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HOUSE BILL 534

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

INTRODUCED BY

BEN LUJAN

AN ACT

RELATING TO OCCUPANCY TAX REVENUES; CHANGING AND CLARIFYING THE PURPOSES FOR WHICH THE REVENUES FROM THE OCCUPANCY TAX IMPOSED PURSUANT TO THE LODGERS' TAX ACT MAY BE USED; CHANGING CERTAIN AUDIT AND REPORTING REQUIREMENTS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 3-38-13 NMSA 1978 (being Laws 1969, Chapter 199, Section 1) is amended to read:

"3-38-13. SHORT TITLE. -- ~~[This act]~~ Sections 3-38-13 through 3-38-24 NMSA 1978 may be cited as the "Lodgers' Tax Act". "

Section 2. Section 3-38-14 NMSA 1978 (being Laws 1969, Chapter 199, Section 2) is amended to read:

"3-38-14. DEFINITIONS. -- As used in the Lodgers' Tax Act:

Underscored material = new
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1 A. "gross taxable rent" means the total amount of
2 rent paid for lodging, not including the state gross receipts
3 tax or local sales taxes;

4 B. "lodging" means the transaction of furnishing
5 rooms or other [~~accommodations~~] accommodations by a vendor to a
6 vendee who for rent uses, possesses or has the right to use or
7 possess any room or rooms or other units of accommodations in or
8 at a taxable premises;

9 C. "lodgings" means the rooms or other
10 accommodations furnished by a vendor to a vendee by a taxable
11 service of lodgings;

12 D. "occupancy tax" means the tax on lodging
13 authorized by the Lodgers' Tax Act;

14 E. "person" means a corporation, firm, other body
15 corporate, partnership, association or individual. "Person"
16 includes an executor, administrator, trustee, receiver or other
17 representative appointed according to law and acting in a
18 representative capacity. [~~but~~] "Person" does not include the
19 United States of America, the state of New Mexico, any
20 corporation, department, instrumentality or agency of the
21 federal government or the state government or any political
22 subdivision of the state;

23 F. "rent" means the consideration received by a
24 vendor in money, credits, property or other consideration valued
25 in money for lodgings subject to an occupancy tax authorized in

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[bracketed material] = delete

1 the Lodgers' Tax Act;

2 G. "taxable premises" means a hotel, apartment,
3 apartment hotel, apartment house, lodge, lodging house, rooming
4 house, motor hotel, guest house, guest ranch, ranch resort,
5 guest resort, mobile home, motor court, auto court, auto camp,
6 trailer court, trailer camp, trailer park, tourist camp, cabin
7 or other premises used for lodging;

8 H. "tourist" means a person who travels for the
9 purpose of business, pleasure or culture to a municipality or
10 county imposing an occupancy tax;

11 I. "tourist-related events" means events that are
12 planned for, promoted to and attended by tourists;

13 J. "tourist-related facilities and attractions"
14 means facilities and attractions that are intended to be used by
15 or visited by tourists;

16 K. "tourist-related transportation systems" means
17 transportation systems that provide transportation for tourists
18 to and from tourist-related facilities, attractions and events;

19 [~~H.-~~] L. "vendee" means a natural person to whom
20 lodgings are furnished in the exercise of the taxable service of
21 lodging; and

22 [~~H.-~~] M. "vendor" means a person furnishing lodgings
23 in the exercise of the taxable service of lodging. "

24 Section 3. Section 3-38-15 NMSA 1978 (being Laws 1969,
25 Chapter 199, Section 3, as amended) is amended to read:

. 109615.2

Underscored material = new
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1 "3-38-15. AUTHORIZATION OF TAX--LIMITATIONS ON USE OF
2 PROCEEDS. --

3 A. A municipality may impose by ordinance an
4 occupancy tax for revenues on lodging within the municipality,
5 and the board of county commissioners of a county may impose by
6 ordinance an occupancy tax for revenues on lodging within that
7 part of the county outside of the incorporated limits of a
8 municipality.

9 B. The occupancy tax shall not exceed five percent
10 of the gross taxable rent.

11 C. Every vendor who is furnishing any lodgings
12 within a municipality or county is exercising a taxable
13 privilege.

14 ~~[D. A municipality or county imposing an occupancy~~
15 ~~tax of no more than two percent shall use not less than one-~~
16 ~~fourth of the proceeds of such tax for the purpose of~~
17 ~~advertising, publicizing and promoting facilities authorized in~~
18 ~~Section 3-38-21 NMSA 1978 and tourist attractions.~~

19 ~~E. Subject to the limitations of Subsection F of~~
20 ~~this section, a municipality or county imposing an occupancy tax~~
21 ~~of more than two percent shall use not less than one-half of the~~
22 ~~proceeds derived from the first three percent of such tax for~~
23 ~~the purpose of advertising, publicizing and promoting facilities~~
24 ~~authorized in Section 3-38-21 NMSA 1978 and tourist attractions.~~
25 ~~A municipality or county imposing an occupancy tax of more than~~

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[bracketed material] = delete

1 ~~three percent shall use all of the proceeds derived from the~~
2 ~~portion of the tax in excess of three percent in any manner~~
3 ~~authorized in Section 3-38-21 NMSA 1978.]~~

4 D. The following portions of the proceeds from the
5 occupancy tax shall be used only for advertising, publicizing
6 and promoting tourist-related attractions, facilities and
7 events:

8 (1) if the municipality or county imposes an
9 occupancy tax of no more than two percent, not less than one-
10 fourth of the proceeds shall be used for those purposes:

11 (2) if the occupancy tax imposed is more than
12 two percent and the municipality is not located in a class A
13 county or the county is not a class A county, not less than one-
14 half of the proceeds from the first three percent of the tax and
15 not less than one-fourth of the proceeds from the tax in excess
16 of three percent shall be used for those purposes; and

17 (3) if the occupancy tax imposed is more than
18 two percent and the municipality is located in a class A county
19 or the county is a class A county, not less than one-half of the
20 proceeds from the tax shall be used for those purposes.

21 E. The proceeds from the occupancy tax in excess of
22 the amount required to be used for advertising, publicizing and
23 promoting tourist-related attractions, facilities and events may
24 be used for any purpose authorized in Section 3-38-21 NMSA 1978.

25 F. The proceeds from the occupancy tax that are

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1 required to be used to advertise, publicize and promote tourist-
2 related attractions, facilities and events shall be used within
3 two years of the close of the fiscal year in which they were
4 collected and shall not be accumulated beyond that date or used
5 for any other purpose.

6 G. Notwithstanding the provisions of Paragraph (2)
7 of Subsection D of this section, any use by a municipality or
8 county of occupancy tax proceeds on January 1, 1996 may continue
9 to be so used after July 1, 1996 in accordance with the
10 provisions of this section and Section 3-38-21 NMSA 1978 as they
11 were in effect prior to July 1, 1996; provided, any change in
12 the use of those tax proceeds after July 1, 1996 is subject to
13 the limitations of that paragraph.

14 [~~F.~~] H. Notwithstanding the provisions of Paragraph
15 (2) of Subsection [E] D of this section, the payment of
16 principal and interest on outstanding bonds issued prior to
17 [July 1, 1977] January 1, 1996 pursuant to Section 3-38-23 or
18 3-38-24 NMSA 1978 shall be made in accordance with the
19 retirement schedules of the bonds established at the time of
20 issuance. The amount of expenditures required under Paragraph
21 (2) of Subsection [E] D of this section shall be reduced each
22 year, if necessary, to make the required payments of principal
23 and interest of all outstanding bonds issued prior to [July 1,
24 1977] January 1, 1996. "

25 Section 4. Section 3-38-17.1 NMSA 1978 (being Laws 1992,

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1 Chapter 12, Section 2) is amended to read:

2 "3-38-17.1. AUDIT OF VENDORS. -- The governing body of any
3 municipality or county collecting over [~~fifty thousand dollars~~
4 ~~(\$50,000)~~] two hundred fifty thousand dollars (\$250,000) in
5 occupancy tax proceeds shall select for annual random audits one
6 or more vendors to verify the amount of gross rent subject to
7 the occupancy tax and to ensure that the full amount of
8 occupancy tax on that rent is collected. The governing body of
9 any municipality or county collecting less than [~~fifty thousand~~
10 ~~dollars (\$50,000)~~] two hundred fifty thousand dollars (\$250,000)
11 in receipts, per annum, of occupancy tax proceeds shall conduct
12 random audits to verify full payment of occupancy tax receipts.
13 Copies of audits completed shall be filed annually with the
14 local government division of the department of finance and
15 administration. "

16 Section 5. A new section of the Lodgers' Tax Act, Section
17 3-38-17.2 NMSA 1978, is enacted to read:

18 "3-38-17.2. [NEW MATERIAL] FINANCIAL REPORTING. --

19 A. The governing body of any municipality or county
20 imposing and collecting an occupancy tax shall furnish to the
21 advisory board that portion of any proposed budget, report or
22 audit filed or received by the governing body pursuant to either
23 Chapter 6, Article 6 NMSA 1978 or the Audit Act that relates to
24 the expenditure of occupancy tax funds within ten days of the
25 filing or receipt of such proposed budget, report or audit by

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1 the local governing body.

2 B. The governing body of any municipality or county
3 imposing and collecting an occupancy tax shall report to the
4 local government division of the department of finance and
5 administration on a quarterly basis any expenditure of occupancy
6 tax funds pursuant to Sections 3-38-15 and 3-38-21 NMSA 1978 and
7 shall furnish a copy of this report to the advisory board when
8 it is filed with the division. "

9 Section 6. A new section of the Lodgers' Tax Act, Section
10 3-38-17.3 NMSA 1978, is enacted to read:

11 "3-38-17.3. [NEW MATERIAL] ENFORCEMENT. --

12 A. An action to enforce the Lodgers' Tax Act may be
13 brought by:

14 (1) the attorney general or the district
15 attorney in the county of jurisdiction; or

16 (2) a vendor who is collecting the proceeds of
17 an occupancy tax in the county of jurisdiction.

18 B. A district court may issue a writ of mandamus or
19 order an injunction or other appropriate remedy to enforce the
20 provisions of the Lodgers' Tax Act.

21 C. The court shall award costs and reasonable
22 attorneys' fees to the prevailing party in a court action to
23 enforce the provisions of the Lodgers' Tax Act. "

24 Section 7. Section 3-38-21 NMSA 1978 (being Laws 1969,
25 Chapter 199, Section 9, as amended) is amended to read:

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Underscored material = new
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1 "3-38-21. [USE] ELIGIBLE USES OF TAX PROCEEDS. -- Subject to
2 the limitations contained in Section 3-38-15 NMSA 1978, a
3 municipality or county imposing an occupancy tax may use the
4 proceeds [~~thereof~~] from the tax to defray costs of:

5 A. collecting and otherwise administering the tax,
6 [~~B. establishing and operating, constructing,~~
7 ~~purchasing, otherwise acquiring, reconstructing, extending,~~
8 ~~bettering or otherwise improving fairgrounds, exposition~~
9 ~~buildings, fieldhouses, auditoriums, welcome centers, tourist~~
10 ~~information centers, museums, performing arts facilities in~~
11 ~~operation prior to January 1, 1989, convention halls or other~~
12 ~~convention facilities of the municipality, of the county within~~
13 ~~which the municipality is located or of the county and acquiring~~
14 ~~improvements incidental thereto;~~

15 C. ~~equipping and furnishing such facilities, as~~
16 ~~specified in Subsection B of this section, of the municipality~~
17 ~~or county;~~

18 D. ~~acquiring a suitable site, grounds or other real~~
19 ~~property or any interest therein for such facilities of the~~
20 ~~municipality or county] including the performance of audits~~
21 ~~required by the Lodgers' Tax Act pursuant to guidelines issued~~
22 ~~by the department of finance and administration;~~

23 B. establishing, operating, purchasing,
24 constructing, otherwise acquiring, reconstructing, extending,
25 improving, equipping, furnishing or acquiring real property or

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1 any interest in real property for the site or grounds for
2 tourist-related facilities, attractions or transportation
3 systems of the municipality, the county in which the
4 municipality is located or the county;

5 [E.] C. the principal of and interest on any prior
6 redemption premiums due in connection with and any other charges
7 pertaining to revenue bonds authorized by Section 3-38-23 or
8 3-38-24 NMSA 1978;

9 [F.] D. advertising, publicizing and promoting
10 [such] tourist-related attractions, facilities and events of the
11 municipality or county and tourist facilities or attractions
12 within the area; [except that a municipality located in a class
13 A county or a class A county imposing an occupancy tax of more
14 than two percent shall use not less than one-half of the
15 proceeds derived from the tax for the purposes of this
16 subsection; provided that this use of the proceeds of the
17 occupancy tax shall not affect the payment of principal and
18 interest on outstanding bonds issued prior to July 1, 1977
19 pursuant to Section 3-38-23 or 3-38-24 NMSA 1978 which shall be
20 made in accordance with the retirement schedules of the bonds
21 established at the time of issuance. The amount of expenditures
22 required by this subsection shall be reduced each year, if
23 necessary, to make the required payments of principal and
24 interest of all outstanding bonds issued prior to July 1, 1977;

25 G. ~~provision of public transportation within a~~

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1 ~~three-mile area of a ski lift facility, provided such a ski lift~~
2 ~~facility originates inside the boundaries or within three~~
3 ~~hundred feet of the boundaries of a municipality;~~

4 ~~H. the operation, maintenance and capital costs~~
5 ~~associated with a public transportation system serving the ski~~
6 ~~area and other tourist areas within a nineteen-mile radius of a~~
7 ~~town that has a population of more than four thousand but less~~
8 ~~than four thousand five hundred according to the 1990 federal~~
9 ~~decennial census; or]~~

10 E. providing police and fire protection and
11 sanitation service for tourist-related events, facilities and
12 attractions located in the respective municipality or county; or

13 ~~[F.]~~ F. any combination of the foregoing purposes or
14 transactions stated in this section, but for no other municipal
15 or county purpose. "

16 Section 8. A new section of the Lodgers' Tax Act, Section
17 3-38-21.1 NMSA 1978, is enacted to read:

18 "3-38-21.1. [NEW MATERIAL] CONTRACTING FOR SERVICES. --

19 A. The governing body of a municipality or county
20 may contract for the management of programs and activities
21 funded with revenue from the tax authorized in Section 3-38-15
22 NMSA 1978. The governing body shall require periodic reports to
23 the governing body, at least quarterly, listing the expenditures
24 for those periods. Within ten days of receiving the reports,
25 the governing body shall furnish copies of them to the advisory

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Underscored material = new
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1 board. Funds provided to the contracting person or governmental
2 agency shall be maintained in a separate account established for
3 that purpose and shall not be commingled with any other money.

4 B. A person or governmental agency with whom a
5 municipality contracts under this section to conduct an activity
6 authorized by Section 3-38-21 NMSA 1978 shall maintain complete
7 and accurate financial records of each expenditure of the tax
8 revenue made and upon request of the governing body of the
9 municipality or county shall make such records available for
10 inspection.

11 C. The occupancy tax revenue spent for a purpose
12 authorized by the Lodgers' Tax Act may be spent for day-to-day
13 operations, supplies, salaries, office rental, travel expenses
14 and other administrative costs only if those administrative
15 costs are incurred directly for that purpose.

16 D. A person or governmental agency with whom a local
17 governmental body contracts under this section may subcontract
18 with the approval of the governing body of the municipality or
19 county. A subcontractor shall be subject to the same terms and
20 conditions as the contractor regarding separate financial
21 accounts, periodic reports and inspection of records. "

22 Section 9. Section 3-38-22 NMSA 1978 (being Laws 1977,
23 Chapter 294, Section 2) is amended to read:

24 "3-38-22. ADVISORY BOARDS CREATED--DUTIES.--

25 A. The mayor of every municipality [which] that

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1 imposes an occupancy tax [~~under Sections 14-37-14 through~~
2 ~~14-37-24 NMSA 1953~~] pursuant to the Lodgers' Tax Act shall
3 appoint [~~an advisory board of five residents of the~~
4 ~~municipality; two of whom shall represent the lodging industry,~~
5 ~~two of whom are directly involved in tourist-related industries~~
6 ~~and one member at large who shall represent the general public~~]
7 a five-member advisory board that consists of two members who
8 are owners or operators of lodgings subject to the occupancy tax
9 within the municipality, two members who are owners or operators
10 of industries located within the municipality that primarily
11 provide services or products to tourists and one member who is a
12 resident of the municipality and represents the general public.

13 B. The chairman of every county commission [~~which~~
14 ~~that~~ imposes an occupancy tax [~~under Sections 14-37-14 through~~
15 ~~14-37-24 NMSA 1953~~] pursuant to the Lodgers' Tax Act shall
16 appoint [~~an advisory board of five residents of the county; two~~
17 ~~of whom shall represent the lodging industry, two of whom are~~
18 ~~directly involved in tourist-related industries and one member~~
19 ~~at large who shall represent the general public~~] a five-member
20 advisory board that consists of two members who are owners or
21 operators of lodgings subject to the occupancy tax within the
22 unincorporated area of the county, two members who are owners or
23 operators of industries located within the unincorporated area
24 of the county that primarily provide services or products to
25 tourists and one member who is a resident of the unincorporated

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1 area of the county who represents the general public.

2 C. Members of the boards created under Subsections A
3 and B of this section shall serve at the pleasure of the
4 respective appointing authorities. The boards shall advise the
5 respective governing bodies on the expenditure of funds
6 authorized by Section [~~14-37-16 NMSA 1953~~] 3-38-15 NMSA 1978 for
7 advertising, publicizing and promoting tourist attractions and
8 facilities in the respective counties and municipalities.

9 D. The advisory board shall submit to the mayor and
10 council or county commission recommendations for the
11 expenditures of funds authorized pursuant to the Lodgers' Tax
12 Act for advertising, publicizing and promoting tourist-related
13 attractions, facilities and events in the respective counties
14 and municipalities. "

15 Section 10. Section 3-38-23 NMSA 1978 (being Laws 1969,
16 Chapter 199, Section 10, as amended) is amended to read:

17 "3-38-23. REVENUE BONDS. --

18 A. Revenue bonds may be issued at any time or from
19 time to time by a municipality or county to defray wholly or in
20 part the costs of any one, all or any combination of purposes
21 authorized in Subsections B through E of Section 3-38-21 NMSA
22 1978.

23 B. The revenue bonds may be payable from and such
24 payment may be secured by a pledge of and lien on the revenues
25 derived from:

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1 (1) the proceeds of the occupancy tax of the
2 municipality or county after the deduction of those amounts
3 required to be expended pursuant to Subsections D and E of
4 Section 3-38-15 NMSA 1978 and the administration costs
5 pertaining to the tax in an amount not to exceed ten percent of
6 the [~~gross taxable rent~~] occupancy tax receipts collected by the
7 municipality or county in any fiscal year, excluding from the
8 computation of such costs the administration costs ultimately
9 recovered from delinquent vendors by civil action as penalties,
10 costs of collection and attorneys' fees but not as interest on
11 unpaid principal;

12 (2) the [~~recreational facilities~~] tourist-
13 related facilities, attractions or transportation systems to
14 which the bonds pertain, after provision is made for the payment
15 of the operation and maintenance expenses of such facilities,
16 attractions or transportation systems; or

17 (3) a combination of such net revenues from
18 both sources designated in Paragraphs (1) and (2) of this
19 subsection.

20 C. The bonds shall bear interest at a rate or rates
21 as authorized in the Public Securities Act, and the first
22 interest payment may be for any period authorized in the Public
23 Securities Act.

24 D. Except as otherwise provided in the Lodgers' Tax
25 Act, revenue bonds authorized in the Lodgers' Tax Act shall be

Underscored material = new
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1 issued in accordance with the provisions of Sections 3-31-2
2 through 3-31-6 NMSA 1978. "

3 Section 11. A new section of Chapter 6, Article 6 NMSA
4 1978 is enacted to read:

5 " [NEW MATERIAL] LOCAL GOVERNMENT DIVISION-- ADDITIONAL
6 DUTIES-- OCCUPANCY TAX QUARTERLY REPORTS. --The local government
7 division of the department of finance and administration shall
8 promulgate rules and regulations that require the governing body
9 of any municipality or county imposing and collecting an
10 occupancy tax pursuant to the Lodgers' Tax Act to report to the
11 division on a quarterly basis any expenditure of occupancy tax
12 funds pursuant to Sections 3-38-15 and 3-38-21 NMSA 1978. "

13 Section 12. EFFECTIVE DATE. --The effective date of the
14 provisions of this act is July 1, 1996.

State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

February 5, 1996

Mr. Speaker:

Your TAXATION AND REVENUE COMMITTEE, to whom has
been referred

HOUSE BILL 534

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

Respectfully submitted,

Jerry W. Sandel, Chairman

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 12 For 0 Against

Yes: 12

Excused: Sandoval

Absent: None

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Underscored material = new
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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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February 12, 1996

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10 Mr. President:

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Your WAYS AND MEANS COMMITTEE, to whom has been
referred

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HOUSE BILL 534

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

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Respectfully submitted,

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TITO D. CHAVEZ, Chairman

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Adopted _____ Not Adopted _____

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FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

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(Chief Clerk)

(Chief Clerk)

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9 The roll call vote was 5 For 0 Against

10 Yes: 5

11 No: 0

12 Excused: Jennings, Riley, Wiener

13 Absent: None

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