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SENATE BILL 10

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

INTRODUCED BY

MANNY M ARAGON

AN ACT

RELATING TO FORFEITURE OF PROPERTY; ENACTING THE FORFEITURE ACT;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN
APPROPRIATION.

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

Section 1. A new section of the Criminal Code is enacted
to read:

"[NEW MATERIAL] SHORT TITLE. --Sections 1 through 12 of
this act may be cited as the "Forfeiture Act". "

Section 2. A new section of the Criminal Code is enacted
to read:

"[NEW MATERIAL] PURPOSE OF ACT. --The purpose of the
Forfeiture Act is to provide uniform standards and procedures
for law enforcement officers and agencies for the seizure and
forfeiture of property used or intended to be used in the
commission of a crime. "

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1 Section 3. A new section of the Criminal Code is enacted
2 to read:

3 "[NEW MATERIAL] DEFINITIONS. --As used in the Forfeiture
4 Act:

5 A. "conviction" means a final adjudication of guilt
6 by a district or magistrate court or, if the court decision is
7 appealed, a final adjudication of guilt by an appellate court;

8 B. "crime" means an offense punishable by
9 imprisonment for one year or more, a violation of laws or
10 regulations regarding hunting or fishing or a violation of laws
11 regarding gambling;

12 C. "law enforcement officer" means a state or
13 municipal police officer, county sheriff, deputy sheriff,
14 conservation officer, motor transportation enforcement officer
15 or other state employee authorized by state law to enforce
16 criminal statutes; provided, "law enforcement officer" does not
17 include correctional officers;

18 D. "owner" means an individual who possesses a legal
19 or equitable ownership in property, or if title to the property
20 is held in the name of a partnership, trust, corporation or
21 other legal entity, an individual who possesses a substantial
22 legal or equitable ownership interest in the partnership, trust,
23 corporation or other legal entity; and

24 E. "property" means tangible or intangible personal
25 property, real property or an interest in tangible or intangible

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1 personal property or real property. "

2 Section 4. A new section of the Criminal Code is enacted
3 to read:

4 "[NEW MATERIAL] FORFEITURE REQUIREMENTS. --

5 A. A judgment for the forfeiture of property shall
6 be entered only upon:

7 (1) conviction of an owner of the property for
8 a crime related to the forfeiture; provided that a forfeiture
9 proceeding may be commenced prior to the conclusion of the
10 criminal prosecution in the trial court; and

11 (2) proof by clear and convincing evidence that
12 the property is forfeitable under state law and that a person
13 convicted of a crime related to the forfeiture is an owner of
14 the property.

15 B. The value of the property forfeited shall not
16 unreasonably exceed the pecuniary gain derived or sought to be
17 derived by the crime, the pecuniary loss caused or sought to be
18 caused by the crime or the value of the convicted owner's
19 interest in the property. "

20 Section 5. A new section of the Criminal Code is enacted
21 to read:

22 "[NEW MATERIAL] SEIZURE-- COURT ORDER-- EXCEPTIONS. --

23 A. Property subject to forfeiture may be seized by a
24 law enforcement officer upon an order issued by the district
25 court having jurisdiction.

1 B. The court may issue an order pursuant to
2 Subsection A of this section if it determines that:

3 (1) there is a substantial probability that the
4 state will prevail on the issue of forfeiture and that failure
5 to enter the order will result in the property's being
6 destroyed, removed from the jurisdiction of the court or
7 otherwise made unavailable for forfeiture; and

8 (2) the need to preserve the availability of
9 the property through the entry of the requested order outweighs
10 the hardship to a party of interest.

11 C. A seizure of property other than a residence or
12 business may be made without a court order when:

13 (1) the seizure is incident to an arrest or a
14 search pursuant to a search warrant or an inspection pursuant to
15 an administrative inspection warrant;

16 (2) the property subject to seizure has been
17 the subject of a prior judgment in favor of the state or a
18 political subdivision in a criminal injunction or forfeiture
19 proceeding;

20 (3) there is probable cause to believe that the
21 property is directly or indirectly dangerous to health or
22 safety; or

23 (4) there is probable cause to believe that the
24 property is forfeitable under state law and that the delay
25 occasioned by the need to secure an order will frustrate the

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1 seizure; provided, however, that an officer having made a
2 seizure pursuant to this paragraph shall, within ten days of the
3 seizure, apply for an order pursuant to Subsection A of this
4 section; and provided further that the property shall be
5 released to the owner immediately if the order is denied. The
6 officer making the seizure shall make a reasonable effort to
7 notify the person from whom the property was seized of the
8 location, date and time of the hearing on the application for an
9 order allowing seizure, so the person has a reasonable
10 opportunity to appear at the hearing and oppose the order.

11 D. The seizure of a residence or business shall
12 occur only after a pre-seizure hearing, with notice provided in
13 accordance with the provisions of Section 6 of the Forfeiture
14 Act.

15 E. The owner shall be given a receipt whenever
16 practicable for the property seized. "

17 Section 6. A new section of the Criminal Code is enacted
18 to read:

19 " NEW MATERIAL SEIZURE-- NOTICE-- CLAIMS. --

20 A. All forfeiture proceedings shall be brought in
21 the name of the state. All forfeiture proceedings shall be
22 initiated in district court in the county in which the property
23 was seized; provided that, for good cause shown upon application
24 of any interested party, the court may consolidate proceedings
25 filed in different counties or allow transfer of proceedings to

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1 another county.

2 B. All forfeiture proceedings shall be initiated by
3 the issuance of a notice of pending forfeiture by the
4 prosecuting attorney. The notice shall be issued within twenty
5 days from the date the property was seized. The notice shall
6 include a description of the property sought to be forfeited,
7 date and place of the seizure of the property, the name and
8 address of the seizing agency, the reason the property is
9 alleged to be forfeitable, a summary of the procedures and the
10 procedural rights applicable to the forfeiture action and a
11 notification alerting a trustee of the state's obligations under
12 the Forfeiture Act.

13 C. The notice shall be given to the person from whom
14 the property was seized and to each owner and secured interest
15 holder and is effective upon personal service.

16 D. If personal service of the notice is not possible
17 after good-faith attempts at all known residences and places of
18 business, the seizing law enforcement agency shall publish a
19 notice of seizure, including a list of seized property, in five
20 consecutive editions of a newspaper of general circulation in
21 the county in which the property has been seized. The notice
22 shall include a statement of the rights of an owner to claim
23 return of the property.

24 E. Any person claiming seized property shall file
25 with the appropriate law enforcement agency a claim stating his

1 interest in the property. All claims shall be filed within
2 sixty days of the date of personal service on the claimant or,
3 if personal service was not effected, within sixty days of the
4 last date of publication in the newspaper of the notice of
5 seizure.

6 F. Within twenty days of receipt by a law
7 enforcement agency of any claim to property, a complaint seeking
8 forfeiture of the property shall be filed in district court, and
9 copies of the complaint shall be served on all claimants. If
10 additional claims to the property are made in a timely manner
11 after the complaint is filed, those additional claimants shall
12 be made parties to the action by amendment of the complaint.
13 The Rules of Civil Procedure for the District Courts shall apply
14 to all forfeiture proceedings. The district court shall
15 determine the extent and priority of interest for all claimants
16 to property.

17 G. No bond of any kind shall be required as a
18 prerequisite to making a claim for the return of seized
19 property.

20 H. Reasonable attorneys' fees and costs shall be
21 awarded to a claimant who prevails in a forfeiture proceeding.
22 The attorneys' fees and costs shall be paid by the state.

23 I. If there is opposition to the forfeiture, the
24 claimant shall have the right to a jury trial in determining the
25 propriety of a forfeiture of any property valued in excess of

1 one thousand dollars (\$1,000).

2 J. If the owner of the seized property is
3 financially unable to obtain representation of counsel, the
4 court may appoint appropriate counsel to represent that person
5 with respect to the claim. The court shall set compensation for
6 that representation as appropriate. Compensation for appointed
7 counsel shall be paid by the state.

8 K. The district court shall file a decision
9 regarding a forfeiture complaint within sixty days of the filing
10 of an answer by a claimant or, if there is more than one
11 claimant, within sixty days of the filing of an answer by the
12 last claimant. The sixty-day time limitation may be extended by
13 a consent of the parties or by the district court for good cause
14 shown. Good cause includes the pendency of related criminal
15 proceedings. Upon agreement of the parties, the court may
16 render a decision regarding whether and to what extent the
17 property is forfeitable prior to the time that related criminal
18 proceedings become final. When related criminal proceedings
19 become final, a final order regarding the forfeiture action
20 shall be entered.

21 L. When no claims to property are filed in a timely
22 manner, the property shall be forfeited. Forfeited property, if
23 it is not currency, shall be sold or otherwise disposed of in
24 accordance with law, and all sale proceeds and forfeited
25 currency shall be deposited in the general fund, or, if

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1 forfeited under Chapter 17 NMSA 1978, the proceeds shall be
2 deposited in the game protection fund, in an amount equal to the
3 amount expended from the game protection fund to prosecute the
4 case, and the surplus shall be deposited in the general fund.
5 Notwithstanding the provisions of this subsection, proceeds from
6 the sale of forfeited property or forfeited currency shall be
7 applied first as restitution to or on behalf of actual victims
8 of the criminal acts related to the forfeiture proceedings."

9 Section 7. A new section of the Criminal Code is enacted
10 to read:

11 "[NEW MATERIAL] RETURN OF PROPERTY TO NONDEFENDANT. -- If
12 the ownership interest of a person convicted for a crime related
13 to the seizure of property cannot be proven by clear and
14 convincing evidence, the court shall order the property returned
15 to its claimants."

16 Section 8. A new section of the Criminal Code is enacted
17 to read:

18 "[NEW MATERIAL] REAL PROPERTY AND MOTOR VEHICLES-- TITLE
19 SEARCH-- NOTICE. --

20 A. In addition to the procedures set forth in
21 Section 6 of the Forfeiture Act, when the seized property is
22 real property or a motor vehicle, the seizing law enforcement
23 agency shall perform a title search on the property. Subsequent
24 to the title search, the seizing law enforcement agency shall
25 give a notice of seizure as provided in Section 6 of the

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1 Forfeiture Act to all persons whom the agency knows or
2 reasonably should know to have an interest in the property.

3 B. When the seizing law enforcement agency
4 determines that the seized real property or motor vehicle does
5 not belong to a person charged with a crime related to the
6 seizure of the property or motor vehicle, the agency shall
7 return the real property or motor vehicle to the owner of the
8 property. "

9 Section 9. A new section of the Criminal Code is enacted
10 to read:

11 "[NEW MATERIAL] ACTIONS--TIME LIMITS--BURDEN OF PROOF.--

12 A. No action to forfeit property shall be brought
13 more than one year from the date of the conviction of a person
14 for a crime related to the proposed forfeiture of the property.

15 B. The burden of proof is on the prosecution to
16 establish, by clear and convincing evidence, that the property
17 is subject to forfeiture. "

18 Section 10. A new section of the Criminal Code is enacted
19 to read:

20 "[NEW MATERIAL] PROPERTY IMMUNE FROM FORFEITURE--
21 EXCEPTION.--

22 A. No property shall be forfeited under the
23 provisions of the Forfeiture Act to the extent of the interest
24 of any owner or lienholder who is not convicted of a crime
25 related to the forfeiture or by reason of a criminal act

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1 committed without the knowledge or consent of that owner or
2 lienholder.

3 B. No property shall be forfeited that has been paid
4 or pledged as bona fide attorneys' fees.

5 C. Notwithstanding other provisions of this section,
6 if the court determines that property was transferred by the
7 owner or otherwise disposed of to circumvent the provisions of
8 the Forfeiture Act or other state law that provides for
9 forfeiture or limits use or disposal of property, that property
10 shall be subject to forfeiture as if the person convicted of the
11 crime were the sole owner."

12 Section 11. A new section of the Criminal Code is enacted
13 to read:

14 "[NEW MATERIAL] SAFEKEEPING OF SEIZED PROPERTY PRIOR TO
15 FORFEITURE--RETURN TO DEFENDANT.--

16 A. All currency seized pursuant to the provisions of
17 the Forfeiture Act shall be remitted to the state treasurer or
18 the clerk of the court for deposit in an interest-bearing trust
19 account.

20 B. Other property not required by state or federal
21 law to be destroyed may be:

- 22 (1) placed under seal;
23 (2) removed to a place designated by the law
24 enforcement agency or the district court;
25 (3) removed to the custody of the law

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1 enforcement agency;

2 (4) sold or disposed of pursuant to Subsection
3 L of Section 6 of the Forfeiture Act, when no claims are filed
4 in a timely manner; or

5 (5) otherwise disposed of as provided by court
6 order.

7 C. Property shall be kept by the law enforcement
8 agency in such a manner as to protect it from theft or damage.

9 D. If an owner whose property was seized is not
10 convicted of the crime for which his property was seized, the
11 property shall be returned to him, including interest accrued on
12 escrow accounts.

13 E. Notwithstanding the immunity provided in the Tort
14 Claims Act, an owner of seized property that is returned
15 pursuant to the Forfeiture Act shall have a cause of action
16 against the law enforcement agency. "

17 Section 12. A new section of the Criminal Code is enacted
18 to read:

19 " NEW MATERIAL DISPOSAL OF FORFEITED PROPERTY. --

20 A. Whenever property is forfeited to the state
21 pursuant to a court order under the Forfeiture Act, the court
22 shall provide for the sale or other disposition of the property.
23 Forfeited currency and proceeds from the sale of forfeited
24 property shall be applied first to restitution to or on behalf
25 of actual victims of the criminal acts of the convicted owner

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1 related to the forfeiture proceedings.

2 B. After payments have been made pursuant to the
3 provisions of Subsection A of this section, the court shall
4 order the balance deposited in the general fund.

5 C. If forfeited property consists of a partial
6 interest in property, the court may, at its discretion and to
7 the benefit of the state's taxpayers, allow the other owners to
8 purchase the state's share at the current market value."

9 Section 13. Section 17-2-20.1 NMSA 1978 (being Laws 1979,
10 Chapter 321, Section 1, as amended) is amended to read:

11 "17-2-20.1. SEIZURE AND FORFEITURE--PROPERTY SUBJECT.--

12 A. All firearms and bows and arrows may be subject
13 to seizure and forfeiture when used as instrumentalities in the
14 commission of the following crimes:

15 (1) illegal possession or transportation of big
16 game during closed season;

17 (2) taking big game during closed season;

18 (3) attempting to take big game by the use of
19 spotlight or artificial light; and

20 (4) exceeding the bag limit on any big game
21 species during open season.

22 ~~[B. Provided that no firearms or bows and arrows~~
23 ~~shall be subject to forfeiture if the violation was without the~~
24 ~~knowledge or consent of the owner.~~

25 ~~C.]~~ B. Any motor vehicle shall be subject to seizure

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1 and forfeiture when operated in violation of the provisions of
2 Section 17-2-31 NMSA 1978 regarding hunting by spotlight. [~~In~~
3 ~~the event of seizure and forfeiture under this subsection, the~~
4 ~~motor vehicle shall be disposed of in accordance with the~~
5 ~~provisions of Section 17-2-20.2 NMSA 1978.~~

6 ~~D. No conveyance is subject to forfeiture under this~~
7 ~~section by reason of any act or omission established for the~~
8 ~~owner to have been committed or omitted without his knowledge or~~
9 ~~consent. A forfeiture of a conveyance encumbered by a bona fide~~
10 ~~security interest shall be subject to the interest of a secured~~
11 ~~party if the secured party neither had knowledge of nor~~
12 ~~consented to the act or omission]~~

13 C. Seizure and forfeiture proceedings shall be
14 conducted pursuant to the provisions of the Forfeiture Act. "

15 Section 14. Section 18-6-9.3 NMSA 1978 (being Laws 1993,
16 Chapter 176, Section 11) is amended to read:

17 "18-6-9.3. CULTURAL PROPERTY--SEIZURE AND FORFEITURE OF
18 INSTRUMENTS. -- [A-] Any instrument, vehicle, tool or equipment
19 used or intended to be used to violate the provisions of the
20 Cultural Properties Act is subject to seizure and forfeiture
21 [~~except that no instrument, vehicle, tool or equipment shall be~~
22 ~~subject to forfeiture if the violation was without the knowledge~~
23 ~~or consent of the owner of the property subject to forfeiture.~~

24 ~~B. Property subject to forfeiture pursuant to the~~
25 ~~provisions of this section may be seized by a conservation~~

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1 ~~officer, sheriff, state police officer or law enforcement~~
2 ~~officer upon an order of the district court in the county having~~
3 ~~jurisdiction over the offense.~~

4 ~~C. Seizure without a court order may occur if:~~

5 ~~(1) the seizure is incident to an arrest or a~~
6 ~~search pursuant to a search warrant; or~~

7 ~~(2) the enforcement officer has probable cause~~
8 ~~to believe that the property was used or intended for use to~~
9 ~~violate the Cultural Properties Act.~~

10 ~~D. In the event of seizure pursuant to this section,~~
11 ~~proceedings shall be instituted within thirty days from the date~~
12 ~~of seizure. A proceeding brought pursuant to this section shall~~
13 ~~be in rem. The claim shall not be filed against the owner or~~
14 ~~any other person and shall be filed only as a civil case.~~

15 ~~E. Property taken or detained pursuant to the~~
16 ~~provisions of this section shall not be subject to replevin, but~~
17 ~~is deemed to be in the custody of the state agency employing the~~
18 ~~enforcing officer, subject only to the orders and decrees of the~~
19 ~~district court. When property is seized pursuant to the~~
20 ~~Cultural Properties Act, the state agency seizing it shall~~
21 ~~remove the property to a place designated by the state agency~~
22 ~~for disposition in accordance with law.~~

23 ~~F. Except as otherwise specifically provided by law,~~
24 ~~property forfeited due to a violation of the Cultural Properties~~
25 ~~Act shall be sold at public auction pursuant to a court order.~~

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1 ~~The proceeds of the court-ordered sale of forfeited property are~~
2 ~~subject first to the claims, verified by the court, of innocent~~
3 ~~persons and the legitimate rights to restitution of actual~~
4 ~~victims of the criminal acts. Where proceeds are derived from~~
5 ~~violations:~~

6 ~~(1) on lands controlled by the commissioner of~~
7 ~~public lands, one-half of the proceeds from the sale shall~~
8 ~~accrue to the state agency of which the law enforcement officer~~
9 ~~seizing that property is a member and one-half shall be~~
10 ~~deposited in the cultural properties restoration fund; and~~

11 ~~(2) on any other state lands, one-half of the~~
12 ~~proceeds from the sale shall accrue to the state agency of which~~
13 ~~the law enforcement officer seizing that property is a member~~
14 ~~and one-half of the proceeds shall be deposited in the cultural~~
15 ~~properties restoration fund] pursuant to the provisions of the~~
16 Forfeiture Act. "

17 Section 15. Section 30-3-8.1 NMSA 1978 (being Laws 1993,
18 Chapter 78, Section 2) is amended to read:

19 "30-3-8.1. SEIZURE AND FORFEITURE OF MOTOR VEHICLE--
20 PROCEDURE [EXCEPTION]. --

21 A. A motor vehicle shall be subject to seizure and
22 forfeiture when the vehicle is used or intended for use in the
23 commission of the offense of shooting at or from a motor vehicle
24 pursuant to Subsection B of Section 30-3-8 NMSA 1978.

25 B. A motor vehicle subject to seizure and forfeiture

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1 ~~[may be seized by a law enforcement officer:~~

2 ~~(1) upon an order issued by the district court~~
3 ~~having jurisdiction;~~

4 ~~(2) without an order if the seizure is incident~~
5 ~~to an arrest; or~~

6 ~~(3) without an order if the seizure is incident~~
7 ~~to a search under a valid search warrant.~~

8 ~~C. In the event of seizure pursuant to Subsection B~~
9 ~~of this section, proceedings under the Rules of Civil Procedure~~
10 ~~for the District Courts and Subsection D of this section shall~~
11 ~~be instituted promptly.~~

12 ~~D. A motor vehicle seized under this section shall~~
13 ~~not be subject to replevin, but is deemed to be in the custody~~
14 ~~of the seizing law enforcement agency, subject only to the~~
15 ~~orders and decrees of the district court. When a motor vehicle~~
16 ~~is seized pursuant to the provisions of this section, a law~~
17 ~~enforcement officer may remove the property to a place~~
18 ~~designated by the district court or by the head of the officer's~~
19 ~~agency for disposition in accordance with the law.~~

20 ~~E. When a vehicle is forfeited pursuant to this~~
21 ~~section, the seizing law enforcement agency shall sell the motor~~
22 ~~vehicle at a public auction, and the proceeds, after all costs~~
23 ~~for impoundment, forfeiture and sale are repaid, shall be~~
24 ~~forwarded to the state treasurer for credit to the crime victims~~
25 ~~reparation fund pursuant to Section 31-22-21 NMSA 1978 within~~

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1 ~~thirty days. If the sale of the motor vehicle does not cover~~
2 ~~the cost of impounding, forfeiting and selling the motor~~
3 ~~vehicle, the law enforcement agency may deduct the uncovered~~
4 ~~portion of the cost from the proceeds of the next sale.~~

5 F. ~~No motor vehicle shall be subject to forfeiture~~
6 ~~when the owner of the motor vehicle establishes that the offense~~
7 ~~of shooting at or from a motor vehicle pursuant to Subsection B~~
8 ~~of Section 30-3-8 NMSA 1978 was committed without his knowledge~~
9 ~~or consent. A forfeiture of a motor vehicle encumbered by a~~
10 ~~recorded bona fide security interest shall be subject to the~~
11 ~~interest of the secured party if the secured party did not have~~
12 ~~knowledge of or did not consent to the offense of shooting at or~~
13 ~~from a motor vehicle pursuant to Subsection B of Section 30-3-8~~
14 ~~NMSA 1978] shall be seized and forfeited pursuant to the~~
15 ~~provisions of the Forfeiture Act. "~~

16 Section 16. Section 30-16B-9 NMSA 1978 (being Laws 1991,
17 Chapter 112, Section 9) is amended to read:

18 "30-16B-9. SEIZURE AND FORFEITURE- -PROCEDURE. - - [A.]
19 Property subject to forfeiture under the Unauthorized Recording
20 Act may be seized [by any enforcement officer upon an order
21 issued by the district court having jurisdiction.

22 B. ~~Seizure without such an order may be made if:~~

23 (1) ~~the seizure is incident to an arrest or~~
24 ~~search under a valid search warrant or an inspection under an~~
25 ~~administrative inspection warrant;~~

1 ~~(2) the property subject to seizure has been~~
2 ~~the subject of a prior judgment in favor of the state in an~~
3 ~~injunction or forfeiture proceeding based upon the Unauthorized~~
4 ~~Recording Act; or~~

5 ~~(3) the enforcement officer has probable cause~~
6 ~~to believe that the property was used or is intended to be used~~
7 ~~in violation of the Unauthorized Recording Act.~~

8 ~~C. In the event of seizure pursuant to Subsection A~~
9 ~~of this section, proceedings under Subsection D of this section~~
10 ~~and the Rules of Civil Procedure for the District Court shall be~~
11 ~~instituted promptly and not later than thirty days after~~
12 ~~seizure.~~

13 ~~D. Property taken or detained under this section~~
14 ~~shall not be subject to replevin but is deemed to be in the~~
15 ~~custody of the seizing police department or agency subject only~~
16 ~~to the orders and decrees of the district court. When property~~
17 ~~is seized under the Unauthorized Recording Act, the enforcement~~
18 ~~officer may:~~

19 ~~(1) place the property under seal; or~~

20 ~~(2) remove the property to a place designated~~
21 ~~by the court or head of the officer's department or agency for~~
22 ~~disposition in accordance with law.~~

23 ~~E. When property is forfeited under the Unauthorized~~
24 ~~Recording Act, the seizing police department or agency shall:~~

25 ~~(1) sell that which is not required to be~~

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1 ~~destroyed by law and the proceeds shall revert to the general~~
2 ~~fund;~~

3 ~~(2) take custody of the property for use by law~~
4 ~~enforcement agencies in the enforcement of the Unauthorized~~
5 ~~Recording Act for disposition in accordance with law; or~~

6 ~~(3) forward property, the proceeds from the~~
7 ~~sale of which are not required to revert to the general fund, to~~
8 ~~the property control division of the general services department~~
9 ~~for disposition] and forfeited pursuant to the provisions of the~~
10 ~~Forfeiture Act. "~~

11 Section 17. Section 30-19-10 NMSA 1978 (being Laws 1963,
12 Chapter 303, Section 19-10) is amended to read:

13 "30-19-10. SEIZURE AND FORFEITURE OF PRIZES AND
14 EQUIPMENT. -- Any illegal gambling device or other illegal
15 equipment of any type used in gambling [~~shall be seized by the~~
16 ~~law enforcement officers discovering such device or equipment~~
17 ~~and it shall be the duty of such officers to retain custody of~~
18 ~~the property seized until such property is disposed of by order~~
19 ~~of the district court. Upon proper application by the district~~
20 ~~attorney to the judge of the district court, the judge of the~~
21 ~~district court may by proper order direct the destruction of any~~
22 ~~gambling device, paraphernalia or equipment of any kind or~~
23 ~~character seized by law enforcement officers] may be seized and~~
24 ~~forfeited pursuant to the provisions of the Forfeiture Act. "~~

25 Section 18. Section 30-31-35 NMSA 1978 (being Laws 1972,

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1 Chapter 84, Section 34, as amended) is amended to read:

2 "30-31-35. SEIZURE AND FORFEITURE- - PROCEDURE. - - [A.]

3 Property subject to forfeiture and disposal under the Controlled
4 Substances Act may be seized [~~by any enforcement officer upon an~~
5 ~~order issued by the district court having jurisdiction.~~

6 B. ~~Seizure without such an order may be made if:~~

7 (1) ~~the seizure is incident to an arrest or~~
8 ~~search under a search warrant or an inspection under an~~
9 ~~administrative inspection warrant;~~

10 (2) ~~the property subject to seizure has been~~
11 ~~the subject of a prior judgment in favor of the state in an~~
12 ~~injunction or forfeiture proceeding based upon the Controlled~~
13 ~~Substances Act;~~

14 (3) ~~the enforcement officer has probable cause~~
15 ~~to believe that the property, which is a controlled substance,~~
16 ~~is directly or indirectly dangerous to health or safety; or~~

17 (4) ~~the enforcement officer has probable cause~~
18 ~~to believe that the property was used or is intended to be used~~
19 ~~in violation of the Controlled Substances Act.~~

20 C. ~~In the event of seizure pursuant to Subsection A~~
21 ~~or Subsection B of this section, proceedings under Subsection D~~
22 ~~of this section and the Rules of Civil Procedure for the~~
23 ~~District Courts of New Mexico shall be instituted promptly and~~
24 ~~not later than thirty days after seizure.~~

25 D. ~~Property taken or detained under this section~~

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1 ~~shall not be subject to replevin, but is deemed to be in the~~
2 ~~custody of the law enforcement agency seizing it subject only to~~
3 ~~the orders and decrees of the district court. When property is~~
4 ~~seized under the Controlled Substances Act, the enforcement~~
5 ~~officer may:~~

6 (1) ~~place the property under seal;~~

7 (2) ~~remove the property to a place designated~~
8 ~~by the enforcement officer; or~~

9 (3) ~~require the law enforcement agency to take~~
10 ~~custody of the property and remove it to an appropriate location~~
11 ~~for disposition in accordance with law.~~

12 E. ~~When property is forfeited under the Controlled~~
13 ~~Substances Act, the law enforcement agency seizing it shall:~~

14 (1) ~~sell that which is not required to be~~
15 ~~destroyed by law. The proceeds shall revert to the general fund~~
16 ~~of the state, county or municipality as the case may be;~~

17 (2) ~~take custody of the property for use by law~~
18 ~~enforcement agencies in the enforcement of the Controlled~~
19 ~~Substances Act or remove it for disposition in accordance with~~
20 ~~law; provided that where a motor vehicle has been seized by a~~
21 ~~municipal police department or a county sheriff's department~~
22 ~~with its respective jurisdictional boundaries, such department~~
23 ~~shall institute forfeiture proceedings; or~~

24 (3) ~~in case of property seized by the state~~
25 ~~police, forward property, the proceeds from the sale of which~~

Underscored material = new
[bracketed material] = delete

1 ~~are not required to revert to the general fund, to the state~~
2 ~~police, bureau of narcotics for disposition; provided that motor~~
3 ~~vehicles seized by the state police may be loaned to the~~
4 ~~governor's organized crime prevention commission for use in~~
5 ~~undercover work, the entire cost of operating such vehicles to~~
6 ~~be borne by the governor's organized crime prevention~~
7 ~~commission] and forfeited pursuant to the provisions of the~~
8 Forfeiture Act. "

9 Section 19. Section 30-31A-10 NMSA 1978 (being Laws 1983,
10 Chapter 148, Section 10) is amended to read:

11 "30-31A-10. SEIZURE AND FORFEITURE--PROCEDURE. -- [A-]
12 Property subject to forfeiture and disposal under the Imitation
13 Controlled Substances Act may be seized [by any law enforcement
14 officer upon an order issued by the district court having
15 jurisdiction.

16 B. ~~Seizure without such an order may be made if:~~

17 (1) ~~the seizure is incident to an arrest or~~
18 ~~search under a search warrant; or~~

19 (2) ~~the property subject to seizure has been~~
20 ~~the subject of a prior judgment in favor of the state in an~~
21 ~~injunction or forfeiture proceeding based upon the Imitation~~
22 ~~Controlled Substances Act.~~

23 C. ~~In the event of seizure pursuant to Subsection A~~
24 ~~or B of this section, proceedings under Subsection D of this~~
25 ~~section and the rules of civil procedure for the district courts~~

Underscored material = new
[bracketed material] = delete

1 ~~of New Mexico shall be instituted promptly and not later than~~
2 ~~thirty days after seizure.~~

3 ~~D. Property taken or detained under this section~~
4 ~~shall not be subject to replevin but is deemed to be in the~~
5 ~~custody of the law enforcement agency seizing it subject only to~~
6 ~~the orders and decrees of the district court. When property is~~
7 ~~seized under the Imitation Controlled Substances Act, the~~
8 ~~enforcement officer may:~~

9 (1) ~~place the property under seal;~~

10 (2) ~~remove the property to a place designated~~
11 ~~by the enforcement officer; or~~

12 (3) ~~require the law enforcement agency to take~~
13 ~~custody of the property and remove it to an appropriate location~~
14 ~~for disposition in accordance with law.~~

15 ~~E. When property is forfeited under the Imitation~~
16 ~~Controlled Substances Act, the law enforcement agency seizing it~~
17 ~~shall take custody of the property for use by law enforcement~~
18 ~~agencies in the enforcement of the Imitation Controlled~~
19 ~~Substances Act and the Controlled Substances Act and remove it~~
20 ~~for disposition in accordance with law] and forfeited pursuant~~
21 ~~to the provisions of the Forfeiture Act. "~~

22 Section 20. Section 30-42-4 NMSA 1978 (being Laws 1980,
23 Chapter 40, Section 4) is amended to read:

24 "30-42-4. PROHIBITED ACTIVITIES--PENALTIES--SEIZURE AND
25 FORFEITURE. --

Underscored material = new
[bracketed material] = delete

1 A. It is unlawful for any person who has received
2 any proceeds derived, directly or indirectly, from a pattern of
3 racketeering activity in which the person has participated, to
4 use or invest, directly or indirectly, any part of the proceeds
5 or the proceeds derived from the investment or use thereof in
6 the acquisition of any interest in, or the establishment or
7 operation of, any enterprise. Whoever violates this subsection
8 is guilty of a second degree felony.

9 B. It is unlawful for any person to engage in a
10 pattern of racketeering activity in order to acquire or
11 maintain, directly or indirectly, any interest in or control of
12 any enterprise. Whoever violates this subsection is guilty of a
13 second degree felony.

14 C. It is unlawful for any person employed by or
15 associated with any enterprise to conduct or participate,
16 directly or indirectly, in the conduct of [~~such~~] the
17 enterprise's affairs by engaging in a pattern of racketeering
18 activity. Whoever violates this subsection is guilty of a
19 second degree felony.

20 D. It is unlawful for any person to conspire to
21 violate any of the provisions of Subsections A through C of this
22 section. Whoever violates this subsection is guilty of a third
23 degree felony.

24 E. Whoever violates Subsection A, B, C or D of this
25 section in addition to the prescribed penalties shall forfeit to

Underscored material = new
[bracketed material] = delete

1 the state of New Mexico:

2 (1) any interest acquired or maintained in
3 violation of the Racketeering Act; and

4 (2) any interest in, security of, claim against
5 or property or contractual right of any kind affording a source
6 of influence over any enterprise [~~which~~] that he has
7 established, operated, controlled, conducted or participated in
8 the conduct of in violation of the Racketeering Act.

9 F. In any action brought by the state under the
10 Racketeering Act, [~~the district court shall have jurisdiction to~~
11 ~~enter such restraining orders or prohibitions, or to take such~~
12 ~~other actions, including but not limited to the acceptance of~~
13 ~~satisfactory performance bonds, in connection with any property~~
14 ~~or other interest subject to forfeiture under this section, as~~
15 ~~it shall deem proper.~~

16 G. ~~Upon conviction of a person under this section,~~
17 ~~the court shall authorize the attorney general or the district~~
18 ~~attorney to seize all property or other interest declared~~
19 ~~forfeited under this section upon such terms and conditions as~~
20 ~~the court shall deem proper, making due provision for the rights~~
21 ~~of innocent persons. If a property right or other interest is~~
22 ~~not exercisable or transferable for value by the convicted~~
23 ~~person, it shall expire and shall not revert to the convicted~~
24 ~~person]~~ seizure and forfeiture of property shall be in
25 accordance with the provisions of the Forfeiture Act. "

Underscored material = new
[bracketed material] = delete

1 Section 21. Section 30-45-7 NMSA 1978 (being Laws 1989,
2 Chapter 215, Section 7) is amended to read:

3 "30-45-7. SEIZURE AND FORFEITURE OF PROPERTY. --

4 A. The following are subject to seizure and
5 forfeiture:

6 (1) all computer property, equipment or
7 products of any kind [~~which~~] that have been used, manufactured,
8 acquired or distributed in violation of the Computer Crimes Act;

9 ~~[(2) all materials, products and equipment of~~
10 ~~any kind which are used or intended for use in manufacturing,~~
11 ~~using, accessing, altering, disrupting, copying, concealing,~~
12 ~~destroying, transferring, delivering, importing or exporting any~~
13 ~~computer property or computer service in violation of the~~
14 ~~Computer Crimes Act;~~

15 ~~(3)]~~ (2) all books, records and research
16 products and materials involving formulas, microfilm, tapes and
17 data [~~which~~] that are used or intended for use in violation of
18 the Computer Crimes Act; and

19 ~~[(4) all conveyances, including aircraft,~~
20 ~~vehicles or vessels, which are used or intended for use to~~
21 ~~transport or in any manner to facilitate the transportation of~~
22 ~~property described in subsection A, B or C of this section for~~
23 ~~the purpose of violating the Computer Crimes Act;~~

24 ~~(5) all property, real, personal or mixed,~~
25 ~~which has been used or intended for use, maintained or acquired~~

Underscored material = new
[bracketed material] = delete

1 ~~in violation of the Computer Crimes Act; and~~

2 ~~(6)]~~ (3) all money or proceeds that constitute
3 an instrumentality or derive from a violation of the Computer
4 Crimes Act.

5 ~~[B. Notwithstanding the provisions of Paragraphs (1)~~
6 ~~through (6) of Subsection A of this section:~~

7 ~~(1) no conveyance used by any person as a~~
8 ~~common carrier in the transaction of business as a common~~
9 ~~carrier is subject to forfeiture under this section unless it~~
10 ~~appears that the owner or other person in charge of the~~
11 ~~conveyance is a consenting party to a violation of the Computer~~
12 ~~Crimes Act;~~

13 ~~(2) no conveyance, computer property, equipment~~
14 ~~or other material is subject to forfeiture under this section by~~
15 ~~reason of any act or omission established by the owner to have~~
16 ~~been committed or omitted without his knowledge or consent;~~

17 ~~(3) a conveyance, computer property, equipment~~
18 ~~or other material is not subject to forfeiture for a violation~~
19 ~~of law the penalty for which is a misdemeanor or petty~~
20 ~~misdemeanor; and~~

21 ~~(4) a forfeiture of a conveyance, computer~~
22 ~~property, equipment or material encumbered by a bona fide~~
23 ~~security interest shall be subject to the interest of a secured~~
24 ~~party if the secured party neither had knowledge of nor~~
25 ~~consented to the act or omission.~~

Underscored material = new
[bracketed material] = delete

1 ~~C.]~~ B. Property subject to seizure and forfeiture
2 ~~[and disposal]~~ under the Computer Crimes Act ~~[may be seized by~~
3 ~~any law enforcement officer upon an order issued by the district~~
4 ~~court having jurisdiction.~~

5 ~~D.~~ ~~Seizure without such an order may be made if:~~

6 ~~(1) the seizure is incident to an arrest or~~
7 ~~search under a search warrant;~~

8 ~~(2) the property subject to seizure had been~~
9 ~~the subject of a prior judgment in favor of the state in an~~
10 ~~injunction or forfeiture proceeding based upon the Computer~~
11 ~~Crimes Act; or~~

12 ~~(3) the enforcement officer has probable cause~~
13 ~~to believe that the property, whether real, personal or mixed,~~
14 ~~was used or intended for use, maintained or acquired in~~
15 ~~violation of the Computer Crimes Act.~~

16 ~~E.~~ ~~In the event of a seizure pursuant to Subsection~~
17 ~~C or Subsection D of this section, a proceeding under the~~
18 ~~Computer Crimes Act and the rules of civil procedure for the~~
19 ~~district courts shall be instituted promptly and not later than~~
20 ~~thirty days after seizure. The proceeding to forfeit property~~
21 ~~under the Computer Crimes Act is against the property and not~~
22 ~~against the owner or any other person. It is in rem wholly and~~
23 ~~not in personam. It is a civil case and not a criminal~~
24 ~~proceeding. The forfeiture proceeding is required, not to~~
25 ~~complete the forfeiture, but to prove the illegal use for which~~

1 ~~the forfeiture was suffered.~~

2 ~~F. Except as otherwise specifically provided by law,~~
3 ~~whenever any property is forfeited to the state by reason of the~~
4 ~~violation of any law, the court by which the offender is~~
5 ~~convicted shall order the sale or other disposition of the~~
6 ~~property and the proceeds of any such sale as provided for in~~
7 ~~this section are subject to the court making due provisions for~~
8 ~~the rights of innocent persons and the legitimate rights to~~
9 ~~restitution on behalf of actual victims of the criminal acts.~~

10 ~~G. Property taken or detained under this section~~
11 ~~shall not be subject to replevin but is deemed to be in the~~
12 ~~custody of the law enforcement agency seizing it, subject only~~
13 ~~to the orders and decrees of the district court. When property~~
14 ~~is seized under the Computer Crimes Act, the enforcement officer~~
15 ~~may:~~

16 ~~(1) place the property under seal;~~

17 ~~(2) remove the property to a place designated~~
18 ~~by the law enforcement officer or by the district court; or~~

19 ~~(3) require the law enforcement agency to take~~
20 ~~custody of the property and remove it to an appropriate location~~
21 ~~for disposition in accordance with law.~~

22 ~~H. When property is forfeited under the Computer~~
23 ~~Crimes Act, the law enforcement agency seizing it shall:~~

24 ~~(1) deliver custody of the property to the~~
25 ~~information systems council attached to the general services~~

Underscored material = new
[bracketed material] = delete

1 ~~department. The council, based upon a plan, shall advertise and~~
2 ~~make available the forfeited property to state agencies and~~
3 ~~political subdivisions of the state based upon a demonstrated~~
4 ~~need and plan of use for that property. The information systems~~
5 ~~council shall advertise and make the forfeited property~~
6 ~~available by bid for a minimum of one hundred twenty days and~~
7 ~~dispose of that property within another sixty days. All~~
8 ~~proceeds from the sale of forfeited property shall be deposited~~
9 ~~in the general fund; or~~

10 ~~(2) where the court orders the property to be~~
11 ~~sold, the proceeds of the sale shall be paid into the general~~
12 ~~fund] may be seized and forfeited pursuant to the provisions of~~
13 ~~the Forfeiture Act."~~

14 Section 22. Section 60-7A-4.1 NMSA 1978 (being Laws 1985,
15 Chapter 179, Section 1, as amended) is amended to read:

16 "60-7A-4.1. UNLAWFUL SALE OF ALCOHOLIC BEVERAGES-- CRIMINAL
17 PENALTY-- SEIZURE AND FORFEITURE. --

18 A. It is unlawful for any person to sell or attempt
19 to sell alcoholic beverages at any place other than a licensed
20 premises or as otherwise provided by the Liquor Control Act.

21 B. Any person who violates the provisions of
22 Subsection A of this section is guilty of a fourth degree
23 felony.

24 C. Any conveyance used or intended to be used for
25 the purpose of unlawful sale of alcoholic beverages or money

Underscored material = new
[bracketed material] = delete

1 [which] that is the fruit or instrumentality of the crime may be
2 seized and [~~upon conviction, in the discretion of the court, be~~
3 ~~forfeited and disposed of under the procedures set forth in~~
4 ~~Section 30-31-35 NMSA 1978]~~ forfeited pursuant to the provisions
5 of the Forfeiture Act. "

6 Section 23. EFFECTIVE DATE. --The effective date of the
7 provisions of this act is July 1, 1996.

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1 FORTY- SECOND LEGI SLATURE
2 SECOND SESSI ON, 1996
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5 JANUARY 18, 1996
6

7 Mr. Presi dent:
8

9 Your COMMI TTEES' COMMI TTEE, to whom has been referred
10

11 SENATE BILL 10
12

13 has had it under consideration and finds same to be GERMANE, PURSUANT
14 TO CONSTITUTIONAL PROVISIONS, and thence referred to the SENATE
15 JUDI CIARY COMMI TTEE.
16

17 Respectfully submi tted,
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22 _____
23 SENATOR MANNY M. ARAGON, Chai rman
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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was __ For __ Against

Yes:

No:

Excused:

Absent:

S0010CC1

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

1 FORTY-SECOND LEGISLATURE
2 SECOND SESSION, 1996

SB 10/a

3
4
5 January 29, 1996

6
7 Mr. President:

8
9 Your JUDICIARY COMMITTEE, to whom has been referred

10
11 SENATE BILL 10

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

15
16 1. On page 3, line 8, after the semicolon strike the remainder of
17 the line and lines 9 and 10 and insert in lieu thereof "any forfeiture
18 proceeding shall be brought in the same proceeding as the criminal
19 matter; however, the two issues shall be bifurcated and presented to the
20 same jury; and".

21
22 and thence referred to the FINANCE COMMITTEE.

23
24 Respectfully submitted,
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**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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Janice D. Paster, Chairman

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

Date _____

The roll call vote was 5 For 1 Against

Yes: 5

No: Reagan

Excused: Carraro, Stefani cs, Vernon

Absent: None

S0010JU1

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

1 FORTY-SECOND LEGISLATURE
2 SECOND SESSION, 1996

SB 10/a

3
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5 February 3, 1996

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7 Mr. President:

8
9 Your FINANCE COMMITTEE, to whom has been referred

10
11 SENATE BILL 10, as amended

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

15
16 1. Strike Senate Judiciary Committee Amendment 1.

17
18 2. On page 5, line 1, strike "an officer having made" and insert
19 in lieu thereof "a law enforcement agency making".

20
21 3. On page 5, line 2, strike "ten" and insert in lieu thereof
22 "thirty".

23
24 4. On page 5, line 6, strike "officer" and insert in lieu thereof
25 "law enforcement agency".

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

SFC/SB 10

Page 40

5. On page 8, line 1, strike "one thousand dollars (\$1,000)" and insert in lieu thereof "ten thousand dollars (\$10,000)".

6. On page 11, strike lines 3 and 4 in their entirety.

7. Reletter the succeeding subsection accordingly.

8. On page 12, line 15, strike "shall" and insert in lieu thereof "may".

9. On page 16, line 16, after the period insert:

"Notwithstanding the provisions of the Forfeiture Act regarding the disposition of forfeited property, when proceeds from a court-ordered sale of forfeited property are derived from a violation of cultural property, the proceeds from the sale shall be used for restoration, stabilization, protection and preservation of the cultural property. Any proceeds remaining shall be deposited in the general fund. "

Respectfully submitted,

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

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SFC/SB 10

Page 41

Ben D. Altamirano, Chairman

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

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

No: 0

Excused: Donisthorpe, Duran, Ingle, Kidd, Kysar

Absent: None

S0010FC1

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

State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

February 12, 1996

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred
SENATE BILL 10, as amended
has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to
APPROPRIATION AND FINANCE COMMITTEE.

Respectfully submitted,

Cisco McSorley, Chairman

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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

Date _____

The roll call vote was 9 For 1 Against

Yes: 9

No: Christensen

Excused: Alwin, Gubbels, Sanchez, R. G.

Absent: None

S0010JC1

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

State of New Mexico House of Representatives

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

February 13, 1996

Mr. Speaker:

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

SENATE BILL 10, as amended

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

Respectfully submitted,

Max Coll, 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 11 For 7 Against

Yes: 11

No: Casey, Gentry, Knowles, Light, Martinez, Townsend, Wallace

Excused: None

Absent: None

S0010AF1

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