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HOUSE BILL 47

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

JERRY W. SANDEL

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; AMENDING THE GASOLINE TAX ACT, THE
PETROLEUM PRODUCTS LOADING FEE ACT AND THE SPECIAL FUELS
SUPPLIER TAX ACT TO CHANGE THE DEFINITION OF WHEN GASOLINE OR
SPECIAL FUEL IS RECEIVED AND WHO RECEIVES IT FOR PURPOSES OF
IMPOSING CERTAIN TAXES; CHANGING THE BOND REQUIREMENTS FOR
CERTAIN TAXPAYERS; AMENDING AND ENACTING SECTIONS OF THE NMSA
1978; DECLARING AN EMERGENCY.

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

Section 1. Section 7-13-2 NMSA 1978 (being Laws 1971,
Chapter 207, Section 2, as amended) is amended to read:

"7-13-2. DEFINITIONS. --As used in the Gasoline Tax Act:

A. "aviation gasoline" means ~~[any flammable liquid
used primarily as fuel for the propulsion of motor vehicles,
motorboats or aircraft. "Gasoline" does not include diesel-~~

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1 ~~engine fuel, kerosene, liquefied petroleum gas, natural gas and~~
2 ~~products specially prepared and] gasoline sold for use in [the~~
3 ~~aircraft propelled by engines other than turbo-prop or jet-type~~
4 ~~engines;~~

5 B. "department" means the taxation and revenue
6 department, the secretary of taxation and revenue or any
7 employee of the department exercising authority lawfully
8 delegated to that employee by the secretary;

9 ~~[C. "secretary" means the secretary of taxation and~~
10 ~~revenue or the secretary's delegate;~~

11 ~~D. "motor vehicle" means any self-propelled vehicle~~
12 ~~suitable for operation on highways;~~

13 ~~E. "highway" means every way or place, including~~
14 ~~toll roads, generally open to or intended to be used for public~~
15 ~~travel by motor vehicles, regardless of whether it is~~
16 ~~temporarily closed;~~

17 ~~F.] C. "distributor" means any person, but not~~
18 ~~including the United States of America or any of its agencies~~
19 ~~except to the extent now or hereafter permitted by the~~
20 ~~constitution and laws thereof, who receives gasoline [within the~~
21 ~~meaning of "received" as defined in this section;~~

22 ~~G. "wholesaler" means any person not a distributor~~
23 ~~who sells gasoline in quantities of thirty five gallons or more~~
24 ~~and does not deliver such gasoline into the fuel supply tanks of~~
25 ~~motor vehicles;~~

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1 H. ~~"retailer" means any person who sells gasoline in~~
2 ~~quantities of thirty five gallons or less and delivers such~~
3 ~~gasoline into the fuel supply tanks of motor vehicles;~~

4 I. ~~the definitions of "distributor", "wholesaler"~~
5 ~~and "retailer" shall be construed so that a person may at the~~
6 ~~same time be a retailer and a distributor or a retailer and a~~
7 ~~wholesaler;~~

8 J. ~~"person" means:~~

9 (1) ~~any individual, estate, trust, receiver,~~
10 ~~cooperative association, club, corporation, company, firm,~~
11 ~~partnership, limited liability company, limited liability~~
12 ~~partnership, joint venture, syndicate or other entity, including~~
13 ~~any gas, water or electric utility owned or operated by a~~
14 ~~county, municipality or other political subdivision of the~~
15 ~~state; or~~

16 (2) ~~the United States or any agency or~~
17 ~~instrumentality thereof or the state of New Mexico or any~~
18 ~~political subdivision thereof;~~

19 K. ~~"received" means:~~

20 (1)

21 (a) ~~gasoline which is produced, refined,~~
22 ~~manufactured, blended or compounded at a refinery in this state~~
23 ~~or stored at a pipeline terminal in this state by any person is~~
24 ~~"received" by such person when it is loaded there into tank~~
25 ~~cars, tank trucks, tank wagons or other types of transportation~~

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1 ~~equipment or when it is placed into any tank or other container~~
2 ~~from which sales or deliveries not involving transportation are~~
3 ~~made;~~

4 ~~(b) when, however, such gasoline is~~
5 ~~shipped or delivered to another person registered as a~~
6 ~~distributor under the Gasoline Tax Act, then it is "received" by~~
7 ~~the distributor to whom it is so shipped or delivered; and~~

8 ~~(c) further, when such gasoline is~~
9 ~~shipped or delivered to another person not registered as a~~
10 ~~distributor under the Gasoline Tax Act for the account of a~~
11 ~~person that is so registered, it is "received" by the~~
12 ~~distributor for whose account it is shipped;~~

13 ~~(2) notwithstanding the provisions of Paragraph~~
14 ~~(1) of this subsection, when gasoline is shipped or delivered~~
15 ~~from a refinery or pipeline terminal to another refinery or~~
16 ~~pipeline terminal, such gasoline is not "received" by reason of~~
17 ~~such shipment or delivery;~~

18 ~~(3) any product other than gasoline that is~~
19 ~~blended to produce gasoline other than at a refinery or pipeline~~
20 ~~terminal in this state is "received" by a person who is the~~
21 ~~owner thereof at the time and place the blending is completed;~~
22 ~~and~~

23 ~~(4) except as otherwise provided, gasoline is~~
24 ~~"received" at the time and place it is first unloaded in this~~
25 ~~state and by the person who is the owner thereof immediately~~

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1 ~~preceding the unloading, unless the owner immediately after the~~
2 ~~unloading is a registered distributor, in which case such~~
3 ~~registered distributor is considered as having received the~~
4 ~~gasoline;~~

5 L. ~~"drip gasoline" means a combustible hydrocarbon~~
6 ~~liquid formed as a product of condensation from either~~
7 ~~associated or nonassociated natural or casing head gas which~~
8 ~~remains a liquid at existing atmospheric temperature and~~
9 ~~pressure;~~

10 M. ~~"gallon" means the quantity of liquid necessary~~
11 ~~to fill a standard United States gallon liquid measure or that~~
12 ~~same quantity adjusted to a temperature of sixty degrees~~
13 ~~fahrenheit at the election of any distributor, but a distributor~~
14 ~~shall report on the same basis for a period of at least one~~
15 ~~year; and~~

16 N. ~~"ethanol blended fuel" means gasoline received in~~
17 ~~New Mexico containing a minimum of ten percent by volume of~~
18 ~~denatured ethanol, of at least one hundred ninety-nine proof,~~
19 ~~exclusive of denaturants] in accordance with Section 7-13-2.1~~
20 ~~NMSA 1978; "distributor" shall be construed so that a person~~
21 ~~simultaneously may be both a distributor and a retailer;~~

22 D. "drip gasoline" means a combustible hydrocarbon
23 liquid formed as a product of condensation from either
24 associated natural or casing head gas and that remains a liquid
25 at room temperature and pressure;

1 E. "ethanol-blended fuel" means gasoline received in
2 New Mexico containing a minimum of ten percent by volume of
3 denatured ethanol, of at least one hundred ninety-nine proof,
4 exclusive of denaturants;

5 F. "gallon" means the quantity of liquid necessary
6 to fill a standard United States gallon liquid measure or that
7 same quantity adjusted to a temperature of sixty degrees
8 fahrenheit at the election of any distributor, but a distributor
9 shall report on the same basis for a period of at least one
10 year;

11 G. "gasoline" means any flammable liquid used
12 primarily as fuel for the propulsion of motor vehicles,
13 motorboats or aircraft. "Gasoline" does not include diesel
14 engine fuel, kerosene, liquefied petroleum gas, compressed or
15 liquefied natural gas or products specially prepared and sold
16 for use in aircraft propelled by turbo-prop or jet-type engines;

17 H. "highway" means every road, highway,
18 thoroughfare, street or way, including toll roads, generally
19 open to the use of the public as a matter of right for the
20 purpose of motor vehicle travel regardless of whether it is
21 temporarily closed for the purpose of construction,
22 reconstruction, maintenance or repair;

23 I. "motor vehicle" means any self-propelled vehicle
24 or device that is either subject to registration pursuant to
25 Section 66-3-1 NMSA 1978 or used or may be used on the public

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1 highways in whole or in part for the purpose of transporting
2 persons or property and includes any connected trailer or
3 semi trailer;

4 J. "person" means an individual or any other entity,
5 including, to the extent permitted by law, any federal, state or
6 other government or any department, agency, instrumentality or
7 political subdivision of any federal, state or other government;

8 K. "retailer" means a person who sells gasoline
9 generally in quantities of thirty-five gallons or less and
10 delivers such gasoline into the fuel supply tanks of motor
11 vehicles. "Retailer" shall be construed so that a person
12 simultaneously may be both a retailer and a distributor or
13 wholesaler;

14 L. "secretary" means the secretary of taxation and
15 revenue or the secretary's delegate;

16 M. "taxpayer" means a person required to pay
17 gasoline tax; and

18 N. "wholesaler" means a person who is not a
19 distributor and who sells gasoline in quantities of thirty-five
20 gallons or more and does not deliver gasoline into the fuel
21 supply tanks of motor vehicles. "Wholesaler" shall be construed
22 so that a person simultaneously may be a wholesaler and a
23 retailer. "

24 Section 2. A new section of the Gasoline Tax Act, Section
25 7-13-2.1 NMSA 1978, is enacted to read:

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1 "7-13-2. 1. [NEW MATERIAL] WHEN GASOLINE RECEIVED-- WHO
2 RECEIVES GASOLINE. --

3 A. Gasoline produced, refined, manufactured, blended
4 or compounded at a refinery or other facility in this state or
5 stored at a pipeline terminal in this state is received in this
6 state when it is first loaded into tank cars, tank trucks, tank
7 wagons or any other type of transportation equipment or when it
8 is placed into any tank or other container from which sales or
9 deliveries not involving transportation are made. If the
10 loading or placement takes place within the exterior boundaries
11 of an Indian reservation or pueblo grant and the person
12 receiving the gasoline is immune from state taxation, the
13 gasoline is also received when the gasoline is transported by
14 any means other than by pipeline off the Indian reservation or
15 pueblo grant.

16 B. Gasoline is received in New Mexico when it is
17 imported by any means other than by pipeline into New Mexico.
18 If the importation takes place within the exterior boundaries of
19 an Indian reservation or pueblo grant and the person receiving
20 the gasoline is immune from state taxation, the gasoline is also
21 received when the gasoline is transported by any means other
22 than by pipeline off the Indian reservation or pueblo grant.

23 C. The person who owns gasoline at the time the
24 gasoline is received is the person who has received the gasoline
25 in New Mexico. Any person, other than the owner of the gasoline

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1 or a pipeline or common carrier transporting the gasoline for
2 another, who possesses the gasoline at the time the gasoline is
3 received has also received the gasoline and is liable for paying
4 the gasoline tax due with respect to the gasoline received if
5 the owner of the gasoline at the time the gasoline is received
6 fails to report or pay in accordance with Subsection D of this
7 section.

8 D. A person who receives gasoline in New Mexico is
9 required to file gasoline tax returns and to pay gasoline tax on
10 the gasoline the person receives except that, if the person
11 receiving gasoline within the exterior boundaries of an Indian
12 reservation or pueblo grant is immune from the imposition of
13 gasoline tax, that person shall collect the gasoline tax from
14 any person not immune who next receives the gasoline and shall
15 report and pay over the collected tax pursuant to Section 7-13-5
16 NMSA 1978. "

17 Section 3. Section 7-13-4 NMSA 1978 (being Laws 1991,
18 Chapter 9, Section 32) is amended to read:

19 "7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the
20 gasoline tax due, the following amounts of gasoline may be
21 deducted from the total amount of gasoline received in New
22 Mexico during the tax period, provided that satisfactory proof
23 thereof is furnished to the department:

24 A. gasoline received in New Mexico, but sold for
25 export or exported from this state by a distributor other than

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1 in the fuel supply tank of a motor vehicle; and

2 B. gasoline received in New Mexico sold to the
3 United States or any agency or instrumentality thereof for the
4 exclusive use of the United States or any agency or
5 instrumentality thereof. Gasoline sold to the United States
6 includes gasoline delivered into the supply tank of a
7 government-licensed vehicle of the United States. "

8 Section 4. A new section of the Gasoline Tax Act is
9 enacted to read:

10 "[NEW MATERIAL] BOND REQUIRED OF TAXPAYERS. --

11 A. Except as provided in Subsection H of this
12 section, every taxpayer shall file with the department a bond on
13 a form approved by the attorney general with a surety company
14 authorized by the state corporation commission to transact
15 business in this state as a surety and upon which bond the
16 taxpayer is the principal obligor and the state the obligee.
17 The bond shall be conditioned upon the prompt filing of true
18 reports and the payment by the taxpayer to the department of all
19 taxes levied by the Gasoline Tax Act, together with all
20 applicable penalties and interest.

21 B. In lieu of the bond, the taxpayer may elect to
22 file with the department cash or bonds of the United States or
23 New Mexico or of any political subdivision of the state.

24 C. The total amount of the bond, cash or securities
25 required of any taxpayer shall be fixed by the department and

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1 may be increased or reduced by the department at any time,
2 subject to the limitations provided in this section.

3 D. In fixing the total amount of the bond, cash or
4 securities required of any taxpayer required to post bond, the
5 department shall require an equivalent in total amount to at
6 least two times the amount of the department's estimate of the
7 taxpayer's monthly gasoline tax, determined in such manner as
8 the secretary may deem proper; provided, however, the total
9 amount of bond, cash or securities required of a taxpayer shall
10 never be less than one thousand dollars (\$1,000).

11 E. In the event the department decides that the
12 amount of the existing bond, cash or securities is insufficient
13 to insure payment to this state of the amount of the gasoline
14 tax and any penalties and interest for which the taxpayer is or
15 may at any time become liable, then the taxpayer shall, upon
16 written demand of the department mailed to the last known
17 address of the taxpayer as shown on the records of the
18 department, file an additional bond, cash or securities in the
19 manner, form and amount determined by the department to be
20 necessary to secure at all times the payment by the taxpayer of
21 all taxes, penalties and interest due pursuant to the Gasoline
22 Tax Act.

23 F. A surety on a bond furnished by a taxpayer as
24 required by this section shall be released and discharged from
25 all liability accruing on the bond after the expiration of

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1 ninety days from the date upon which the surety files with the
2 department a written request to be released and discharged;
3 provided, however, such request shall not operate to release or
4 discharge the surety from any liability already accrued or that
5 shall accrue before the expiration of the ninety-day period,
6 unless a new bond is filed during the ninety-day period, in
7 which case the previous bond may be canceled as of the effective
8 date of the new bond. On receipt of notice of the request, the
9 department shall promptly notify the taxpayer who furnished the
10 bond that the taxpayer shall, on or before the expiration of the
11 ninety-day period, file with the department a new bond with a
12 surety satisfactory to the department in the amount and form
13 required in this section.

14 G. The taxpayer required to file bond with or
15 provide cash or securities to the department in accordance with
16 this section and who is required by another state law to file
17 another bond with or provide cash or securities to the
18 department may elect to file a combined bond or provide cash or
19 securities applicable to the provisions of both this section and
20 the other law, with the approval of the secretary. The amount
21 of the combined bond, cash or securities shall be determined by
22 the department, and the form of the combined bond shall be
23 approved by the attorney general.

24 H. Every taxpayer who, for the twenty-four month
25 period immediately preceding July 1, 1994, has not been a

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1 delinquent taxpayer pursuant to the Gasoline Tax Act is exempt
2 from the requirement pursuant to this section to file a bond. A
3 taxpayer required to file a bond pursuant to the provisions of
4 this section who, for a twenty-four consecutive month period
5 ending after July 1, 1994, has not been a delinquent taxpayer
6 pursuant to the Gasoline Tax Act may request to be exempt from
7 the requirement to file a bond beginning with the first day of
8 the first month following the end of the twenty-four month
9 period. If a taxpayer exempted pursuant to this subsection
10 subsequently becomes a delinquent taxpayer under the Gasoline
11 Tax Act, the department may terminate the exemption and require
12 the filing of a bond in accordance with this section. If the
13 department terminates the exemption, the termination shall not
14 be effective any earlier than ten days after the date the
15 department notifies the taxpayer in writing of the termination. "

16 Section 5. Section 7-13A-2 NMSA 1978 (being Laws 1990,
17 Chapter 124, Section 15, as amended) is amended to read:

18 "7-13A-2. DEFINITIONS. --As used in the Petroleum Products
19 Loading Fee Act:

20 A. "department" means the taxation and revenue
21 department, the secretary of taxation and revenue or any
22 employee of the department exercising authority lawfully
23 delegated to that employee by the secretary;

24 B. "distributor" means any person registered as a
25 distributor for purposes of the Gasoline Tax Act and any person

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1 who receives special fuel in this state for the purposes of the
2 Special Fuels Supplier Tax Act;

3 C. "gallon" means the quantity of liquid necessary
4 to fill a standard United States gallon liquid measure, which is
5 approximately 3.785 liters, or that same quantity adjusted to a
6 temperature of sixty degrees fahrenheit at the election of any
7 distributor, but a distributor shall report on the same basis
8 for a period of at least one year;

9 D. "gasoline" means any flammable liquid used
10 primarily as fuel for the propulsion of motor vehicles,
11 motorboats or aircraft. "Gasoline" does not include diesel
12 engine fuel, kerosene and products specially prepared and sold
13 for use in [~~the~~] turbo-prop or jet-type engines;

14 E. "highway" means every road, highway,
15 thoroughfare, street or way, including toll roads, generally
16 open to the use of the public as a matter of right for the
17 purpose of motor vehicle travel, and notwithstanding that the
18 same may be temporarily closed for the purpose of construction,
19 reconstruction, maintenance or repair;

20 F. "motor vehicle" means any self-propelled vehicle
21 or device that is either subject to registration pursuant to
22 Section 66-3-1 NMSA 1978 or is used or may be used on the public
23 highways in whole or in part for the purpose of transporting
24 persons or property and includes any connected trailer or
25 semi trailer;

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1 G. "person" means an individual or any other legal
2 entity, including any gas, water or electric utility owned or
3 operated by a county, municipality or other political
4 subdivision of the state. "Person" also means, to the extent
5 permitted by law, any federal, state or other government or any
6 department, agency or instrumentality of the state, county,
7 municipality or any political subdivision thereof;

8 H. "petroleum product" means gasoline and special
9 fuels;

10 ~~I. "received" means:~~

11 ~~(1)~~

12 ~~(a) a petroleum product that is produced,~~
13 ~~refined, manufactured, blended or compounded at a refinery in~~
14 ~~this state or stored at a pipeline terminal in this state by any~~
15 ~~person is "received" by such person when it is loaded there into~~
16 ~~tank cars, tank trucks, tank wagons or other types of~~
17 ~~transportation equipment or when it is placed into any tank or~~
18 ~~other container from which sales or deliveries not involving~~
19 ~~transportation are made;~~

20 ~~(b) when, however, such a petroleum~~
21 ~~product is shipped or delivered to another distributor, then it~~
22 ~~is "received" by the distributor to whom it is so shipped or~~
23 ~~delivered; and~~

24 ~~(c) further, when such petroleum product~~
25 ~~is shipped or delivered to another person not a distributor for~~

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1 ~~the account of a person that is a distributor, it is "received"~~
2 ~~by the distributor for whose account it is shipped;~~

3 ~~(2) notwithstanding the provisions of Paragraph~~
4 ~~(1) of this subsection, when a petroleum product is shipped or~~
5 ~~delivered from a refinery or pipeline terminal to another~~
6 ~~refinery or pipeline terminal, the petroleum product is not~~
7 ~~"received" by reason of such shipment or delivery;~~

8 ~~(3) any product other than gasoline that is~~
9 ~~blended to produce gasoline other than at a refinery or pipeline~~
10 ~~terminal in this state is "received" by a person who is the~~
11 ~~owner thereof at the time and place the blending is completed;~~
12 ~~and~~

13 ~~(4) except as otherwise provided, a petroleum~~
14 ~~product is "received" at the time and place it is first unloaded~~
15 ~~in this state and by the person who is the owner thereof~~
16 ~~immediately preceding the unloading, unless the owner~~
17 ~~immediately after the unloading is a distributor, in which case~~
18 ~~the distributor is considered as having "received" the petroleum~~
19 ~~product;~~

20 ~~J.]~~ I. "secretary" means the secretary of taxation
21 and revenue or the secretary's delegate; and

22 ~~[K.]~~ J. "special fuel" means diesel engine fuel,
23 kerosene and all other liquid fuels used for the generation of
24 power to propel a motor vehicle, except:

25 (1) gasoline as defined in Section 7-13-2 NMSA

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1 1978;

2 (2) alternative fuel as defined in [~~the~~
3 ~~Alternative Fuel Tax Act~~] Section 7-16B-3 NMSA 1978;

4 (3) products specially prepared and sold for
5 use in turbo-prop or jet-type aircraft; and

6 (4) liquefied petroleum gases and natural gas. "

7 Section 6. Section 7-16A-2 NMSA 1978 (being Laws 1992,
8 Chapter 51, Section 2, as amended) is amended to read:

9 "7-16A-2. DEFINITIONS. --As used in the Special Fuels
10 Supplier Tax Act:

11 A. "bulk storage" means the storage of special fuels
12 in any tank or receptacle, other than a supply tank, for the
13 purpose of sale by a dealer or for use by a user or for any
14 other purpose;

15 B. "bulk storage user" means a user who operates,
16 owns or maintains bulk storage in this state from which the user
17 places special fuel into the supply tanks of motor vehicles
18 owned or operated by that user;

19 C. "dealer" means any person who sells and delivers
20 special fuel to a user;

21 D. "department" means the taxation and revenue
22 department, the secretary of taxation and revenue or any
23 employee of [~~that~~] the department exercising authority lawfully
24 delegated to that employee by the secretary;

25 E. "government-licensed vehicle" means a motor

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1 vehicle lawfully displaying a registration plate, as defined in
2 the Motor Vehicle Code, issued by:

3 (1) [~~issued by~~] the United States or [~~by~~] any
4 state identifying the motor vehicle as belonging to the United
5 States or any of its agencies or instrumentalities [~~or to~~];

6 (2) the state of New Mexico identifying the
7 vehicle as belonging to the state of New Mexico or any of its
8 political subdivisions, agencies or instrumentalities; or

9 [~~(2) issued by~~] (3) any state identifying the
10 motor vehicle as belonging to an Indian nation, tribe or pueblo
11 or an agency or instrumentality thereof;

12 F. "gross vehicle weight" means the weight of a
13 motor vehicle or combination motor vehicle without load, plus
14 the weight of any load on the vehicle;

15 G. "highway" means every road, highway,
16 thoroughfare, street or way, including toll roads, generally
17 open to the use of the public as a matter of right for the
18 purpose of motor vehicle travel and notwithstanding that the
19 same may be temporarily closed for the purpose of construction,
20 reconstruction, maintenance or repair;

21 H. "motor vehicle" means any self-propelled vehicle
22 or device that is either subject to registration pursuant to
23 Section 66-3-1 NMSA 1978 or is used or may be used on the public
24 highways in whole or in part for the purpose of transporting
25 persons or property and includes any connected trailer or

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1 semi trailer;

2 I. "person" means an individual or any other [legal]
3 entity, [~~"person" also means~~] including, to the extent permitted
4 by law, any federal, state or other government or any
5 department, agency, [~~or~~] instrumentality [~~of the state, county,~~
6 ~~municipality~~] or [any] political subdivision [~~thereof~~];

7 J. ~~"received" means:~~

8 (1) ~~special fuel that is produced, refined,~~
9 ~~manufactured, blended or compounded at a refinery in this state~~
10 ~~or stored at a pipeline terminal in this state by any person is~~
11 ~~"received" by that person when it is loaded there into tank~~
12 ~~cars, tank trucks, tank wagons or other types of transportation~~
13 ~~equipment or when it is placed into any tank or other container~~
14 ~~from which sales or deliveries not involving transportation are~~
15 ~~made; but when such special fuel is shipped or delivered to~~
16 ~~another person:~~

17 (a) ~~registered as a special fuel supplier~~
18 ~~under the Special Fuels Supplier Tax Act, then it is "received"~~
19 ~~by the special fuel supplier to whom it is so shipped or~~
20 ~~delivered; or~~

21 (b) ~~not registered as a special fuel~~
22 ~~supplier under the Special Fuels Supplier Tax Act for the~~
23 ~~account of a person who is so registered, it is "received" by~~
24 ~~the special fuel supplier for whose account it is shipped;~~

25 (2) ~~notwithstanding the provisions of Paragraph~~

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1 ~~(1) of this subsection, when special fuel is shipped or~~
2 ~~delivered from a refinery or pipeline terminal to another~~
3 ~~refinery or pipeline terminal, such special fuel is not~~
4 ~~"received" by reason of such shipment or delivery;~~

5 ~~(3) any product other than special fuel that is~~
6 ~~blended to produce special fuel other than at a refinery or~~
7 ~~pipeline terminal in this state is "received" by a person who is~~
8 ~~the owner of the special fuel at the time and place the blending~~
9 ~~is completed;~~

10 ~~(4) except as otherwise provided, special fuel~~
11 ~~is "received" at the time and place it is first unloaded in this~~
12 ~~state and by the person who is the owner thereof immediately~~
13 ~~preceding the unloading, unless the owner immediately after the~~
14 ~~unloading is a registered special fuel supplier, in which case~~
15 ~~the registered special fuel supplier is considered as having~~
16 ~~"received" the special fuel; and~~

17 ~~(5) with respect to a motor vehicle that is not~~
18 ~~registered pursuant to the laws of this state or a motor vehicle~~
19 ~~for which the operator cannot produce a valid tax identification~~
20 ~~card, entry of the motor vehicle into the state. The amount of~~
21 ~~special fuel "received" upon entry into this state shall be~~
22 ~~determined in accordance with regulations of the secretary] of~~
23 any federal, state or other government;

24 [K.] J. "registrant" means any person who has
25 registered a motor vehicle pursuant to the laws of this state or

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1 of another state;

2 [L-] K. "sale" means any delivery, exchange, gift or
3 other disposition;

4 [M-] L. "secretary" means the secretary of taxation
5 and revenue or the secretary's delegate;

6 [N-] M. "special fuel" means diesel engine fuel,
7 kerosene and any other liquid fuel used for the generation of
8 power to propel a motor vehicle, except gasoline as defined in
9 Section 7-13-2 NMSA 1978 or alternative fuel as defined in [~~the~~
10 ~~Alternative Fuel Tax Act~~] Section 7-16B-3 NMSA 1978;

11 [O-] N. "special fuel user" means any user who is a
12 registrant, owner or operator of a motor vehicle using special
13 fuel and having a gross vehicle weight in excess of twenty-six
14 thousand pounds;

15 [P-] O. "state" or "jurisdiction" means a state,
16 territory or possession of the United States, the District of
17 Columbia, the commonwealth of Puerto Rico, a foreign country or
18 a state or province of a foreign country;

19 [Q-] P. "supplier" means any person, but not
20 including the United States or any of its agencies except to the
21 extent now or hereafter permitted by the constitution of the
22 United States and laws thereof, who receives special fuel
23 [~~within the meaning of "received" as defined in this section~~];

24 [R-] Q. "supply tank" means any tank or other
25 receptacle in which or by which fuel may be carried and supplied

Underscored material = new
[bracketed material] = delete

1 to the fuel-furnishing device or apparatus of the propulsion
2 mechanism of a motor vehicle when the tank or receptacle either
3 contains special fuel or special fuel is delivered into it;

4 [S-] R. "tax" means the special fuel excise tax
5 imposed [under] pursuant to the Special Fuels Supplier Tax Act;

6 [T-] "use" means:-

7 ~~(1) the receipt or placing of special fuels by~~
8 ~~a special fuel user into the fuel supply tank of any motor~~
9 ~~vehicle registered, owned or operated by the special fuel user;~~

10 ~~(2) the consumption by a special fuel user of~~
11 ~~special fuels in the propulsion of a motor vehicle on the~~
12 ~~highways of this state and any activity ancillary to that~~
13 ~~propulsion; or~~

14 ~~(3) the importation of special fuels in the~~
15 ~~fuel supply tank of any motor vehicle as fuel for the propulsion~~
16 ~~of the motor vehicle on the highways] and~~

17 [U-] S. "user" means any person other than the
18 United States government or any of its agencies or
19 instrumentalities; the state of New Mexico or any of its
20 political subdivisions, agencies or instrumentalities; or an
21 Indian nation, tribe or pueblo or any agency or instrumentality
22 of an Indian nation, tribe or pueblo who uses special fuel to
23 propel a motor vehicle on the highways. "

24 Section 7. A new section of the Special Fuels Supplier Tax
25 Act, Section 7-16A-2.1 NMSA 1978, is enacted to read:

. 109056. 2

Underscored material = new
[bracketed material] = delete

1 "7-16A-2.1. [NEW MATERIAL] WHEN SPECIAL FUEL RECEIVED OR
2 USED. --

3 A. Special fuel produced, refined, manufactured,
4 blended or compounded at a refinery or other facility in this
5 state or stored at a pipeline terminal in this state is received
6 in this state when it is first loaded into tank cars, tank
7 trucks, tank wagons or any other type of transportation
8 equipment or when it is placed into any tank or other container
9 from which sales or deliveries not involving transportation are
10 made. If the loading or placement takes place within the
11 exterior boundaries of an Indian reservation or pueblo grant and
12 the person receiving the special fuel is immune from state
13 taxation, the special fuel is also received when the special
14 fuel is transported by any means other than by pipeline off the
15 reservation or pueblo grant.

16 B. Special fuel is received in New Mexico when it is
17 imported by any means other than by pipeline into New Mexico.
18 If the importation takes place within the exterior boundaries of
19 an Indian reservation or pueblo grant and the person receiving
20 the special fuel is immune from state taxation, the special fuel
21 is also received when the special fuel is transported by any
22 means other than by pipeline off the reservation or pueblo
23 grant.

24 C. The person who has possession of the special
25 fuel, other than a pipeline or common carrier transporting the

. 109056.2

Underscored material = new
[bracketed material] = delete

1 special fuel for another, or who owns the special fuel at the
2 time the special fuel is received is the person who has received
3 the special fuel in New Mexico.

4 D. Any person who receives special fuel in New
5 Mexico is required to file special fuel excise tax returns and
6 to pay special fuel excise tax on the special fuel the person
7 received except that, if the person receiving special fuel
8 within the exterior boundaries of an Indian reservation or
9 pueblo grant is immune from the imposition of special fuel
10 excise tax, that person shall collect the special fuel excise
11 tax from the persons who next receive the special fuel and shall
12 report and pay over the collected tax pursuant to Section
13 7-16A-9 NMSA 1978.

14 E. Special fuel is used in New Mexico when it is put
15 into the supply tank of any motor vehicle registered, owned or
16 operated by a special fuel user, consumed by a special fuel user
17 in the propulsion of a motor vehicle on the highways of this
18 state or any activity ancillary to that propulsion or imported
19 into the state in the fuel supply tank of any motor vehicle for
20 the propulsion of the motor vehicle on New Mexico highways. "

21 Section 8. Section 7-16A-8 NMSA 1978 (being Laws 1992,
22 Chapter 51, Section 8, as amended) is amended to read:

23 "7-16A-8. SPECIAL BULK STORAGE USER PERMIT. --

24 A. The department may issue to a user an annual
25 special bulk storage user permit that shall entitle that user to

1 own, operate, utilize or maintain bulk storage for the sole
2 purpose of placing special fuel from it into the supply tank of
3 an allowable motor vehicle registered, owned or operated by that
4 user.

5 B. To secure a special bulk storage user permit, an
6 applicant shall:

7 (1) file with the department upon a form
8 furnished by the department an application for a special bulk
9 storage user permit;

10 (2) indicate on the application the number of
11 years, to a maximum of three, for which the applicant wishes the
12 permit to be valid;

13 [~~(2)~~] (3) accompany the application with
14 payment of an annual special bulk storage user permit fee in the
15 amount of ten dollars (\$10.00); and

16 [~~(3)~~] (4) accompany the application with a
17 signed affidavit to the effect that the signer shall use the
18 special fuel from the special bulk storage only for the purpose
19 of placing it into the supply tanks of specified allowable motor
20 vehicles registered, owned or operated by the signer.

21 C. It is a violation of the Special Fuels Supplier
22 Tax Act for any special bulk storage user to:

23 (1) sell special fuel from the user's special
24 bulk storage to any other person; or

25 (2) deliver special fuel from the user's

Underscored material = new
[bracketed material] = delete

1 special bulk storage into the supply tank of any motor vehicle,
2 except specified allowable motor vehicles registered, owned or
3 operated by the special bulk storage user.

4 D. "Allowable motor vehicles", for the purposes of
5 this section, includes but is not limited to motor vehicles used
6 primarily for or suitable for use in construction or farming,
7 such as road graders, backhoes, rubber-tired rollers, front
8 loaders, rubber-tired draglines, farm tractors, self-propelled
9 combines or self-propelled reapers.

10 E. The department may revoke, after due notice and
11 hearing as provided in Section 7-1-24 NMSA 1978, the special
12 bulk storage user permit of any user found to be in violation of
13 any provision of the Special Fuels Supplier Tax Act.

14 F. Special fuel purchased for bulk storage under a
15 special bulk storage user permit shall not be subject to the
16 special fuel excise tax at the time of purchase, but special
17 fuel excise tax shall be due on any special fuel removed from
18 bulk storage if delivered into the supply tank of a motor
19 vehicle that is operated on the highways of this state.

20 G. All special fuel acquired, purchased or received
21 under a special bulk storage user permit shall be acquired,
22 purchased or received from a registered dealer or supplier. It
23 is unlawful for any person to sell special fuel in bulk
24 quantities to special bulk storage users unless that person is
25 registered ~~[under]~~ pursuant to the Special Fuels Supplier Tax

Underscored material = new
[bracketed material] = delete

1 Act. "

2 Section 9. Section 7-16A-10 NMSA 1978 (being Laws 1992,
3 Chapter 51, Section 10, as amended) is amended to read:

4 "7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL
5 FUEL SUPPLIERS.--In computing the special fuel excise tax due,
6 the following amounts of special fuel may be deducted from the
7 total amount of special fuel received in New Mexico during the
8 tax period, provided that satisfactory proof thereof is
9 furnished to the department:

10 A. special fuel received in New Mexico, but [~~sold~~
11 ~~for export or~~] exported from this state by a special fuel
12 supplier, other than in the fuel supply tank of a motor vehicle;

13 B. special fuel sold to the United States or any
14 agency or instrumentality thereof for the exclusive use of the
15 United States or any agency or instrumentality thereof; special
16 fuel sold to the United States includes special fuel delivered
17 into the supply tank of a government-licensed vehicle;

18 C. special fuel sold to the state of New Mexico or
19 any political subdivision, agency or instrumentality thereof for
20 the exclusive use of the state of New Mexico or any political
21 subdivision, agency or instrumentality thereof; special fuel
22 sold to the state of New Mexico includes special fuel delivered
23 into the supply tank of a government-licensed vehicle;

24 D. special fuel sold to an Indian nation, tribe or
25 pueblo or any agency or instrumentality thereof for the

Underscored material = new
[bracketed material] = delete

1 exclusive use of the Indian nation, tribe or pueblo or any
2 agency or instrumentality thereof; special fuel sold to an
3 Indian nation, tribe or pueblo includes special fuel delivered
4 into the supply tank of a government-licensed vehicle;

5 E. special fuel sold to the holder of a special bulk
6 storage user permit and delivered into special bulk storage
7 [~~under~~] pursuant to the provisions of Section 7-16A-8 NMSA 1978;
8 and

9 F. special fuel sold for nonhighway use. "

10 Section 10. Section 7-16A-12 NMSA 1978 (being Laws 1992,
11 Chapter 51, Section 12) is amended to read:

12 "7-16A-12. CREDIT--SPECIAL FUEL EXCISE TAX--SPECIAL FUEL
13 USERS.--In computing any special fuel excise tax due, all
14 special fuel excise tax paid on special fuel used during the
15 reporting period may be credited against the calculated special
16 fuel excise tax due [~~or weight distance tax due~~] for that
17 reporting period, provided that satisfactory proof of the
18 special fuel excise tax paid is furnished to the department. "

19 Section 11. Section 7-16A-15 NMSA 1978 (being Laws 1992,
20 Chapter 51, Section 15, as amended) is amended to read:

21 "7-16A-15. BOND REQUIRED OF SUPPLIER [~~OR DEALER~~]. --

22 A. Except as provided in Subsection H of this section,
23 every supplier [~~and dealer~~] shall file with the department a
24 bond on a form approved by the attorney general with a surety
25 company authorized by the state corporation commission to

Underscored material = new
[bracketed material] = delete

1 transact business in this state as a surety and upon which bond
2 the supplier [~~or dealer~~] is the principal obligor and the state
3 the obligee. The bond shall be conditioned upon the prompt
4 filing of true reports and the payment by the supplier [~~or~~
5 ~~dealer~~] to the department of all taxes levied by the Special
6 Fuels Supplier Tax Act, together with all applicable penalties
7 and interest thereon.

8 B. In lieu of the bond, the supplier [~~or dealer~~] may
9 elect to file with the department cash or bonds of the United
10 States or New Mexico or of any political subdivision of the
11 state.

12 C. The total amount of the bond, cash or securities
13 required of any supplier [~~or dealer~~] shall be fixed by the
14 department and may be increased or reduced by the department at
15 any time, subject to the limitations provided in this section.

16 D. In fixing the total amount of the bond, cash or
17 securities required of any supplier [~~or dealer~~] required to post
18 bond, the department shall require an equivalent in total amount
19 to at least two times the amount of the department's estimate of
20 the supplier's [~~or dealer's quarterly~~] monthly special fuel
21 excise tax, determined in such manner as the secretary may deem
22 proper; provided, however, [~~that~~] the total amount of bond, cash
23 or securities required of a supplier [~~or dealer~~] shall never be
24 less than one thousand dollars (\$1,000).

25 E. In the event the department decides that the

Underscored material = new
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1 amount of the existing bond, cash or securities is insufficient
2 to insure payment to this state of the amount of the special
3 fuel excise tax and any penalties and interest for which the
4 supplier [~~or dealer~~] is or may at any time become liable, then
5 the supplier [~~or dealer~~] shall forthwith, upon written demand of
6 the department mailed to the last known address of the supplier
7 [~~or dealer~~] as shown on the records of the department, file an
8 additional bond, cash or securities in the manner, form and
9 amount determined by the department to be necessary to secure at
10 all times the payment by the supplier [~~or dealer~~] of all taxes,
11 penalties and interest due [~~under~~] pursuant to the Special Fuels
12 Supplier Tax Act.

13 F. Any surety on any bond furnished by any supplier
14 [~~or dealer~~] as required by this section shall be released and
15 discharged from all liability accruing on the bond after the
16 expiration of ninety days from the date upon which the surety
17 files with the department a written request to be released and
18 discharged; provided, however, [~~that~~] such request shall not
19 operate to release or discharge the surety from any liability
20 already accrued or that shall accrue before the expiration of
21 the ninety-day period, unless a new bond is filed during the
22 ninety-day period, in which case the previous bond may be
23 canceled as of the effective date of the new bond. On receipt
24 of notice of such request, the department shall notify promptly
25 the supplier [~~or dealer~~] who furnished the bond that the

Underscored material = new
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1 supplier [~~or dealer~~] shall, on or before the expiration of the
2 ninety-day period, file with the department a new bond with a
3 surety satisfactory to the department in the amount and form
4 required in this section.

5 G. The supplier [~~or dealer~~] required to file bond
6 with or provide cash or securities to the department in
7 accordance with this section and who is required by any other
8 state law to file another bond with or provide cash or
9 securities to the department may elect to file a combined bond
10 or provide cash or securities applicable to the provisions of
11 both this section and the other law, with the approval of the
12 secretary. The amount of the combined bond, cash or securities
13 shall be determined by the department, and the form of the
14 combined bond shall be approved by the attorney general.

15 H. On July 1, 1994, every supplier [~~or dealer~~] who,
16 for the twenty-four month period immediately preceding that
17 date, has not been a delinquent taxpayer [~~and both has timely~~
18 ~~filed all tax returns due~~] under the Special Fuels Supplier Tax
19 Act or the Special Fuels Tax Act [~~and has timely paid all taxes~~
20 ~~due under those acts~~] is exempt from the requirement [~~under~~
21 pursuant to] this section to file a bond. A supplier [~~or dealer~~]
22 required to file a bond [~~under~~] pursuant to the provisions of
23 this section who, for a twenty-four consecutive month period
24 ending after July 1, 1994, [~~timely files all tax returns due~~
25 under] has not been a delinquent taxpayer pursuant to either the

Underscored material = new
[bracketed material] = delete

1 Special Fuels Supplier Tax Act or the Special Fuels Tax Act [~~is~~]
2 may request to be exempt from the requirement to file a bond
3 beginning with the first day of the first month following the
4 end of the twenty-four month period. If a supplier [~~or dealer~~]
5 exempted [~~under~~] pursuant to this subsection subsequently
6 becomes a delinquent taxpayer [~~or twice fails in any twelve~~
7 ~~consecutive month period either to timely file a tax return or~~
8 ~~make timely payment of tax due under~~] pursuant to the Special
9 Fuels Supplier Tax Act, the department may terminate the
10 exemption and require the filing of a bond in accordance with
11 this section. If the department terminates the exemption, the
12 termination shall not be effective any earlier than ten days
13 after the date the department notifies the supplier [~~or dealer~~]
14 in writing of the termination. "

15 Section 12. Section 7-16A-19 NMSA 1978 (being Laws 1992,
16 Chapter 51, Section 19, as amended) is amended to read:

17 "7-16A-19. TEMPORARY SPECIAL FUEL USER PERMITS. --

18 A. [~~The department may issue temporary special fuel~~
19 ~~user permits for the privilege of using special fuel in New~~
20 ~~Mexico~~] To prevent evasion of the special fuel excise tax,
21 special fuel users whose vehicles are not registered with the
22 department must acquire a temporary special fuel user permit
23 from the department before operating the unregistered motor
24 vehicle on the highways of New Mexico. The temporary special
25 fuel user permit shall be valid for one entrance and one exit of

Underscored material = new
[bracketed material] = delete

1 the state, within a period that shall not exceed forty-eight
2 hours from the time of issuance.

3 ~~[B. Temporary special fuel user permits shall be~~
4 ~~secured from the department.]~~

5 ~~C.]~~ B. The fee for a temporary special fuel user
6 permit is five dollars (\$5.00) for each motor vehicle.

7 ~~[D.]~~ C. It is a violation of the Special Fuels
8 Supplier Tax Act for any person to act as a temporary special
9 fuel user without obtaining a valid temporary special fuel user
10 permit from the department. "

11 Section 13. A new section of the Special Fuels Supplier
12 Tax Act is enacted to read:

13 "[NEW MATERIAL] MANIFEST OR BILL OF LADING REQUIRED WHEN
14 TRANSPORTING SPECIAL FUELS. --Every person transporting special
15 fuels from a refinery or other facility at which special fuel is
16 produced, refined, manufactured, blended or compounded or from a
17 pipeline terminal in this state, importing special fuels into
18 this state or exporting special fuels from this state, other
19 than by pipeline or in the fuel supply tanks of motor vehicles,
20 shall carry a manifest or bill of lading in form and content as
21 prescribed by or acceptable to the department. The manifest or
22 bill of lading shall be signed by the consignor and by every
23 person accepting the special fuel or any part of it, with a
24 notation as to the amount accepted. If a manifest or bill of
25 lading is not required to be carried by the terms of this

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Underscored material = new
[bracketed material] = delete

1 section, any person transporting special fuels without such a
2 manifest or bill of lading shall, upon demand, furnish proof
3 acceptable to the department that the special fuels so
4 transported were legally acquired by a registered supplier or
5 dealer who assumed liability for payment of the tax imposed by
6 the Special Fuels Supplier Tax Act. "

7 Section 14. EFFECTIVE DATE. --The effective date of the
8 provisions of this act is March 1, 1996.

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

State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

January 26, 1996

Mr. Speaker:

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

HOUSE BILL 47

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

1. On page 8, line 13, after the word "transported" strike the remainder of the line and all of lines 14 and 15 and insert in lieu thereof "off the reservation or pueblo grant by any means other than in the supply tank of a motor vehicle or by pipeline."

2. On page 8, line 21, after the word "transported" strike the remainder of the line and all of line 22 and insert in lieu thereof "off the reservation or pueblo grant by any means other than in the supply tank of a motor vehicle or by pipeline."

3. On page 23, line 14, after the word "transported"

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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strike the remainder of the line and all of line 15 and insert in lieu thereof "off the reservation or pueblo grant by any means other than in the supply tank of a motor vehicle or by pipeline."

4. On page 23, line 21, after the word "transported" strike the remainder of the line and all of lines 22 and 23 and insert in lieu thereof "off the reservation or pueblo grant by any means other than in the supply tank of a motor vehicle or by pipeline."

Respectfully submitted,

Jerry W. Sandel, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

Underscored material = new
[bracketed material] = delete

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HTRC/HB 47

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The roll call vote was 7 For 3 Against
Yes: 7
No: Lovejoy, Lujan, Sandoval
Excused: Parsons, Ryan
Absent: Gallegos

H0047TR1

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

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HTRC/HB 47

Page 38

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HTRC/HB 47

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~~[bracketed material] = delete~~

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HB 47/a

February 7, 1996

Mr. President:

Your WAYS AND MEANS COMMITTEE, to whom has been
referred

HOUSE BILL 47, as amended

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

1. On page 8, line 6, strike "when" and insert in lieu
thereof "immediately prior to the time".

2. On page 23, line 6, strike "when" and insert in lieu
thereof "immediately prior to the time".,

and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

TITO D. CHAVEZ, Chairman

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Riley, Wiener, Campos

Absent: None

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~~[bracketed material] = delete~~

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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**FORTY- SECOND LEGI SLATURE
SECOND SESSION, 1996**

February 13, 1996

Mr. President:

**Your INDIAN & CULTURAL AFFAIRS COMMITTEE, to whom
has been referred**

HOUSE BILL 47, 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,

John Pinto, Chairman

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

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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

Date _____

The roll call vote was 4 For 1 Against

Yes: 4

No: Pinto

Excused: Ingle, McKibben, Paster

Absent: None

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Underscored material = new
[bracketed material] = delete

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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