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HOUSE JOINT MEMORIAL 64

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

John A. Heaton

A JOINT MEMORIAL

**REQUESTING THE DEPARTMENT OF ENVIRONMENT TO STUDY AND MAKE
RECOMMENDATIONS FOR PROPOSED LEGISLATION ON ENVIRONMENTAL
COVENANTS.**

**WHEREAS, New Mexico law does not require all
environmental cleanups of polluted property to result in
return of the property to unrestricted use; and**

**WHEREAS, the responsible parties and the department of
environment frequently agree that it may be appropriate for
certain properties to be returned to some other use, such as
industrial or recreational; and**

**WHEREAS, a determination by the department of environment
that the property be returned to some other use is often based
on the continuing risk to humans and the environment; and**

WHEREAS, land use restrictions that require the owner to

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1 control access or use in perpetuity are unenforceable under
2 state law; and

3 WHEREAS, if the department of environment has the legal
4 authority to allow a property to be returned to a more
5 restrictive land use, considerable money can be saved by both
6 the owners of the property and the department of environment;
7 and

8 WHEREAS, the authority to enforce environmental covenants
9 will allow the department of environment to permit risk-based
10 cleanup levels in appropriate cases; and

11 WHEREAS, many states are jointly developing a model
12 covenant bill that gives environmental agencies authority to
13 enforce land use restrictions related the environmental
14 cleanup levels; and

15 WHEREAS, the department of environment is currently
16 cooperating with other states to formulate a model covenant
17 bill;

18 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
19 STATE OF NEW MEXICO that the department of environment be
20 requested to study the issue of regulatory authority to
21 enforce land use restrictions and report its findings and make
22 recommendations for legislation to the appropriate committee
23 by November 2002; and

24 BE IT FURTHER RESOLVED that a copy of this memorial be
25 transmitted to the secretary of environment.

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