At 2:17 p.m., Chairman Robinson called a subcommittee of the Commerce Committee to order to hear testimony on bills.

SUBCOMMITTEE MEMBERS PRESENT:

Mr. Bennett.
Mr. Chaney
Mr. Dini
Mr. Kovacs
Dr. Robinson

Shortly after testimony began, other members of the Committee appeared to make a quorum.

MEMBERS PRESENT IN ADDITION TO THE SUBCOMMITTEE:

Mr. DuBois
Mr. Prengaman
Mr. Rusk

MEMBERS ABSENT:

Mr. Brady (Excused)
Mr. Bremner (Excused)
Mr. Jeffrey (Excused)

Chairman Robinson opened the hearing on A.B. 538.

A.B. 538 REQUIRES STATE BOARD OF ARCHITECTURE TO ACCEPT NATIONAL CERTIFICATION AS EVIDENCE OF REGISTRATION AND CERTIFICATION.

Testifying on behalf of A.B. 538 was Harvey Whittemore, an attorney with the law firm of Lionel, Sawyer and Collins. Testifying with Mr. Whittemore was Delbert Ragland, a licensed Colorado architect.

In explaining the impact of A.B. 538, Mr. Whittemore said that the Board would be required to accept, as evidence of registration and certification, a certificate of the National Council of Architectural Registration Boards (NCARB). He stated that the most important aspect of the bill appeared on lines 8 through 10. This language would require the Board to adopt regulations to establish standards by which it will accept as satisfactory other evidence of registration and certification. He added that this provision would relieve the Board of a numer of administrative headaches.

Mr. Whittemore asked if he might be afforded the opportunity to rebut any opposing testimony.

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Mr. Delbert Ragland, the Secretary of the Northern Nevada Chapter of the American Institute of Architects, stated that he was in support of A.B. 538 for the following reasons:

1. It is in line with agency review legislation passed by the Legislature.
2. The bill aids the State Board by not limiting competition, thus raising the level of design and public expectation and assuring equal representation under the law to all applicants for licensing.
3. The legislation could save the State government a small amount of money.

Mr. Ragland referred to S.B. 171, the "sunset legislation" and quoted several sections of the bill. Specifically quoted were sections 2 and 3. Mr. Ragland added, "I feel that A.B. 538 does not diminish the State's control over licensing." He also indicated that 42 states now accept NCARB certification as being equivalent to the individual states' testing requirements and another 4 accept additional practice after initial registration as being equivalent to various test parts. He added that seismic testing requirements have been satisfied by all NCARB testing since 1965.

In summary, Mr. Ragland stated the Nevada State Board of Architecture recognizes the validity of the NCARB testing and grading procedures and should, therefore, recognize the certification status of other applicants.

Mr. Whittemore stated: "The failure of the Board to license qualified individuals is going to expose the Board to a greater number of suits with respect to their abuse of discretion and the possibility that we're going to be in the courts a number of times. By removing some of this, and again, making it consistent with qualifications already present in the state, you're simply going to have them perform an administrative function rather than a judicial function."

Dr. Robinson questioned why the State of Nevada should relinquish its sovereignty in giving examinations and establishing requirements.

Mr. Whittemore responded that the bill would allow the State to continue to set the qualifications and to determine which other states' qualifications are equal to those of Nevada.

Dr. Robinson stated that it sounded like a situation of "reciprocity." Mr. Whittemore answered that it was. Mr. Whittemore added that the bill would not limit the State of Nevada in setting whatever standards it wished to establish. He said, "They (the State Board) have total control over the qualifications which will be acceptable and those which won't."

Dr. Robinson asked if an architect, who was licensed in Nevada, could design a project for a company in California. Mr. Ragland responded that an architect must be licensed in each state that he practices in.

Dr. Robinson then asked why the bill had been drafted. Mr. Whittemore answered that the Nevada State Board had too much discretion compared to other jurisdictions. He added that the bill would allow practices to be consistent throughout the State.

Mr. Ragland then read a short letter from Gary Hennings, a professional engineer. The letter is attached as EXHIBIT A. He also read a letter from Michael Mitchell, an architect licensed in Nevada, (EXHIBIT B) both letters indicated support for A.B 538. Mr. Ragland also provided the Committee with papers showing the requirements of different states with respect to reciprocity. The papers are attached as EXHIBIT C.

Next to testify was Arturo Cambeiro, representing the Nevada State Board of Architecture. Mr. Cambeiro stated that National Council of Architectural Registration Boards (NCARB) had been instrumental with regard to establishing standardized examinations and reciprocity concepts. He briefly explained the purpose of NCARB, and added, "Regulation of professional registration and licensing of practitioners must remain a function of the individual states rather than be delegated to a national board."

Mr. Cambeiro listed the reciprocity requirements in Nevada as being:

1. A certificate from NCARB.
2. Successful completion of all portions of the NCARB examination--36 hours total.
3. Fulfillment of the seismic requirements by examination or completion of NCARB seismic seminars.

He added that at present, the only states that were requiring the full 36 hour exam were: New York, New Jersey, Deleware, Washington, Missouri, Nebraska, Nevada and California.

Mr. Cambeiro stated that A.B. 538 mandates international reciprocity and the passage of the bill would not allow the Board the discretion needed, " . . . to guard the safety and welfare of the public." He added, "NCARB was not meant to become a vehicle for a carte blanche certification in any jurisdiction."

Mr. Cambiero then said that there were almost 1,400 registered architects in Nevada with approximately 1,000 being active registrants, of which only 125 were "resident" architects. He said that this leaves 88 percent of the architects in Nevada as being licensed through reciprocity. He indicated that the Board had never revoked a license for malpractice.

In response to a question from Mr. DuBois, Mr. Cambiero said that there was a trend for some of the states to pull away from the NCARB.

Testifying with Mr. Cambeiro was George Enomoto, a licensed architect in Nevada and a member of the Nevada State Board of Architecture. In response to a question from Mr. Bennett regarding the nature of the bill, Mr. Enomoto said that some states permit applicants to waive portions of the NCARB test in lieu of collegiate credits; and he believed that the authors of the bill were architects who had had portions of their exams waived in such a way. He added that those people had attempted to take the portions of the exam in Nevada that had been waived in another state and had failed them several times.

Mr. Enomoto stressed that all applicants in Nevada were required to take the full 36 hour exam regardless of prior education or licensing status in other states. He commented that the previous witnesses had insinuated that the Board had no credibility in judging whether an architect, coming from another state, is qualified. He added that he did not think the Board had too much power.

Mr. Cambeiro indicated that the Board charged a $5.00 application fee and $100.00 for certification plus a renewal fee of $50.00 and $200.00 for licensing. He also said that the Board licensed, by reciprocity, approximately 125 new architects per year and that approximately 25 to 30 architects took their exams in Nevada each year.

Mr. Enomoto informed the Committee that Nevada did not have a school of architecture, so most of the architects in the state get licensed through "the pipeline." He stressed that architects who get their qualifications through experience instead of from a school must still take the full 36 hour examination. He added that the Board attempts to "be uniform and equitable to all of our people."

Mr. Prengaman questioned Mr. Cambeiro as to why the Board had attempted to change the licensing requirements to make it more difficult to obtain a license through on-the-job-training.

Mr. Cambeiro answered that the rules had been changed at the request of NCARB, which was attempting to make a degree from a recognized school of architecture part of the requirements to become eligible for a "Blue Cover Certificate." He said that such a degree will become a requirement in 1984, at which time Nevada will pull away from NCARB and their standards for reciprocity. When this happens, Mr. Cambeiro said; Nevada will recognize only candidates from those states that offer full recognition to Nevada condidates.

Mr. Enomoto further explained that NCARB had attempted to give architects license to practice immediately upon graduation from a recognized school; a step that Nevada did not agree with. He said that NCARB then tested the graduates against architects who had come through the "pipeline" and found that the graduates did

no better than those who had not attended schools. Mr. Enomoto said that NCARB had then acquiesced and did not insist on a degree for licensing, but that they would start requiring a degree for "Blue Cover" by 1984.

Next to testify on AB 538 was Barbra Reedy, lobbyist for the Nevada Society of Architects. Ms. Reedy stated the fees of the Board to be as follows: examination - $100; rewriting of any part of the examination - $100; certificate of registration - $100; annual renewal - $50; registration of an expired certificate - $100; registration of a revoked certificate - $200; change of address - $5; replacement - $5; and application forms - $5.

The rest of Ms. Reedy's testimony is attached as EXHIBIT D.

Next to testify in opposition to AB 538 was Boone Hellman, an architect in Nevada. He said that the State Board had little or nothing to say about what the NCARB did and that to require Nevada to follow NCARB guidelines would "be bad legislation." He also said, "The purpose of NRS 623 is to see that the architects have the education and background to practice architecture. To weaken that requirement by law is to tie the hands of the Board, and this will not protect the public." He added that passage of the bill would allow architects who were not properly trained to practice in Nevada.

Mr. Hellman provided the Committee with a copy of a letter from Robert A. Fielden, a member of the Nevada State Board of Architects. The letter is attached as EXHIBIT E. The letter spoke in opposition to the bill, and Mr. Hellman said that it reiterated most of the testimony by previous Board members.

Mr. Whittemore returned to say that the most important point of the legislation did not pertain to NCARB, and that the proponents would be willing to return the language on line 6 of the bill to "may require" instead of the proposed "shall accept." He stressed the most important part of the legislation was on lines 8 through 10.

Mr. Cambeiro stated that the Board already had such regulations.

Mr. Whittemore argued that they did not.

Dr. Robinson asked Mr. Cambeiro to submit a copy of the Board's regulations pertaining to reciprocity to the Committee.

Chairman closed the hearing on AB 538 and opened the hearing on SB 443.

SB 443 EXTENDS EXEMPTION FROM PREMIUM TAX TO ANNUITIES FOR DEFERRED COMPENSATION OF PUBLIC EMPLOYEES.

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Testifying on behalf of the bill was Irma Edwards, representing the Nevada Insurance Division. She said that all the Division wanted to do in this legislation was to add "457" to the law, which is the IRS chapter referring to public employees deferred

compensation. She added that this addition would allow public employees, who purchase annuities, the same treatment that others now receive.

Ms. Edwards indicated that all of the rest of the language in the bill was put in by the Legislative Counsel Bureau to change the terminology.

Also testifying on behalf of the bill was Milos Terzich, representing the American Council of Life Insurance. Mr. Terzich said, "I think this is a good bill." He provided the Committee with a copy of IRS Section 457 (EXHIBIT F).

Chairman Robinson then opened the hearing on SB 285.

SB 285 REMOVES PROHIBITION AGAINST TAKING SECURITY INTEREST IN REAL PROPERTY ON INSTALLMENT LOANS.

Presenting the bill to the Committee was Joe Midmore, representing the Nevada Consumer Finance Association. Mr. Midmore said the bill would remove the restriction on licensees under NRS Chapter 675 from taking real property as security on loans. He added that those licensees at present could make loans up to $10,000 and the bill would permit them to take real property as security on loans in excess of $3,500. He indicated that the Senate had established the $3,500 figure so that a very small loan could not be used to place a lien against a person's house. Mr. Midmore also said that 45 other states allowed consumer finance companies to take real estate for collateral. In Nevada, such finance companies may use personal property, including furniture, appliances, and automobiles, as collateral now.

Mr. Midmore said that in this day, restricting a company from taking real property as security on a loan "just does not work." He added that the federal laws, which encourages bankruptcy, has devastated the consumer credit field. He also indicated that the liquidation value of most personal property is small, and usually does not cover the defaulted loan.

Mr. Midmore stressed that he was not suggesting that small loan companies would cease making personal loans using personal property as security. He commented that experience in other states has shown that when these companies were given the ability to make loans secured by real estate, they continued to make loans on personal property.

Mr. Midmore indicated that 17 consumer loan offices had closed in Nevada since December because of the economic conditions, and allowing them to secure their loans with real property would help them "survive." He referred to a situation called "dual licensing," which would allow consumer finance companies to operate a small loan company and a mortgage company in the same office, and said that the Department of Commerce would not allow such licensing. Mr. Midmore also said that the Director of the Department of Commerce had no objections to a change in the statutes to allow the small loan companies to secure their loans with real property.

Mr. Midmore stated that the primary opposition to this type of legislation came from companies already involved in second trust deed loans. He added that some banks and even some savings and loan associations were getting into the second trust deed field. Mr. Midmore commented, "The opposition to 285, I assure you, despite what may have been said, is purely a case of an attempt to stifle further competition from the people who I represent."

Dr. Robinson asked what effect the removal of the usary rates would have on this bill. Mr. Midmore responded that as SB 101, the bill to remove usary ceilings, as written, would remove the ceiling on interest rates on loans made by small loan companies the same as on loans made by banks. He added that an amendment had been proposed to that bill which would place a 30 percent cap on the interest chargeable by small loan companies.

Dr. Robinson then asked why the small loan companies had not become savings and loan type companies if they wanted to secure loans with real estate.

Mr. Midmore responded that some of the small loan companies were opening separate mortgage offices, but that they were prohibited from operating such mortgage companies as a "connected entity."

Testifying as an opponent to SB 285 was Renny Ashleman, an attorney representing American Investors Mortgage and Nevada Thrift Association. He said that he was opposed to the legislation because it was the function of the consumer loan companies to make loans to the necessitous borrowers, and these loans should not be made on real estate. He added that the idea of dual licensure would lead to deceptive practices and in many cases the borrowers would end up mortgaging their homes without being aware that they are doing so.

Mr. Ashleman also said that "every" small loan company now had a subsidiary in the mortgage business, which made these companies very competitive. He read some statistics showing the break-down of the lending companies, which showed that there was ample competition in the field. Mr. Ashleman read further statistics on lending trends and the supply of money and housing. He said that the figures showed that the second mortgage industry was the fastest growing industry in Nevada.

Mr. Ashleman indicated that he was concerned that permitting the small loan companies to lend on real property would tend to divert these companies from making non-real estate loans and lower the money available for the "necessitous borrower." He said that there were no statistics that would provide a clear answer to this concern.

Mr. DuBois commented that Mr. Ashleman's account of the rapid growth in the lending industry was in conflict with Mr. Midmore's statements that 17 companies had recently closed in Nevada.

Mr. Ashleman answered that Mr. DuBois was talking about two different industries; small loan companies, and mortgage companies. He added that the small loan companies could easily get into the

mortgage market and are, in fact, doing so. He said that it was the second mortgage market that had experienced such tremendous growth.

Mr. Ashleman remarked that there are people that are not and should not be getting second mortgage loans because they did not have the means of repaying those loans. He added that there was no shortage of funds for the truely credit worthy individual. He expressed two specific points of opposition to the small loan companies lending on second mortgages: (1) They did not use a tie to floating prime rates. (2) Most of the borrowers in the small loan companies should really not be borrowing on their homes.

Next to testify was Tom Bordigioni, Manager for Associates Financial Services in Reno. Mr. Bordigioni said that he was often approached by representatives of the mortgage companies and the thrift companies, who asked him to refer loans to them that the small loan companies are prohibited from making. He stated that he knew some of the mortgage and thrift companies were making loans to persons who were not credit worthy. Mr. Bordigioni remarked that his office had lost $260,000 in receivables since August 1st, and that his company had closed two of its six offices in three months. He also said that Associates was opening a mortgage company in Las Vegas and, "We are just asking to compete on the same basis."

Dr. Robinson stated that the small loan companies had an advantage over other types of lending institutions in that they could charge higher interest rates.

Mr. Bordigioni responded by saying that the consumer was aware of money rates and that other states were allowing the small loan companies to make loans on real estate. He elaborated on the procedures used to qualify borrowers for consolidation loans and said, "We are turning down probably 70 percent of the people right now because we do not have either the collateral to go against or they do not budget or they are not credit worthy." Mr. Bordigioni also stated that his company was making no loans at present in excess of $1,500 because of the losses due to bankruptcy.

Mr. Bordigioni commented that if his company could use real estate as collateral, he would be able to make more loans to help the consumers.

Dr. Robinson remarked that if the company were permitted to use real estate as security, it would make loans whether the borrower was credit worthy or not.

Mr. Bordigioni expressed objection at Dr. Robinson's statement and further explained his company's procedures for qualifying borrowers.

Dr. Robinson then said that the philosophy of the Legislature was such that it was inclined to give the small loan companies the ability to charge higher rates of interest, but it was not about to give them the right to forclose on someone's home for nonpayment of a small loan.

Mr. Bordigioni answered, "Then again, we try to qualify these people for this and if they do reach difficulties, we're not just going out there to catch all the real estate in the state. No sir, we're out to help people. That's what we're in business for!"

Mr. Midmore then said, "I very, very much resent the implication, and it has been made here, that the companies I represent are unscrupulous, predatory lenders. They are equally as honorable as First National Bank of Nevada, First Thrift of Nevada, and any other lender in this state."

Lewis W. Shuman, with American Investors Management, said that he took exception to Mr. Bordigioni's contradicting Mr. Ashleman's remarks. He also said that though there was a need for the small loan companies to continue making personal loans to needy individuals and that in states where such companies had been allowed to make real estate loans, they no longer served their other personal loan customers to the same extent that they did previously.

Next to speak was Sidney Stern, President of the Nevada Association of Thrift Companies. Mr. Stern stated that the afternoon's discussion had not taken the depositors into consideration. He said that a new company could come in with a lot of money, drop the rates and gain control of the industry. Mr. Stern also said, "This state is overdone with real estate lenders." He stated that the Committee had to consider the nature of the state and the economic situation, and that the Legislature had a "social responsibility" to the savers in the state.

Mr. Stern indicated that allowing "a tremendous flush of money" to come into the state by small loan companies that were owned by out-of-state entities, would necessitate the banks, savings and loan companies, and thrift companies in Nevada make lower risk or "garbage" loans in order to compete. He added that such action would then jeopardize the funds that were entrusted to these institutions.

There was discussion between Mr. Rusk and several members of the audience pertaining to lending policies in Nevada whereby institutions within the state use funds from participating institutions or insurance companies from out of the state.

Mr. Ashleman commented that the second mortgage market's funds in Nevada are supplied almost 100 percent by funds from within the state. That market, he added, had risen almost 2,000 percent and represented one of the few areas of lending where the State of Nevada is fairly well supplied with capital.

Mr. Midmore commented that there was no limit on the interest rate on second mortgages at present nor was there a limit on the points that could be charged by the mortgage brokers so that that particular market "is essentially uncontrolled now."

Mr. Ashleman responded that the problem was not one of insufficient funds for second mortgages. The problem, he said, "is one of credit worthy borrowers."

Mr. Rusk questioned why, if there was so much competition, did all of the lenders' rates seem to stay so close together.

Mr. Shuman responded that the investors were responsible for setting the rates, and that the investors usually wanted the highest return on their investments, which tended to be close to the upper limits allowed.

Mr. Ashleman then responded to Mr. Rusk's question by saying that mortgage brokers were limited to 3 1/2 percent over prime, which was a fairly "narrow spread." He added that the industry had recommended that that limitation remain intact in order to keep competition stable.

Mr. Okada stated that the Savings and Loan Division had licensed 40 new mortgage brokers since last year.

Mr. Sevigny added that 2 new small loan companies had been established while 17 such companies had closed.

Mr. Okada explained what the requirements were to get a license as a mortgage broker and commented that "it is relatively easy to get a mortgage broker's license." He also said that there were presently four small loan companies who were in the process of obtaining mortgage broker's licenses.

Steve Sather, of Associates Financial Services, testified that several of the small loan companies who had mortgage broker licenses were restricted to charging only 18 percent interest with no points allowed. He said that his company also planned on opening a mortgage company so that they could compete for these types of second mortgage loans.

There being no further testimony on SB 285, Chairman Robinson closed the hearing on that bill.

After a short recess, Chairman Robinson opened the hearing on AB 554.

AB 554 REQUIRES LANDLORDS TO HOLD TENANTS' SECURITY DEPOSITS IN SEPARATE INTEREST-BEARING ACCOUNTS.

Testifying on behalf of the bill was Assemblyman John Vergiels. Mr. Vergiels' remarks were taken from the UCLA Law Review and are attached as EXHIBIT G. He added that there were currently two bills pending in the California Legislature which would require interest on tenant security deposits. Mr. Vergiels also said that most of the language in AB 554 was that of the bill drafter.

Mr. Vergiels stated that there was a problem with out-of-state landlords not returning security deposits to their tenants and that the tenants usually did not pursue the issue in court because the costs there were generally higher than the security deposits. He conceded that there might be a problem with the bill in terms of costs to apartment owners for implementing the required bookkeeping systems.

Next to testify on the bill were Albert Cartlidge and Scott Brenneke, representing the Nevada State Apartment Association and the Northern Nevada Apartment Association respectively.

Mr. Cartlidge's remarks are attached in their entirety as EXHIBIT H. He indicated that AB 554, as written, did not address the problem that Mr. Vergiels had mentioned, which was that some out-of-state landlords were not returning security deposits to their tenants. Mr. Cartlidge proposed an amendment that would solve the problem. The amendment is included on page three of EXHIBIT H.

Mr. Cartlidge indicated that his amendments would delete all the language in the present bill and replace it with the new language as found on page three of EXHIBIT H.

Mr. Brenneke then told the Committee that one of the problems at present was that small claims courts had no way to force out-of-state landlords to appear at hearings in Nevada. Mr. Brenneke referred to NRS 118A.260, saying that this portion of the law addresses the problem of identifying an out-of-state owner. He added that by strengthening this section, the Nevada representative or agent of such an out-of-state landlord could be held responsible when the owner failed to appear in court.

Dr. Robinson asked Mr. Brenneke why it took so long for a tenant, who was moving out, to get his deposit back. Mr. Brenneke responded that in a number of projects, the person signing the refund check is different from the on-site manager. Mr. Brenneke went on to explain the process involved in refunding a security deposit.

There was also discussion concerning the origination of and need for landlords to collect security deposits.

Mr. Brenneke commented that it would be necessary to raise apartment rents by approximately $30 per month if AB 554 had to be implemented in its present form. He said, "There's no way that even a large complex could go through the paperwork in that with their existing staff."

Dr. Robinson requested that Mr. Cartlidge and Mr. Brenneke get together with Mr. Vergiels to make the bill viable.

There was further discussion between the two witnesses and the Committee with regard to normal security deposit procedures.

Mr. Brenneke then explained what the "Hot Line" was and how it had grown in five years of operation.

Assemblyman Robinson then closed the hearing on AB 554 and opened the hearing on AB 570.

AB 570 PROHIBITS CERTAIN PRACTICES IN INSURANCE

Jim Wadhams, Director of the Department of Commerce, testified that he did not know where the bill had come from. He added

that three sessions ago, the Insurance Division had been asked to draft such a law for a particular Assemblyman, and AB 570 appeared to be that law. Mr. Wadhams went on to say that he could explain the bill, but he did not want the Committee to think that the Department of Commerce or the Division of Insurance was in favor of the bill.

Mr. Wadhams explained that sometimes large business will have one of their employees become licensed as an insurance agent; the business would then run their insurance through the employee's agency, which would effectively save the company the commissions they would otherwise have to pay to an outside agent. The bill, he indicated, was designed to prevent this type of thing from happening.

Mr. Bob Evans, representing the Insurance Division, stated that, during his five years with the Division, he knew of no complaints regarding any problems with companies setting up such "in-house" agencies.

Mr. Wadhams added that there were several companies in the state operating such agencies now. He listed automobile dealerships and banks as being among those companies.

There being no further business, Chairman Robinson adjourned the meeting.

Respectfully submitted,

Evelyn Edwards
Committee Secretary

ASSEMBLY COMMERCE COMMITTEE

GUEST LIST

DATE: 4-30-81

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK FOR	AGAINST	BILL NO.
ARTURO CAMBEIRO	NEVADA STATE BOARD OF ARCHITECTURE		X	AB-538
GEORGE ENCINETO	" " " " "		X	AB 538
BOB EVANS	UNR - INTERN			
Joseph Q Sevigny	Commerce - Banking			SB285
MARC SIMONCINI	SIMONCINI & ASSOC. INC.	X		AB-538
PATRICK FLANAGAN	H & V ENGINEERING INC	X		AB-538
HARVEY WHITTEMORE	Lionel, Sawyer & Collins	X		AB-538
DELBERT RAGLAND	SELF	X		AB 538
STEVE SATTER	Associates Financial Serv.	X		~~SB 285~~
T.A. Borlagiani	" " "	X		~~SB-285~~
BARBRA REEDY	NEVADA SOCIETY OF ARCH		X	~~AB538~~
Emma Edwards	Nevada Inc. Division	X		SB433
Bob Ewing	Nevada Land Development			AB 570
BOONE HELLMANN	MYSELF AND BOB FIELDEN, ARCHITECT		X	~~AB538~~
Joe Midmore	Nev Consumer Finance Assn	X		SB285
[illegible]	A.I.R.S. - NTA		1	SB 755
LEWIS W. SHUMAN	AMERICAN INVESTORS MGT		X	SB 285
S. B. STERN	NEVADA THRIFT ASSOC.		X	SB 285

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Jim Wadhams — COMMERCE
Joe Sevigny — BANKING
Norm OKADA — S+L

ASSEMBLY COMMERCE COMMITTEE

GUEST LIST

DATE: 4/30/81

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BILL NO.
ALBERT CARTLIDGE	NEV STATE [illegible] Assoc		X	AB554
Scott BRENNAN	Northern Nev. Ad[illegible]		X	AB 554

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EXHIBIT A

To Dr. Robert E. Robinson and the Members of the Committee on Commerce

I am in support of Assembly Bill 538. I have recently been granted reciprocity for the practice of Mechanical Engineering in the State of Nevada after having passed the recognized national exam and completing experience requirements as set forth by the Nevada State Board of Professional Engineers. This law would bring architectural licensing requirements more in line with the other design professionals.

Gary Hennings

Gary Hennings, P.E.

EXHIBIT B

MICHAEL A MITCHELL
ARCHITECT A. I. A.

April 30, 1981

State Assembly Committee on Commerce:

The following comments are in reference to proposed Assembly Bill #538.

I believe that the intent of the bill is in the right direction. Although the NCARB certificate is a good indication of a person having the required educational and experience background for one state, I feel it is equally important for the individual (i.e., candidate for reciprocity) to demonstrate that he or she is capable of performing the duties of an architect in that particular state which they want to become licensed. This demonstration of capabilities may not have to be by further written examination but best accomplished by more in depth oral examinations and personal interviews. These orals and interviews should be equally important as the NCARB certificate in determining the qualifications of a reciprocity candidate.

Michael A. Mitchell, AIA

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1000 BIBLE WAY #77 — RENO, NEVADA — 89502 — 702-322-4195

ALL CERTIFICATE HOLDERS REQUESTING RECIPROCAL REGISTRATION MUST READ THE FOLLOWING:

EXHIBIT C

A. States that require an NAAB Accredited Degree for examination or reciprocal registration:

1. Michigan 2. Indiana 3. Florida (and/or 10 years practice as a principa

☐ Your degree does/does not satisfy requirement.
☐ You do not satisfy requirement.

B. States that require both Qualifying Test and Professional Examinations A & B of all applicants for examination or reciprocal registration or the 7 part/36 hour exam:

1. Delaware
2. Illinois
3. Missouri
4. Nebraska
5. Nevada
6. New Jersey
7. New York
8. Utah

(Wisconsin requires parts B, C & D only of the Qualifying Test and the Professional Exams - Section "A" Professional Exam to be required June 1980).

☐ Your exam satisfies the requirement for reciprocal registration.
☐ You are deficient the Qualifying Test, Professional Exam A (Design/Site) for reciprocal registration in the State of _____.

The following States require that all applicants for reciprocal registration must have completed the Design/Site Examination in their initial exam:

1. Ohio
2. California
3. Arizona
4. New Mexico
5. Michigan

The following States will accept additional practice after initial registration in lieu of the QUALIFYING/EQUIVALENCY TEST:

1. New York (2 years in a responsible position)
2. Missouri (2 years as a principal)
3. New Jersey (5 years in a responsible position)
4. Utah

DESIGN TEST

1. Ohio
2. California
3. Arizona
4. New Mexico

C. States that require that the Seismic Forces have been satisfied by your examination (included in NCARB Examinations beginning December 1965, in Western Conference States beginning with June 1963 examination and California after 1936).

1. Alaska
2. Arizona
3. California
4. Colorado
5. Guam
6. Hawaii
7. Idaho
8. Nevada*
9. New Mexico*
10. Oregon
11. Utah
12. Washington
13. Wyoming
14. Montana*

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SEE REVERSE SIDE

C. (cont'd) (*States will accept Seismic Seminar or exam only beginning December 1965).

☒ Your exam satisfies the Seismic requirement.

☐ Your exam does not satisfy the Seismic requirement for reciprocal registration in the State of _____. This may be satisfied by Treatise or Seismic Seminar.

D. The following States will not accept for reciprocity, applicants who have been initially licensed by exemption and whose certification was received through the Board of Oral Examiners:

1.	Indiana	(at Board Discretion)		12.	Puerto Rico
2.	Maine	"	"	13.	Illinois
3.	Massachusetts	"	"	14.	Missouri
4.	Delaware	"	"	15.	South Dakota
5.	Virginia	"	"	16.	Hawaii
6.	South Carolina	"	"	17.	Utah
7.	Michigan	"	"		
8.	Nebraska	"	"		
9.	Arizona	"	"		
10.	California	"	"		
11.	Nevada	"	"		

E. The following States will not accept for reciprocity applicants certified under the Architects Registration Council of the United Kingdom (ARCUK) or Architects Accreditation Council of Australia (AACA) agreements with NCARB:

1.	Puerto Rico	9.	Hawaii		
2.	Florida	10.	Nevada		
3.	Illinois	11.	Utah		
4.	Indiana	12.	Washington		
5.	Missouri	13.	Virginia	(at Board Discretion	
6.	South Dakota	14.	South Carolina	"	"
7.	Arizona	15.	Michigan	"	"
8.	California	16.	Nebraska	"	"

☒ Please submit a print of your current wallet card in your

☒ Base State of Registration COLORADO

☐ State of Residence/Business

☐ Please submit a current photograph prepared in accordance with enclosed instructions.

☐ The Delaware Board requires that all applicants submit with their application on a separate sheet a list of clients, at least three but no more than ten, over the past five years. The list should include the project name, project number, construction cost, date completed, client name, client address. Please include this with the return of your forms.

EXHIBIT D

TESTIMONY OPPOSING ASSEMBLY BILL 538

Presented to the Assembly Commerce Committee
By the Nevada Society of Architects

30 April 1981
Carson City, Nevada

The Nevada Society of Architects is opposed to passage of A.B. 538. Our primary argument is that the Nevada State Board of Architecture should not be required by statute to grant reciprocal licenses to persons who have not demonstrated competance comparable to that required of architects whose initial license was granted within the State of Nevada. It should be emphasized here that state regulatory boards are charged by legislatures to regulate the practice of architecture and that the National Council of Architectural Registration Boards is only a private organization with no accountability whatsoever to any law-making entity in the realm of architecture licensing. NCARB has granted its certificate to persons who have not demonstrated minimum competance by examination in several critical areas including structural and architectural design. Nevada has consistently required demonstration of competance by examination in these areas. Enactment of A.B. 538 would abrogate our Board's current requirement that registrants demonstrate competance in seismic design.

Traditionally, reciprocal licenses have been granted when the licensing requirements of the state of an architect's initial registration were at least as stringent as the state granting the reciprocal license. The initial purpose of NCARB included that of facilitating reciprocal registration among states having little consistency in licensing requirements. During the 1960's, NCARB did indeed initiate improvements and standardization in architectural licensing across the country. During the past five years, however, there has been a growing gap between NCARB policy and that of the individual state boards. The trend of NCARB certification policy has been to limit entrance into the profession with the explicit intent of elevating the profession's standards, while individual

boards, especially those under the impact of sunset review, have exhibited a growing concern for the accountability of the profession to the health, safety, and welfare of the general public. Examples of these opposing trends are, on the one hand, NCARB's 1984 requirement that certification will only be available to graduates of accredited schools of architecture, a requirement that is being challenged by a significant number of states. And, in the case of registration boards, the inclusion of lay members on architectural boards and the removal of minimum age requirements for liscensure.

California, Wisconsin, New York, and Illinois are among the states challenging NCARB. California,in particular is closely monitoring NCARB's 1981 examination results. The 1981 examinations purportedly contain major changes in response to recent criticism. The President of the California State Board of Architectural Examiners advised me yesterday, that California, which alone grants over 50% of the nation's architectural licenses, will institute its own examination if NCARB does not deliver an acceptable examination. He further indicated that now is not the time to make special exceptions to licensing procedure or requirements; particularly, it is not the time to rely upon NCARB certification when the policies of NCARB itself are being aggressively challenged from within its membership. At this time NCARB is in an unstable transition and it future existance is questionable.

Secondly, we suspect that the impetus for this legislation is to censor the Nevada State Board of Architecture for its reciprocal licensing procedures. While many of our members are critical of some board practices, most believe that passage of A.B. 538 would reduce public accountability in the two critical areas cited above. Many of our members believe that the administrative policy, regulations, and constituency of the board itself should be changed rather than the statutory provisions for licensing. In the case of California practices,

there are alternatives to the demonstration of competance by examination in licensing by reciprocity. In the case of structural design competance, completion of a board-accredited seismic seminar which includes its own examination will satisfy the California board. Reciprocal licensing candidates may request a special design review jury to evaluate their design competance in lieu of taking the design examination. Currently, and to our knowledge, the Nevada State Board of Architecture has provided only one means of obtaining reciprocal licenses and that is by the successful completion of all of the NCARB examinations. NRS 623 currently permits alternatives to the examinations to be established. That the Nevada Board chooses to limit reciprocal licensing procedures is a reflection of its own current policies not statutory dictum.

EXHIBIT E

Commerce Committee
Nevada State Assembly
Carson City, Nevada 89710

Honorable Members of the Committee:

My purpose for this correspondence is to present oppositions to the proposal to alter NRS Chaper 623, to direct the State Board of Architecture to accept without exception NCARB Certificates for registration through reciprocity in this State.

There are many reasons for this opposition - while I am certain that all of the reasons will be presented to the Committee - I wish to express my beliefs, as a member of the Architectural Community, and as a member of the Nevada State Board of Architecture.

The Architectural profession, like our learned colleagues in other professional areas of public trust, are in a constant state of flux and change; drawn between the minimal acceptable levels of proficiency - measured through testing and evaluation - and Society's demands that the previledged status, as a professional registered by the State, insures the highest level of qualifications in public confidence.

The requirements for professional registration as an Architect varies with each State. The variances evolve about the differences that exist within each particular jurisdiction. In many jurisdictions, the variances are limited to legal requirements that are established by Legislative enactment. In others, the variances may be two (2) to four (4) critically distinct differences such as unique climatic environmental strain or unstable geologic conditions.

NCARB testing, historically, has established a broad scope of minimal acceptable level of professional proficiency; and because of the wide socio - political, climatic and geologic experiences that exist within this Country, only recently has the organization testing and evaluation evolved to a level of sophistication that is adequate to measure the more distinct level of unique differences.

Literally, there are thousands of Architects registered in this Country - certified by NCARB, or eligible for NCARB certification - who have never been examined for licensing for registration as an Architect. These individuals received their professional registration under "Grandfather Legislation", and through ten (10) years have have received certification by the National Council of Architectural Registration Board. There are thousands of Architects registered, here, in the United States, with NCARB credentials who have never been examined for qualifications for design for seismic conditions; a level of competence which is of utmost importance to the safety of the citizens of this great state. It is essential to understand, that until 1968, except on a state to state basis - established by each individual Architectural Registration Board - building designs for earthquake conditions was not a major consequence to examination of professional qualifications by the NCARB.

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Of a similar magnitude are the number of registered Architects with NCARB National certification who have never been tested by the profession to evaluate their proficiency in Architectural design. By in large, these individuals are a product of the Vietnam Era, when society and accademia were re-evaluating their roles in responsibilities to life and to a culture that was torn by war.

In years gone by, the large percentage of candidates seeking registration as Architects, in Nevada, were ineligible for registration through administrative reciprocity. Prior to energy strain, the oil embargo and movement of business and industry to the "Sun Belt", the majority of individuals interested in Architecture as a career moved to Nevada, as young para-professionals; either with degree from a school elsewhere, or with formal professional educational background or practical office training.

In my own case, I moved to Nevada, to make this State my home. I had received a degree in Architecture and after three (3) years as an intern was eligible for registration through examination. For my colleagues without a completed formal education the task requires a longer period of intership, and re-examination by the State Board until each portion of the testing proceedure was satisfactorily accomplished.

Nevada is unique in that some states will not allow candidates to be tested for professional registration unless the candidate has graduated from an accredited school of Architecture.

With all due respect - even though the Legislature has not responded to the critical importance in value to Nevada's future, of establishing a school of Architecture, to provide for the quality of life and safety to the citizens of this State - it has established a minimum level of Architectural qualifications to be administered by the Board. Historically, the Legislature's position has been to treat all (and I underline all) equally. In the past, each and every candidate, either through examination or through reciprocity, has had to provide proof to the Board that they have exhibited through standardized national evaluation a minimal acceptable level of professional competency.

This has always been the case; or, both, those candidates from out of State, with a degree of professional registration, or from those citizens who live here, in Nevada, who have not had opportunity or accessibility to formal academic preparation.

During my short tenure on the Board, I have had an opportunity to review the qualifications of a wide varity of candidates seeking Architectural registration in Nevada. Until my appointment to this position I had no understanding of the wide diversity of the qualifications that exist

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among registrants. A major segment of the members of this profession are qualified and competent to practice within the requirements established by the Legislature to protect the people of Nevada. However, there are some design professionals, with credentials, who are ill-prepared, unqualified - probably incompetent - and whose moral integrity is of question. This is a problem which must be monitored by the State of Nevada.

If the Legislature inacts the changes that are proposed to NRS Chapter 623 included in this Bill, it will be impossible for the Board to uphold its obligations to the State to protect the health, safety and welfare of the citizens of Nevada, or to maintain equal and due process of the law as it relates to the registration of Architects in this State.

While requirements for professional registration as an Architect in Nevada are not lenient, they are by far, not the most stringent established within the 55 various jursidictions administered by NCARB.

As a member of the Architectural profession and the Board, I strongly believe the candidate who cannot pass the examination - establishing minimum standards that are now required for National certification - should not be waived from those requirements simply because they receive certification prior to NCARB changes.

If this Board is to continue to be responsible to protect the interest of the public I hope that your Committee will be supportive in voting for the defeat of the modifications proposed.

Very truly yours,

Robert A. Fielden

Robert A. Fielden, AIA
Member, Nevada State Board of Architects

RAF:ss

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EXHIBIT F

year was (for the preceding taxable year) a corporation which was not a life insurance company, such corporation shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year, all installment obligations which it held on such last day. A partnership of which a life insurance company becomes a partner shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year of such partnership, all installment obligations which it holds at the time such insurance company becomes a partner.

(2) Special rule where life insurance company elects to treat income as investment income.—Paragraph (1) shall not apply to any transfer or deemed transfer of an installment obligation if the life insurance company elects (at such time and in such manner as the Secretary may by regulations prescribe) to determine its life insurance company taxable income—

(A) by returning the income on such installment obligation under the installment method prescribed in section 453, and

(B) if such income would not otherwise be returnable as an item referred to in section 804(b) or as long-term capital gain, as if the income on such obligations were income specified in section 804(b).

(f) Obligation becomes unenforceable.—For purposes of this section, if any installment obligation is canceled or otherwise becomes unenforceable—

(1) the obligation shall be treated as if it were disposed of in a transaction other than a sale or exchange, and

(2) if the obligor and obligee are related persons (within the meaning of section 453(f)(1)), the fair market value of the obligation shall be treated as not less than its face amount.

Added Pub.L. 96–471, § 2(a), Oct. 19, 1980, 94 Stat. 2252, and amended Pub.L. 96–471, § 2(c)(3), Oct. 19, 1980, 94 Stat. 2254.

Prior Provisions. Provisions similar to those comprising this section were contained in former section 453 of this title.

1980 Amendment. Subsec. (d)(2). Pub. L. 96–471, § 2(c)(3), provided that in the case of any installment obligation which would have met the requirements of subpars. (A) and (B) of par. (2) but for section 337(f), gain shall be recognized to such corporation by reason of such distribution only to the extent gain would have been recognized under section 337(f) if such corporation had sold or exchanged such installment obligation on the date of such distribution.

Effective Date. For effective date, see section 6(a)(1), (5) of Pub.L. 96–471, set out as a note under section 453 of this title.

Effective Date of 1980 Amendment. For effective date of amendment by Pub. L. 96–471, see section 6(a)(6) of Pub.L. 96–471, set out as a note under section 453 of this title.

Legislative History. For legislative history and purpose of Pub.L. 96–471, see 1980 U.S.Code Cong. and Adm.News, p. —.

§ 456. Prepaid dues income of certain membership organizations

1. **Prepaid dues income**
Peninsula Motor Club v. U. S., 545 F. 2d 1286 [main volume], 212 Ct.Cl. 133.

§ 457. Deferred compensation plans with respect to service for state and local governments

(a) Year of inclusion in gross income.—In the case of a participant in an eligible State deferred compensation plan, any amount of compensation deferred under the plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary.

(b) Eligible state deferred compensation plan defined.—For purposes of this section, the term "eligible State deferred compensation plan" means a plan established and maintained by a State—

(1) in which only individuals who perform service for the State may be participants,

(2) which provides that (except as provided in paragraph (3)) the maximum that may be deferred under the plan for the taxable year shall not exceed the lesser of—

(A) $7,500, or

(B) 33⅓ percent of the participant's includible compensation,

(3) which may provide that, for 1 or more of the participant's last 3 taxable years ending before he attains normal retirement age under the plan, the ceiling set forth in paragraph (2) shall be the lesser of—

(A) $15,000, or

(B) the sum of—

(i) the plan ceiling established for purposes of paragraph (2) for the taxable year (determined without regard to this paragraph), plus

(ii) so much of the plan ceiling established for purposes of paragraph (2) for taxable years before the taxable year as has not theretofore been used under paragraph (2) or this paragraph,

(4) which provides that compensation will be deferred for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month,

(5) which does not provide that amounts payable under the plan will be made available to participants or other beneficiaries earlier than when the participant is separated from service with the State or is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary by regulation), and

(6) which provides that—

(A) all amounts of compensation deferred under the plan,

(B) all property and rights purchased with such amounts, and

(C) all income attributable to such amounts, property, or rights,

shall remain (until made available to the participant or other beneficiary) solely the property and rights of the State (without being restricted to the provision of benefits under the plan) subject only to the claims of the State's general creditors.

A plan which is administered in a manner which is inconsistent with the requirements of any of the preceding paragraphs shall be treated as not meeting the requirements of such paragraph as of the first plan year beginning more than 180 days after the date of notification by the Secretary of the inconsistency unless the State corrects the inconsistency before the first day of such plan year.

(c) **Individuals who are participants in more than one plan.**—

(1) **In general.**—The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed $7,500 (as modified by any adjustment provided under subsection (b)(3)).

(2) **Coordination with section 403(b).**—In applying paragraph (1) of this subsection and paragraphs (2) and (3) of subsection (b), an amount excluded during a taxable year under section 403(b) shall be treated as an amount deferred under subsection (a). In applying clause (ii) of section 403(b)(2)(A), an amount deferred under subsection (a) for any year of service shall be taken into account as if described in such clause.

(d) **Other definitions and special rules.**—For purposes of this section—

(1) **State.**—The term "State" means a State, a political subdivision of a State, and an agency or instrumentality of a State or political subdivision of a State.

(2) **Performance of service.**—The performance of service includes performance of service as an independent contractor.

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(3) Participant.—The term "participant" means an individual who is eligible to defer compensation under the plan.

(4) Beneficiary.—The term "beneficiary" means a beneficiary of the participant, his estate, or any other person whose interest in the plan is derived from the participant.

(5) Includible compensation.—The term "includible compensation" means compensation for service performed for the State which (taking into account the provisions of this section and section 403(b)) is currently includible in gross income.

(6) Compensation taken into account at present value.—Compensation shall be taken into account at its present value.

(7) Community property laws.—The amount of includible compensation shall be determined without regard to any community property laws.

(8) Income attributable.—Gains from the disposition of property shall be treated as income attributable to such property.

(9) Section to apply to rural electric cooperatives.—

(A) In general.—This section shall apply with respect to any participant in a plan of a rural electric cooperative in the same manner and to the same extent as if such plan were a plan of a State.

(B) Rural electric cooperative defined.—For purposes of subparagraph (A), the term "rural electric cooperative" means—

(i) any organization which is exempt from tax under section 501(a) and which is engaged primarily in providing electric service on a mutual or cooperative basis, and

(ii) any organization described in paragraph (4) or (6) of section 501(c) which is exempt from tax under section 501(a) and at least 80 percent of the members of which are organizations described in clause (i).

(e) Tax treatment of participants where plan or arrangement of State is not eligible.—

(1) In general.—In the case of a plan of a State providing for a deferral of compensation, if such plan is not an eligible State deferred compensation plan, then—

(A) the compensation shall be included in the gross income of the participant or beneficiary for the first taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

(B) the tax treatment of any amount made available under the plan to a participant or beneficiary shall be determined under section 72 (relating to annuities, etc.).

(2) Exceptions.—Paragraph (1) shall not apply to—

(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(B) an annuity plan or contract described in section 403,

(C) a qualified bond purchase plan described in section 405(a),

(D) that portion of any plan which consists of a transfer of property described in section 83, and

(E) that portion of any plan which consists of a trust to which section 402(b) applies.

(3) Definitions.—For purposes of this subsection—

(A) Plan includes arrangements, etc.—The term "plan" includes any agreement or arrangement.

(B) Substantial risk of forfeiture.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

Added Pub.L. 95–600, Title I, § 131(a), Nov. 6, 1978, 92 Stat. 2779, and amended Pub.L. 96–222, Title I, § 101(a)(4), Apr. 1, 1980, 94 Stat. 196.

1980 Amendment. Subsec. (d)(3)(B). Pub.L. 96–222 in cl. (i) struck out "described in section 501(c)(12)" following "any organization" and substituted "electric service on a mutual or cooperative basis" for "electric service" and in cl. (ii) substituted paragraph (4) or (6) of section 501(a)" for "section 501(c)(6)" and "at least 80 percent of the members" for "all the members".

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub.L. 95-600, to which such amendment relates, see section 201 of Pub.L. 96-222, set out as a note under section 43 of this title.

Effective Date. Section 131(c)(1) of Pub.L. 95-600 provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1978."

Transitional Rules. Section 131(c)(2) of Pub.L. 95-600 provided that:

"(A) **In general.**—In the case of any taxable year beginning after December 31, 1978, and before January 1, 1982—

"(i) any amount of compensation deferred under a plan of a State providing for a deferral of compensation (other than a plan described in section 457(e)(2) of the Internal Revenue Code of 1954) [subsec. (e)(2) of this section], and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary, but

"(ii) the maximum amount of the compensation of any one individual which may be excluded from gross income by reason of clause (i) and by reason of section 457(a) of such Code [subsec. (a) of this section] during any such taxable year shall not exceed the lesser of—

"(I) $7,500, or

"(II) 33⅓ percent of the participant's includible compensation.

"(B) **Application of catch-up provisions in certain cases.**—If, in the case of any participant for any taxable year, all of the plans are eligible State deferred compensation plans, then clause (ii) of subparagraph (A) of this paragraph shall be applied with the modification provided by paragraph (3) of section 457(b) of such Code [subsec. (b)(3) of this section].

"(C) **Applications of certain coordination provisions.**—In applying clause (ii) of subparagraph (A) of this paragraph and section 403(b)(2)(A)(ii) of such Code [subsec. (2)(A)(ii) of this section], rules similar to the rules of section 457(c)(2) of such Code [subsec. (c)(2) of this section] shall apply.

"(D) **Meaning of terms.**—Except as otherwise provided in this paragraph, terms used in this paragraph shall have the same meaning as when used in section 457 of such Code [this section]."

Legislative History. For legislative history and purpose of Pub.L. 95-600, see 1978 U.S.Code Cong. and Adm.News, p. 6761. See, also, Pub.L. 96-222, 1980 U.S.Code Cong. and Adm.News, p. ——.

§ 458. Magazines, paperbacks, and records returned after the close of the taxable year

(a) **Exclusion from gross income.**—A taxpayer who is on an accrual method of accounting may elect not to include in the gross income for the taxable year the income attributable to the qualified sale of any magazine, paperback, or record which is returned to the taxpayer before the close of the merchandise return period.

(b) **Definitions and special rules.**—For purposes of this section—

(1) **Magazine.**—The term "magazine" includes any other periodical.

(2) **Paperback.**—The term "paperback" means any book which has a flexible outer cover and the pages of which are affixed directly to such outer cover. Such term does not include a magazine.

(3) **Record.**—The term "record" means a disc, tape, or similar object on which musical, spoken, or other sounds are recorded.

(4) **Separate application with respect to magazines, paperbacks, and records.**—If a taxpayer makes qualified sales of more than one category of merchandise in connection with the same trade or business, this section shall be applied as if the qualified sales of each such category were made in connection with a separate trade or business. For purposes of the preceding sentence, magazines, paperbacks, and records shall each be treated as a separate category of merchandise.

(5) **Qualified sale.**—A sale of a magazine, paperback, or record is a qualified sale if—

(A) at the time of sale, the taxpayer has a legal obligation to adjust the sales price of such magazine, paperback, or record if it is not resold, and

EXHIBIT G

UCLA law Review 1978

I. Interest Payments on Security Deposits Under Common and Statutory Law

Begin here

A. *The Common Law*

The common law relating to the landlord's duty to pay the tenant interest on security deposits is indefinite and confusing.[16] The courts have long held an express provision for a security deposit in a lease or rental agreement to be "valid and enforceable."[17] However, the extent to which the landlord may use the deposit, and his relationship to the tenant in this context, has varied widely; the standard is vague at best. In determining the character of the relationship between tenant and landlord, courts generally rely on the consequences of the relationship and the actual facts and equities in the particular case.[18] Absent a statute or specific contractual agreement to the contrary, the courts are inclined to infer that the landlord may use the funds as he chooses. Debt, pledge, and trust theories have all been advanced by courts to define this relationship.[19]

to cover the landlord's additional costs would likely exceed the interest the tenant receives.[40]

B. *Statutory Law*

Many state legislatures have recognized the inadequacy of the common law with respect to security deposits.[41] This awareness has often resulted in the passage of laws regulating these deposits.[42] Some of this legislation includes provisions for the payment of interest; however, all seek to give the tenant more protection from the misappropriation or depletion of the deposit at the hands of an unscrupulous or ignorant landlord.[43]

1. Statutory Construction of the Relationship

To give the tenant more protection, legislatures increasingly define the security deposit as creating a trust relationship between landlord and tenant.[44] Most statutes provide, explicitly or implicitly, that the deposit remains the property of the tenant, to be held by the landlord as security until it is returned in accordance with the terms of the controlling statute and the rental agreement.[45] In

addition, many statutes prohibit the landlord from commingling the tenant's security deposit with his personal funds or allowing the deposit to become an asset.[46] Numerous statutes require that the funds be deposited in trust or escrow accounts in an insured and regulated banking or lending institution.[47]

2. Required Interest Payments

Of the 35 states which have enacted security deposit legislation,[48] eleven mandate the payment of interest on security deposits.[49] Although no two statutes are exactly alike, there are a number of common elements. Generally, these statutes require payment of simple interest of from two to five percent per annum or the prevailing interest rate.[50] Some allow the landlord certain

46. *E.g.*, ALASKA STAT. § 34.03.070(c) (1976); FLA. STAT. § 83.49(1) (1973); IOWA CODE ANN. § 562.9 (West Supp. 1975-1979); KY. REV. STAT. § 383.580(1)

a small portion of this sum to cover administrative costs incurred in keeping records.[51] Mechanisms for distribution of interest vary from accrual and distribution of interest at intervals of six months or on the annual anniversary date of tenancy[52] to the landlord's retention of all interest until the termination of tenancy.[53] Some states do not require distribution of interest until the deposit has been held for a period ranging from six months to two years;[54] in other cases interest does not begin to accrue until after the stipulated time period.[55]

Several states exempt landlords from having to make interest payments if the landlord does not commingle or use the security deposit. Some legislatures have also considered the number of

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ANDREW P. GROSE, *Research Director* (702) 885-5637

April 30, 1981

M E M O R A N D U M

TO: Assemblyman Jack Vergiels

FROM: Donald A. Rhodes, Chief Deputy Research Director

SUBJECT: Tenants' Security Deposits

According to the National Housing Law Project [(415) 548-9400] 35 states have statutes providing varying degrees of protection for tenants' security deposits. Sixteen of those states (Connecticut, Florida, Illinois, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Washington, Maine, New Hampshire, Virginia, and Wisconsin) require that tenants receive interest on their security deposits. The required level of that interest varies with the minimum usually being bank interest rates and the maximum being a return on a prudent investment.

There are currently two bills pending in the California legislature, one in the Assembly Housing and Community Development Committee and the other in the Senate Judiciary Committee, which would require interest on tenants' security deposits.

We will be supplementing this memorandum with articles from the state and law libraries.

DAR/jld: 5.1 Deposit

EXHIBIT H

NEVADA STATE APARTMENT ASSOCIATION

AB554 REGARDING SECURITY DEPOSITS

POSSIBLE TRANSACTIONS UNDER THE BILL

April 28, 1981

AB 554 requires, among other things, transfer of security deposits received by landlords to separate savings accounts and payment of interest periodically to tenants. We now have two steps in connection with security deposits under existing law. The first is receipt of the deposit and proper recording thereof and the second is repayment of the deposit upon termination of the tenancy. Under AB 554, there would be numerous possible transactions and steps involved as follows:

1. Receipt of the deposit and proper recording thereof (same as present requirement)
2. Transfer within three months to a savings account drawing minimum interest rate of 5 1/2% per annum (interesting to note that at the present time banks are now paying 5 1/4% interest on passbook savings account and savings and loans are paying 5 1/2% - per FNB and Nevada Savings and Loan)
3. Written notice to tenants within 30 days after the transfer per 2 above indicating depositories name and address, the date interest is due the tenant annually and rate.
4. Records must be maintained of tenants due interest each day, in other words, 1 year from date of occupancy.
5. Interest earned must be computed on compounding quarterly or the method used by banks and savings and loans.
6. Service fees for excessive withdrawals must be determined and allocated to all tenants based on some formula we are not aware of at the present time. Banks charge $5.00 per transaction for excessive withdrawals which are apparently those in excess of about five withdrawals per month.

7. Net interest earned from the above two computations must then be determined and a check prepared and forwarded to the tenant.
8. Funds must be transferred from the savings account to the landlord's checking account.
9. Based on turn-over averaging 100% to 150% per year, several transactions above must also be completed plus an itemization of the deposit as required by present law.
10. An IRS I.D. Application form must be completed and filed with Internal Revenue Service if the landlord has no employees and therefore, no I.D. number. This would probably apply to approximately 75% of the landlords in Nevada.
11. IRS form 1099 and 1096 must be prepared annually and forwarded to IRS and to all tenants receiving any interest during the year from the landlord on or before February 28. This would require approximately two forms per unit based on average turn-over. Records must be maintained of interest paid to each tenant in order to prepare the form. Social security numbers and addresses must also be secured and a record made thereof.
12. Additional IRS forms 1099 and 1096 must be completed and forwarded to both Internal Revenue Service and tenants by February 28 for tenants who did not provide or perhaps do not have social security numbers, in other words, a separate set of forms on those tenants without social security numbers.
13. Expect extreme compliance problems. Most landlords would not be knowledgeable enough to properly complete items 1 through 12 above.
14. Finally, landlords must determine rent increases necessary to cover costs of 1 through 12.

AB 554 does not address the real problem. Tenants in some cases, are not receiving their deposit refund within the required 21 days. Apartment associations in both the North and South admit this problem exists and is heavily concentrated in out of state owned apartment complexes. We propose amendments to AB 554 as follows:

1. Delete Section 1 through Section 8 and amend the summary and the description of the act.

2. Include as Section 1, an amendment to NRS 118 A.240, subparagraph one, section four inclusive of the act. Add a new sentence to subparagraph four following -

> and if that address is unknown, then at the tenants last known address. Should the landlord willfully neglect to return the remaining portion of the security deposit to the tenant within 30 days after termination of tenancy, the landlord shall be required to return the deposit forthwith without any deduction whatsoever for defaults in payment of rent, repairs or costs of cleaning the premises. Further, all out of state landlords must deisgnate a representative in the State of Nevada such as manager of the apartment complex, to receive service in connection with any legal action brought by tenants or others. In the absence of such designated agent, the on-site manager or any other person managing or operating the property shall automatically be the designated representative to accept such service. If a judgment in favor of the tenant is granted and the defendant fails to comply within a reasonable time, the defendant will be liable for a misdemeanor charge as well as the judgment.

This amendment addresses the real problem, lack of compliance with the three week deposit refund provision and lack of availability of local courts to tenants to voice their grievances against out of state landlords. We urge your adoption of our amendments to AB554.