 (1) renegotiate any loan or agreement;
22 (2) consent to any modification of the terms
23 of any loan or agreement; and
24 (3) purchase bonds, which may upon purchase
25 be canceled; and

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1 S. to do any and all things necessary or
2 convenient to carry out its purposes and exercise the powers
3 given and granted in the New Mexico Finance Authority Act. "

4 Section 3. Section 6-21-6 NMSA 1978 (being Laws 1992,
5 Chapter 61, Section 6, as amended) is amended to read:

6 "6-21-6. PUBLIC PROJECT REVOLVING FUND--PURPOSE--
7 ADMINISTRATION.--

8 A. The "public project revolving fund" is created
9 within the authority. The fund shall be administered by the
10 authority as a separate account, but may consist of such
11 subaccounts as the authority deems necessary to carry out the
12 purposes of the fund. The authority is authorized to
13 establish procedures and adopt regulations as required to
14 administer the fund in accordance with the New Mexico Finance
15 Authority Act.

16 B. Except as otherwise provided in the New Mexico
17 Finance Authority Act, money from payments of principal of and
18 interest on loans and payments of principal of and interest on
19 securities held by the authority for public projects
20 authorized specifically by law shall be deposited in the
21 public project revolving fund. The fund shall also consist of
22 any other money appropriated, distributed or otherwise
23 allocated to the fund for the purpose of financing public
24 projects authorized specifically by law.

25 C. Money appropriated to pay administrative costs,

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1 money available for administrative costs from other sources
2 and money from payments of interest on loans or securities
3 held by the authority, including payments of interest on loans
4 and securities held by the authority for public projects
5 authorized specifically by law, that represents payments for
6 administrative costs shall not be deposited in the public
7 project revolving fund and shall be deposited in a separate
8 account of the authority and may be used by the authority to
9 meet administrative costs of the authority.

10 D. Except as otherwise provided in the New Mexico
11 Finance Authority Act, money in the public project revolving
12 fund is appropriated to the authority to make loans [~~or~~
13 ~~grants~~] and to purchase or sell securities to assist qualified
14 entities in financing public projects in accordance with the
15 New Mexico Finance Authority Act and pursuant to specific
16 authorization by law for each project.

17 E. Money in the public project revolving fund not
18 needed for immediate disbursement, including [~~any funds~~] money
19 held in reserve, may be deposited with the state treasurer for
20 short-term investment pursuant to Section 6-10-10.1 NMSA 1978
21 or may be invested in direct and general obligations of or
22 obligations fully and unconditionally guaranteed by the United
23 States, obligations issued by agencies of the United States,
24 obligations of this state or any political subdivision of the
25 state, interest-bearing time deposits, commercial paper issued

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1 by corporations organized and operating in the United States
2 and rated "prime" quality by a national rating service, other
3 investments permitted by Section 6-10-10 NMSA 1978 or as
4 otherwise provided by the trust indenture or bond resolution,
5 if [~~funds are~~] money is pledged for or [~~secure~~] secures
6 payment of bonds issued by the authority.

7 F. The authority shall establish fiscal controls
8 and accounting procedures that are sufficient to assure proper
9 accounting for public project revolving fund payments,
10 disbursements and balances.

11 G. Money on deposit in the public project
12 revolving fund may be used to make interim loans for a term
13 not exceeding one year to qualified entities for the purpose
14 of providing interim financing for any project approved or
15 funded by the legislature.

16 H. Money on deposit in the public project
17 revolving fund may be used to acquire securities or to make
18 loans to qualified entities in connection with the equipment
19 program. As used in this subsection, "equipment program"
20 means the program of the authority designed to finance the
21 acquisition of equipment for fire protection; law enforcement
22 and protection; computer and data processing; street and road
23 construction and maintenance; emergency medical services;
24 solid waste collection, transfer and disposal; radio and
25 telecommunications; and utility system purposes; and to

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1 finance the acquisition, construction and improvement of fire
2 stations. The amount of securities acquired from or the loan
3 made to a qualified entity at any one time pursuant to this
4 subsection shall not exceed five hundred thousand dollars
5 (\$500,000). The authority shall issue bonds within one year
6 of the date the securities are acquired or within one year of
7 the date on which the loans are made and use the bond proceeds
8 to reimburse the public project revolving fund for the amounts
9 temporarily used to acquire securities or to make loans. The
10 temporarily funded projects under the equipment program are
11 not required to obtain specific authorization by law required
12 of projects permanently funded from the public project
13 revolving fund, as provided in this section and Section 6-21-8
14 NMSA 1978.

15 I. Money on deposit in the public project
16 revolving fund may be designated as a reserve [~~funds~~] for any
17 bonds issued by the authority, including bonds payable from
18 sources other than the public project revolving fund, and the
19 authority may covenant in any bond resolution or trust
20 indenture to maintain and replenish the reserve [~~funds~~] from
21 money deposited in the public project revolving fund after
22 issuance of bonds by the authority. "

23 Section 4. Section 6-21-8 NMSA 1978 (being Laws 1992,
24 Chapter 61, Section 8) is amended to read:

25 "6-21-8. PUBLIC PROJECT FINANCE PROGRAM - LOANS - PURCHASE

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1 OR SALE OF SECURITIES. -- To implement a program to assist
2 qualified entities in financing public projects, the
3 authority, subject to specific authorization by law for
4 projects financed with money in the public projects revolving
5 fund, may:

6 A. make loans to qualified entities that establish
7 one or more dedicated sources of revenue to repay the loan
8 from the authority;

9 B. make, enter into and enforce all contracts
10 necessary, convenient or desirable for the purposes of the
11 authority or pertaining to:

12 (1) a loan to a qualified entity;

13 (2) a grant to a qualified entity out of any
14 money available to the authority except money in the public
15 project revolving fund;

16 (3) a purchase or sale of securities
17 individually or on a pooled basis; or

18 (4) the performance of its duties and
19 execution of any of its powers under the New Mexico Finance
20 Authority Act;

21 C. purchase or hold securities at prices and in a
22 manner the authority considers advisable, giving due
23 consideration to the financial capability of the qualified
24 entity, and sell securities acquired or held by it at prices
25 without relation to cost and in a manner the authority

. 125751. 2

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1 considers advisable;

2 D. prescribe the form of application or procedure
3 required of a qualified entity for a loan or purchase of its
4 securities, fix the terms and conditions of the loan or
5 purchase and enter into agreements with qualified entities
6 with respect to loans or purchases;

7 E. charge for its costs and services in review or
8 consideration of a proposed loan to a qualified entity or
9 purchase by the authority of securities, whether or not the
10 loan is made or the securities purchased;

11 F. fix and establish terms and provisions with
12 respect to:

13 (1) a purchase of securities by the
14 authority, including date and maturities of the securities;

15 (2) redemption or payment before maturity;

16 and

17 (3) any other matters that in connection with
18 the purchase are necessary, desirable or advisable in the
19 judgment of the authority;

20 G. to the extent permitted under its contracts
21 with the holders of bonds of the authority, consent to
22 modification of the rate of interest, time and payment of
23 installment of principal or interest, security or any other
24 term of a bond, contract or agreement of any kind to which the
25 authority is a party;

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1 H. in connection with the purchase of any
2 securities, consider the ability of the qualified entity to
3 secure financing from other sources and the costs of that
4 financing and the particular public project or purpose to be
5 financed or refinanced with the proceeds of the securities to
6 be purchased by the authority;

7 I. acquire and hold title to or leasehold interest
8 in real and personal property and to sell, convey or lease
9 that property for the purpose of satisfying a default or
10 enforcing the provisions of a loan agreement; and

11 J. in the event of default by a qualified entity,
12 enforce its rights by suit or mandamus or may use all other
13 available remedies under state law. "

14 Section 5. Section 6-21-11 NMSA 1978 (being Laws 1992,
15 Chapter 61, Section 11) is amended to read:

16 "6-21-11. BONDS OF THE AUTHORITY--USE--SECURITY.--

17 A. The authority may issue and sell bonds in
18 principal amounts it considers necessary to provide sufficient
19 funds for any purpose of the New Mexico Finance Authority Act,
20 including:

- 21 (1) purchase of securities;
- 22 (2) [~~make~~] making loans through the purchase
23 of securities;
- 24 (3) [~~make~~] making grants for public projects
25 out of any money available to the authority except money in

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1 the public project revolving fund;

2 (4) the construction of public projects;

3 (5) the payment, funding or refunding of the
4 principal of or interest or redemption premiums on bonds
5 issued by the authority, whether the bonds or interest to be
6 paid, funded or refunded have or have not become due;

7 (6) the establishment or increase of reserves
8 or sinking funds to secure or to pay principal, premium, if
9 any, or interest on bonds; and

10 (7) all other costs or expenses of the
11 authority incident to and necessary or convenient to carry out
12 its corporate purposes and powers.

13 B. Except as otherwise provided in the New Mexico
14 Finance Authority Act, all bonds or other obligations issued
15 by the authority shall be obligations of the authority payable
16 solely from the revenues, income, fees, charges or funds of
17 the authority that may, pursuant to the provisions of the New
18 Mexico Finance Authority Act, be pledged to the payment of
19 such obligations, and the bonds or other obligations shall not
20 create an obligation, debt or liability of the state. No
21 breach of any pledge, obligation or agreement of the authority
22 shall impose a pecuniary liability or a charge upon the
23 general credit or taxing power of the state or any political
24 subdivision of the state.

25 C. As security for the payment of the principal,

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1 interest or premium, if any, on bonds issued by the authority,
2 the authority is authorized to pledge, transfer and assign:

3 (1) any obligation of a qualified entity that
4 is payable to the authority;

5 (2) the security for the qualified entity's
6 obligations;

7 (3) money in the public project revolving
8 fund or any subaccount of that fund subject to the provisions
9 of Subsection C of Section [~~6 of the New Mexico Finance~~
10 ~~Authority Act~~] 6-21-6 NMSA 1978;

11 (4) any grant, subsidy or contribution from
12 the United States or any of its agencies or instrumentalities;
13 or

14 (5) any income, revenues, funds or other
15 money of the authority from any other source authorized for
16 such pledge, transfer or assignment other than from the public
17 [~~projects~~] project revolving fund under the New Mexico Finance
18 Authority Act. "

19 Section 6. EMERGENCY.--It is necessary for the public
20 peace, health and safety that this act take effect
21 immediately.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5 February 2, 1999

6
7 Mr. President:

8
9 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
10 whom has been referred

11
12 SENATE BILL 80

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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, and thence referred to the
16 JUDICIARY COMMITTEE.

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18 Respectfully submitted,

Roman M. Maes, Chairman

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Macias, McKibben, Robinson

Absent: None

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

SB 80/a

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7 February 17, 1999

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9
10 Mr. President:

11
12 Your JUDICIARY COMMITTEE, to whom has been referred

13
14 SENATE BILL 80

15
16 has had it under consideration and reports same with
17 recommendation that it DO PASS, amended as follows:

18
19 1. On page 14, between lines 18 and 19, insert the
20 following new section:
21

22 "Section 6. Section 6-21-21 NMSA 1978 (being Laws 1992,
23 Chapter 61, Section 21, as amended) is amended to read:
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25 . 125751. 2

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

SJC/SB 80

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"6-21-21. MONEY OF THE AUTHORITY-- EXPENSES-- AUDIT--
ANNUAL REPORT.--

A. All money of the authority, except as otherwise authorized or provided in the New Mexico Finance Authority Act or in a bond resolution, trust indenture or other instrument under which bonds are issued, shall be deposited as soon as practical in a separate account or accounts in banks or trust companies organized under the laws of this state. All deposits of money shall be secured, if required by the authority, in such a manner as the authority determines to be prudent. Banks or trust companies are authorized to give security for deposits of the authority.

B. Subject to the provisions of any contract with bondholders, the authority shall prescribe a system of accounts.

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

SJC/SB 80

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C. Money held by the authority that is not needed for immediate disbursement, including ~~[any funds]~~ money held in reserve, may be deposited with the state treasurer for short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivision of the state, interest-bearing time deposits, commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service, other investments permitted by Section 6-10-10 NMSA 1978 or as otherwise provided by the trust indenture or bond resolution, if the ~~[funds are]~~ money is pledged for or ~~[secure]~~ secures payment of bonds issued by the authority.

D. The authority shall have an audit of its books and accounts made at least once each year by the state auditor or by a certified public accounting firm whose proposal has been

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Page 20

reviewed and approved by the state auditor. The cost of the audit shall be an expense of the authority. Copies of the audit shall be submitted to the governor and the New Mexico finance authority oversight committee and made available to the public.

E. The authority shall submit a report of its activities to the governor and to the legislature not later than December 1 of each year. Each report shall set forth a complete operating and financial statement covering its operations for that year and a complete list of qualified entities requesting loans from the public project revolving fund during the preceding year whose requests were denied because the qualified entities lacked the financial resources to repay a loan."

2. Renumber the succeeding section accordingly.

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SJC/SB 80

Page 21

Respectfully submitted,

Cisco McSorley, Vice Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: None

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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SJC/SB 80

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Excused: Aragon, Sanchez, Stockard

Absent: None

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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 5, 1999
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8 Mr. Speaker:
9

10 Your TAXATION AND REVENUE COMMITTEE, to whom has
11 been referred
12

13 SENATE BILL 80, as amended
14

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

18 Respectfully submitted,
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22 _____
23 Jerry W. Sandel, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HTRC/SB 80/a

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

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Gubbels, Lujan, Russell, Silva, Whitaker, Sandel

Absent: None

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

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4 March 19, 1999

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7 Mr. Speaker:

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9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
10 whom has been referred

11 SENATE BILL 80, as amended

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

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16 Respectfully submitted,

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21 Max Coll, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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

Date _____

The roll call vote was 16 For 0 Against

Yes: 16

Excused: Buffett

Absent: None

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