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**HOUSE BILL 774**

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

**INTRODUCED BY**

**JOE M STELL**

**FOR THE INTEGRATED WATER AND RESOURCE PLANNING COMMITTEE**

**AN ACT**

**RELATING TO SOIL AND WATER CONSERVATION; AMENDING SECTIONS OF  
THE NMSA 1978 TO TRANSFER ADMINISTRATION OF THE SOIL AND WATER  
CONSERVATION DISTRICT ACT TO THE NEW MEXICO DEPARTMENT OF  
AGRICULTURE.**

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

**Section 1. Section 9-5A-3 NMSA 1978 (being Laws 1987,  
Chapter 234, Section 3) is amended to read:**

**"9-5A-3. DEPARTMENT ESTABLISHED. - -**

**A. There is created in the executive branch the  
"energy, minerals and natural resources department". The  
department shall be a cabinet department and shall include, but  
not be limited to, the following organizational units:**

- (1) the administrative services division;**
- (2) the state park and recreation division;**

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1 (3) the forestry division [~~which shall include~~  
2 ~~a soil and water conservation bureau~~];

3 (4) the energy conservation and management  
4 division;

5 (5) the mining and minerals division; and

6 (6) the oil conservation division.

7 B. The state game commission is administratively  
8 attached to the department. "

9 Section 2. Section 9-5A-4 NMSA 1978 (being Laws 1987,  
10 Chapter 234, Section 4) is amended to read:

11 "9-5A-4. DIVISIONS--DUTIES.--In addition to the duties  
12 assigned to each division of the energy, minerals and natural  
13 resources department by the secretary of energy, minerals and  
14 natural resources:

15 A. the administrative services division shall  
16 provide clerical, recordkeeping and administrative support to  
17 the department in the areas of personnel, budget, procurement  
18 and contracting;

19 B. the energy conservation and management division  
20 shall plan, administer, review, provide technical assistance,  
21 maintain records and monitor state and federal energy  
22 conservation and alternative energy technology programs;

23 C. the forestry division shall enforce and  
24 administer all laws and regulations relating to forestry [~~and~~  
25 ~~soil and water conservation~~] on lands within the state;

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1           D. the mining and minerals division shall enforce  
2 and administer laws and regulations relating to mine safety,  
3 coal surface mine reclamation and abandoned mine lands  
4 reclamation;

5           E. the oil conservation division shall administer  
6 the laws and regulations relating to oil, gas and geothermal  
7 resources, except those laws specifically administered by  
8 another authority; and

9           F. the state park and recreation division shall  
10 develop, maintain, manage and supervise all state parks and  
11 state-owned or state-leased recreation areas. "

12           Section 3. Section 73-20-27 NMSA 1978 (being Laws 1965,  
13 Chapter 137, Section 3, as amended) is amended to read:

14           "73-20-27. DEFINITIONS. --As used in the Soil and Water  
15 Conservation District Act:

16           A. "district" means a soil and water conservation  
17 district, which is a governmental subdivision of the state, a  
18 public body corporate and politic, organized for the purposes,  
19 granted the powers and subject to the restrictions of the Soil  
20 and Water Conservation District Act;

21           B. "supervisor" means a member of the governing body  
22 of a district;

23           C. "committee" or "commission" means the soil and  
24 water conservation commission;

25           D. "agencies of the United States" includes the

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1 ~~[soil and]~~ natural resources conservation service of the United  
2 States department of agriculture;

3 E. "landowner" includes resident and nonresident  
4 owners of natural resources as defined in the Soil and Water  
5 Conservation District Act;

6 F. "due notice" means the publication of the  
7 appropriate information in notice form in a newspaper or other  
8 written medium of general circulation within the affected  
9 geographical area at least twice with a period of ten or more  
10 days intervening between the first and last publication. If a  
11 newspaper of general circulation or other written medium of  
12 general circulation does not service the affected geographical  
13 area, due notice may be given by posting the appropriate  
14 information in notice form in six conspicuous public places  
15 where it is customary to post notices concerning county or  
16 municipal affairs within the affected geographical area;

17 ~~[G. "division" means the forestry division of the  
18 energy, minerals and natural resources department;]~~

19 G. "department" means the New Mexico department of  
20 agriculture;

21 H. "director" means the director of the department;

22 ~~[H.]~~ I. "natural resources" includes land, except  
23 the oil and gas and other minerals underlying the land, soil,  
24 water, vegetation, trees, natural beauty, scenery and open  
25 space; human resources are included where appropriate; and

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1                    ~~[I. "secretary" means the secretary of energy,~~  
2 ~~minerals and natural resources]~~

3                    J. "board" means the board of regents of New Mexico  
4 state university. "

5                    Section 4. Section 73-20-31 NMSA 1978 (being Laws 1978,  
6 Chapter 175, Section 1, as amended) is amended to read:

7                    "73-20-31. POWERS AND DUTIES OF ~~[SECRETARY AND SOIL AND~~  
8 ~~WATER CONSERVATION COMMISSION]~~ DEPARTMENT AND BOARD. --

9                    A. The supervising officer of any state agency or  
10 institution of learning shall, within the limitations of his  
11 budget and the demands of his agency or institution, assign or  
12 detail staff or personnel, render special reports and undertake  
13 surveys or studies pertaining to soil and water conservation for  
14 the ~~[soil and water conservation bureau of the division and for~~  
15 ~~the]~~ commission and the department as requested.

16                    B. The ~~[secretary]~~ department, with the advice of  
17 the commission, shall:

18                    (1) assist districts in the development of  
19 district soil and water conservation programs and, from such  
20 programs, develop a soil and water conservation program for the  
21 state;

22                    (2) provide information for district  
23 supervisors concerning the experience and activities of all  
24 districts and facilitate the exchange of experience and advice  
25 among districts;

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1 (3) promote cooperation among districts and, by  
2 advice and consultation, assist in the coordination of district  
3 programs;

4 (4) secure and maintain the cooperation and  
5 assistance of state and federal agencies and seek to secure and  
6 maintain the cooperation and assistance of national, state and  
7 local organizations and groups interested or active in natural  
8 resource conservation and development;

9 (5) disseminate information throughout the  
10 state concerning district activities and programs; and

11 (6) encourage and, within budget limitations,  
12 render aid and assistance to district activities and facilitate  
13 and encourage the formation of new districts in areas where  
14 district organization is desirable.

15 C. The commission may, on its own initiative,  
16 furnish advice and recommendations to the [secretary] department  
17 and the board concerning any matter that in its opinion has a  
18 significant impact on or otherwise substantially affects soil  
19 and water conservation."

20 Section 5. Section 73-20-32 NMSA 1978 (being Laws 1973,  
21 Chapter 324, Section 4, as amended) is amended to read:

22 "73-20-32. ADDITIONAL DUTIES OF [DIVISION] DEPARTMENT. -- In  
23 addition to all other powers and duties of the [division]  
24 department, it shall:

25 A. upon request and within budget limitations,

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1 provide land-use planning assistance in the areas of terrain  
2 management consisting of flood control, drainage, erosion and  
3 measures required for adapting proposed development to existing  
4 soil characteristics and topography; and

5 B. with the [~~approval~~] advice of the commission,  
6 divide the state into six soil and water conservation regions  
7 and assign each of the [~~presently~~] currently created soil and  
8 water conservation districts or those created in the future to  
9 one of the six geographical regions. Division and assignment  
10 may be amended from time to time with the [~~consent~~] advice of  
11 the commission as the boundaries of the districts alter or other  
12 conditions warrant. "

13 Section 6. Section 73-20-36 NMSA 1978 (being Laws 1978,  
14 Chapter 85, Section 1) is amended to read:

15 "73-20-36. SOIL AND WATER CONSERVATION DISTRICTS--  
16 MODIFICATION OF EXISTING DISTRICTS. --

17 A. Petitions for including additional land within an  
18 existing organized district may be filed with the [~~division~~]  
19 department and shall be treated in the same manner as petitions  
20 for the creation of a proposed district. If, however, such a  
21 petition is signed by two-thirds or more of the owners of the  
22 additional land proposed to be included in the district, the  
23 [~~commission~~] department may enter its determinations without  
24 hearing or referendum. The commission shall advise the  
25 department on all petitions filed pursuant to this section.

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1           B. Petitions for severing land from the defined  
2 geographical area of an existing organized district, or for its  
3 severance and inclusion within another existing organized  
4 district, may be filed with the ~~[division]~~ department and may be  
5 treated in the same manner as petitions for the creation of a  
6 proposed district. If, however, ~~[such]~~ the petition is signed  
7 by two-thirds or more of the owners of the land to be severed or  
8 is submitted by the boards of supervisors of each district  
9 affected, the ~~[commission]~~ department may enter its  
10 determinations without hearing or referendum.

11           C. Petitions for consolidating two or more districts  
12 or for separating an existing district into two or more  
13 districts may be filed with the ~~[division]~~ department by the  
14 boards of supervisors of each district affected. After due  
15 notice, a public hearing shall be held in each district  
16 affected, and no action can be taken without the majority  
17 approval of the voters present at the hearing. If petitions  
18 have been filed pursuant to this subsection and approved as  
19 ~~[herein]~~ provided in the Soil and Water Conservation District  
20 Act, it shall not be necessary to obtain the consent of the  
21 landowners within the districts prior to the consolidation or  
22 division.

23           D. The ~~[commission]~~ department shall give written  
24 notice to the secretary of state of any modification in the  
25 defined geographical area of any existing organized district;

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1 the notice of modification shall describe and portray by map the  
2 modified geographical area. The secretary of state shall note,  
3 file and record each modification and shall issue, under state  
4 seal, a certificate of reorganization to each district affected.  
5 Certificates of reorganization shall have the same force and  
6 effect, and shall be accorded the same dignity, as the  
7 certificates they supersede.

8 E. In the event a supervisor of a district is  
9 disqualified from holding office by the modification of his  
10 district, he shall be deemed to have resigned, and his successor  
11 shall be appointed to serve the unexpired term by the remaining  
12 supervisors of the district. In the event two or more  
13 supervisors are disqualified from holding office by the  
14 modification of a district, their successors shall be appointed  
15 to serve the unexpired terms by the [~~commission~~] board."

16 Section 7. Section 73-20-37 NMSA 1978 (being Laws 1965,  
17 Chapter 137, Section 11, as amended) is amended to read:

18 "73-20-37. DISTRICT SUPERVISORS--ELECTION AND  
19 APPOINTMENT--NEW DISTRICTS. --

20 A. The governing body of each district shall be  
21 composed of five supervisors [~~four of whom~~] who shall be elected  
22 [~~one from each zone~~]; provided, however, two additional  
23 supervisors may be appointed to the governing body of each  
24 district by the [~~commission~~] board in accordance with the  
25 provisions of the Soil and Water Conservation District Act. The

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1 four elected supervisors of each district shall be land owners  
2 within the defined geographical area of their district. One  
3 elected supervisor shall be designated supervisor-at-large and  
4 may serve the district without qualification. A supervisor  
5 shall serve a term of three years and shall continue in office  
6 until his successor has been elected or appointed and has  
7 qualified. A vacant unexpired term of the office of supervisor  
8 shall be filled by ~~the~~ appointment ~~of~~ by the remaining  
9 supervisors of the district. Two or more vacant unexpired terms  
10 of the offices of supervisor, occurring simultaneously in the  
11 same district, shall be filled by appointment ~~of~~ by the  
12 ~~[commission. Four elected supervisors of each district shall be~~  
13 ~~owners of land within the defined geographical area of their~~  
14 ~~district. One elected supervisor shall be designated~~  
15 ~~supervisor-at-large and may serve the district without~~  
16 ~~qualification.]~~ board.

17 B. Unless a different time is prescribed by the  
18 ~~[commission]~~ board, within thirty days following the issuance of  
19 a certificate ~~of~~ of organization to the two interim  
20 supervisors of a district, nominating petitions proposing  
21 candidates for supervisors of the district may be filed with the  
22 ~~[division]~~ department. Nominating petitions shall be signed by  
23 ~~[not less]~~ no fewer than ten owners of land situate within the  
24 district; landowners shall not be restricted in the number of  
25 nominating petitions ~~[which]~~ they may subscribe. The

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1 [commission] department shall give due notice of election for  
2 the offices of five district supervisors. All owners of land  
3 situate within the district shall be eligible to vote. The  
4 [commission] board, with the advice of the commission, shall  
5 adopt and prescribe regulations governing the conduct of the  
6 election, shall determine voter eligibility and supervise the  
7 election [~~shall bear the expenses of election~~] and shall publish  
8 its results. The districts shall bear the expenses of  
9 elections.

10 C. In the first election of supervisors to serve a  
11 newly organized district, two supervisors shall be elected for  
12 terms of one year; two supervisors shall be elected for terms of  
13 two years; and the supervisor-at-large shall be elected for a  
14 term of three years. Thereafter, each elected supervisor shall  
15 serve a term of three years.

16 D. Appointed interim supervisors may continue to serve  
17 as appointed supervisors at the pleasure of the [commission]  
18 board or until their successors are otherwise appointed."

19 Section 8. Section 73-20-38 NMSA 1978 (being Laws 1965,  
20 Chapter 137, Section 12, as amended) is amended to read:

21 "73-20-38. DISTRICT SUPERVISORS--ELECTION AND  
22 APPOINTMENT--ORGANIZED DISTRICTS. --

23 A. Successors to supervisors of organized districts  
24 whose terms end in a calendar year shall be elected during the  
25 period September 1 to [~~November 1~~] December 15 of that year.

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1 Election dates shall be determined by the supervisors of the  
2 district and may concur with the time of annual meeting of  
3 district landowners. Elections shall be called, conducted and  
4 returned in the same manner as the first election of supervisors  
5 of a newly organized district; provided, however, that the  
6 powers conferred upon the [~~commission~~] board in conducting the  
7 first election of supervisors in a newly organized district  
8 shall apply to and be exercised by the supervisors of the  
9 organized district.

10 B. In a district election held during an annual  
11 meeting of district landowners, the nomination of a supervisor  
12 candidate may be made from the floor of the meeting as well as  
13 by nominating petition. The district supervisors shall  
14 determine the results of a district election, shall certify and  
15 publish the results and shall give the [~~commission~~] department  
16 notice of their canvass within seven days.

17 C. In the first annual election of supervisors to  
18 serve an extant organized district, following the enactment of  
19 the Soil and Water Conservation District Act, two supervisors  
20 shall be elected for terms of one year, two supervisors shall be  
21 elected for terms of two years and the supervisor-at-large shall  
22 be elected for a term of three years. Thereafter, each elected  
23 supervisor shall serve a term of three years.

24 D. Regulations promulgated by the [~~soil and water~~  
25 ~~conservation~~] board, with the advice of the commission, and the

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1 election provisions of the Soil and Water Conservation District  
2 Act shall be exclusive in the conduct of district elections.

3 The [~~soil and water conservation commission shall~~] board may  
4 promulgate rules and regulations [~~under the provisions of the~~  
5 ~~Administrative Procedures Act~~] to carry out the provisions of  
6 the Soil and Water Conservation District Act.

7 E. Within forty days after an annual district  
8 election, the district supervisors shall submit to the  
9 [~~division~~] department a list of five names of persons interested  
10 in the district and who by experience or training are qualified  
11 to serve as supervisors. The board, with the advice of the  
12 ~~commission~~, may appoint two persons from the list submitted to  
13 serve as district supervisors if it is the determination of the  
14 [~~commission~~] board that the appointments are necessary or  
15 desirable and would benefit or facilitate the work and functions  
16 of the district. In the event a list is not submitted to the  
17 [~~division~~] department by the district supervisors within forty  
18 days after an annual district election, the board, with the  
19 advice of the ~~commission~~, may appoint at will two district  
20 supervisors qualified to serve by training or experience.  
21 Appointed district supervisors shall serve at the pleasure of  
22 the [~~commission~~] board and shall have the same powers and  
23 perform the same duties as elected supervisors. Successors to  
24 appointed supervisors, or replacement-appointed supervisors in  
25 the event of vacancy, shall be appointed by the board, with the

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1 advice of the commission, from a list of candidates or at will  
2 in accordance with the provisions of this subsection. "

3 Section 9. Section 73-20-41 NMSA 1978 (being Laws 1965,  
4 Chapter 137, Section 15, as amended) is amended to read:

5 "73-20-41. POWERS AND DUTIES OF DISTRICT SUPERVISORS. --

6 A. District supervisors may employ a secretary and  
7 such other agents, employees and technical or professional  
8 experts as they may from time to time require, and may determine  
9 qualifications, compensation and duties applicable to any agent,  
10 employee or expert engaged. District supervisors shall require  
11 and provide for the execution of a corporate surety bond in  
12 suitable penal sum for and to cover any person entrusted with  
13 the care or disposition of district funds or property. District  
14 supervisors may delegate their powers to one or more district  
15 supervisors or to one or more district employees, agents or  
16 experts.

17 B. District supervisors may call upon the district  
18 attorney of the judicial district within which all or a part of  
19 the district lands may be situate for legal services required by  
20 the district. District supervisors may invite the legislative  
21 body of any municipality or county situate within, near or  
22 comprising a part of the district to designate a representative  
23 to advise and consult with the supervisors on matters affecting  
24 property, water distribution or other matters of interest to the  
25 municipality or county.

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1           C. District supervisors are authorized to adopt and  
2 promulgate rules and regulations necessary for the proper  
3 execution of district duties and activities. The supervisors  
4 shall:

5                   (1) keep a full and accurate record of all  
6 district proceedings and of all resolutions, regulations and  
7 orders issued or adopted;

8                   (2) provide for and submit to an annual audit of  
9 district accounts or receipts and disbursements, in the event  
10 district receipts total more than five thousand dollars (\$5,000)  
11 annually;

12                   (3) furnish to the [~~division~~] department a  
13 complete report of district proceedings and activities during  
14 each fiscal year, including a financial report;

15                   (4) furnish or make available to the [~~division~~]  
16 department upon request, district files and copies of rules,  
17 regulations, orders, contracts, forms and other documents  
18 adopted or employed in conducting district activities; and

19                   (5) call and give due notice of an annual meeting  
20 of the owners of land situate within the district to be held on  
21 a designated date within the period September 1 to [~~November 1~~]  
22 December 15. "

23           Section 10. Section 73-20-49 NMSA 1978 (being Laws 1965,  
24 Chapter 137, Section 23, as amended) is amended to read:

25           "73-20-49. DISSOLUTION OF DISTRICTS. --

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1           A. At any time five years after the organization of a  
2 district, any twenty-five [~~owners of land~~] landowners, situate  
3 within the district, may subscribe and file a petition with the  
4 [~~division~~] department for the dissolution of the district. To  
5 assist it in its determinations, the commission may hold public  
6 hearings upon the petition. Within sixty days of its receipt of  
7 the petition, the [~~commission~~] department shall give due notice  
8 of referendum to adopt and approve the petition of dissolution.  
9 The referendum shall be conducted with appropriate ballot and in  
10 substantially the same manner as a referendum adopting and  
11 approving the creation of a proposed district.

12           B. The [~~division~~] department shall publish the results  
13 of the referendum and, if a majority of the votes cast at the  
14 referendum [~~adopt~~] adopts the petition and [~~approve~~] approves  
15 the dissolution of the district, the [~~commission~~] department  
16 shall then determine whether the continued operation of the  
17 district within its defined geographical area is  
18 administratively practicable. In making its determination, the  
19 [~~commission~~] department shall consider:

- 20                   (1) the attitude of the [~~owners of lands~~]  
21 landowners lying within the district;
- 22                   (2) the ratio of votes cast at the referendum to  
23 the number of eligible voters;
- 24                   (3) the proportion of the total number of votes  
25 cast at the referendum to the number of votes cast in favor of

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1 the dissolution of the district;

2 (4) the approximate wealth and income of the  
3 landowners of the district; and

4 (5) the probable expense of carrying on natural  
5 resource conservation and development within the district.

6 C. In the event the [~~commission shall determine~~]  
7 department determines that the continued operation of the  
8 district is not administratively practicable, it shall enter and  
9 record its determination and shall certify its determination to  
10 the [~~district's~~] district supervisors. Upon receipt of the  
11 [~~commission's~~] department's certification, the [~~district's~~]  
12 district supervisors shall terminate the affairs of the  
13 district; shall dispose of all district property at public  
14 auction; or by transfer to the [~~commission~~] board or to another  
15 district; and shall certify and deliver up the proceeds of any  
16 sale to be paid over to the [~~commission~~] board. The district  
17 supervisors shall file a verified application for the  
18 dissolution of the district with the secretary of state; the  
19 application shall be supported by a copy of the certificate of  
20 the [~~commission~~] department setting forth its determination that  
21 continued operation of the district is not administratively  
22 practicable and by a verified accounting of the disposition of  
23 district property and the proceeds [~~therefrom~~] from it. Upon  
24 receipt of a proper application, the secretary of state shall  
25 issue to the district supervisors a certificate of dissolution

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1 and shall record the certificate in an appropriate book of  
2 record in his office.

3 D. Upon the issuance of a certificate of dissolution  
4 by the secretary of state, the district shall dissolve and cease  
5 to exist, and all regulatory acts of the district supervisors  
6 shall have no further force or effect. The [~~commission~~] board  
7 shall be automatically substituted for the district as a party  
8 to all executory contracts and shall be entitled to enforce all  
9 rights and obligated to perform all duties thereunder to the  
10 same effect and in the same manner as the district.

11 E. Petitions for the dissolution of a district may not  
12 be accepted and shall not be considered by the [~~commission~~]  
13 department more often than once in any five-year period."

14 Section 11. TEMPORARY PROVISION--TRANSFER. --On July 1,  
15 1997, the soil and water conservation bureau of the forestry  
16 division of the energy, minerals and natural resources  
17 department is abolished. On that date, all functions,  
18 appropriations, money, equipment and records belonging to the  
19 bureau are transferred to the board of regents of New Mexico  
20 state university. On July 1, 1997, all existing rules and  
21 regulations, contracts and agreements in effect for the bureau  
22 shall be binding on the board of regents of New Mexico state  
23 university.

24 Section 12. EFFECTIVE DATE. --The effective date of the  
25 provisions of this act is July 1, 1997.

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**State of New Mexico  
House of Representatives**

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

**March 1, 1997**

**Mr. Speaker:**

**Your AGRICULTURE AND WATER RESOURCES COMMITTEE,  
to whom has been referred**

**HOUSE BILL 774**

**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,**

---

**G. X. McSherry, Chairman**

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HAGC/HB 774

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Johnson, Porter, Townsend

Absent: None

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# **State of New Mexico House of Representatives**

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

**March 8, 1997**

**Mr. Speaker:**

**Your APPROPRIATIONS AND FINANCE COMMITTEE, to  
whom has been referred**

**HOUSE BILL 774**

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

**Respectfully submitted,**

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**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 2 Against

Yes: 12

No: Coll, Varela

Excused: Buffett, Marquardt, Watchman

Absent: None

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 17, 1997

Mr. President:

Your CONSERVATION COMMITTEE, to whom has been referred

HOUSE BILL 774

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

Respectfully submitted,

\_\_\_\_\_  
Michael S. Sanchez, Chairman

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Date \_\_\_\_\_

The roll call vote was 5 For 1 Against

Yes: 5

No: Tsosie

Excused: Eisenstadt, Griego, Lyons, Macias

Absent: None

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