The meeting was called to order at 8:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Hernstadt
Senator Don Ashworth
Senator Dodge
Senator Ford
Senator Raggio
Senator Sloan

ABSENT: None

AJR 29 Requests Congress to propose amendment to United States Constitution to establish immunity of each state from unconsented suit in courts of another state except to extent of immunity is waived by other state.

Larry Struve, Chief Deputy Attorney General, informed the committee that this had been prepared by his office in response to the decision of the United States Supreme Court in the case of the State of Nevada v. Hall. The "whereas" clauses were taken from the dissenting opinions in that decision.
He stated that there were six reasons for this resolution:

1) A constitutional amendment appears to be the only way the states of the union would have to limit the effect of the Hall decision and to restore recognition in the courts of sister states that the U.S. is composed of sovereign entities and not just administrative units that can be as private litigants.
2) The Hall decision cannot be read consistently with the 11th Amendment. The court got around the 11th Amendment by saying that it applied only in federal courts. They stated that under the doctrine of commity, if a sister state desires to give immunity to a sister state, they would do so in their own courts but they weren't required to do so either by the constitution or the amendment.
3) As a result of the Hall decision, it is possible that there will be an invitation to interstate retaliation and judicial confusion. The opinion leaves open the question as to whether or not a judgment in another state is entitled to full faith and credit on the part of the states who are being sued.
4) This amendment would assure that there is consistency in the treatment of plaintiffs who sue the State of Nevada.

5) His office contacted 41 other states and found that their major concern was that the decision would require the courts of sister states to treat other states as private litigants.
6) The Hall decision could be read as possibly being inconsistent with the 10th Amendment, which reserves certain rights to the states that are not expressly delegated.

Assemblyman Jim Banner, District 11, testified in opposition to this measure. He stated that people no longer believe in the theory that "the king can do no wrong." He felt that sovereign immunity was becoming a thing of the past.

Senator Sloan moved to report AJR 29 out of committee with a "do pass" recommendation.

Seconded by Senator Dodge.

Motion carried unanimously. Senators Ford and Hernstadt were absent from the vote.

AJR 30 Proposes to amend Nevada constitution by prohibiting commutation of sentences of death and life imprisonment without possibility of parole to sentences which would allow parole.

Cal Dunlap, Washoe County District Attorney, testified in support of this measure. He stated that the term "without possibility of parole" is a fiction. Persons serving "life without" actually serve between 13 and 14 years. He stated that the jury is not informed to what the results of their sentencing will be. He believed that they and the public at large, would be outraged if they knew the actual results.

Senator Close asked if it wouldn't be easier to change the law to provide that sentences of certain crimes could not be commuted or to describe precisely what the sentence means rather than changing the constitution. He felt that "life without" was a misnomer.

Senator Raggio responded that the only reference the courts can make in their instructions to the jury is that it is subject to executive clemency. You cannot, by statute, say that these sentences cannot be commuted because that is embodied in a constitutional provision.

Senator Close stated that he was suggesting that "life without" was a misnomer and that the language could be changed so that in describing the penalty, it would be "life without possibility of commutation."

Senator Sloan responded that you would then have "truth in sentencing" but that it doesn't get to the underlying problem of keeping them in prison for over 14 years.

Charles L. Wolff, Director, Department of Prisons, testified in opposition to this measure. He stated that he did not believe that the death penalty would be made available and that if society was going to permit life, they should also allow for hope.
He stated people who do time, have a change in their thinking, which is sometimes dramatic.
He further stated that he believed that the Parole and Pardons Board was fair and equitable both with the concerns of society and the individuals involved.

Senator Dodge stated that he was satisfied that the public supports this concept. He believed that people should have to pay the penalty for these acts.
He further stated that he supported Senator Close's suggestion which would allow for legislative direction in the commutation of sentences.

Senator Raggio concurred and suggested an amendment such as "A sentence of death or life without may not be commuted to a sentence that would allow parole except as may be provided by law."

Senator Dodge moved to report AJR 30 out of committee with an "amend and do pass" recommendation.

Seconded by Senator Ashworth.

Motion carried unanimously. Senators Ford and Hernstadt were absent from the vote.

AB 396 Requires gift of clothing and increases amount of money which may be given to an offender upon release.

Charles L. Wolff, Director, and Mike Medema, Department of Prisons, testified in support of this measure.
Mr. Wolff stated that this does not mean that every individual would be receiving these upon release from prison.

He stated that if an individual has $250 in their account, they would get nothing. There is a graduated scale which would be applied from $250 on down.
He further stated that there is a proposed work program which should be starting soon so that the fiscal impact of this measure would be minimal.

Mr. Medema stated that the Assembly Ways and Means Committee had appropriated $40,000 for this project.

Senator Dodge moved to report AB 396 out of committee with a "do pass and rerefer to Finance" recommendation.

Seconded by Senator Sloan.

Motion carried. The vote was as follows:

AYE:	Senator Close	NAY:	Senator Ashworth
	Senator Dodge		
	Senator Raggio	ABSENT:	Senator Ford
	Senator Sloan		Senator Hernstadt

AB 480 Provides penalty for battery against adult member of defendant's household.

For testimony on this measure, see the minutes of the meeting for May 7, 1979.

Senator Close informed the committee that this had been taken from the General File and placed on the Secretary's Desk for amendment.
He has had an amendment drafted which would require that the abuse would have had to occur within the past 24 hours.

Senator Sloan stated that he had talked with Senators Wilson and Young and they had both indicated that they felt there would be a serious constitutional problem in giving a person the right to arrest on the suspicion that a battery may occur.

In view of Senator Sloan's remarks, it was the decision of the committee to delete the 24 hour amendment because the bodily harm would then exist.

Senator Dodge moved to amend AB 480.

Seconded by Senator Sloan.

Motion carried unanimously. Senators Ford, Hernstadt and Raggio were absent from the vote.

SB 292 Provides for periodic payments of certain damages recovered in malpractice claims against providers of health care.

For testimony and further discussion of this measure, see the minutes of the meetings for March 15, 28 and 29, April 3 and 20, and May 1, 1979.

The committee reviewed the amendments.

Senator Close stated that he would have the bill redrafted for final review.

No action was taken at this time.

AB 763 Limits liability for certain injuries at ski resorts.

For testimony on this measure, see the minutes of the meeting for May 9, 1979.

Senator Dodge stated that there had been testimony that was an assumption of risk theory and that it was intended to take care of the more obvious situations.

Peter Neumann, Nevada Trial Lawyer's Association, testified in opposition to this measure. He agreed with Senator Dodge that this states the assumption of risk theory, however, he stated that that is an absolute defense in a negligence case.
The Supreme Court has severely limited the assumption of risk doctrine. This would not only invite it back into the law with regard to ski cases, but also for everyone else. If you do it for one special interest, every other possible defendant is going to want it too.
This bill says that every person who engages in the sport of skiing assumes the risk, as a matter of law.

No action was taken at this time.

AB 30 Changes certain procedures for defending actions against public officers and employees.

For testimony and further discussion, see the minutes of the meeting of May 9, 1979.

The committee continued its section-by-section review of this bill.

On page 3, line 34, Senator Sloan suggested allowing 15 days in which to make service on the individual. He further suggested that, in every suit brought against the State of Nevada, there should be 45 days in which to file an answer. He felt this should be made uniform throughout.

Regarding the notice of declination, Senator Close stated that he had received the following suggested language from Larry Struve, Chief Deputy Attorney General:
"The attorney general, or other chief legal officer or attorney of the political subdivision, shall determine as promptly as possible, whether or not to tender the defense of the person requesting the defense in any court of this state. The attorney general or other chief legal officer or attorney of the political subdivision, if it is determined not to defend the person requesting the defense, file with the court and mail to each plaintiff of record and each person who has requested a defense... has determined not to tender the defense. In such event, no default may be entered except upon notice given after the last date on which a response or pleading must be filed pursuant to law or agreement of the parties.

Senator Sloan stated that with that language, the attorney general could send you a letter on the 45th day saying he had decided against defending you.

Senator Dodge concurred and suggested that if the attorney general declined the defense, the defendant should be so notified at least 10 days prior to the time of default.

Senator Sloan stated that there was another situation in which the answer may have been filed and the attorney general then decide against defending. He suggested adding language something to the effect that "unless an answer has been filed.

It was the consensus of the committee to delete Section 4, subsection 1, and insert the new language as amended.

SECTION 9: Senator Close stated that you do not require the insurer to defend. You tender the defense to the insurer.

SECTION 13: Senator Close stated that Mr. Struve had proposed some new language, in view of the fact that common law appears to recognize the liability of employers for the wanton and malicious acts of their employees while acting within the scope of their employment. He recommended the following:
"No judgment may be entered against the state of Nevada or any agency of the state or against any political subdivision of the state for any act or omission, whether or not it is determined to be wanton or malicious of any officer, employee...which is outside the course and scope of the person's public duties or employment."

Senator Sloan stated that there have been cases which held that if you act in a wanton and malicious manner, you are always outside the scope of your employment.
He recommended adopting the suggested language. It was his opinion that the state should bear the cost as opposed to the person who is harmed.

It was the consensus of the committee to accept that language.

SECTION 15: With regard to lines 20-21, Senator Sloan stated that that was not in existing law. If a judgment can be had in excess of the $35,000, the state should be required to indemnify the employee for the full amount. If the employee is an agent of the state, and you can't get the state for over $35,000, then why should you be able to get the employee above $35,000 for his own personal exposure. He suggested not specifying the amount, as in current law and then if the court determines that $35,000 is the most you can get, then that is the most you can get.

Senator Close further suggested increasing the state's sovereign immunity to $50,000.

It was the consensus of the committee to accept both amendments.

In subsection 4, Senator Close stated that Larry Struve recommended the following: "If the action was brought in a court of competent jurisdiction of this state, the state or political subdivision has not been named a party defendant and the attorney general or chief legal officer has not had an opportunity to provide or arrange for the defense of the state or political subdivision."

Senator Sloan stated that Chapter 41 states that no action may be brought against the state of Nevada or any political subdivision unless the state is named as a party defendant. He suggested including in this subsection that failure to comply with Chapter 41 precludes recovery against both the state and the employee.

Frank Daykin, Legislative Counsel, stated that he believed the key phrase was "in a court of competent jurisdiction of this state" because if the action were brought against the employee in a federal court, our command that it could not be done without naming the state as a party defendant would probably be ineffectual. He did not believe that you could control by statute, the parties who may be named in an action in a federal court. If the action was brought in a court of competent jurisdiction of this state, Chapter 41 would apply to prevent its being brought if the state were a proper party. If we omitted that language we would say that if the state has not been named a party defendant, then the employee would not be indemnified. However, meeting those conditions, the action could be brought in a federal court without being precluded by Chapter 41.

Senator Sloan stated that it did not make sense to limit it only to a federal court in this state when you could go to 49 other states and not have the same requirement.

Mr. Daykin replied that it was not being limited to a federal court of this state. This refers to a "court of competent jurisdiction of this state" which would be a state court. It would leave open the federal court anywhere that the action could be brought. However, he stated that he would re-draft the language to clarify this point.

No action was taken at this time.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Cheri Kinsley, Secretary

APPROVED:

Senator Melvin D. Close, Jr., Chairman

ASSEMBLY BILL NO. 396—ASSEMBLYMEN MANN, SENA, CHANEY AND POLISH

FEBRUARY 13, 1979

Referred to Committee on Judiciary

SUMMARY—Requires gift of clothing and increases amount of money which may be given to an offender upon release from prison. (BDR 16-82)
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 the department of prisons; increasing the amount of money which may be provided to an offender upon his release; requiring the provision of certain clothing for an offender upon his release; 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. NRS 209.511 is hereby amended to read as follows:

209.511 When an offender is released from an institution by expiration of his term of sentence, by pardon or by parole, the director:

1. May furnish him with a sum of money not to exceed [$50,] *$100,* the amount to be based upon the offender's economic need as determined by the director, which shall be paid out of the appropriate account within the state general fund for the use of the department as any other claim against the state is paid.

2. Shall give him notice of the provisions of NRS 202.360, forbidding ex-felons to possess or have custody of concealable weapons and the provisions of NRS 207.080 to 207.150, inclusive, relating to the registration and fingerprinting of convicted persons.

3. Shall require him to sign an acknowledgment of the notice required in subsection 2.

4. Shall provide him with clothing suitable for reentering society, the cost of which must be paid out of the appropriate account within the state general fund for the use of the department as any other claim against the state is paid.

ASSEMBLY JOINT RESOLUTION NO. 29—COMMITTEE ON WAYS AND MEANS

MAY 3, 1979

Referred to Committee on Judiciary

SUMMARY—Requests Congress to propose amendment to United States Constitution to establish immunity of each state from unconsented suit in courts of another state except to extent immunity is waived by other state. (BDR 2143)

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

ASSEMBLY JOINT RESOLUTION—Requesting the Congress of the United States to submit to each state legislature for ratification a proposed amendment to the United States Constitution which would establish the sovereign immunity of each state from any unconsented suits in the courts of another state except to the extent that the immunity is waived in its own courts or is waived as a matter of comity with another state.

WHEREAS, The United States Supreme Court in the case of *State of Nevada v. Hall,* 99 S.Ct. 1182 (1979), has held that there is no constitutional language or doctrine which provides any basis for restricting one state's exercise of its judicial power over another state in a private tort action brought against the other state; and

WHEREAS, The court has further held that the state of the forum is not required to respect any statutory limitations placed by the other state upon its waiver of sovereign immunity; and

WHEREAS, As its ultimate consequences, the court's holding may open the door to avenues of liability and interstate retaliation that will prove unsettling and upsetting to the federal system of government; and

WHEREAS, There are many indications that the framers of the United States Constitution intended, and that many courts have assumed, that the states were immune from suit in the courts of their sister states; and

WHEREAS, The Eleventh Amendment to the United States Constitution nullified the decision of the United States Supreme Court, in *Chisholm v. Georgia,* 2 Dall. 419 (1793), in which a state had been held answerable to a suit brought by a private citizen of another state in a federal court; and

WHEREAS, A state's right to sovereign immunity has been described in expansive terms in prior opinions of the United States Supreme Court, including statements to the effect that a state's freedom from unconsented

A. J. R. 30

ASSEMBLY JOINT RESOLUTION NO. 30—
COMMITTEE ON JUDICIARY

MAY 3, 1979

Referred to Committee on Judiciary

SUMMARY—Proposes to amend Nevada constitution by prohibiting commutation of sentences of death and life imprisonment without possibility of parole to sentences which would allow parole. (BDR C-1901)

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

ASSEMBLY JOINT RESOLUTION—Proposing to amend section 14 of article 5 of the constitution of the State of Nevada, relating to commutations of sentences, by prohibiting the commutation of a sentence of death or life imprisonment without possibility of parole to a sentence which would allow parole.

Resolved by the Assembly and Senate of the State of Nevada, jointly, That section 14 of article 5 of the constitution of the State of Nevada be amended to read as follows:

Sec. 14. *1.* The governor, justices of the supreme court, and attorney general, or a major part of them, of whom the governor shall be one, may, upon such conditions and with such limitations and restrictions as they may think proper, remit fines and forfeitures, commute punishments, *except as provided in subsection 2,* and grant pardons, after convictions, in all cases, except treason and impeachments, subject to such regulations as may be provided by law relative to the manner of applying for pardons.

2. A sentence of death or a sentence of life imprisonment without possibility of parole may not be commuted to a sentence which would allow parole.

3. The legislature is authorized to pass laws conferring upon the district courts authority to suspend the execution of sentences, fix the conditions for, and to grant probation, and within the minimum and maximum periods authorized by law, fix the sentence to be served by the person convicted of crime in said courts.

(30)