Committee in Session at 8:41 am on Monday, April 30, 1979.

Senator Keith Ashworth in the Chair.

PRESENT: Chairman Keith Ashworth
Senator Clifton Young
Senator Rick Blakemore
Senator Jim Kosinski

ABSENT: Vice-Chairman Joe Neal
Senator Wilbur Faiss

GUESTS: Assemblyman Louis Bergevin, Assembly District No. 39
Mr. Van Petersen, Conservation Districts
Mr. Tim Hafen, President, Nevada Farm Bureau Federation
Mr. Howard Winn, Nevada Mining Association
Mr. Jack Kenney, Southern Nevada Homebuilders
Mr. Ernest Gregory, Administrator, Division of Environmental Protection
Mr. Charles Zobell, City of Las Vegas
Ms. Pat Gallagher, Clark County
Mr. Bob Warren, Executive Secretary, Nevada Mining Association
Mr. John Connolly, Nevada Association of Soil Conservation Districts
Mr. Russell McDonald, County Commissioners Association
Mr. Don Rhodes, Chief Deputy Research Director, Legislative Counsel Bureau
Dr. William Edwards, Community Health Services, Health Division

Chairman Ashworth opened the hearing on A.B. 572.

Assemblyman Louis Bergevin, Assembly District No. 39, stated that the bill has been in the drafting stages for approximately four years. He said A.B. 572 is the final result of consolidated efforts for the groundwork for a "208" non-point source pollution bill. Mr. Bergevin stated that the bill basically restates some of the water-quality standards for the state and defines "diffuse sources" and penalties required if there are violations of this legislation. He stated that A.B. 572 contains sections that delegate the administration mostly to the county and cities where the diffuse sources are located and defined. He stated that there were four hearings on the bill in the Assembly committee and numerous amendments that, he believes, are satisfactory to all.

Mr. Van Petersen, Conservation Districts in Nevada, stated that the need for water quality was recognized several years ago and there are many phases of the conservation program that deal almost parallel to the water quality. The Conservation Commission has developed a "Best Management Practice Manual" to be used as a

guideline for water quality management problems which has been distributed throughout the counties and throughout the state. He emphasized that these are only guidelines. He said many areas throughout rural Nevada have programs that are water-quality oriented that do not necessarily become the affairs of the state; they are all handled on the local levels with various types of funding programs. Mr. Petersen stated that conservation districts throughout rural Nevada are qualified to administer many of these programs concerning water quality. He said that a point brought out during various public meetings was that if a water quality program was necessary, try to keep it so it can be handled at the local level; the state should administer the program at the state level but the responsibility should be given to the local communities. Mr. Petersen said that, up to now, the water quality problems in the state have not necessarily been defined; many areas also have no problem in the area of non-point source.

Mr. Tim Hafen, President, Nevada Farm Bureau Federation, spoke in opposition to A.B. 572. He expressed concern with subsection 2, Page 1, paragraph (a). He questioned how "terrestrial and aquatic" could be interpreted. He also questioned limiting the bill to "existing industries" as noted in Line 22. As to paragraph (b), Page 2, Lines 1 through 3, Mr. Hafen stated that the state does not have a non-point source permissive bill; that is a federal act commonly called the "208 Act" which involves non-point sources of pollution. He stated that non-point sources of pollution are different from point source; this particular statute deals with point source under Chapter 445. Mr. Hafen stated that point source, for example, may be a chemical plant that is discharging waste from a pipe into a stream, it can be seen and measured; non-point or diffuse source is defined as dust that blows and collects in a stream, or rain that falls and may wash nitrogen, etc., from fields into a stream, and so forth. He stated that non-point sources are hard to measure and hard to see.

Senator Young questioned if it was difficult to tell the difference between point and non-point sources. Mr. Hafen stated that he did not believe it was but expressed that he may not be as clear on the difference as he thought he was.

Mr. Hafen stated that this proposed legislation is the first reference to diffused sources; now the statute would be dealing with both point and non-point sources. As to Page 2, Section 3, Mr. Hafen said that the bill gives a new definition to "water quality". In Section 4, subsection 2, Line 34, it states, "other beneficial uses" and Mr. Hafen questioned what the interpretation would be as well as how priorities would be set. Mr. Hafen also expressed concern with the language on Page 3, Line 2, "or uses which the commission has determined"; he stated he was not concerned with the present commission but questioned the ramifications in the future under a different commission. He stated that it could "open the book" on beneficial uses and take it away from the historical practices.

Senator Kosinski questioned if Mr. Hafen had discussed A.B. 572 with the Department of Conservation and Natural Resources. Mr. Hafen stated that he has been involved in the hearings and in several draft attempts of the legislation; to that extent, it was discussed, but not directly as pertains to this particular bill. Senator Kosinski stated that the language in subsection 1 of Section 5 was probably designed to circumvent some difficult provisions in the law. He stated that he believed it could possibly be more beneficial to the agricultural industry in the state. He questioned how Mr. Hafen would wish to amend this language. Mr. Hafen stated that he did not like the language at all and did not know how to amend it. He said that if the threat of federal intervention was real, which he did not think existed, standards less that the federal requirements were not possible; his fear is that the standards would be much more. He further stated that he believed subsection 2, Page 3, is also "opening the book." Chairman Ashworth questioned if this language was synonymous with the federal Clean Water Act. Mr. Hafen stated that it was. As to subsection 3, Page 3, Line 13, Mr. Hafen stated that the criteria could vary depending upon the administration in control. He felt it was another example of an "open book."

On Page 3, Section 8, Mr. Hafen stated that "diffuse source" was used to replace "non-point." Senator Young questioned the reason for not using the common word. Mr. Hafen stated that he did not know; however, it is defined later in the bill as meaning the same thing. Senator Blakemore questioned a "discrete conveyance." Mr. Hafen stated that he did not know the meaning.

On Page 3, Section 9, Mr. Hafen expressed concern with the term "must be maintained" in Line 42. He questioned the balance between economics and the desire for higher water quality standards. He stated that the language in the rest of Section 9, subsection 1, places the burden of proof on whoever is developing or farming and disagreed with the concept. Mr. Hafen stated that Page 1, Line 22, refers to "existing industries" yet on Page 3, Section 2, subsection 2, reference is made to "a new or increased source of pollution of water". He questioned expansion of an operation under this provision.

As to Page 4, Lines 11 and 12, Chairman Ashworth questioned the verbage, "The legislature finds".

As to Section 10, subsection 2 on Page 4, Mr. Hafen stated that many of the rural counties do not have the money to administer these programs and stated that he assumed the state would be the administrator. He stated that Section 11 pertains to the penalty section and on Page 5, Section 12, subsection 2, Lines 10 and 11, diffuse sources are specifically exempted from the penalty section. Mr. Hafen expressed concern that during the next legislative session, that exemption may be eliminated.

Senator Faiss arrived for the meeting (9:06 am).

Mr. Hafen stated that the book entitled Best Management Practices was the result of a study by the Department of Conservation and Natural Resources and the Nevada Association of Soil Conservation Districts as the contracting agency from the federal government. (A copy of this book is located with the Research Division of the Legislative Counsel Bureau.) He stated that Best Management Practices would be the only way of controlling diffused or non-point sources of pollution and questioned how this control could be enacted without a mandatory program. Mr. Hafen stated that the American Farm Bureau staff has informed him that the federal Environmental Protection Agency does not have the authority to "step in and enforce a '208' program within a state." Chairman Ashworth stated that this did not seem to be the case as indicated in Clark County. Mr. Hafen stated that Clark County has an enabling act and this is what they are trying to prevent in the rural counties. He said that the federal threats are dependent upon the amount of weight given them. Senator Blakemore stated that it also depended upon the agency stating that legislation is necessary. He stated that there have been instances when the legislature has been told something must be done; however, other states have not done anything nor do they intend to do so. He questioned enacting legislation that may cause economic hardship to the people of Nevada. Mr. Hafen stated that he would appreciate some hard evidence as to the Environmental Protection Agency having the authority to enforce a "208" program within the state.

As to Best Management Practices, Mr. Hafen stated that it involves every aspect of a farming operation as well as many other areas. He said it also involves every aspect of agriculture. He said that if the bill is going to be effective, a best management practice would have to be submitted to the state stating, "these are the procedures we will follow." He said that the bill has no penalties should these procedures not be followed; however, he stated that he did not believe it would remain as such. He stated that this procedure under A.B. 572 is extra "red tape" because they engage in these procedures wherever practical as it is in his best interest. He said that this was extra government control that he felt was unnecessary. Chairman Ashworth questioned if he would be agreeable to amending A.B. 572. Mr. Hafen stated that the bill is too complex at this stage and he recommended disposing the bill.

Mr. Hafen questioned the difference between point source and non-point source and cited an example where the difference was difficult to discern. He stated that he believed the bill was "opening the book" to a maze of problems that should be considered carefully. He expressed concern as to finding themselves in a "system of permits."

Senator Young stated that perhaps it is a field where much is un-known but questioned how to maintain protection against polluting problems. Mr. Hafen stated that he believed that the present NRS Chapter 445 has all the controls necessary and that A.B. 572 is going far beyond what is necessary.

Chairman Ashworth questioned if best management practices must be

developed. Mr. Hafen stated that the book Best Management Practices is the guideline but it must be adapted to each operation. He questioned having someone in Carson City telling him that he cannot plow, etc., after his best management practices have been established. Mr. Hafen stated that Page 4 of A.B. 572, Section 2, Lines 5 through 12 indicates that the book Best Management Practices will be adopted by regulation. Chairman Ashworth stated that the verbage, "the legislature finds," indicates that a committee of the legislature has reviewed it and made that finding.

Mr. Hafen concluded by stating that the non-point source of pollution, dust, is believed to be the primary problem. He stated that this dust sedimentation and erosion is the real thrust behind "208."

Mr. Howard Winn, Nevada Mining Association, stated that the Association did take part in the two-year workshop that preceded A.B. 572. He stated that sedimentation is the major non-point source of pollution involved in this bill. Mr. Winn explained that the bill drafter does not find "non-point source" in the dictionary and therefore declined to use the term in the bill. Senator Young questioned if it would be better to use "non-point." Mr. Winn stated that it would be simpler but the term is used in the definition so the two are tied together legally so they have no objection. Mr. Winn requested the committee's favorable consideration of A.B. 572. He stated that Section 10 is the principle part of the enabling act that allows control of non-point sources in Nevada; he stated that they recommend that somewhat reluctantly as they do not wish more controls. However, the best legal information the Mining Industry has obtained states that every state will be better off if they have enabling legislation for non-point source control. Mr. Winn stated that if a state appears unwilling to comply, the federal government can impose sanctions. He said that the Clean Water Act does leave some areas to the states that are very important including the sanctity of the water rights. Senator Blakemore took exception to this statement by the actions of the Bureau of Land Management. Mr. Winn stated that Nevada still has the right to designate uses of water and determine the control to be applied to non-point sources; also, the state has the right to control stream flow. Mr. Winn stated that these rights are the basis for many of the suggested changes in A.B. 572.

He stated that Section 2 is a rewrite of legislative intent that, in his opinion, is a much clearer statement. He stated that each word has a definite meaning. Senator Young questioned how this changes the present law. Mr. Winn stated that it simply makes it clearer. He stated that Lines 22 and 23 are a strong statement. Senator Young questioned the meaning of "terrestrial." Mr. Winn stated that it meant anything outside of the water.

As to Section 3, Mr. Winn stated that the description of a water quality standard has been made more definitive and shorter. Also in Section 5, the "heart" of the suggested changes, Mr. Winn stated that the attempt was to describe what a water quality standard

is exactly and putting emphasis on the continuation of designated beneficial uses. As to subsection 2, Lines 7 through 10, Mr. Winn stated that the verbage "are reasonably attainable" relates to a part of the federal law which mandates that streams will be fishable and swimmable by 1983. Chairman Ashworth questioned if there are streams that are not fishable and swimmable. Mr. Winn stated that there may be some during the heavy part of the irrigation season. Senator Blakemore questioned if flash flooding does the same thing. Mr. Winn stated that it does.

Senator Neal arrived for the meeting (9:32 am).

Mr. Winn stated that Section 3 is stating that water quality standards may be set differently than water quality criteria. Mr. Winn stressed the importance of this as criteria are sometimes generated in a manner that does not relate to the particular stream involved. Senator Blakemore questioned if the thrust was to get the water quality as good as it is at Lake Tahoe. Mr. Winn stated that it was not; rather, heading toward the quality of water that is necessary to maintain the beneficial uses.

Mr. Winn stated that Section 8 is a definition of a diffused or non-point source. Section 9, he stated, is an anti-degradation statement; this statement simply tells how to reduce the quality of extra-pure water. He said a method must be described in this regard for useage of water that will suit Nevada best. He stated that Section 11 is simply taking the fines out of the application of non-point source control as it is difficult to define. Senator Young questioned how this would be enforced. Mr. Winn stated that it would be by civil suit through the Division of Environmental Protection.

Chairman Ashworth stated that he still had a problem with the verbage on Page 4, paragraph (b) and questioned the intent. Mr. Winn stated that they wished it to read, "if the discharge will be from a diffused source, it will be controlled or corrected by the application of suitable best management practices"; however, the verbage is the application of the bill drafter. Chairman Ashworth questioned the verbage, "the legislature finds." Mr. Winn stated that it was when the book was presented to the committee. Chairman Ashworth expressed concern on this point. Mr. Winn stated that the wording was not recommended originally but was amended into the bill. He said that the bill drafter is reluctant to use federal language. Senator Young requested more examples of diffused source. Mr. Winn complied and stated that it could be the runoff of any type of disturbed land.

Senator Young questioned if A.B. 572 applies to municipalities. Mr. Winn stated that it does and disagreed with Mr. Hafen's testimony that the bill only applies to non-designated areas.

Mr. Jack Kenney, Southern Nevada Homebuilders, stated that the bill is too broad, gives too much power and it is too soon. Mr. Kenney

requested viewing of the original bill draft request prior to the application by the bill drafter and stated the Homebuilders may not be as opposed to the bill. Mr. Kenney questioned what the problem is with the standards under which they have been operating, those in present law. He stated that the National Association of Homebuilders is attempting to change the law at the federal level. He also questioned the need for the proposed legislation as the federal law does not go into effect until 1983 and questioned why this could not be addressed in the next legislative session. Mr. Ernie Gregory, Administrator, Division of Environmental Protection, took exception to Mr. Kenney's comment of the federal law not going into effect until 1983. Mr. Kenney requested the backup on that fact. Mr. Kenney stated that there has been extensive work in the past to change the regulations in this area and stated that the proposed subsection 1 of Section 5 was too broad. He requested the bill be amended so that the regulations must be reviewed by a legislative group during the interim. He also requested that the bill be returned to the next session of the legislature for review. He expressed concern that the bill would be "cast in concrete" and requested the two-year time period to see how it works.

Senator Neal stated that he remembered a similar bill before the last session. He said that Mr. Kenney's testimony was similar then and questioned if he was "buying time." Mr. Kenney stated that his opening remarks were, "Why are they changing the bill when we have gone along for the past two years." Senator Neal questioned if it was time for legislation of this type. Mr. Kenney stated that now the issue is diffused source and he had no knowlege of that last session, only point source.

Mr. Kenney stated that on Page 3, Section 5, subsection 3, the proposed legislation is very broad and requested they report back so there would be a system of checks and balances. He stated that once the commission is appointed by the governor, nothing can be done until their term is completed; also, the only challenge is through the courts. He stated that the homebuilders would consider the bill in a more favorable light should the members of the commission be subject to removal.

Chairman Ashworth left to attend another meeting and Vice-Chairman Neal assumed the Chair.

Mr. Kenney stated that Page 3, Subsection 9, regarding no degradation, indicates how arbitrary they are attempting to be by statute. He stated that this was absolute and forecloses any option as to slight degradation. He stated that the degradation decision should be determined by experts brought in from the "outside." He stated that he would like to offer amendments and would bring them to the committee. As to Page 4, paragraph (b), Lines 11 and 12, Mr. Kenney said he would like to see the original definition of "best management practices." He said that the problem with best management practices is that the "state of the art keeps changing" and as the standards are changed, state in the bill that the standards will

change with the federal regulations. He questioned why state standards should be more strict when research has not been done. He also questioned why a Fiscal Note was not attached to provide for more staff in this area.

Senator Kosinski questioned if the several concerns expressed by Mr. Kenney regarding "the commission has determined" could be subject to the Administrative Procedures Act. Mr. Kenney stated that he would like it specified in the bill or that they must report back in a type of study. Mr. Kenney said that the legislative counsel reviews all regulations from this date forward but anything set in the past cannot be changed and have the full force and effect of law. He stated that he would like to see past regulations subject to review amended into the law.

Mr. Ernest Gregory, Administrator, Division of Environmental Protection, stated that they have assisted in the development of this legislation. He said that the original draft submitted to the bill drafter is approximately 21 pages and A.B. 572 is an abbreviation.

Senator Young questioned if in relation to federal law, something must be done to be in compliance. Mr. Gregory stated that "208" is a planning effort and if Nevada does not plan for the control of point sources as well as non-diffuse sources, we lose our construction grants. Senator Blakemore requested this in writing over Mr. Gregory's signature. He served notice that this would be requested of any other agency as well on matters of this nature when coming before any committee on which he sits. Mr. Gregory stated he would comply (see Exhibit "A", received May 2, 1979). Senator Blakemore questioned the cost, especially in the small counties, and Mr. Gregory stated that they have no idea at this time. Senator Blakemore questioned the fiscal impact as to Section 10. Mr. Gregory stated that it would not cost any additional people as water quality studies are being done. Mr. Gregory made note of the fact that Section 10 states a director has to find a problem before a "208" control program can be implemented; the director must demonstrate this to the commission based on the economic feasibility of the non-point source controls for that area. Senator Blakemore questioned if he would go on record as to not needing further personnel. Mr. Gregory stated that he did not say they would not need further personnel but can operate within their budget.

Senator Young questioned if this bill was needed to come into compliance with the Public Law. Mr. Gregory stated that it was his opinion it is necessary. He said that in the regulations of the Environmental Protection Agency, they insist that there be some kind of a regulatory program for the control of non-point sources of pollution. He said that they are going to give the state a chance to implement without getting serious as to how stringent the regulatory program is but some kind of program must be developed. Mr. Gregory stated that if the bill does not pass, his agency is going to implement "208" controls however possible. Senator Young questioned if assuming it is not really needed,

would it be Mr. Gregory's testimony that the bill is still desirable as it clarifies present law. Mr. Gregory agreed. He stated that there had been problems with the Nevada Mining Association in establishing water quality standards. He said that water quality standards and criteria are different; water quality standards are what are found in streams, criteria is based upon a "Red Book" which takes into consideration almost every element that can affect people or aquatic life. He said that many of the streams are clean and can be degradaded up to what the water quality criteria would permit; once above the criteria, whatever beneficial use you are trying to protect will be affected.

Mr. Gregory stated that the Best Management Practices indicated by Mr. Hafen are only recommended. He stated that he wished to see it remain as such because if the agricultural industry can submit something as good as the recommended procedure, they should be able to implement their procedure. He said he did not wish to see Best Management Practices become mandatory. Mr. Gregory stated that the bill drafter did not wish to use the term "non-point" source nor the term "best management practices" so Page 4, Lines 11 and 12, is what was included to indicate there is such a thing as Best Management Practices. He stated that his interpretation of the bill is that the "legislature finds" that "such measures, methods of operation or practices as are reasonably calculated or designed to prevent, eliminate or reduce water pollution from the source" indicates the legislative finding; not the finding of the best management practices. Vice-Chairman Neal stated that Lines 5 through 10, Page 4, is the definition of best management practices which constitutes the findings of the legislature. He stated that it does not become subject until A.B. 572 is passed.

Mr. Charles Zobell, representing the City of Las Vegas, and Ms. Pat Gallagher, representing Clark County, spoke in opposition to A.B. 572. Mr. Zobell stated that they can see the need for legislation in this area as clarification is necessary on non-point or diffuse water pollution; however, it is his belief that this bill may be confusing the issue rather than clarifying. Mr. Zobell stated that Section 8, the definition of diffuse source, remains a problem even through the definition does include non-point source. He stated that by definition a non-point source could become a point source if it were channeled into a small canal or something of that nature. Senator Young questioned the definition of a "discrete conveyance." Mr. Zobell stated that he was unsure and said that was a problem with the definition. Mr. Winn stated that a "discrete conveyance" was a separate conveyance. Mr. Don Rhodes, Chief Deputy Research Director, Legislative Counsel Bureau, stated that it meant one entity providing pollution. Mr. Winn stated that it was a federal definition. Mr. Zobell also expressed concern with Section 9, subsection 2 as to "private project" and questioned a broad interpretation. As to Section 9, subsection 2, paragraph (a), Mr. Zobell questioned what would happen should they not agree with the determination of the director as to what is the "highest and best degree of waste treatment available." Vice-Chairman Neal stated that as he understood the language, enough

latitude is available to make a presentation to the commission. Mr. Zobell said they are uncertain as to that point as they do not know if there is an appeal process to the commission since it is not written in the bill. Vice-Chairman Neal stated that under the Administrative Procedures Act, a method for hearing is required. Mr. Zobell stated that they would feel more comfortable should this be stated within the bill. As to Section 10, subsection 2, Mr. Zobell stated that the City has a problem with the sentence beginning on line 27 and questioned if the director delegates to the county and not to the city, does the county have authority for the area within the city. He suggested amending the sentence to read, "if the authority is delegated to a county but not to an incorporated city within that county, then the county would have authority only for the unincorporated areas and that the state, then, would still maintain the authority over the area within the city." Vice-Chairman Neal questioned if the county has the responsibility for the "208" plan. Mr. Zobell stated that under the consent decree, it is now a joint responsibility for the planning process; this federal consent decree was recently agreed to by all parties concerned. Mr. Zobell said that the consent decree should cover the City but wished to have the state law in agreement. Mr. Zobell stated that he was familiar with the original draft of the legislation and stated that he could not understand why the final proposed bill was not more detailed that would answer the confusion expressed.

Ms. Pat Gallagher stated that she had been in contact with Clark County's Deputy District Attorney responsible for water pollution and addressed Senator Blakemore's question regarding federal requirements. She stated that the federal government, under the amendments to the federal Clean Water Act, would be allowed to intervene to the extent that United States waters are affected. She further said that United States waters are defined as any navigable water; this would mean the Colorado River so they could intervene in Clark County at any time they choose. She stated that Clark County has problems with Section 5 and Section 9 (see Exhibit "B"). As to Section 9, subsection 1, Ms. Gallagher stated that the intergovernmental coordination, public participation provisions and the state's planning process out of the bill, which are vital factors.

Mr. Bob Warren, Executive Director, Nevada Mining Association, stated that in response to the points raised by Ms. Gallagher, the bill was drafted to protect the interests of the ranching industry, farmers, miners, etc., so all could continue to use the waters of the state for whatever beneficial use the state deems appropriate. He said that should the language of the federal government be used, the state would be required to follow the precise federal government regulations. He said that the purpose of the bill is to broaden it so the state would be given the opportunity to make some of these decisions rather than accepting those of the federal government. He said that point should be kept in mind as the bill was designed to give the legislature and the Environmental Commission a "voice" as to how the waters of the state shall be used.

Mr. John Connolly, Nevada Association of Soil Conservation Districts,

stated he has knowlege of the needs of mining as well as those of ranching. Mr. Connolly stated that the reference to "best management practices" on Page 4, Line 11 is simply a general outline of what is attempting to be accomplished. He recommended that this be changed to either, "the legislature instructs," or "the commission shall." He stated that this should then read, "the legislature instructs that the commission, in cooperation with the soil conservation commission, to provide a handbook of best management practices to be used as guidelines to obtain these benefits as appropriate to diffuse sources, such manual to be updated through public hearings periodically." As to Page 4, Section 10, Line 16, Mr. Connolly stated that it is not possible for the commission to apply controls; the commission can either prescribe or request controls to be applied to diffuse sources. He said that language would then agree with Section 11, subsection 1, paragraph (c). He stated he agreed with the language on Page 2, Section 4, subsection 2 that has been proposed but wished to add, "all irrigation water return flows are to be regarded as diffuse regardless of size or method of return delivery." He stated that as to comments made regarding irrigation water, samples have been taken of his water and it was determined that the water from the field was better than it was originally. He said that irrigation does improve the quality of the water.

Senator Kosinksi questioned if Mr. Connolly's ideas were presented to the Assembly. Mr. Connolly stated that he had. Senator Kosinski expressed concern at making further changes as members on the Assembly committee were more familiar with agricultural needs than he. Mr. Connolly stated that he was willing to accept A.B. 572 as it is, but since there appeared to be a possibility for amendment, he wished to have his suggestions included.

Vice-Chairman Neal closed the hearing on A.B. 572.

The hearing was opened on A.B. 502.

Mr. Russell McDonald, representing the County Commissioners Association and Ms. Pat Gallagher, representing Clark County, spoke in support of A.B. 502. Mr. McDonald stated that the bill "does no damage whatsoever but cleans up the law." He stated that it proposes to amend NRS 428.040 to delete the requirements of residency for general indigent welfare recipients on a county level. He stated that this section has not been amended since the United States Supreme Court ruled that residency could not be a requirement to be a recipient of general welfare. He said that the bill, as originally introduced, proposed to repeal NRS 428.060 but not as amended in the Assembly; this is to prevent one county "foisting" a pauper off on another county. He stated that most of the county welfare directors were present at the Assembly hearings and everyone agrees with A.B. 502 in its present form.

Ms. Gallagher stated that the original bill was at the request of Clark County and they are in agreement with the amended version.

Vice-Chairman Neal closed the hearing on A.B. 502.

Vice-Chairman Neal opened the hearing on A.B. 431.

Mr. Don Rhodes, Chief Deputy Research Director, Legislative Counsel Bureau, stated that A.B. 431 was a result of the interim subcommittee studying the conditions of the state prison. He stated that the prison and the Health Division agree conceptually with the idea of the bill. A.B. 431 provides for monitoring the prison in the areas of medical and dental services, nutritional adequacy and sanitation and healthfulness and cleanliness.

Vice-Chairman Neal stated that there would not be time for testimony on A.B. 667 and scheduled it for the first item on the agenda May 1, 1979.

Mr. Rhodes submitted Exhibit "C" to the committee stating that it addresses the points of the law which he believes enhances the provision of the law. Senator Blakemore stated that previous testimony has indicated that the job has not been done in conformity with existing law. Mr. Rhodes stated that this point was addressed by the subcommittee and felt that a more workable solution would be required monitoring and reporting at least every six months. He said the subcommittee did review various national standards relating to nutritional adequacy of diet, medical care and sanitation. He stated that they were hesitant to make this law as the prison is a changing environment; therefore, the conclusion was the monitoring system by the health officer with reporting to the prison board.

Senator Young questioned if this bill would create many problems and produce court action. Mr. Rhodes stated that part of the attempt of the bill is to dissuade future judicial intervention by establishing broad standards within the law. Senator Young expressed concern that this may be an "open invitation" to legal action. Mr. Rhodes stated that during the interim there was a medical peer review committee of the department's medical operation and the director's recommendation did address the establishment of certain guidelines in these areas.

Senator Kosinski questioned if Line 8 as to "palatability of diet" is subjective. Mr. Rhodes stated that he believed it was; however, the definition has been established in certain standards as to the meaning. Senator Kosinski questioned if it would be proper for the health officer to comment upon that fact.

Senator Young questioned if this was a "model act." Mr. Rhodes stated that it was partially; also, input from the nutritionists at the Health Division. Mr. Rhodes stated that a nutritionist would be an enhancement to the prison taken from an existing position in the Health Division.

Dr. William Edwards, Community Health Services, Health Division, stated that the Health Division supports the bill and that Dr. John Carr, Health Officer, testified in support of the bill before the Assembly. He stated that existing staff can handle the

provisions of the bill and there is an additional position in the present budget request for an institutional nutritionist who would be working largely with the prison.

Senator Young questioned if this provision would be made for state prisons, could the same palatability, nourishment and dietary needs be denied to other facilities. Dr. Edwards stated that it may be discriminatory.

There being no further testimony, Vice-Chairman Neal closed the hearing on A.B. 431.

Vice-Chairman Neal stated that the amendments to S.B. 325 had been received (Exhibit "D"). Senator Kosinski stated that the amendments did accomplish the committee's purpose.

S.B. 325 (Exhibit "E")

Senator Kosinski moved to "Amend" and "Do Pass" S.B. 325 with the adoption of Amendment No. 809.

Seconded by Senator Young.

Motion carried.

Yeas -- 4
Nays -- None
Absent -- Senators Ashworth and Blakemore

There being no further business, the meeting adjourned at 10:56 am.

Respectfully submitted,

Roni Ronemus
Committee Secretary

Approved:

Chairman
Senator Keith Ashworth

EXHIBIT "A"

MAY 2 1979

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

TELEPHONE (702) 885-4670

May 2, 1979

MEMORANDUM

To: Richard E. Blakemore, Senator
Nevada State Legislature

From: Ernie Gregory

Subject: Requirements of the Federal Water Pollution Control Act (Public Law 92-500)

You asked for the statutory cites which indicated a non-point source program (208) was mandatory for the State Water Pollution Control program, there are two sections of the federal act directly related to the 208 Section planning activity to which A.B. 572 pertains; Sections 201 and 303.

Section 101 sets forth the policies of Congress and provides:

DECLARATION OF GOALS AND POLICY

Section 101.(a) The objective of this Act is to restore and manintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act -

(1)it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2)it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3)it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4)it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

EXHIBIT A

5)it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; and,

(6)it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the continguous zone, and the oceans.

(b)It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act. It is the policy of Congress that the States manage the construction grant program under this Act and implement the permit programs under sections 402 and 404 of this Act.

Sections 208 and 303 are those portions of the Act designed to implement the areawide waste treatment management policy statement of Section 101(a).

Section 208 provides:

AREAWIDE WASTE TREATMENT MANAGEMENT

Section 208.(a) For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans.

(1)The Administrator, within ninety days after the date of enactment of this Act and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

(2)The Governor of each State, within sixty days after publication of the guidelines issued pursuant to paragraph (1) of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after consultation with appropriate elected and other officials of local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization, including elected officials from local governments or their designees, capable of developing effective areawide waste treatment management plans for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines areawide waste treatment management to be appropriate, designate the boundaries of such area, and designate an organization capable of developing effective areawide waste treatment management plans for such area.

Exh. BITA

(3)With respect to any area which, pursuant to the guidelines published under paragraph (1) of this subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which areawide waste treatment management plans would be most effective, and toward designating, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of developing effective areawide waste treatment management plans for such ares.

(4)If a Governor does not act, either by designating or determining not to make a designation under paragraph (2) of this subsection, within the time required by such paragraph, or if, in the case of an interstate area, the Governors of the States involved do not designate a planning organization within the time required by paragraph (3) of this subsection, the chief elected officials of local governments within an area may by agreement designate (A) the boundaries for such an area, and (B) a single representative organization including elected officials from such local governments, or their designees, capable of developing an areawide waste treatment management plan for such area.

(5)Exiting regional agencies may be designated under paragraphs (2), (3), and (4) of this subsection.

(6)The State shall act as a planning agency for all portions of such State which are not designated under paragraphs (2), (3), or (4) of this subsection.

(7)Designations under this subsection shall be subject to the approval of the Administrator.

(b)(1)(A) Not later than one year after the date of designation of any organization under subsection (a) of this section such organization shall have in operation a continuing areawide waste treatment management planning process consistent with section 201 of this Act. Plans prepared in accordance with this process shall contain alternatives for waste treatment management, and be applicable to all wastes generated within the area involved. The initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than two years after the planning process is in operation.

EXHIBIT A

(B)For any agency designated after 1975 under subsection (a) of this section and for all portions of a State for which the State is required to act as the planning agency in accordance with subsection (a)(6), the initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than three years after the receipt of the initial grant award authorized under subsection (f) of this section.

(2)Any plan prepared under such process shall include, but not be limited to -

(A) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works, and an identification of open space and recreation opportunities that can be expected to result from improved water quality, including consideration of potential use of lands associated with treatment works and increased access to water-based recreation;

(B) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

(C) the establishment of a regulatory program to

(i) implement the waste treatment management requirements of section 201(c),

(ii) regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area, and

(iii) assure that any industrial or commercial waste discharged into any treatment works in such area meet applicable pretreatment requirements;

(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

(E) the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social, and environmental impact of carrying out the plan within such time;

(F) a process to (i) identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution, including return flows from irrigated agriculture, and their cumulative effects, runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(G) a process of (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(H) a process to (i) identify construction activity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(I) a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth procedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan;

(J) a process to control the disposition of all residual waste generated in such area which could affect water quality; and

(K) a process to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality.

(3)Areawide waste treatment management plans shall be certified annually by the Governor or his designee (or Governors or their designees, where more than one State is involved) as being consistent with applicable basin plans and such areawide waste treatment management plans shall be submitted to the Administrator for his approval.

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(4) (A) Whenever the Governor of any State determines (and notifies the Administrator) that consistency with a statewide regulatory program under section 303 so requires, the requirements of clauses (F) through (K) of paragraph (2) of this subsection shall be developed and submitted by the Governor [to the Administrator for application to all regions within such State] to the Administrator for approval for application to a class or category of activity throughout such State.

Section 208 further provides:

(c)(1) The Governor of each State, in consultation with the planning agency designated under subsection (a) of this section, at the time a plan is submitted to the Admnistrator, shall designate one or more waste treatment management agencies (which may be an existing or newly created local, regional or State agency or potential subdivision) for each area designated under subsection (a) of this section and submit such designations to the Administrator.

(2) The Administrator shall accept any such designation, unless, within 120 days of such designation, he finds that the designated management agency (or agencies) does not have adequate authority -

(A) to carry out appropriate portions of an areawide waste treatment management plan developed under subsection (b) of this section;

(B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;

(C) directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;

(D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;

(E) to raise revenues, including the assessment of waste treatment charges;

(F) to incur short- and long-term indebtedness;

(G) to assure in implementation of an areawide waste treatment management plan that each participating community pays its proportionate share of treatment costs;

EXHIBIT A

(H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and

(I) to accept for treatment industrial wastes.

(d) After a waste treatment management agency having the authority required by subsection (c) has been designated under such subsection for an area and a plan for such area has been approved under subsection (b) of this section, the Administrator shall not make any grant for construction of a publicly owned treatment works under section 201 (g)(1) within such area except to such a designated agency and for works in conformity with such plan.

(e) No permit under section 402 of this Act shall be issued for any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

Section 303(e) provides:

(e)(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this Act.

(2) Each State shall submit not later than 120 days after the date of the enactment of the Water Pollution Control Amendments of 1972 to the Administrator for his approval a proposed continuing planning process which is consistent with this Act. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this Act. The Administrator shall not approve any State permit program under title IV of this Act for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 301(b)(1), section 301(b)(2), section 306, and section 307, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

EXHIBIT A

(B) the incorporation of all elements of any applicable areawide waste management plans under section 208, and applicable basin plans under section 209 of this Act;

(C)total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirement of sections 301 and 302.

(f) Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be impelemented prior to the dates set forth in sections 301(b)(1) and 301(b)(2) nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

(g) Water quality standards relating to heat shall be consistent with the requirements of section 316 of this Act.

(h) For the purposes of this Act the term "water quality standards" includes thermal water quality standards.

Section 201 is the authorization for grants for development and construction of public wastewater treatment plants. The State of Nevada receives about $20,000,000 annually for the construction of wastewater treatment plants (Section 205). This provides a grant of 75% to communities for the construction of the plants (Section 202).

EXHIBIT A

As stated in Section 208(d) no grants will be made for the construction of wastewater treatment plants that are not in conformance with the 208 plan, this is in effect the penalty provisions of the Act.

Section 201 provides:

TITLE II- GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

Purpose

Section 201(a) It is the purpose of this title to require and to assist the development and implementation of waste treatment management plans and practices which will achieve the goals of this Act.

(b) Waste treatment management plans and practices shall provide for the application of the best practicable waste treatment technology before any discharge into receiving waters, including reclaiming and recycling of water, and confined disposal of pollutants so they will not migrate to cause water or other environmental pollution and shall provide for consideration of advanced waste treatment techniques.

(c) To the extent practicable, waste treatment management shall be on an areawide basis and provide control or treatment of all point and nonpoint sources of pollution, including in place or accumulated pollution sources.

(d) The Administrator shall encourage waste treatment management which results in the construction of revenue producing facilities providing for -

(1) the recycling of potential sewage pollutants through the production of agriculture, silviculture, or aquaculture products, or any combination thereof;

(2) the confined and contained disposal of pollutants not recycled;

(3) the reclamation of wastewater; and

(4) the ultimate disposal of sludge in a manner that will not result in environmental hazards.

(e) the Administrator shall encourage waste treatment management which results in integrating facilities for sewage treatment and recycling with facilities to treat, dispose of, or utilize other industrial and municipal wastes, including but not limited to solid waste and waste heat and thermal discharges. Such integrated facilities shall be designed and operated to produce revenues in excess of capital and operation and maintenance costs and such revenues shall be used by the designate regional management agency to aid in financing other environmental improvement programs.

EXHIBIT A

(f) The Administrator shall encourage waste treatment management which combines "open space" and recreational considerations with such management.

(g)(1) The Administrator is authorized to make grants to any State, municipality, or intermunicipal or interstate agency for the construction of publicly owned treatment works.

EGG:mhr

EXHIBIT "B"

PAT GALLAGHER'S TESTIMONY ON A.B. 572 - 4/30/79

In our opinion Sec. 5 of the bill would not allow the State Environmental Commission to adopt water quality standards for waters of the United States which would be sufficient to meet the requirements of Section 303(c) (2) of the Clean Water Act, 33 U.S.C. §1313(c) (2). Section 303(c) (2) says:

> "Whenver the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation."

It is apparent that the language which Sec. 5 of A.B. 572 would delete from NRS 445.244 was intended to require the State Environmental Commission to adopt water quality standards which would meet the requirements of Section 303(c) (2) and be approved by E.P.A. It is our opinion that under Sec. 5 of A.B. 572 the State Environmental Commission could not adopt water quality standards which could be approved by E.P.A.

Subsection (1) of Sec. 9 of A.B. 572 appears to conflict with 40 C.F.R. §130.17(e) (2). Subsection (1) of Sec. 9 of the bill says in effect that the quality of water may be lowered if it has been demonstrated to the department that the lower quality "is justifiable because of economic or social development." 40 C.F.R. §130.17(e) (2) requires that the State adopt an anti-degradation policy which requires maintenance and protection of high quality waters unless "the State chooses, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, to allow lower water quality as a result of <u>necessary</u> and justifiable economic or social developments."

Opinion of Clark County Deputy District Attorney, Victor W. Priebe.

EXHIBIT "C"

A.B. 431

(BDR 16-71)

DISCUSSION OF THE RECOMMENDATIONS WHICH LED TO THIS BILL BEGINS ON PAGE 28 OF THE SUBCOMMITTEE REPORT ENTITLED THE CONDITION OF THE STATE PRISON.

AS YOU KNOW, THE INTERIM STUDY OF THE PRISON SYSTEM WAS MANDATED BY A.C.R. 1 OF THE 1977 LEGISLATIVE SESSION. THE RESOLUTION EXPRESSED MANY CONCERNS ABOUT THE PRISON INCLUDING THE WELL-BEING OF THE DEPARTMENT'S INMATES. IN RESPONSE TO THIS CONCERN, THE SUBCOMMITTEE REVIEWED SEVERAL MATTERS RELATING TO INMATE WELL-BEING INCLUDING MEDICAL AND DENTAL CARE, SANITATION AND HYGIENE AND FOOD SERVICES.

A.B. 431 EMANATES FROM THE SUBCOMMITTEE'S RECOMMENDATIONS. THE BILL REQUIRES THE STATE HEALTH OFFICER TO PERIODICALLY EXAMINE, AND REPORT TO THE BOARD OF PRISON COMMISSIONERS SEMIANNUALLY, ON THE PRISON'S MEDICAL AND DENTAL SERVICES, INMATES' DIETS, AND THE SANITATION, HEALTHFULNESS AND CLEANLINESS AND SAFETY OF THE PRISON SYSTEM'S FACILITIES. THE PRISON BOARD IS REQUIRED TO TAKE APPROPRIATE ACTION TO REMEDY ANY DEFICIENCIES REPORTED BY THE HEALTH OFFICER.

MEDICAL AND DENTAL CARE

CERTAIN OF THE MOST FREQUENTLY MENTIONED COMPLAINTS DURING THE PRESENTATIONS TO THE INTERIM SUBCOMMITTEE RELATED TO DEFICIENCIES IN MEDICAL AND DENTAL CARE PROVIDED BY THE DEPARTMENT OF PRISONS. THE COMPLAINTS RELATED TO SEVERAL PROBLEMS INCLUDING LONG DELAYS IN OBTAINING TREATMENT.

A MEDICAL REVIEW PEER COMMITTEE, CHAIRED BY DR. RICHARD D. GRUNDY, ALSO IDENTIFIED MEDICAL DEFICIENCIES AT THE PRISON AND MADE SUGGESTIONS FOR IMPROVEMENTS IN INMATE MEDICAL CARE. THE REVIEW COMMITTEE SAID THAT, "THE MEDICAL DEPARTMENT AT THE PRISON MUST BE FURNISHED WITH SOME SPECIFIC GUIDELINES CONCERNING THE EXTENT THAT MEDICAL CARE SHOULD BE GIVEN TO INMATES," AND NOTED THAT, "THESE GUIDELINES SHOULD COME FROM THE PEOPLE OF THE STATE OF NEVADA THROUGH THEIR ELECTED REPRESENTATIVES."

SEVERAL NATIONAL ORGANIZATIONS INCLUDING THE AMERICAN CORRECTIONAL ASSOCIATION, THE AMERICAN BAR ASSOCIATION AND THE COMMISSIONERS ON UNIFORM STATE LAWS HAVE ADDRESSED WHAT THEY BELIEVE TO BE MINIMUM STANDARDS FOR PROPER MEDICAL CARE FOR PRISONERS. I HAVE PROVIDED YOU WITH COPIES OF CERTAIN OF THESE STANDARDS.

NEVADA STATUTES ALSO ADDRESS THE HEALTH, MEDICAL CARE AND TREATMENT OF INMATES. SUBSECTION 2 OF NRS 209.381 STATES, "THE DIRECTOR WITH THE APPROVAL OF THE BOARD SHALL ESTABLISH STANDARDS FOR PERSONAL HYGIENE OF OFFENDERS AND FOR THE MEDICAL AND DENTAL SERVICES OF EACH INSTITUTION." ALSO, SUBSECTION 6 OF NRS 209.131 REQUIRES THE DIRECTOR OF THE DEPARTMENT OF PRISONS

TO, "TAKE PROPER MEASURES TO PROTECT THE HEALTH AND SAFETY OF THE STAFF AND INMATES OF THE INSTITUTIONS OF THE DEPARTMENT."

FINALLY, NRS 449.030 PROVIDES THAT, "NO PERSON, STATE OR LOCAL GOVERNMENT UNIT OR AGENCY THEREOF SHALL OPERATE OR MAINTAIN IN THE STATE ANY HEALTH AND CARE FACILITY WITHOUT FIRST OBTAINING A LICENSE AS PROVIDED IN NRS 449.001 TO 449.240, INCLUSIVE." ACCORDING TO THE HEALTH DIVISION, HOWEVER, NONE OF THE PRISONS' HEALTH CARE FACILITIES ARE LICENSED NOR HAS SUCH LICENSING BEEN REQUESTED.

THE INTERIM SUBCOMMITTEE BELIEVED THAT, BESIDES BEING A MORAL AND LEGAL OBLIGATION, PROPER AND ADEQUATE MEDICAL CARE FOR INMATES CONTRIBUTES TO THE SUCCESS OF ANY CORRECTIONAL PROGRAM. PHYSICAL DISABILITIES OR ABNORMALITIES MAY CONTRIBUTE TO A PERSON'S SOCIALLY DEVIANT BEHAVIOR OR RESTRICT HIS EMPLOYMENT. IN THESE CASES, MEDICAL OR DENTAL TREATMENT IS AN INTRICATE PART OF THE OVERALL REHABILITATION PROGRAM.

THE SUBCOMMITTEE DID NOT HAVE THE EXPERTISE TO DETERMINE THE QUALITY OR ADEQUACY OF HEALTH CARE PROVIDED BY THE DEPARTMENT OF PRISONS FOR ITS INMATES. IT WAS, HOWEVER, CONCERNED THAT MEDICAL AND DENTAL CARE AND FACILITIES BE PROVIDED AND OPERATED ON AN ADEQUATE BASIS. AS MENTIONED, HEALTH CARE FACILITIES OPERATED BY STATE GOVERNMENT UNITS ARE REQUIRED, BY NRS 449.030, TO BE LICENSED BY THE HEALTH DIVISION. LICENSING OF THE DEPARTMENT'S HEALTH CARE FACILITIES APPEARS TO BE AN

UNWORKABLE SOLUTION FOR ENSURING ADEQUATE AND CONSISTENT HEALTH CARE. THE SUBCOMMITTEE THOUGHT THAT SOME OTHER MECHANISM IS NECESSARY TO ENSURE THAT THE MEDICAL AND DENTAL TREATMENT OF PRISONERS IS MAINTAINED AT A PROPER LEVEL. IT THEREFORE RECOMMENDED THE PERIODIC MONITORING AND REPORTING APPROACH SUGGESTED IN A.B. 431.

SANITATION AND HYGIENE

OF SPECIAL CONCERN TO THE INTERIM SUBCOMMITTEE WAS THAT THE DEPARTMENT OF PRISONS' INSTITUTIONS BE KEPT IN A CLEAN AND SANITARY CONDITION AND THAT PROPER HYGIENIC CONDITIONS BE MAINTAINED BY THE INMATES. BASED ON ITS OWN OBSERVATIONS AND PRESENTATIONS BY WITNESSES APPEARING BEFORE IT, THE SUBCOMMITTEE FELT THERE MAY BE PROBLEMS WITH THE SANITATION AND HYGIENE AT THE PRISON IN SUCH AREAS AS (1) HOUSEKEEPING FOR THE PHYSICAL PLANT, (2) WASTE DISPOSAL, (3) THE EXCHANGE OF CLEAN CLOTHING FOR INMATES, AND (5) THE FREQUENCY INMATES ARE PERMITTED TO BATHE. MANY OF THESE PROBLEMS RELATE TO THE AGE OF THE MAXIMUM SECURITY PRISON AND TO SECURITY MEASURES IN OPERATION DURING A LOCKDOWN WHICH WAS IN EFFECT DURING A PORTION OF THE SUBCOMMITTEE'S MEETING SCHEDULE.

I SHOULD NOTE THAT IMPROVEMENTS HAVE BEEN MADE SINCE THE SUBCOMMITTEE'S STUDY.

EXISTING LAW, NRS 444.330, GIVES THE HEALTH DIVISION SUPERVISION OF THE SANITATION AT THE PRISON. IT ALSO PERMITS THE STATE BOARD OF HEALTH TO PROMULGATE RULES AND REGULATIONS PERTAINING TO SUCH SANITATION AND (1) REQUIRES THE STATE HEALTH OFFICER, OR HIS AUTHORIZED AGENT, TO INSPECT THE INSTITUTIONS, (2) PERMITS THE STATE HEALTH OFFICER TO PUBLISH REPORTS OF SUCH INSPECTIONS, AND (3) REQUIRES ALL PERSONS CHARGED WITH THE DUTY OF MAINTENANCE AND OPERATION OF THE INSTITUTIONS TO OPERATE THEM IN CONFORMANCE WITH THE STATE BOARD OF HEALTH'S REGULATIONS RELATING TO SANITATION, HEALTHFULNESS AND CLEANLINESS.

THE SUBCOMMITTEE BELIEVED THAT A MORE FREQUENT MONITORING AND REPORTING REQUIREMENT, THAN PROVIDED IN NRS 444.330, IS NECESSARY TO ENSURE PROPER SANITATION AND HYGIENIC CONDITIONS AT THE NEVADA STATE PRISON. IT THEREFORE RECOMMENDED THE APPROACH CONTAINED IN A. B. 431.

FOOD SERVICES

DURING ITS MEETINGS, THE SUBCOMMITTEE HEARD MANY COMPLAINTS ABOUT INMATE FOOD SERVICES. MOST OF THESE COMPLAINTS CENTERED AROUND THE FOOD AT THE MAXIMUM SECURITY PRISON AND DEALT, IN PARTICULAR, WITH THE MEALS SERVED DURING THE LOCKDOWN.

COMPLAINTS PERTAINED TO INSUFFICIENT QUANTITIES OF FOOD, SPOILED AND ILL PREPARED FOOD, EXCESSIVE AMOUNTS OF STARCHY FOODS, AND THE NUMBER OF MEALS DURING WHICH PROCESSED MEAT OR CHEESE SANDWICHES WERE SERVED. CERTAIN INMATES ALSO STATED THAT NO

ATTENTION WAS GIVEN, BY THE DEPARTMENT OF PRISONS IN ITS MEAL PREPARATION AND SERVICE, TO THE SPECIAL RELIGIOUS OR MEDICAL DIETARY NEEDS OF CERTAIN INMATES. IT WAS ALSO NOTED THAT DIETARY ALLOWANCES WERE NOT ADJUSTED FOR INMATE AGE OR ACTIVITY.

INMATE FOOD SERVICE AT THE DEPARTMENT OF PRISONS IS ADMINISTERED BY A FOOD SERVICE ADMINISTRATOR. IN ADDITION, THE MAXIMUM SECURITY PRISON, NORTHERN NEVADA CORRECTIONAL CENTER AND SOUTHERN NEVADA CORRECTIONAL CENTER HAVE FOOD SERVICE MANAGERS AND COOK SUPERVISORS. THE WOMEN'S INSTITUTION HAS A COOK SUPERVISOR. INMATES AT EACH OF THE INSTITUTIONS ARE RESPONSIBLE FOR THE ACTUAL PREPARATION OF FOOD. THE PRISON DOES NOT EMPLOY A NUTRITIONIST. MOREOVER, NO SPECIAL EXPERTISE OR PROCEDURES ARE AVAILABLE AT THE PRISON FOR PREPARING SPECIAL DIETS FOR INMATES WHO NEED THEM.

THE INTERIM SUBCOMMITTEE WAS OF THE OPINION THAT THE DEPARTMENT OF PRISONS SHOULD MAINTAIN A COMPLETE FOOD SERVICE FOR THE PRISONERS THAT INCLUDES THREE MEALS A DAY WHICH ARE NUTRITIONALLY ADEQUATE AND PALATABLE, AND THAT ARE PRODUCED UNDER SANITARY CONDITIONS AT A REASONABLE COST. BECAUSE THE DEPARTMENT DOES NOT EMPLOY A NUTRITIONIST AND BECAUSE INMATES DO ALL THE PREPARATION OF FOOD, THE SUBCOMMITTEE BELIEVED THAT OUTSIDE MONITORING SHOULD BE AVAILABLE TO ENSURE THE ADEQUACY OF THE INMATES' DIETS. THE SUBCOMMITTEE NOTED THAT THE HEALTH DIVISION HAS A STAFF OF NUTRITIONISTS WHICH COULD BE USED FOR THIS PURPOSE AND THEREFORE, RECOMMENDED THE PROCEDURE CONTAINED IN A.B. 431.

EXHIBIT "D"

1979 REGULAR SESSION (60TH)

| ...BLY ACTION | | SENATE ACTION | | Senate AMENDMENT BLANK |
|---|---|---|---|---|
| ...opted | ☐ | Adopted | ☐ | AMENDMENTS to Senate |
| ...st | ☐ | Lost | ☐ | Bill No. 325 ~~Joint Resolution No.~~ |
| ...e: | | Date: | | |
| ...tial: | | Initial: | | BDR 40-1179 |
| ...curred in | ☐ | Concurred in | ☐ | Proposed by Committee on Human Resources and Facilities |
| ... concurred in | ☐ | Not concurred in | ☐ | |
| ...e: | | Date: | | |
| ...tial: | | Initial: | | |

Amendment No. 809

Replaces Amendment No. 766.

Amend section 1, page 1, line 2, by deleting "16," and inserting "14,".

Amend section 2, page 1, by inserting between lines 5 and 6, the words:

"2. "Director" means the director of the department of human resources.".

Amend section 2, page 1, line 6, by deleting "2." and inserting "3.".

Amend section 2, page 1, line 8, by deleting "and" and inserting "or".

Amend section 2, page 1, lines 8 and 9, by deleting "specially provide" and inserting "provides".

Amend section 2, page 1, by deleting lines 10 and 11.

Amend section 3, page 1, by deleting lines 12 through 20 and inserting:

...o: E & E
LCB File
Journal
Engrossment
Bill

1056

Date 4-27-79 Drafted by JW:iw

"Sec. 3. 1. The position of advocate for residents of facilities for long-term care is hereby created in the office of the director of the department of human resources.

2. The advocate is appointed by the director and is in the unclassified service of the state.".

Amend the bill as a whole, by deleting section 4 and renumbering sections 5 through 9 as sections 4 through 8.

Amend section 5, page 2, by deleting lines 8 through 17 and inserting:

"Sec. 4. 1. The director shall establish by regulation procedures for receiving, investigating, referring and attempting to resolve through voluntary action any complaint which is made by or on behalf of a resident of a facility for long-term care concerning any act of the facility or of a governmental agency which may adversely affect the health, safety, welfare or civil rights of any resident of the facility.

2. The advocate, with the approval of the director, shall:

(a) Investigate any act of a governmental agency which may affect residents of facilities for long-term care, and report the results of his investigation to the director and the adminis-".

Amend section 5, page 2, by deleting line 19 and inserting:

"(b) Recommend and review legislation and regulations, both".

Amend section 5, page 2, line 21, by deleting "4." and inserting "(c)".

Amend section 5, page 2, by deleting lines 24 and 25, and inserting:

"(d) Record information about complaints and conditions in facilities for long-term care and analyze the information to identify problems affecting residents of the facilities.".

Amend section 5, page 2, line 26, by deleting "6." and inserting "(e)".

Amend section 5, page 2, by deleting line 29, and inserting:

"(f) Periodically prepare reports for the director and the administrator of the aging services division".

Amend section 6, page 2, by deleting line 33, and inserting:

"investigate any act".

Amend section 6, page 2, line 34, by deleting "policy".

Amend section 7, page 2, line 39, by deleting "and any volun-".

Amend section 7, page 2, by deleting line 40, and inserting "may:".

Amend section 7, page 2, line 41, by deleting "notice between the" and inserting "advance notice".

Amend section 7, page 2, by deleting line 42, and inserting "and, after notifying the person in charge of the".

Amend the bill as a whole, by deleting section 10 and renumbering sections 11 through 16 as sections 9 through 14.

Amend section 11, page 3, line 48, by deleting "8" and inserting "7".

Amend section 12, page 4, by deleting lines 4 and 5, and inserting: "exploited or abandoned shall promptly report that information to the advocate.".

Amend section 13, page 4, lines 6 and 7, by deleting "or a volunteer advocate".

Amend section 14, page 4, by deleting lines 11 and 12, and inserting: "by any person to the advocate, and any communication made in good faith by the advocate".

Amend section 15, page 4, by deleting line 18 and inserting: "to the advocate.".

Amend section 16, page 4, by deleting line 21 and inserting "tion 8 of this act or sections 10, 11 or 13 of this act;".

Amend section 16, page 4, line 22, by deleting "or a volunteer advocate".

Amend section 16, page 4, line 23, by deleting "their" and inserting "his".

Amend section 16, page 4, line 24, by deleting "or a volunteer advocate".

Amend section 16, page 4, by deleting lines 29 through 31 and inserting

"is guilty of a misdemeanor.".

EXHIBIT O



Amend the title of the bill, line 1, by deleting "office" and inserting "position".

Amend the title of the bill, line 3, by deleting "fine;" and inserting "penalty;".

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

# S. B. 325

## SENATE BILL NO. 325—COMMITTEE ON HUMAN RESOURCES AND FACILITIES

MARCH 13, 1979

Referred to Committee on Human Resources and Facilities

SUMMARY—Creates office of advocate for residents of facilities for long-term care. (BDR 40-1179)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to health and care facilities; creating the position of advocate for residents of facilities for long-term care; providing its powers and duties; providing for the investigation of complaints about facilities; providing a penalty; and providing other matters properly relating thereto.

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Chapter 449 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this act.

SEC. 2. *As used in this act, unless the context otherwise requires:*

*1. "Advocate" means the advocate for residents of facilities for long-term care.*

*2. "Director" means the director of the department of human resources.*

*3. "Facility for long-term care" means a group care facility as defined in NRS 449.005, an intermediate care facility as defined in NRS 449.014 or a skilled nursing facility as defined in NRS 449.018, which provides services or care to the elderly at the facility.*

SEC. 3. *1. The position of advocate for residents of facilities for long-term care is hereby created in the office of the director of the department of human resources.*

*2. The advocate is appointed by the director and is in the unclassified service of the state.*

SEC. 4. *1. The director shall establish by regulation procedures for receiving, investigating, referring and attempting to resolve through voluntary action any complaint which is made by or on behalf of a resident of a facility for long-term care concerning any act of the facility or of a governmental agency which may adversely affect the health, safety, welfare or civil rights of any resident of the facility.*