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HOUSE BILL 767

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO OCCUPATIONAL LICENSES; ENACTING THE WATER WELL
DRILLERS LICENSING ACT; REQUIRING LICENSURE; CREATING A BOARD;
PRESCRIBING POWERS AND DUTIES; CREATING A FUND; PROVIDING
PENALTIES; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Water Well Drillers Licensing Act".

Section 2. DEFINITIONS.--As used in the Water Well
Drillers Licensing Act:

A. "board" means the water well drillers advisory
board;

B. "installer" means a person licensed by the
state engineer to install or repair water well pumps and
equipment; and

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1 C. "water well driller" means a person licensed by
2 the state engineer to drill water, inject wells, de-water
3 wells or monitor wells.

4 Section 3. LICENSE REQUIRED. --

5 A. It is unlawful for a person to:

6 (1) represent himself as a well driller
7 unless he is licensed pursuant to the Water Well Drillers
8 Licensing Act; or

9 (2) continue to act as a well driller if the
10 license issued pursuant to the Water Well Drillers Licensing
11 Act has expired or been revoked or suspended.

12 B. Driller trainees under the direct on-site
13 supervision of a water well driller are exempt from the
14 provisions of this section.

15 Section 4. BOARD CREATED-- MEMBERS-- QUALIFICATIONS--
16 TERMS-- VACANCIES-- REMOVAL. --

17 A. The "water well drillers advisory board" is
18 created.

19 B. The board is composed of seven members, five
20 appointed by the state engineer, among whom:

- 21 (1) four are water well drillers and:
22 (a) are residents of New Mexico;
23 (b) have ten years or more experience
24 as well drillers; and
25 (c) represent the four geographic

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1 quadrants of the state; and

2 (2) one is representative of the general
3 public.

4 C. The remaining two members of the board are the
5 state engineer or his designee and the secretary of
6 environment or his designee.

7 D. Members of the board shall not be employed by
8 or own an interest in the same business.

9 E. The initial appointed members of the board
10 shall serve staggered terms, one of the members appointed for
11 a term ending July 1, 2000, one for a term ending July 1,
12 2001, one for a term ending July 1, 2002 and two for terms
13 ending July 1, 2003. Thereafter, appointments shall be made
14 for terms of four years and be made in such a manner that the
15 terms of no more than two board members expire on July 1 of
16 each year. Vacancies shall be filled by appointment by the
17 state engineer for the unexpired term within sixty days of the
18 vacancy. Board members shall serve until their successors
19 have been appointed and qualified.

20 F. A board member who misses three consecutive
21 meetings without being excused may be removed by the state
22 engineer as a member of the board.

23 G. The board shall meet at the call of the state
24 engineer who shall serve as the chair, and appointed board
25 members shall serve at the pleasure of the state engineer.

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1 H. Appointed members of the board may be
2 reimbursed as provided in the Per Diem and Mileage Act, but
3 shall receive no other compensation, perquisite or allowance.

4 I. The board is administratively attached to the
5 office of the state engineer and shall advise the state
6 engineer on administration of the Water Well Drillers
7 Licensing Act.

8 Section 5. STATE ENGINEER--DUTIES.--The state engineer
9 shall:

10 A. adopt and file in accordance with the State
11 Rules Act rules to carry out the provisions of the Water Well
12 Drillers Licensing Act and enforce the rules;

13 B. determine the qualifications of a water well
14 driller;

15 C. establish standards of water well construction
16 to protect ground water quality;

17 D. conduct the examination process for licensure
18 and issue licenses;

19 E. review complaints concerning the conduct of a
20 water well driller;

21 F. establish a record system for water well
22 driller licenses;

23 G. consult with the board on the administration of
24 the Water Well Drillers Licensing Act;

25 H. establish requirements for continued

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1 proficiency in water well drilling and pump installation; and

2 I. establish ethical standards of conduct for
3 water well drillers, including that a water well driller
4 shall:

5 (1) disclose all known adverse conditions
6 about the quantity and quality of ground water in the area of
7 a prospective well;

8 (2) recommend that clients have well water
9 analyzed;

10 (3) inform the board of any unethical or
11 unauthorized conduct known to the water well driller;

12 (4) accurately represent to the prospective
13 client the qualifications and capabilities of the licensee and
14 the licensee's equipment;

15 (5) not offer to perform services except in
16 the class of well for which the water well driller is licensed
17 and qualified by experience or knowledge;

18 (6) not evade contractual responsibility;

19 (7) not enter into a partnership or agreement
20 with or give the water well drilling equipment to a person not
21 legally qualified to perform the services to be rendered; and

22 (8) not falsely promote services, mislead or
23 deceive.

24 Section 6. REQUIREMENTS FOR LICENSURE. -- The state
25 engineer shall issue or renew an annual license as a water

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- 1 well driller or installer to an applicant who:
- 2 A. files a completed application accompanied by a
- 3 required fee of one hundred dollars (\$100) for a resident
- 4 license or two hundred dollars (\$200) for a nonresident
- 5 license;
- 6 B. is at least eighteen years of age;
- 7 C. has two years or more of experience in the well
- 8 drilling or pump installation business;
- 9 D. passes an examination administered by or
- 10 demonstrates to the state engineer at least ten years of
- 11 experience in water well drilling or pump installation;
- 12 E. demonstrates at least ninety days of residency
- 13 prior to submission of the application for licensure or holds
- 14 a valid license from another state that provides reciprocity
- 15 for New Mexico residents;
- 16 F. has no criminal record;
- 17 G. complies with all other requirements of law as
- 18 a person doing business in the state; and
- 19 H. agrees to comply with ethical standards
- 20 established by the state engineer.

21 Section 7. LICENSE AND REGISTRATION TERMS AND RENEWAL. --

- 22 A. The water well drilling license shall be
- 23 displayed in a conspicuous place in the principal place of
- 24 business.
- 25 B. A water well driller shall notify the state

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1 engineer within thirty days after a change in his address or
2 any other information required by the board under conditions
3 of the license.

4 C. No water well drilling license is transferable
5 or reassignable.

6 Section 8. BOND REQUIRED. --

7 A. No license shall be issued pursuant to the
8 Water Well Drillers Licensing Act unless the applicant files
9 with the state engineer a surety bond in the sum of five
10 thousand dollars (\$5,000). The bond shall run to the state,
11 shall be executed and acknowledged by the applicant as
12 principal and by a corporation that is licensed by the
13 superintendent of insurance to transact the business of
14 fidelity and surety insurance, as surety.

15 B. The surety bond shall provide for suit by a
16 person who has a cause of action pursuant to the Water Well
17 Drillers Licensing Act or rules adopted pursuant to that act.

18 C. No action shall be brought on a bond after the
19 expiration of three years from the date of the occurrence of
20 the act upon which a claim is based.

21 D. The bond shall be continuous in form and remain
22 in full force concurrently with the license and any renewals
23 unless terminated or canceled by action of the surety.

24 E. Upon the filing of thirty days' written notice
25 with the board by a surety company of its withdrawal as the

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1 surety of a licensee, the board shall give notice by certified
2 mail to the licensee of the withdrawal. The license of a
3 licensee shall be void upon the termination of the bond by the
4 surety company unless, prior to termination, a new bond has
5 been filed with the board.

6 F. Should the license of a company to transact
7 fidelity and surety insurance business in this state be
8 canceled, revoked or otherwise terminated, all water well
9 drilling business bonds for which the surety company is surety
10 are canceled. Upon the cancellation, the license of any water
11 well drilling business having a bond posted is suspended and
12 shall remain suspended until a new and valid bond is filed.
13 Failure of a licensee to file a new bond within thirty days
14 after being advised by the state engineer revokes the license.

15 Section 9. DENIAL, SUSPENSION OR REVOCATION OF
16 LICENSE. --In accordance with procedures set forth in the
17 Uniform Licensing Act, the state engineer may deny, suspend or
18 revoke any license held or applied for under the Water Well
19 Drillers Licensing Act upon grounds that the licensee or
20 applicant:

21 A. made a false statement or gave false
22 information in connection with an application for a license or
23 renewal or reinstatement of a license;

24 B. violated any provision of the Water Well
25 Drillers Licensing Act;

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1 C. violated a rule or ethical standard of the
2 state engineer adopted pursuant to the Water Well Drillers
3 Licensing Act;

4 D. has been convicted of a felony or a crime
5 involving moral turpitude or illegally using, carrying or
6 possessing a deadly weapon;

7 E. has made a material misstatement of facts in a
8 well record report or has failed to submit a well record
9 report;

10 F. has failed to mark a water well rig;

11 G. has failed to advise a person for whom a well
12 is being drilled, deepened or otherwise altered that injurious
13 water has been encountered that poses a potential pollution
14 hazard, and the well must be plugged or properly completed in
15 accordance with the state engineer's rules;

16 H. has aided and abetted an unlicensed person to
17 evade the provisions of the state engineer's rules;

18 I. has knowingly conspired with or acted as an
19 agent, partner or associate of an unlicensed person;

20 J. has performed a service incompetently;

21 K. committed or permitted an employee to commit an
22 act while the license was expired that would be cause for the
23 suspension or revocation of a license or grounds for the
24 denial of an application for a license;

25 L. has been chronically or persistently inebriated

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1 or addicted to the illegal use of dangerous or narcotic drugs;

2 M has been adjudged mentally incompetent or
3 insane; or

4 N. while unlicensed or under suspended license,
5 represented himself as a water well driller.

6 Section 10. FUND CREATED. --The "water well drillers
7 fund" is established in the state treasury. All license fees
8 received by the state engineer pursuant to the Water Well
9 Drillers Licensing Act shall be deposited in the fund and
10 shall be used by the state engineer for the administration of
11 that act. The state treasurer shall invest the fund as other
12 state funds are invested, and all income derived from the fund
13 shall be credited to the fund. All money in the fund is
14 appropriated to the state engineer to carry out provisions of
15 the Water Well Drillers Licensing Act. Disbursements from the
16 fund shall be drawn on warrants of the secretary of finance
17 and administration pursuant to vouchers signed by the state
18 engineer or his authorized representative. All balances in
19 the fund shall remain in the fund and shall not revert to the
20 general fund.

21 Section 11. PENALTIES. --

22 A. A person who fraudulently represents himself to
23 be a water well driller is guilty of a misdemeanor and shall
24 be punished by a definite term of imprisonment of less than
25 one year or a fine of not more than one thousand dollars

1 (\$1,000) or both.

2 B. A person who violates a provision of the Water
3 Well Drillers Licensing Act, except as provided for in
4 Subsection A of this section, is guilty of a misdemeanor and
5 shall be punished by a definite term of imprisonment of not
6 more than six months or by a fine of not more than five
7 hundred dollars (\$500) or both.

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 March 9, 1999

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8 Mr. Speaker:

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10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
11 been referred

12
13 HOUSE BILL 767

14
15 has had it under consideration and reports same with
16 recommendation that it DO NOT PASS, but that

17 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE
18 FOR HOUSE BILL 767

19
20 DO PASS, and thence referred to the APPROPRIATIONS AND
21 FINANCE COMMITTEE.

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HBIC/HB 767

Page 13

Respectfully submitted,

Fred Luna, Chairman

Adopted _____

(Chief Clerk)

Not Adopted _____

(Chief Clerk)

Date _____

The roll call vote was 11 For 1 Against

Yes: 11

No: Lutz

Excused: None

Absent: None

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1 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
2 HOUSE BILL 767
3 **44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**
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9 AN ACT

10 RELATING TO OCCUPATIONAL LICENSES; ENACTING THE WATER WELL
11 DRILLERS LICENSING ACT; REQUIRING LICENSURE; CREATING A BOARD;
12 PRESCRIBING POWERS AND DUTIES; CREATING A FUND; PROVIDING
13 PENALTIES; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978;
14 MAKING AN APPROPRIATION.

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

16 Section 1. SHORT TITLE. -- This act may be cited as the
17 "Water Well Drillers Licensing Act".

18 Section 2. DEFINITIONS. -- As used in the Water Well
19 Drillers Licensing Act:

20 A. "board" means the water well drillers licensing
21 board; and

22 B. "water well driller" means a person licensed by
23 the state engineer to drill a water well, an injection well, a
24 de-watering well or a monitoring well.

25 Section 3. LICENSE REQUIRED. --

A. It is unlawful for a person to:

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(1) drill a water well without being licensed as a water well driller by the state engineer pursuant to the Water Well Drillers Licensing Act;

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(2) represent himself as a water well driller unless he is licensed pursuant to the Water Well Drillers Licensing Act;

(3) continue to act as a water well driller if the license issued pursuant to the Water Well Drillers Licensing Act has expired or been revoked or suspended;

(4) allow the drilling of a well for water by a person other than a water well driller licensed pursuant to the Water Well Drillers Licensing Act;

(5) produce water from an underground source through any well drilled in violation of the Water Well Drillers Licensing Act; or

(6) apply water from an underground source to land having no valid water right for the purpose to which applied.

B. Exempted from the provisions of this section are:

(1) driller trainees under the direct on-site supervision of a water well driller;

(2) persons who construct driven wells if the casing of that well does not exceed two and three-eighths inches outside diameter; and

(3) wells subject to the authority of the oil conservation division pursuant to the Oil and Gas Act and other laws conferring power to the oil conservation division to prevent or abate water pollution.

Section 4. BOARD CREATED- - MEMBERS- - QUALIFICATIONS- - TERMS- - VACANCIES- - REMOVAL. - -

A. The "water well drillers licensing board" is

1 created.

2 B. The board is composed of seven members, five
3 appointed by the state engineer, among whom:

4 (1) four are water well drillers and:

5 (a) are residents of New Mexico;

6 (b) have ten years or more experience
7 as well drillers; and

8 (c) represent the four geographic
9 quadrants of the state; and

10 (2) one is a representative of the general
11 public.

12 C. The remaining two members of the board are the
13 state engineer or his designee and the secretary of
14 environment or his designee.

15 D. Members of the board shall not be employed by
16 or own an interest in the same business.

17 E. The initial appointed members of the board
18 shall serve staggered terms, one of the members appointed for
19 a term ending July 1, 2000, one for a term ending July 1,
20 2001, one for a term ending July 1, 2002 and two for terms
21 ending July 1, 2003. Thereafter, appointments shall be made
22 for terms of four years and be made in such a manner that the
23 terms of no more than two board members expire on July 1 of
24 each year. A vacancy shall be filled by appointment by the
25 state engineer for the unexpired term within sixty days of the
vacancy. Board members shall serve until their successors
have been appointed and qualified.

F. A board member who misses three consecutive

1 meetings without being excused may be removed by the state
2 engineer as a member of the board.

3 G. The board shall meet at the call of the state
4 engineer, who shall serve as the chair, and appointed board
5 members shall serve at the pleasure of the state engineer.

6 H. Appointed members of the board may be
7 reimbursed as provided in the Per Diem and Mileage Act, but
8 shall receive no other compensation, perquisite or allowance.

9 I. The board is administratively attached to the
10 office of the state engineer and shall advise the state
11 engineer on administration of the Water Well Drillers
12 Licensing Act.

13 Section 5. STATE ENGINEER-- POWERS-- DUTIES. --

14 A. The state engineer shall:

15 (1) adopt and file in accordance with the
16 State Rules Act rules to carry out the provisions of the Water
17 Well Drillers Licensing Act and enforce the rules; and

18 (2) require a bond in form and with adequate
19 surety to be approved by him in the penal sum of five thousand
20 dollars (\$5,000) conditioned on the applicant complying with
21 the Water Well Drillers Licensing Act and rules of the state
22 engineer and all laws of New Mexico pertaining to drilling of
23 wells.

24 B. The state engineer may:

25 (1) in district court, apply for and obtain
an injunction against:

(a) a person who drills a well or
allows a well to be drilled in violation of the provisions of

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1 the Water Well Drillers Licensing Act;

2 (b) a person who produces water from
3 any well drilled in violation of the provisions of the Water
4 Well Drillers Licensing Act; and

5 (c) a person who applies water from an
6 underground source to lands having no valid water right for
7 the purpose to which applied;

8 (2) suspend or revoke, upon notice and
9 hearing, a water well driller's license in the event that the
10 licensee violated any provision of the Water Well Drillers
11 Licensing Act or rules adopted pursuant to that act,
12 appealable to a district court;

13 (3) recover in a civil suit in the district
14 court of the county where the well involved is located and
15 judgment for damages caused by a well drilled in violation of
16 the Water Well Drillers Licensing Act;

17 (4) charge a water well driller license
18 application fee not to exceed twenty-five dollars (\$25.00) to
19 be deposited with the state treasurer and placed in the
20 general fund; and

21 (5) recover a civil penalty on behalf of the
22 state of New Mexico in an amount to be determined by the
23 district court in which the action is tried, not to exceed one
24 thousand dollars (\$1,000), and judgment for both damages and
25 penalty shall be against the principal and sureties upon the
bond.

C. The provision contained in Subsection B of this
section shall not be construed to affect the existing right of

1 a court of equity in the exercise of its general equity powers
2 to grant relief to the state of New Mexico.

3 Section 6. BOARD--DUTIES.--The board shall:

4 A. review experience records and qualifications of
5 applicants for licensure;

6 B. recommend appropriate standards of water well
7 construction to protect ground water quality;

8 C. develop an examination process for licensure;

9 D. review complaints concerning the conduct of a
10 water well driller and recommend action to the state engineer;

11 E. establish requirements for continued
12 proficiency in water well drilling; and

13 F. establish ethical standards of conduct for
14 water well drillers, including that a water well driller
15 shall:

16 (1) disclose all known adverse conditions
17 about the quantity and quality of ground water in the area of
18 a prospective well;

19 (2) recommend that clients have well water
20 analyzed;

21 (3) inform the board of any unethical or
22 unauthorized conduct known to the water well driller;

23 (4) accurately represent to the prospective
24 client the qualifications and capabilities of the licensee and
25 the licensee's equipment;

(5) not offer to perform services except in
the class of well for which the water well driller is licensed
and qualified by experience or knowledge;

- 1 (6) not evade contractual responsibility; and
- 2 (7) not falsely promote services, mislead or
- 3 deceive.

4 Section 7. REQUIREMENTS FOR LICENSURE. --The state
5 engineer shall issue or renew a biennial license as a water
6 well driller or installer to an applicant who:

7 A. files a completed application accompanied by a
8 required fee of two hundred dollars (\$200) for a resident
9 license or four hundred dollars (\$400) for a nonresident
10 license;

11 B. is at least eighteen years of age;

12 C. passes an examination administered by the state
13 engineer, has a valid license on the effective date of the
14 Water Well Drillers Licensing Act;

15 D. demonstrates at least ninety days of residency
16 prior to submission of the application for licensure or holds
17 a valid license from another state that provides reciprocity
18 for New Mexico license holders; and

19 E. agrees to comply with the rules established by
20 the state engineer.

21 Section 8. LICENSE AND REGISTRATION TERMS AND
22 RENEWAL. --

23 A. The water well driller license shall be
24 displayed in a conspicuous place in the water well driller's
25 principal place of business.

B. A water well driller shall notify the state
engineer within thirty days after a change in his address or
any other information required by the board under conditions

1 of the license.

2 C. No water well driller license is transferable
3 or re-assignable.

4 D. A water well driller shall have ninety days
5 after expiration of his license to renew the license without
6 taking the examination.

7 Section 9. DENIAL, SUSPENSION OR REVOCATION OF
8 LICENSE. --In accordance with procedures set forth in the
9 Uniform Licensing Act, the state engineer may deny, suspend or
10 revoke any license held or applied for pursuant to the Water
11 Well Drillers Licensing Act upon grounds that the licensee or
12 applicant:

13 A. made a false statement or gave false
14 information in connection with an application for a license or
15 renewal or reinstatement of a license; or

16 B. willfully violated any provision of the Water
17 Well Drillers Licensing Act or rules established pursuant to
18 that act.

19 Section 10. FUND CREATED. --The "water well drillers
20 fund" is established in the state treasury. All license and
21 examination fees received by the state engineer pursuant to
22 the Water Well Drillers Licensing Act shall be deposited in
23 the fund and shall be used by the state engineer for the
24 administration of that act. The state treasurer shall invest
25 the fund as other state funds are invested, and all income
derived from the fund shall be credited to the fund. All
money in the fund is appropriated to the state engineer to
carry out the provisions of the Water Well Drillers Licensing

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1 Act. Disbursements from the fund shall be drawn on warrants
2 of the secretary of finance and administration pursuant to
3 vouchers signed by the state engineer or his authorized
4 representative. All balances in the fund shall remain in the
5 fund and shall not revert to the general fund.

6 Section 11. PENALTIES. -- A person violating any provision
7 of the Water Well Drillers Licensing Act or of the rules of
8 the state engineer adopted pursuant to that act is guilty of a
9 misdemeanor and, upon conviction, shall be fined in a sum of
10 not less than twenty-five dollars (\$25.00) nor more than two
11 hundred fifty dollars (\$250) for each offense. Each day that
12 the violation continues shall be construed a separate offense
13 for the purpose of this section.

14 Section 12. REPEAL. -- Sections 71-12-12 through 71-12-16
15 NMSA 1978 (being Laws 1949, Chapter 178, Sections 1 through 5,
16 as amended) are repealed.

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3

4 March 11, 1999
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6
7 Mr. Speaker:
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9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
10 whom has been referred

11 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE
12 FOR HOUSE BILL 767
13

14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:
16

17 1. On page 2, strike lines 16 through 21.

18 2. On page 5, lines 14 and 15, strike the colon and
19 "(a)".
20

21 3. On page 5, strike lines 18 through 23.
22

23 4. On page 9, line 20, strike "license and".
24

25 5. On page 9, line 23, strike "and" and insert in lieu
thereof ". Subject to appropriation by the legislature, the

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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fund".

6. On page 10, line 17, strike "71-12-12 through 71-12-16" and insert in lieu thereof "72-12-12 through 72-12-16".

Respectfully submitted,

Max Coll, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HB/HBIC/HB 767

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4 The roll call vote was 15 For 0 Against

5 Yes: 15

6 Excused: Coll, Saavedra

7 Absent: None

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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March 18, 1999

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Mr. President:

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Your CONSERVATION COMMITTEE, to whom has been referred

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12

HOUSE BUSINESS AND INDUSTRY COMMITTEE

13

SUBSTITUTE FOR HOUSE BILL 767, as amended

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15

has had it under consideration and reports same with

16

recommendation that it DO PASS, and thence referred to the

17

JUDICIARY COMMITTEE.

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Respectfully submitted,

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Fernando R. Macias, Chairman

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1 HB/HBIC/HB 767

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Adopted _____ Not

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Adopted _____

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(Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 7 For 1 Against

12

Yes: 7

13

No: Vernon

14

Excused: Payne, Sanchez

15

Absent: None

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underscored material = new
[bracketed material] = delete