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HOUSE BILL 335

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

INTRODUCED BY  
JERRY W. SANDEL

AN ACT

RELATING TO PUBLIC FUNDS; CHANGING CERTAIN PROVISIONS FOR  
INVESTMENT OF THE PERMANENT FUND AND THE SEVERANCE TAX PERMANENT  
FUND.

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

Section 1. Section 6-8-9 NMSA 1978 (being Laws 1957,  
Chapter 179, Section 9, as amended) is amended to read:

"6-8-9. SECURITIES AND INVESTMENT. -- Money made available  
for investment for a period in excess of one year may be  
invested in the following classes of securities and investments:

- A. bonds, notes or other obligations of the United States government, its agencies or instrumentalities;
- B. bonds, notes or obligations of a municipal or political subdivision of this state, issued pursuant to a law of this state; provided that the issuer has not, within ten years

Underscored material = new  
[bracketed material] = delete

Underscored material = new  
[bracketed material] = delete

1 prior to the making of the investment, been in default for more  
2 than three months in the payment of any part of the principal or  
3 interest on any debt evidenced by its bonds, notes or  
4 obligations; and provided further, if the bonds are city or  
5 county utility or utility-district revenue bonds, the revenues  
6 of that utility, other than for payment of operation and  
7 maintenance expenses, are pledged wholly to the payment of the  
8 interest on and principal of the indebtedness and the utility  
9 project has been completely self-supporting for a period of five  
10 years next preceding the investment;

11 C. bonds, debentures or other obligations issued by  
12 a federal land bank or by a federal intermediate credit bank or  
13 banks for cooperatives under the acts of congress known as the  
14 Federal Farm Loan Act, as amended, and the Farm Credit Act of  
15 1933, as amended;

16 D. bonds, debentures or other obligations issued or  
17 guaranteed by any national mortgage association under the act of  
18 congress of June 27, 1934 known as the National Housing Act, as  
19 amended;

20 E. bonds, notes, debentures, equipment trust  
21 certificates, conditional sales agreements or other evidences of  
22 indebtedness of any corporation organized and operating within  
23 the United States, rated not less than [A] Baa or BBB or the  
24 equivalent by a national rating service;

25 F. common and preferred stocks and convertible

Underscored material = new  
[bracketed material] = delete

1 issues of any corporation organized and operating within the  
2 United States; provided that it has a minimum net worth of  
3 twenty-five million dollars (\$25,000,000) and securities listed  
4 on one or more national stock exchanges; and provided further  
5 that the fund shall not own more than five percent of the voting  
6 stock of any company. Common stocks should represent a  
7 diversified portfolio with an above-average current yield and  
8 the prospect for dividend increases and capital appreciation;

9 G. industrial revenue bonds issued pursuant to the  
10 Industrial Revenue Bond Act, where both the principal and  
11 interest of the bonds are fully and unconditionally guaranteed  
12 by a lease agreement, executed by a corporation organized and  
13 operating within the United States, rated not less than A by a  
14 national rating service;

15 H. notes or obligations securing loans to New Mexico  
16 businesses made by banks and savings and loan associations  
17 pursuant to the act of congress of July 30, 1953 known as the  
18 Small Business Act of 1953, as amended, only to the extent that  
19 both principal and interest are guaranteed by the United States  
20 government. The state investment officer may enter into  
21 conventional agreements for the servicing of the loans and the  
22 administration of the receipts therefrom. Any servicing  
23 agreement may contain reasonable and customary provisions as the  
24 state investment officer may deem advisable and as may be agreed  
25 upon;

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Underscored material = new  
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1 I. notes or obligations securing loans or  
2 participation in loans to business concerns or other  
3 organizations [~~which~~] that are obligated to use the loan  
4 proceeds within New Mexico, to the extent the loans are secured  
5 by first mortgages on real estate located in New Mexico and are  
6 further secured by an assignment of rentals, the payment of  
7 which is fully guaranteed by the United States in an amount  
8 sufficient to pay all principal and interest of the mortgage;

9 J. notes or obligations securing loans issued by  
10 banks and savings and loan associations pursuant to Title IV of  
11 the act of congress of November 8, 1965 known as the Higher  
12 Education Act of 1965, as amended, only to the extent that both  
13 principal and interest are guaranteed unconditionally by the  
14 United States government. The applicant banks or savings and  
15 loan associations shall enter into an indemnity agreement to pay  
16 off the investments, together with interest and any unpaid costs  
17 and expenses in connection therewith, according to the terms  
18 under which they are made in a form [~~which~~] that meets the  
19 approval of the state investment officer. The state investment  
20 officer may enter into conventional agreements for the servicing  
21 of the loans and the administration of the receipts therefrom  
22 Any servicing agreement may contain reasonable and customary  
23 provisions as the state investment officer may deem advisable  
24 and as may be agreed upon;

25 K. obligations secured by mortgages constituting a

Underscored material = new  
[bracketed material] = delete

1 first lien upon real estate located within the state of New  
2 Mexico [~~which~~] that are fully insured or guaranteed as to the  
3 payment of the principal and interest thereof by the government  
4 of the United States or by any authorized agency thereof,  
5 including mortgages securing loans insured under the National  
6 Housing Act or the Farmers' Home Administration Act, as amended.  
7 The state investment officer may enter into conventional  
8 agreements for the servicing of those loans and the  
9 administration of the receipts therefrom, and any servicing  
10 agreement may contain reasonable and customary provisions as the  
11 state investment officer may deem advisable and as may be agreed  
12 upon, with respect to such matters as the taking and holding of  
13 title in the name of the servicing agent for the benefit of the  
14 state investment officer; the physical custody of the  
15 obligations and mortgages serviced by the servicing agent; the  
16 deduction of the servicing agent's fee, in the amount [~~which~~]  
17 that shall not annually exceed one-half of one percent of the  
18 principal balance of the obligations serviced from time to time  
19 outstanding, by the servicing agent, prior to remittance of the  
20 proceeds; the periodic remittance of the net proceeds received  
21 in payment on all obligations so secured to the state treasurer  
22 as custodian of the permanent fund; the authority and duty of  
23 the servicing agent with respect to the collection of any  
24 obligation in default and the effectuation of the applicable  
25 federal insurance or guarantee thereof; and other appropriate

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Underscored material = new  
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1 matters; and

2 L. bonds, notes, debentures and other obligations  
3 issued by the state of New Mexico. All transactions entered  
4 into on or after July 1, 1991 shall be accounted for in  
5 accordance with generally accepted accounting principles.

6 Not more than fifty percent of the total of the permanent  
7 fund shall be invested in securities ~~[under]~~ described in  
8 Subsections E and F of this section, and no more than ten  
9 percent of the book value of the permanent fund shall be  
10 invested in securities described in Subsection E of this section  
11 that are rated Baa or BBB.

12 Commissions paid for the purchase and sale of any security  
13 shall not exceed brokerage rates prescribed and approved by  
14 national stock exchanges or by industry practice. "

15 Section 2. Section 6-8-19 NMSA 1978 (being Laws 1987,  
16 Chapter 126, Section 1, as amended) is amended to read:

17 "6-8-19. SHORT-TERM INVESTMENTS--REPURCHASE AGREEMENTS. --

18 A. Money in or derived from the land grant permanent  
19 trust funds and in or from the severance tax permanent fund made  
20 available for investment for a period of less than one year may  
21 be invested in:

22 (1) contracts for the present purchase and  
23 resale at a specified time in the future, not to exceed one  
24 year, of specific securities at specified prices at a price  
25 differential representing the interest income to be earned by

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Underscored material = new  
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1 the state. No such contract shall be invested in unless the  
2 contract is fully secured by:

3 (a) obligations of the United States or  
4 other securities backed by the United States ~~[having]~~ if the  
5 obligations or securities have a market value of at least one  
6 hundred two percent of the amount of the contract; or

7 (b) A1 or P1 commercial paper, corporate  
8 obligations rated AA or better and maturing in five years or  
9 less or asset-backed securities rated AAA with an average life  
10 of five years or less if the commercial paper, corporate  
11 obligations or asset-backed securities have a market value of at  
12 least one hundred three percent of the market value of the  
13 contract;

14 (2) contracts for the temporary exchange of  
15 state-owned securities for the use of broker-dealers, banks or  
16 other recognized institutional investors in securities, for  
17 periods not to exceed one year, for a specified fee rate. No  
18 such contract shall be invested in unless the contract is fully  
19 secured by exchange of an irrevocable letter of credit running  
20 to the state, cash or equivalent collateral of at least one  
21 hundred two percent of the market value of the securities plus  
22 accrued interest temporarily exchanged. Such contracts may  
23 authorize the state investment officer to invest cash collateral  
24 in instruments or securities that are authorized investments for  
25 the funds and may authorize payment of a fee from the funds, or

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Underscored material = new  
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1 from income generated by the investment of cash collateral, to  
2 the borrower of securities providing cash as collateral. The  
3 state investment officer may enter into a contract that  
4 apportions income derived from the investment of cash to pay its  
5 agent in securities-lending transactions;

6 (3) commercial paper issued by corporations  
7 organized and operating within the United States and rated  
8 "prime" quality by a national rating service; and

9 (4) prime bankers' acceptances issued by money  
10 center banks.

11 B. The collateral required for either of the forms  
12 of investment specified in Paragraph (1) or (2) of Subsection A  
13 of this section shall be delivered to the state fiscal agent or  
14 its designee contemporaneously with the transfer of funds or  
15 delivery of the securities, at the earliest time industry  
16 practice permits, but in all cases settlement shall be on a  
17 same-day basis.

18 C. Neither of the contracts specified in Paragraph  
19 (1) or (2) of Subsection A of this section shall be invested in  
20 unless the contracting bank, brokerage firm or recognized  
21 institutional investor has a net worth in excess of five hundred  
22 million dollars (\$500,000,000) or is a primary broker or primary  
23 dealer."

24 Section 3. Section 7-27-5.1 NMSA 1978 (being Laws 1983,  
25 Chapter 306, Section 8, as amended) is amended to read:

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1 "7-27-5. 1. MARKET RATE INVESTMENTS. --

2 A. The severance tax permanent fund may be invested  
3 in the following market rate investments:

4 (1) bonds, notes or other obligations of the  
5 United States government, its agencies or instrumentalities and  
6 bonds, notes or other obligations guaranteed by agencies and  
7 instrumentalities of the United States government, including the  
8 bureau of Indian affairs;

9 (2) bonds, notes, debentures or other  
10 obligations issued under the act of congress of June 27, 1934  
11 known as the Federal Farm Loan Act, as amended, and the  
12 [~~Federal~~] Farm Credit Act of 1933, as amended;

13 (3) bonds, notes, debentures or other  
14 obligations issued or guaranteed by any national mortgage  
15 association under the act of congress of June 27, 1934 known as  
16 the National Housing Act, as amended;

17 (4) preferred stock, common stock or  
18 convertible issues of any corporation organized and operating  
19 within the United States; provided that it shall have a minimum  
20 net worth of twenty-five million dollars (\$25,000,000) and  
21 securities listed on one or more national stock exchanges or  
22 included on a nationally recognized list of stocks; and provided  
23 further that the fund shall not own more than five percent of  
24 the voting stock of any company. Common stock shall not be  
25 purchased if, at the time, it will exceed or will with the

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Underscored material = new  
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1 purchase exceed [~~thirty-five~~] fifty percent of the book value of  
2 the severance tax permanent fund. Common stocks should  
3 represent a diversified portfolio with an above-average current  
4 yield and the prospects for dividend increases and capital  
5 appreciation;

6 (5) bonds, notes, debentures or other evidence  
7 of indebtedness, excluding commercial paper of any corporation  
8 organized and operating within the United States; provided that  
9 the bonds, notes, debentures or other evidence of indebtedness  
10 are rated at least Baa or BBB or the equivalent by a national  
11 rating service. No more than ten percent of the severance tax  
12 permanent fund shall be invested in bonds, notes, debentures or  
13 other evidence of indebtedness that are rated Baa or BBB or the  
14 equivalent by a national rating service;

15 (6) commercial paper rated "prime" quality by a  
16 national rating service, issued by corporations organized and  
17 operating within the United States;

18 (7) prime bankers' acceptances issued by money  
19 center banks;

20 (8) contracts for the present purchase and  
21 resale at a specified time in the future, not to exceed one  
22 year, of specific securities at specific prices at a price  
23 differential representing the interest income to be earned by  
24 the state. No such contract shall be invested in unless the  
25 contract is fully secured by:

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1                   (a) obligations of the United States or  
2 other securities backed by the United States ~~[having]~~ if the  
3 obligations or securities have a market value of at least one  
4 hundred two percent of the amount of the contract; or

5                   (b) A1 or P1 commercial paper, corporate  
6 obligations rated AA or better and maturing in five years or  
7 less or asset-backed securities rated AAA with an average life  
8 of five years or less if the commercial paper, corporate  
9 obligations or asset-backed securities have a market value of at  
10 least one hundred three percent of the amount of the contract;

11                   (9) contracts for the temporary exchange of  
12 state-owned securities for the use of broker-dealers, banks or  
13 other recognized institutional investors in securities, for  
14 periods not to exceed one year, for a specified fee rate. No  
15 such contract shall be invested in unless the contract is fully  
16 secured by exchange of an irrevocable letter of credit running  
17 to the state, cash or equivalent collateral of at least one  
18 hundred two percent of the market value of the securities plus  
19 accrued interest temporarily exchanged. Such contracts may  
20 authorize the state investment officer to invest cash collateral  
21 in instruments or securities that are authorized investments for  
22 the funds and may authorize payment of a fee from the funds, or  
23 from income generated by the investment of cash collateral, to  
24 the borrower of securities providing cash as collateral. The  
25 state investment officer may enter into a contract that

Underscored material = new  
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1 apportions income derived from the investment of cash to pay its  
2 agent in securities-lending transactions; and

3 (10) participation interests in New Mexico  
4 real-property-related business loans. The actual amount  
5 invested under this paragraph shall not exceed ten percent of  
6 the severance tax permanent fund and shall be included in any  
7 minimum amount of severance tax permanent fund investments  
8 required to be placed in New Mexico certificates of deposit.  
9 Investments authorized in this paragraph are subject to the  
10 following:

11 (a) the state investment officer may  
12 purchase from eligible institutions a participation interest of  
13 up to eighty percent in any loan secured by a first mortgage or  
14 a deed of trust on the real property located in New Mexico of an  
15 eligible business entity, or its subsidiary, that is operating  
16 or shall use loan proceeds to commence operations within New  
17 Mexico plus any other guarantees or collateral that may be  
18 judged by the eligible institution or the state investment  
19 officer to be prudent. To be eligible for investment the  
20 following minimum requirements shall be met: 1) the loan  
21 proceeds shall be used exclusively for the purpose of expanding  
22 or establishing businesses in New Mexico, including the  
23 refinancing of such businesses for expansion purposes only. If  
24 a portion of the loan proceeds were used for refinancing or  
25 repaying an existing loan and payment of principal and interest

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1 to the state has not been made within ninety days from the due  
2 date, unless extended pursuant to agreement between the  
3 originating institution and the state investment officer, the  
4 originating institution shall buy back the state's participation  
5 interest in the loan and begin foreclosure proceedings;

6 2) eligible business entities shall not include public utilities  
7 or financial institutions or shopping centers, apartment  
8 buildings or other such passive investments; 3) the minimum loan  
9 amount shall be two hundred fifty thousand dollars (\$250,000)  
10 and may be met by packaging up to ten separate loans satisfying  
11 the requirements of this paragraph. The maximum loan amount  
12 shall be two million dollars (\$2,000,000); 4) the loan maturity  
13 shall be not less than five years or more than thirty years;

14 5) the maximum loan-to-value ratio shall be seventy-five percent  
15 and based on current appraisal of the real property by an  
16 appraiser who is licensed or certified in New Mexico and  
17 approved by the state investment officer, which shall be made  
18 not more than one hundred eighty days from the loan origination  
19 date; 6) the interest rate of the loan shall be fixed for five  
20 years and shall be adjusted at every fifth anniversary of the  
21 note to the rate specified in Item 7) of this subparagraph;

22 7) the yield on the state's participation interest shall in no  
23 case be less than the greater of the then-prevailing yield on  
24 United States treasury securities of five-year maturity plus two  
25 and one-half percent or the yield received by the lending

Underscored material = new  
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1 institution calculated exclusive of servicing fees; 8) if  
2 payment of principal or interest has not been made within one  
3 hundred eighty days from the due date, unless extended pursuant  
4 to agreement between the originating institution and the state  
5 investment officer, the originating institution shall buy back  
6 the state's participation interest in the loan, substitute  
7 another qualifying loan or begin foreclosure proceedings; and  
8 9) if foreclosure proceedings are commenced, the state and the  
9 originating institution shall share in proportion to their  
10 participation interest, as provided in this subparagraph, in the  
11 legal and other foreclosure expenses and in any loss incurred as  
12 a result of a foreclosure sale;

13 (b) a standardized participation  
14 agreement, the form of which shall be approved by the attorney  
15 general's office, shall be executed between the investment  
16 office and each eligible originating institution. The  
17 participation agreement shall provide that the originating  
18 institution shall not assign its interest in any loan covered by  
19 the agreement without the prior written consent of the state  
20 investment officer;

21 (c) a formal forward commitment program  
22 may be instituted by the state investment officer with the  
23 approval of the council;

24 (d) the council shall adopt regulations:  
25 1) defining passive investments; 2) establishing underwriting

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1 guidelines; 3) ensuring diversification across a variety of  
2 types of collateral, types of businesses and regions of the  
3 state; and 4) providing for the review by the state investment  
4 officer of servicing and other fees that may be charged by the  
5 eligible institution;

6 (e) eligible institutions include banks,  
7 savings and loan associations and credit unions operating in the  
8 state; and

9 (f) real property is defined as land and  
10 attached buildings, but excludes all interests that may be  
11 secured by a security interest under Article 9 of the Uniform  
12 Commercial Code, and mineral resource values.

13 B. The collateral required for either of the forms  
14 of investment specified in Paragraph (8) or (9) of Subsection A  
15 of this section shall be delivered to the state fiscal agent or  
16 its designee contemporaneously with the transfer of funds or  
17 delivery of the securities, at the earliest time industry  
18 practice permits, but in all cases settlement shall be on a  
19 same-day basis.

20 C. Neither of the contracts specified in Paragraph  
21 (8) or (9) of Subsection A of this section shall be invested in  
22 unless the contracting bank, brokerage firm or recognized  
23 institutional investor has a net worth in excess of five hundred  
24 million dollars (\$500,000,000) or is a primary broker or primary  
25 dealer. "

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Section 4. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1996.

- 16 -



# State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 2, 1996

Mr. Speaker:

Your TAXATION AND REVENUE COMMITTEE, to whom has  
been referred

HOUSE BILL 335

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

1. On page 6, line 6, strike "total" and insert in lieu  
thereof "book value".

2. On page 6, line 7, after "invested" insert "at any given  
time".

3. On page 6, line 10, after "invested" insert "at any given  
time".,

and thence referred to the APPROPRIATIONS AND FINANCE  
COMMITTEE.

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FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

HTRC/HB 335

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Respectfully submitted,

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Jerry W. Sandel, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 12 For 0 Against

Yes: 12

Excused: Gonzales

Absent: None

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Underscored material = new  
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# State of New Mexico House of Representatives

FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

February 2, 1996

Mr. Speaker:

Your TAXATION AND REVENUE COMMITTEE, to whom has  
been referred

## HOUSE BILL 335

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

1. On page 6, line 6, strike "total" and insert in lieu thereof "book value".
2. On page 6, line 7, after "invested" insert "at any given time".
3. On page 6, line 10, after "invested" insert "at any given time".,

and thence referred to the APPROPRIATIONS AND FINANCE  
COMMITTEE.

FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

HTRC/HB 335

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Respectfully submitted,

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Jerry W. Sandel, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 12 For 0 Against

Yes: 12  
Excused: Gonzales  
Absent: None

. 111603. 1

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Underscored material = new  
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# State of New Mexico House of Representatives

FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

February 6, 1996

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to  
whom has been referred

HOUSE BILL 335, as amended

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

Respectfully submitted,

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Max Coll, Chairman

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FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

HB335

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Bird, Casey, Gentry, Martinez, Picraux, Salazar,

Watchman

Absent: none

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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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12 Your WAYS AND MEANS COMMITTEE, to whom has been  
13 referred

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HOUSE BILL 335, as amended

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

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20 Respectfully submitted,

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TITO D. CHAVEZ, Chairman

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FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

1 HB335

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against  
Yes: 7  
No: 0  
Excused: Romero  
Absent: None

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FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

1 HB335

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FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

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February 13, 1996

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10 Mr. President:

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Your FINANCE COMMITTEE, to whom has been referred

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HOUSE BILL 335, as amended

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has had it under consideration and reports same with

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recommendation that it DO PASS.

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Respectfully submitted,

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Ben D. Altamirano, Chairman

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Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

FORTY- SECOND LEGISLATURE  
SECOND SESSION, 1996

1 HB335

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Date \_\_\_\_\_

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The roll call vote was 8 For 0 Against

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Yes: 8

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No: 0

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Excused: Donisthorpe, Duran, Ingle, Kidd, Kysar

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Absent: None

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H0335FC1

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Underscored material = new  
[bracketed material] = delete