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HOUSE BILL 563

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

INTRODUCED BY

RAYMOND G. SANCHEZ

AN ACT

RELATING TO EDUCATION; ENACTING THE EDUCATION TRUST ACT;
CREATING A FUND; ENACTING SECTIONS OF THE NMSA 1978; MAKING
APPROPRIATIONS.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 7 of this act may be cited as the "Education Trust Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
Education Trust Act:

A. "beneficiary" means a person who is entitled to
receive benefits under a college investment agreement or a
prepaid tuition contract;

B. "board" means the education trust board;

C. "commission" means the commission on higher
education;

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1 D. "college investment agreement" means an agreement
2 entered into by the board and an investor, pursuant to the
3 provisions of the Education Trust Act, to defray the costs of
4 attendance of a beneficiary at an institution of higher
5 education;

6 E. "council" means the state investment council;

7 F. "fund" means the education trust fund;

8 G. "institution of higher education" means a state
9 educational institution as defined in Section 6-17-1.1 NMSA
10 1978, a branch college, an independent community college, a
11 technical and vocational institute, an institution licensed by
12 the commission or a regionally accredited independent post-
13 secondary institution operated in New Mexico;

14 H. "investor" means a person who has entered into a
15 college investment agreement with the board;

16 I. "prepaid tuition contract" means a contract
17 entered into by the board and a purchaser, pursuant to the
18 provisions of the Education Trust Act, to provide for the
19 payment of higher education tuition and required fees of a
20 beneficiary; and

21 J. "purchaser" means a person who is obligated to
22 make payments under a prepaid tuition contract.

23 Section 3. [NEW MATERIAL] EDUCATION TRUST FUND--
24 CREATION. --

25 A. The "education trust fund" is created in the

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1 state treasury. The board shall deposit all money received
2 pursuant to college investment agreements and prepaid tuition
3 contracts into the fund. Money in the fund shall consist of
4 appropriations, investments, payments, gifts, bequests or
5 donations. All money invested in the fund is appropriated to
6 the board. Money in the fund shall not revert to the general
7 fund at the end of the fiscal year. The board shall account for
8 each payment from an investor or purchaser on behalf of a
9 beneficiary pursuant to a college investment agreement or
10 prepaid tuition contract. All money in the fund shall be
11 invested by the state investment officer according to rules and
12 regulations promulgated by the council, subject to the approval
13 of the board, for the investment of funds pursuant to the
14 Education Trust Act. The board shall review investments made
15 pursuant to this subsection at least quarterly.

16 B. Expenditures from the fund shall be for payments
17 to institutions of higher education on behalf of beneficiaries
18 or for refunds, in accordance with the provisions of the
19 Education Trust Act, and for costs of administering that act.

20 C. If, prior to the end of fiscal year 2003, the
21 assets of the fund are sufficiently in excess of those required
22 to meet the obligations of the fund, the fund shall refund to
23 the general fund the non-reverted portion of the appropriation
24 provided for in Section 10 of the Education Trust Act.

25 Section 4. [NEW MATERIAL] BOARD CREATED-- MEMBERS--

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1 APPOINTMENT--TERMS OF OFFICE. --

2 A. There is created the "education trust board".
3 The board is administratively attached to the commission, and
4 the commission shall provide administrative support for the
5 board in carrying out its duties pursuant to the Education Trust
6 Act. The board shall consist of the following voting members:

7 (1) the executive director of the commission,
8 or his designee, who shall be the ex-officio chair of the board;

9 (2) the state investment officer, or his
10 designee;

11 (3) one member appointed by the governor;

12 (4) one member representing institutions of
13 higher education appointed by the speaker of the house of
14 representatives; and

15 (5) one member representing students at
16 institutions of higher education appointed by the president pro
17 tempore of the senate.

18 B. The appointed members must possess knowledge,
19 skill and experience in higher education, business or finance.

20 C. The appointed members shall serve six-year terms,
21 with the exception of the member representing students, who
22 shall be appointed for a two-year term. Vacancies on the board
23 shall be filled by the respective appointing authority for the
24 remainder of the vacating member's term.

25 D. Members of the board shall be subject to the

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1 provisions of the Per Diem and Mileage Act and shall receive no
2 other compensation, perquisite or allowance for their service on
3 the board.

4 Section 5. [NEW MATERIAL] COLLEGE INVESTMENT AGREEMENT. --

5 A. An investor may enter into a college investment
6 agreement with the board under which the investor agrees to make
7 investments into the fund from time to time for the purpose of
8 defraying the costs of attendance billed by institutions of
9 higher education. An investor may enter into a college
10 investment agreement on behalf of any beneficiary under the age
11 of eighteen. The board shall adopt a form of the college
12 investment agreement to be used by the board and investors.

13 B. The beneficiary under a college investment
14 agreement must be younger than eighteen years of age at the time
15 the investor enters into the agreement and must be:

16 (1) a resident of this state at the time the
17 investor enters into the agreement; or

18 (2) a nonresident who is the child of a parent
19 who is a resident of this state at the time that parent enters
20 into the agreement.

21 C. The board shall provide for the direct payment of
22 principal, investment earnings and capital appreciation accrued
23 pursuant to a college investment agreement to the institution of
24 higher education that the beneficiary actually attends.

25 D. The board may require a reasonable period of

1 residence in this state, together with other related criteria,
2 for a beneficiary or an investor. A beneficiary is considered a
3 resident for purposes of tuition regardless of the beneficiary's
4 residence on the date of enrollment.

5 E. The college investment agreement may be
6 terminated by the investor at any time. The investor may modify
7 the college investment agreement to designate a new beneficiary
8 or beneficiaries instead of the original beneficiary if the new
9 beneficiary or beneficiaries meet the requirements of the
10 original beneficiary on the date the designation is changed and
11 if the original beneficiary:

- 12 (1) dies;
- 13 (2) is not admitted to the institution of
14 higher education following proper application;
- 15 (3) elects not to attend the institution of
16 higher education or, if attending, elects to discontinue higher
17 education; or
- 18 (4) for any other circumstance approved by the
19 board, does not exercise his rights under the college investment
20 agreement.

21 F. If the college investment agreement is terminated
22 pursuant to the provisions of this section, the board shall
23 refund to the investor, to any person designated by the investor
24 pursuant to the agreement or to the legal representative of the
25 investor, an amount equal to all the principal contributed or

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1 paid in by the investor plus interest not to exceed four percent
2 annually. The balance of the accrued investment earnings and
3 capital appreciation less administrative costs shall be credited
4 to the fund.

5 G. The board shall establish a refund policy if a
6 beneficiary receives additional student financial aid.

7 H. A college investment agreement terminates on the
8 tenth anniversary of the date the beneficiary is projected to
9 graduate from high school, not counting time spent by the
10 beneficiary as an active-duty member of the United States armed
11 services.

12 I. Gifts and bequests to the fund may be made in the
13 name of a specific beneficiary or in the name of the fund in
14 general. Gifts and bequests given for the benefit of a specific
15 beneficiary shall be credited to that beneficiary, and gifts and
16 bequests given to the fund in general shall be credited equally
17 to each beneficiary of a college investment agreement.

18 J. Principal paid into the fund, together with
19 accrued investment earnings and capital appreciation, shall be
20 excluded from any calculation of a beneficiary's state student
21 financial aid eligibility.

22 K. The board shall annually notify each investor of
23 the balance of his college savings agreement principal, accrued
24 investment earnings and capital appreciation.

25 Section 6. [NEW MATERIAL] PREPAID HIGHER EDUCATION

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1 TUITION PROGRAM - RULES AND REGULATIONS. --

2 A. The board is authorized to adopt and promulgate
3 rules and regulations in order to establish a prepaid higher
4 education tuition program. Prior to the establishment of the
5 program, the board will contract for a thorough feasibility
6 study of the proposed prepaid higher education tuition program,
7 including an actuarial analysis of the assumptions underlying
8 the proposed program, and report to the appropriate interim
9 committee of the legislature prior to November 1, 1997. The
10 report shall include a recommendation from the board regarding
11 whether it is feasible to proceed with the adoption of the
12 proposed program based on the findings of the feasibility study.

13 B. The rules and regulations regarding the prepaid
14 higher education tuition program shall specify at least the
15 following:

16 (1) that prepaid tuition contracts, once paid,
17 will cover all tuition and required fees of public institutions
18 of higher education;

19 (2) that payments for prepaid tuition contracts
20 may be made either in a lump sum or in installments;

21 (3) that the prepaid tuition contracts shall
22 include at least the following:

23 (a) provisions that allow purchasers to
24 choose from payment plans that pay the tuition and required fees
25 for public institutions of higher education;

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1 (b) provisions that allow for rollover of
2 prepaid higher education tuition benefits from one plan to
3 another, and that provide that benefits may be used at any
4 public institution of higher education;

5 (c) penalties for termination of the
6 contract or default on any of the contract's terms or
7 conditions; and

8 (d) provisions that allow purchasers to
9 change or switch beneficiaries;

10 (4) that beneficiaries must meet certain
11 minimum eligibility requirements as determined by the board;

12 (5) that the board shall consider at least the
13 following variables when setting contract prices:

14 (a) the amount and estimated rate of
15 increase of tuition and fees at public institutions of higher
16 education;

17 (b) estimated investment returns;

18 (c) estimated administrative costs; and

19 (d) the period between the date the
20 contract is entered into and the date the beneficiary is
21 projected to graduate from high school;

22 (6) that gifts or bequests may be made to the
23 fund, either on behalf of a beneficiary or to the fund
24 generally;

25 (7) that public institutions of higher

Underscored material = new
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1 education are either required to participate or that the board
2 may specify how and when public institutions of higher education
3 become eligible to participate in the program;

4 (8) that benefits under a prepaid tuition
5 contract are excluded from any calculation of a beneficiary's
6 state student financial aid eligibility; and

7 (9) that the board shall annually provide for
8 audited statements and actuarial studies on the condition of the
9 fund.

10 C. In no event shall any liability of, or
11 contractual obligation incurred by, the program established
12 pursuant to the provisions of this section obligate or encumber
13 any of the state's permanent funds, the severance tax permanent
14 fund or any money that is a part of a state-funded financial aid
15 program.

16 Section 7. [NEW MATERIAL] REPORTS. --

17 A. Not later than November 1 of each year, the board
18 shall submit to the governor and to the appropriate interim
19 legislative committee a report including:

20 (1) the board's fiscal transactions during the
21 preceding fiscal year;

22 (2) the market and book value of the fund as of
23 the end of the preceding fiscal year;

24 (3) the asset allocations of the fund expressed
25 in percentages of stocks, fixed income, securities, cash or

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1 other financial assets;

2 (4) the rate of return on the investment of the
3 fund's assets during the preceding fiscal year;

4 (5) an actuarial valuation of the assets and
5 liabilities of the program, including the extent to which the
6 program's liabilities are unfunded; and

7 (6) complete prepaid tuition contract sales
8 information, including projected enrollments of beneficiaries at
9 institutions of higher education.

10 B. The board shall make the report described by
11 Subsection A available to purchasers of prepaid tuition
12 contracts and investments under college investment agreements.

13 Section 8. A new section of the Income Tax Act is enacted
14 to read:

15 " [NEW MATERIAL] DEDUCTION-PAYMENTS INTO EDUCATION TRUST
16 FUND. -- A taxpayer may claim a deduction from net income in an
17 amount equal to the payments made by the taxpayer into the
18 education trust fund pursuant to a college investment agreement
19 or prepaid tuition contract under the Education Trust Act in the
20 taxable year for which the deduction is being claimed. A
21 husband and wife who file separate returns for the taxable year
22 in which they could have filed a joint return may each claim
23 only one-half of the deduction that would have been allowed on
24 the joint return. Individuals having income both within and
25 without this state shall apportion this exemption in accordance

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1 with regulations of the secretary. "

2 Section 9. A new section of the Income Tax Act is enacted
3 to read:

4 " [NEW MATERIAL] EXEMPTION-- EARNINGS FROM EDUCATION TRUST
5 FUND.-- All earnings of an investor, purchaser or beneficiary
6 from investment of money paid by the investor or purchaser or on
7 behalf of the beneficiary into the education trust fund pursuant
8 to a college investment agreement or prepaid tuition contract
9 authorized in the Education Trust Act are exempt from the income
10 tax pursuant to the Income Tax Act. "

11 Section 10. APPROPRIATION.-- One hundred seventy-five
12 thousand dollars (\$175,000) is appropriated from the general
13 fund to the commission on higher education for expenditure in
14 fiscal year 1998 for the purpose of advertising, conducting
15 feasibility studies and other costs associated with implementing
16 the provisions of the Education Trust Act. Any unexpended or
17 unencumbered funds remaining at the end of the fiscal year shall
18 revert to the general fund.

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 19, 1997

Mr. Speaker:

Your EDUCATION COMMITTEE, to whom has been referred

HOUSE BILL 563

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

1. On page 2, line 9, before "educational" insert "public
post-secondary".

2. On page 8, line 17, after "of" insert "state".

3. On page 8, line 25, after "for" insert "state".

4. On page 9, line 3, after "any" insert "state".

5. On page 9, line 15, after "at" insert "state".

6. On page 9, line 25, after "that" insert "state".

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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7. On page 10, line 2, after "when" insert "state".,

and thence referred to the APPROPRIATIONS AND FINANCE
COMMITTEE.

Respectfully submitted,

Samuel F. Vigil, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HEC/HB 563

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The roll call vote was 10 For 0 Against
Yes: 10
Excused: Mallory, Nicely, S.M. Williams
Absent: None

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 5, 1997

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7 Mr. Speaker:

8 Your TAXATION AND REVENUE COMMITTEE, to whom has
9 been referred

10
11 HOUSE BILL 563, as amended

12
13 has had it under consideration and reports same with
14 recommendation that it DO PASS, amended as follows:

15 1. Strike House Appropriations and Finance Committee
16 Amendments 6 and 7.

17
18 2. On page 1, line 12, strike "NMSA 1978" and insert in lieu
19 thereof "INCOME TAX ACT".

20
21 3. On page 2, line 11, strike the comma and insert in lieu
22 thereof "or".

23 4. On page 2, line 12, after "commission", strike the
24 remainder of the line and strike all of line 13 up to the
25 semi colon.

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HTRC/HB 563

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5. On page 11, line 25, strike "exemption" and insert in lieu thereof "deduction".

6. On page 12, strike lines 4 through 10 and insert in lieu thereof:

"" [NEW MATERIAL] EDUCATION TRUST FUND-- EARNINGS TAX EXEMPT--
WITHDRAWALS ARE TAXABLE INCOME-- AUTHORITY TO WITHHOLD TAX. --

A. All earnings of an investor, purchaser or beneficiary from investment of money paid by the investor or purchaser or on behalf of the beneficiary into the education trust fund pursuant to a college investment agreement or prepaid tuition contract authorized in the Education Trust Act are exempt from the income tax pursuant to the Income Tax Act.

B. All amounts refunded to an investor upon termination of a college investment agreement or to a purchaser upon termination of a prepaid tuition contract pursuant to the Education Trust Act are taxable in the year in which they are received.

C. Upon payment of a refund to an investor or purchaser pursuant to the provisions of the Education Trust Act, the education trust board shall deduct and withhold from that refund a tax in an amount equal to six percent of the refund. The amount withheld shall be transmitted to the taxation and revenue department for disposition pursuant to regulations of the

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HTRC/HB 563

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secretary. "".

Respectfully submitted,

Jerry W. Sandel, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 13 For 0 Against

Yes: 13

Excused: None

Absent: None

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FORTY-THIRD LEGISLATURE

FIRST SESSION

March 8, 1997

HOUSE FLOOR AMENDMENT number 1 to HOUSE BILL 563, as amended

Amendment sponsored by Representative Danice Picraux

1. On page 2, line 10, strike the third comma and insert in lieu thereof "or".

2. On page 2, lines 11 and 12, strike ", an institution licensed by the commission".

3. On page 4, line 1, after "OFFICE" insert "-- POWERS AND DUTIES".

4. On page 5, between lines 3 and 4, insert the following new subsection:

"E. The board is authorized to adopt and promulgate rules and regulations as necessary to carry out the provisions of the Education Trust Act, protect the financial integrity of the fund, preserve the program's benefits and assure the appropriate use of the tax benefits.

FORTY-THIRD LEGISLATURE
FIRST SESSION

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HFL/HB 563, aa

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The board shall also determine and adopt by regulation the cost of attendance at institutions of higher education, provided that the cost of attendance shall include the same components and allowances as are used to determine cost of attendance for the federal student financial assistance programs. "

5. On page 6, line 23, after "investor" strike the remainder of the line, strike all of line 24 and on line 25, strike "investor, ".

6. On page 10, line 25, after "income" strike the comma.

7. On page 11, line 20, after the period insert:

"The amount of payments made on behalf of any one beneficiary that may be deducted shall not exceed in the aggregate the cost of attendance at the applicable institution of higher education, as determined by the education trust board. "

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FORTY-THIRD LEGISLATURE
FIRST SESSION

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Date _____

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FORTY-THIRD LEGISLATURE
FIRST SESSION

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 15, 1997

Mr. President:

Your EDUCATION COMMITTEE, to whom has been referred

HOUSE BILL 563, as amended

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

Respectfully submitted,

Cynthia Nava, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

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FORTY-THIRD LEGISLATURE
FIRST SESSION

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Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Boitano, Duran, Gorham, Rawson

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION

HFL/HB 563, aa

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 18, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

HOUSE BILL 563, as amended

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

Respectfully submitted,

Ben D. Altamirano, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

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FORTY-THIRD LEGISLATURE
FIRST SESSION

HFL/ HB 563, aa

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Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Carraro, Eisenstadt, Ingle, Lyons, McKibben

Absent: None

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 1, 1997

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7 Mr. Speaker:

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

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11 HOUSE BILL 563, as amended

12
13 has had it under consideration and reports same with
14 recommendation that it DO PASS, amended as follows:

15 1. On page 1, lines 12 and 13, strike "; MAKING APPROPRIATIONS".

16
17 2. On page 3, between lines 24 and 25, insert the following new
18 subsection:

19
20 "D. In no event shall any liability of, or contractual
21 obligation incurred by, the program established pursuant to the
22 provisions of the Education Trust Act obligate or encumber any of the
23 state's land grant permanent funds, the severance tax permanent fund or
24 any money that is a part of a state-funded financial aid program".

25 3. On page 5, line 11, strike "eighteen" and insert in lieu
thereof "nineteen".

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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4. On page 5, line 14, strike "eighteen" and insert in lieu thereof "nineteen".

5. On page 10, strike lines 10 through 15.

6. On page 11, line 20, after the period insert "If payments made by the taxpayer to the education trust fund are not expended for the purposes authorized by the Education Trust Act, the payments shall be taxable in the year the withdrawal is made.".

7. On page 12, line 10, after the period insert "All earnings of an investor, purchaser or beneficiary from investment of money paid by the investor or purchaser or on behalf of the beneficiary into the education trust fund shall be taxable in the year they are withdrawn if the earnings are not expended for the purposes authorized by the Education Trust Act.".

8. On page 12, lines 11 through 18, strike Section 10 in its entirety.

Respectfully submitted,

Max Coll, Chairman

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 0 Against

Yes: 12

Excused: Abeyta, Knowles, Marquardt, Pearce, Taylor, JP

Absent: None

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