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MEMBERS PRESENT: Chairman Bremner
Vice Chairman Hickey
Mr. Bergevin
Mr. Brady
Mr. Coulter
Mr. Glover
Mrs. Hayes
Mr. Horn
Mr. Marvel
Mr. Rhoads
Mr. Robinson
Mr. Vergiels
Mrs. Westall

ALSO PRESENT: Bill Bible, Fiscal Analyst; Judy Matteucci,
Deputy Fiscal Analyst; Mike Alastuey, Deputy
Budget Director; (SEE ATTACHED QUEST LIST)

Chairman Bremner called the meeting to order at 7 a.m.

S.B. 29 Extends program of restitution by certain offenders.

Senator Sue Wagner said that S.B. 29, as amended, extends the program of the restitution centers which was approved for operation by the 1979 Legislature. She noted that this legislation also expands the definition of victim (Section 4) to include governmental agencies and unincorporated associations or businesses; allows the assignment of offenders participating in work or educational programs to the centers if space is available (Section 5, Sub-section 2); and permits the offender to request assignment to the restitution program. She pointed out that, in addition, S.B. 29, as amended, removes the "sunset" clause of this program as included in the 1979 session thereby providing for its continuation through this biennium. Senator Wagner said that the Prison Subcommittee unanimously endorses reinstating the restitution program as it is more cost effective than incarceration (\$9,658 a year to incarcerate an inmate in a traditional institution while it costs \$7,018 in a restitution center).

In response to Mr. Glover's question on the new definition of "victim" as contained in S.B. 29, Senator Wagner said that it has been basically expanded. Charles Wolff, Director of the Department of Prisons, pointed out that previously governmental agencies were not classified as "victims."

Mr. Glover asked if there had been any problems with the locations of the two restitution centers.

Senator Wagner said that one of the centers is located on South Virginia Street in Reno and the center in the south is located in an old campground in Clark County. She was not aware of any complaints on the locations of the two centers. In addition, Mr. Glover asked what is the possibility of expanding the program, Mr. Wolff said that could be possible - but the Multiuse Centers for Parole and Probation should be expanded first and if that is absorbed then the Work Release Programs should be second because they are more cost effective and there are not that many prisoners who are interested in making restitution.

Chairman Bremner asked if there had been any complaints from the community or from employers of the prisoners. Mr. Wolff indicated there have been isolated complaints that have been corrected.

In response to Mr. Robinson's question on the number of additional crimes that have been committed by prisoners in the restitution centers, Mr. Wolff said that he could furnish the committee with the statistics. He added that the number of incidents is small compared to the number of prisoners participating in the program (currently there are 25 in the northern center and 34 in the southern center and since the inception of the program \$35,000 has been paid back in restitution).

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Mr. Marvel asked if the \$7.50 per day paid by the inmates at the restitution centers covers the cost to the state of housing them. Mr. Wolff said that it does not cover the entire cost to operate the centers.

Mr. Robinson questioned the possibility of the State of Nevada acting as a "victim" and recover the costs of incarceration. Mr. Wolff said that the state is recovering costs to the degree of \$7.50 per day but total costs would be impossible to assess.

When Chairman Bremner asked if the \$7.50 per day charge to inmates at the restitution centers is anticipated to be increased, Mr. Wolff said that it is feasible to increase the rate but no figure has been determined.

S.B. 176 Provides for legislative or gubernatorial approval of acquisitions or uses of certain lands by Federal Government.

Senator Glaser told the committee that S.B. 176 is a result of a recommendation by the Select Committee on Public Lands which was initially to stipulate that the state would repeal the "blanket" authority of the Federal Government to make acquisitions of land within the State of Nevada. Since that initial recommendation, other relative areas have been incorporated into this legislation.

Mr. Bob Erickson, Legislative Counsel Bureau, pointed out to the committee that the one area of the legislation that contains a fiscal impact (Section 7) which calls for the State Land Registrar to maintain a registry of lands in the state controlled by the Federal Government with advice and assistance from the Attorney General regarding the nature of federal jurisdiction over such lands. He noted that the Department of Taxation, in cooperation with the State Land Registrar, is directed to advise the county assessors on taxable lands or activities on such lands. The Department of Taxation has submitted a fiscal note estimate of \$30,000 for FY 1981-82 and \$32,700 for FY 1982-83 regarding this function.

Mr. Erickson said the NRS Chapter 328 currently provides Nevada's consent to federal land acquisitions. This was put into Nevada's law, and most other states, in response to Section 8, Clause 17 of Article I of the U.S. Constitution that provides that the consent of state legislatures is required for certain land purchases with each affected state. He noted that, however, U.S. Supreme Court decisions have established a clear and long-standing interpretation that the requirement of the consent of the states is only necessary if the United States desires to acquire full and exclusive legislative authority over any property acquired for the purposes mentioned in the U.S. Constitution.

S.B. 176 add new language to the law, Mr. Erickson noted, that would require state consent on four main areas of federal activity. Section 2 Subsection 1 states that the Federal Government "may" apply to the Director of the Legislative Counsel Bureau to obtain a cession of concurrent criminal jurisdiction from the State of Nevada.

Section 2, Subsection 2 states that the Federal Government "shall" apply to the State Engineer to appropriate water on public lands. Lastly, Subsection 4 provides that applications from federal agencies for land use activities which impair state sovereignty are to be filed with the state land use planning agency within the Nevada Division of State Lands.

Senator Glaser noted that S.B. 176 is complimentary legislation to the Sagebrush Rebellion measure. He added that Utah, Oklahoma and Ohio are states which have recently amended their state laws to repeal "blanket" consent provisions similar to that in Nevada. He observed that the fiscal impact clause of this legislation is the least important and he would have no objection to deleting it if that was the committee's decision.

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Mr. Jac Shaw, Division of State Lands, said that S.B. 176 is a beginning in making an equal relationship in the administration of state and federal issue in the natural resource field.

Mr. Larry Struve, Attorney General's Office, said that, from the perspective of the Attorney General's Office, one important aspect of this legislation is the repeal of many of the sections of NRS Chapter 328 which "talk" in terms of giving the state's consent to federal acquisition of land within the boundaries of the State of Nevada. Section 26 which involves the lands in the Lake Tahoe basin, he noted, was added on the floor of the Senate and the language in this section was also contained in another bill, S.B. 490 which is still pending in the Senate Natural Resources Committee. Based on the research by the Attorney General's office, the state cannot prevent an acquisition by the Federal Government but can condition the extent to which the jurisdiction can be exercised. He said that Section 26 of S.B. 176 attempts to address that problem and in essence to provide that, with respect to the acquisitions under the laws that are specified in this section, the acquisition by the Federal Government is acknowledged by the State of Nevada but, as pointed out in subparagraph 2 on page 9, line 10, nothing precludes the Federal Government with respect to those acquisitions of coming to the state and asking for the jurisdiction that is provided for with respect to other lands as set forth in this bill.

Mr. Harry Swainston, Deputy Attorney General, said that the thrust of this bill is to focus the attention, not on the consent to acquisition, but rather to focus it on the consent to cessions of jurisdiction.

Mr. Rhoads asked how this legislation will affect the future of the wilderness areas in the state. Mr. Swainston said that wilderness areas are much like withdrawal for certain federal purposes much like a national forest. The Sagebrush Rebellion legislation suggests that the state claims ownership for these lands; however, the United States is exercising the parallel existing authority to withdraw lands for federal purposes, therefore, there would be no impact associated with this bill on wilderness areas.

Mr. George Abbott, Attorney at Law, distributed a handout to the committee (EXHIBIT A). He pointed out that although he is in agreement with the concept of S.B. 176, he does not agree with the concept there is no fiscal affect. NRS Chapter 328 currently conditions "consent" upon possible requirement of payments in lieu of taxes by the United States. He noted that the Attorney General's Office has concluded that unless consent is obtained the land is held by an ordinary proprietor. He said that his interpretation of the opinion is that the governmental subdivisions can continue to tax that property unless it is property that falls within the exclusive jurisdiction (Section 8, Clause 17 provision). He added that it was his opinion that this legislation would retroactively approve questionable lawfull acquistions within the Lake Tahoe basin by the United States (\$150 million worth of property within the last 6 years).

Mr. Rhoads asked Mr. Abbott if his main objection was to Section 26 of S.B. 176. Mr. Abbott said he did object to that section only as it relates to the Rabe estate properties at Lake Tahoe. He suggested that the bill be amended to not have application to the Rabe estate property as its title status existed on July 1, 1977. Mr. Struve pointed out to the committee a 1943 Attorney General's opinion written by then Attorney General, Alan Bible, "it is, we believe, to be a fundamental rule of taxation where the United States and the state may be concerned that unless Congress is consented that property of the United States may be taxed by a state, the power of the state to so tax does not exist." Research from the Attorney General's office reveals that this has been enunciated in many cases so, therefore, holding land as an ordinary proprietor does not carry the attendant authority to tax that property. With respect to Section 26, Mr. Struve said that he was not aware of any legality

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to include specific reference to the Jennings, Kahle and Burton-Santini acquisitions as this language was not suggested by the Attorney General's office - it was suggested by people in the Senate that were working on this bill. They were specifically concerned about these three areas - the two properties in Douglas County (Jennings and Kahle estates) and the anticipated acquisitions that will come under the Santini-Burton bill which apparently were extensively discussed by the legislators in connection with the amendments to the compact. He noted that according to his impression the language in Section 26 is confined to those types of acquisitions and are designed to avoid any confusion with respect to those acquisitions. He added that it does not affect the Rabe estate and assumed in view of the fact the litigation is pending that if there has been an improper acquisition by the United States in that case it will be properly presented to the court and proper relief will be accorded to the parties and Section 26 will in no way affect that litigation. Mr. Abbott said that with Mr. Struve's statement he would assume that the state would have no objection to making it clear that it does not affect the Rabe property. Mr. Struve said that he could not represent the state but felt that Senator Glaser would be the proper person to direct the question to.

Senator Glaser said that his committee would consider any amendments to S.B. 176 to that affect.

Mr. Bergevin commented that currently the Kahle property at Lake Tahoe is under private ownership and he saw no reason for it to be included in this legislation.

Mr. George Finn said that the state does have the right to impose taxes on the Federal Government on property they have acquired.

Mr. Roland Westergard, Director of the Department of Conservation and Natural Resources, referred to Section 26 and noted that the "consent" is only being given to the acquisition by the United States under three federal acts: No. 96586 (Burton-Santini bill) and the other two are referenced to the Jennings and Kahle properties. He said that the Kahle property was included because in the original federal acts that would have appropriated money for acquisition of those properties within the Tahoe basin the Kahle property was cited. He said that if it is necessary to amend the bill there would be no objection to specify that nothing in this legislation would in any way be intended to affect pending litigation.

Mr. Bergevin asked Mr. Westergard if he would have any objection to language in the bill that would specify that any property involved in litigation prior to this date would be exempted. Mr. Westergard said there would be objection.

S.B. 421 Allows investment of surplus in certain offenders' funds.

Mr. Perry Comeaux, Assistant Director of the Department of Prisons, said that the purpose of S.B. 421 is to allow the Director of the Department of Prisons to deposit with the State Treasurer for investment those inmate funds under his control that are in excess of the current operating needs. The bill provides that the earnings from such investments would be deposited in the Prisoner Store Fund periodically and would be used to purchase recreational equipment and other items for the benefit of the inmates.

Mr. Horn said that the Prison Subcommittee is in favor of this legislation. It is projected that the Inmate Store will generate approximately \$700,000 in revenue this year and the subcommittee has recommended to increase the prices 20% (the Dept. of Prisons is projecting increases up to 18%). In addition, approximately \$10,000 from the interest of that fund can be used for purchase of recreational equipment, television sets, etc.

Mr. Horn noted that a second recommendation of the Prison Subcommittee is the establishment of an Offenders' Employment Fund to receive the net amount of any wages earned by an inmate during

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MINUTES AND THE MICROFICHE.**

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output, to be worth approximately \$31 million annually.

Chairman Bremner asked Mr. Sudweeks if he had any objection to the \$150,000 appropriated by the Interim Finance Committee in August of 1980 being included in the "payback" required in Section 2 in the event that the Division is successful and additional power is allocated beyond the current 17.6% allotment. Mr. Sudweeks said he would have no objection.

In response to Mr. Rhoads question on the feasibility of acquiring the increased power, Mr. Lavelle said there is a substantial chance in pervading in the litigation. Mr. Clark said other avenues are being pursued in addition to the legal action.

Mr. Bible pointed out that if the \$750,000 is appropriated to the Colorado River Research and Development Fund then the state General Fund will lose the interest.

Chairman Bremner asked if a time table has been adopted in the development of this litigation. Mr. Sudweeks said that the development of the state's case will be developed as Western area Power develops their plan. They intend to publish their preliminary marketing criteria in June of this year and will accept applications in September 1981 and, hopefully, shortly thereafter announce some allocations.

Mr. Lavelle said that it is anticipated that this litigation could evolve over a number of months and tactical decisions have to be made at certain points.

In response to Mrs. Westall's question on the number of megawats Nevada is currently receiving, Mr. Sudweeks stated, 189 megawats and the present capacity of the Hoover Dam is 1,340 megawats and there is an effort to upgrade the capacity to 1,800 megawats.

S.B. 422 Makes civil defense and disaster agency a division of department of military.

William Engel, Adjutant General for the State of Nevada, introduced Mr. Don Dehne, representing the Civil Defense Agency, and told the committee that S.B. 422 establishes the Civil Defense and Disaster Agency as a division of the Department of the Military and makes the director of the division, although still appointed by the Governor, subject to the direction and control of the Adjutant General. Chairman Bremner asked if personnel reductions could be made in the Civil Defense agency. General Engel said that a change in personnel in Civil Defense was not recommended through this reorganization and pointed out that, with the merger, provision of emergency and disaster could better be supplied to counties requesting aid. He further indicated that all positions in this agency are funded with federal grants. In addition, Chairman Bremner asked if some of the federal grants were actually "soft" dollars and could possibly be losing some funds through this merger. Mr. Dehne indicated that currently there are 4 professional and 1 clerical positions that are on permanent status within the agency and there are three ongoing grants that have 5 salaried employees and as such no "soft" dollars are available.

COMMITTEE WORK SESSION

Report of Gaming Subcommittee

Mr. Bible said that the Gaming Subcommittee is recommending reductions in the budget for the Gaming Control Board in the amount of \$84,000 for the biennium. The recommendations are as follows:

- (1) There is an increase requested of \$150,000 each year of the biennium to conduct the post-licensing investigation as S.B. 418 which would have allowed the Gaming Control Board to charge for such investigations was not passed by the Senate.

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- (2) The out-of-state travel category be decreased by \$5,000 in each year of the biennium.
- (3) The Office Supplies category be decreased by \$3,500 each year of the biennium (\$44,500 the first year and \$47,150 the second year).
- (4) The Contract Services category be decreased by \$20,000 each year of the biennium (\$46,000 the first year and \$46,150 the second year).
- (5) Other Contract Services line item can be reduced by \$5,000 each year of the biennium (153,180 the first year and \$165,765 the second year).
- (6) The Advertising and Public Relations Expense can be reduced by \$1,500 in each year of the biennium (\$8,000 the first year and \$6,900 the second year).
- (7) The Dues and Registrations line item can be reduced by \$1,000 in each year of the biennium (\$26,025 the first year and \$27,025).
- (8) The Office Furniture and Equipment category be reduced by \$20,000 in the first year of the biennium (\$147,455).
- (9) The Training category can be reduced by \$100,000 the first year of the biennium (\$50,000) and by \$49,500 the second year (\$50,000).
- (10) The Special Communications category can be reduced by \$136,577 in the first year of the biennium (\$40,000) and the requested \$5,990 in the second year would not be necessary.

Mr. Bible indicated that the overall net affect on the budget for the Gaming Control Board is that by making the reductions in the operating items in the first year of the biennium a reduction of \$292,577 which is offset, however, against the increase of \$150,000 for the post-licensing review function and results in a total decrease of \$142,577 in the first year of the biennium. In the second year, the various reductions in the line items result in \$91,490 of reductions which is offset against the \$150,000 increase for an increase of \$58,510 and when the two amounts are netted over the biennium there is a total reduction of \$84,067.

Mr. Hickey moved to adopt the subcommittee's report, seconded by Mr. Glover. Motion carried with Mr. Coulter absent.

Mr. Hickey moved to adopt the GOVERNOR'S RECOMMENDATION AS AMENDED, seconded by Mr. Glover. Motion approved, budget closed. Mr. Coulter absent.

S.B. 422 Makes civil defense and disaster agency a division of the department of military.

Mr. Hickey moved DO PASS, seconded by Mr. Robinson. Motion approved. Mr. Coulter absent.

S.B. 417 Makes appropriation to division of Colorado River resources of department of energy to pay for certain costs of litigation.

Chairman Bremner suggested amending the bill by leaving the \$750,000 in the General Fund to accumulate interest and be earmarked for the use of the Colorado River Research and Development Fund.

Mr. Hickey moved to adopt the amendment, seconded by Mr. Glover. Motion approved.

Mr. Hickey moved to further amend the measure by including in Section 2 that the \$150,000 appropriated by Interim Finance be included in the "payback" to the General Fund, seconded by Mr. Glover. Motion approved.

Mr. Hickey moved DO PASS AS AMENDED, seconded by Mr. Glover. Motion approved.

S.B. 336 Makes appropriation to WICHE for higher education student loan fund.

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Mr. Alastuey pointed out that if this bill is not approved the WICHE loan fund budget that was earlier approved by the committee would have to be restructured because that budget includes the amount in this bill.

Mr. Hickey moved DO PASS, seconded by Mr. Bergevin. Motion approved.

S.B. 551 Makes supplemental appropriation to state board of parole commissioners for travel expenses.

Mr. Glover moved DO PASS, seconded by Mr. Horn. Motion approved.

S.B. 29 Extends program of restitution by certain offenders.

Mr. Glover moved DO PASS, seconded by Mr. Horn. Motion approved.

*S.B. 648 Alters statutory provisions relating to payment and distribution of tax on pari-mutuel wagers.

Mr. Hickey moved to amend line 8 by deleting "examination and inspection" and inserting "regulatory function," seconded by Mr. Bergevin. Motion approved.

Mr. Hickey moved DO PASS AS AMENDED, seconded by Mr. Bergevin. Motion approved, Mr. Robinson voted NO.

A.B. 639 Makes appropriation to Nevada racing commission for support of Henderson track.

Mr. Hickey moved DO PASS, seconded by Mr. Rhoads. Motion carried.

BUDGETS

Central Data Processing

Mr. Alastuey referred to the line item, Other Contract Services, and it was suggested by the Administrator of Central Data Processing that the \$384,000 requested be reduced to \$313,000. In addition, in the second year, the amount could be reduced to \$325,824. He added that the item, State Owned Building Rent, by virtue of the adjustments that had to be made in the Utilities category of Buildings and Grounds would increase from \$50,648 in the first year to \$52,179; and in the second year, from \$48,095 to \$55,693. The Facility charges that had to be reallocated, because the Computer Facility is now going to directly pick up their utility costs and pass those on to the user, would go from \$790,555 in the first year to \$810,648 and in the second year from \$882,318 down to \$859,528.

Mr. Alastuey continued: The Dues and Registrations in each year could be reduced from \$5,000 to \$1,850. In addition, concurrently with the reduction in Other Contract Services, the administrator of CDP has requested the establishment of a category Univac 1900 at \$57,000 in the first year and \$63,000 in the second year. Added to those line item changes, there needs to be a redistribution of the costs among the agencies using CDP services primarily because of the fact that the Gaming Control Board was "pulling out". He noted under the CDP Reallocation Budget there is an amount of \$42,037 in the first year and \$269,768 in the second year - in effect, this budget portrayed an artificial agency that would make payments to CDP in lieu of Gaming Control Board participation. In reexamining the need for reallocations of this extent, it was found that the \$269,768 in the second year was composed of facility services that were reallocated and CDP services in the amount of \$132,000 that had to be reallocated in equipment rental that need not really take place. There is much less General Fund impact to the reallocation than would be indicated by the \$20,000 appropriation the first year and \$132,000 the second year. Mr. Alastuey said that he would provide the committee with revised projections of what each of the agencies would require in CDP allocations.

*AB 648

(Committee Minutes)

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In response to Mr. Robinson's question on the \$132,000 appropriation the second year of the biennium, Mr. Alastuey said that instead of the \$132,000 a complete reallocation of the CDP costs among the remaining agencies other than Gaming Control would cost approximately \$29,000 and rather than \$20,000 the first year it would be about \$21,000. This budget was constructed by taking the reduction in income that was necessitated by pulling Gaming Control out and then applied a percentage factor of approximately 49.51% for general fund appropriation and other sources to the need, building in an estimated amount of general fund so that it could be more realistically projected what was actually necessary. After respreading all the costs it results in an approximate \$110,000 the second year of the biennium (\$29,971 versus \$132,186). The first year reallocation would cost \$21,174 versus the \$20,598.

In response to Mr. Bible's question on the other agency funds, Mr. Alastuey said that the other funds that would be built into the other agency budgets are \$8,763 in federal money in the first year, other sources of \$12,000 and in the second year, \$10,203 in federal sources and other sources, \$24,767.

Mr. Horn moved to amend the budget to accept the above recommendations, seconded by Mr. Rhoads. Motion approved.

Mr. Horn moved to adopt the GOVERNOR'S RECOMMENDATION AS AMENDED, seconded by Mr. Rhoads. Motion approved; budget closed.

Mr. Bergevin moved to amend the budget as recommended, seconded by Mr. Horn. Motion approved.

Mr. Bergevin moved to adopt the GOVERNOR'S RECOMMENDATION AS AMENDED, seconded by Mr. Horn. Motion approved; budget closed.

Computer Facility

Mr. Alastuey pointed out that the Utility line item will increase \$59,784 in the first year and \$78,091 in the second year of the biennium. In addition, under the category Equipment the line item, Specialized Equipment, in the second year of the biennium that includes \$160,324 of the \$177,420 for purchase of IBM Memory - the agency is proposing to delete that and instead provide \$74,936 in increases in Other Contract Services to lease the same equipment. He added that with those line item changes the Department of Transportation, for example, that would have been billed \$425,738 would now be billed \$436,559 and CDP that would have been billed \$790,555 would now be billed \$810,648.

Mr. Hickey asked if these other agency budgets will have to be adjusted accordingly. Mr. Alastuey said that adjustments will be necessary as were required by agencies who use CDP services to take care of the reallocation of CDP costs.

Mr. Robinson moved to amend the budget to reflect the previous changes, seconded by Mrs. Hayes. Motion approved.

Mr. Robinson moved to adopt the GOVERNOR'S RECOMMENDATION AS AMENDED, seconded by Mrs. Hayes. Motion approved; budget closed.

Department of Taxation

After discussion, the committee agreed to hold the budget pending information from Mr. Rhoads.

Public Defender

Mr. Alastuey noted that this budget is contingent upon the passage of A.B. 397 which establishes the authorizations by county for collection of fees assessed by the Public Defender based upon workload.

Mr. Vergiels moved to adopt the GOVERNOR'S RECOMMENDATION, seconded by Mr. Glover. Mr. Brady commented that he is opposed to any

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expansion of the program.

Mr. Brady moved to amend Mr. Vergiels' motion to eliminate all new positions, seconded by Mr. Marvel.

Mr. Alastuey observed that the new positions are necessary considering the growth problems experienced by the Tonopah area. In addition, the requested positions for Carson City are centered around the need to represent clients at the prison.

On Mr. Brady's motion, Mr. Glover, Mr. Coulter, Mrs. Hayes, Mr. Robinson, and Mr. Vergiels voted NO, Mr. Horn was absent. Motion failed. On Mr. Vergiels' motion to adopt the GOVERNOR'S RECOMMENDATION, motion failed.

Mr. Vergiels moved to reduce the regular appropriation in the budget for the Public Defender by \$50,000 each year of the biennium, seconded by Mr. Hickey.

Mr. Rhoads said that by the state accepting the funding for this service there is no incentive for counties to assume the responsibility of financing the program. Mr. Glover said that many counties cannot afford to provide such a service to the public.

On Mr. Vergiels' motion to reduce the budget by \$50,000 each year of the biennium, motion carried with Mr. Glover voting NO.

Mr. Vergiels moved GOVERNOR'S RECOMMENDATION AS AMENDED, seconded by Mr. Hickey. Motion approved; budget closed.

A.B. 397 Authorizes state public defender to collect certain amounts from counties for use of his services.

Mr. Vergiels moved DO PASS, seconded by Mr. Bergevin. Motion approved.

Chairman Bremner adjourned the meeting at 10:25 a.m.

DATE: May 14, 1981

WAYS AND MEANS COMMITTEE

GUEST LIST

NAME (PLEASE PRINT)

REPRESENTING:

Bryan Armstrong
George Abbott
BING OBERCE
PERRY COMEAUX
WOLFF
HARRY W SWAINSTON
Ken Partridge
Niels Anderson
Bill Engel
DON DEHNE
Dawn Marie Abreis
Mary Poppey
Jimmy Stumpe
Roland D. Westergaard
Jac R Shaw
Jim Lavette
Norman Hansen
Quane R. Sudweeks
Thel A Clark

State Parole Board - SB 557
RABE Estab - SB 176
DEPT. OF HUMAN RESOURCES SB 150
DEPT. OF PRISONS
PRISON
ATTORNEY GENERAL SB 176
U of Nevada System
U of Nevada System Emply Ctr
Military Dept
STATE CIVIL DEFENSE
University of NV Systems
Previous
AG
Dept of Conservation
State Lands
Attorney General - SB 417
State Senator
Div. Colorado River Resources
Dept of Energy

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May 13, 1981

Honorable Roger Bremner, Chairman
Ways and Means Committee
Nevada State Legislature
Room 234 Legislative Building
Carson City, Nevada 89801

Dear Mr. Chairman:

Re: Senate Bill 176

1. This letter is written on behalf of the Estate of Elizabeth Rabe, owners of property within the Tahoe Basin portion of Douglas County, Nevada, and persons interested in Senate Bill No. 176, pending before your committee.

2. From a reading of SB 176, it would appear that it could operate, in effect, to quiet title retroactively to certain lands, more particularly, the Rabe estate properties at Lake Tahoe.

3. The repeal of NRS 328 of all sections except .100, .110 and .120, and the granting of permission to the United States by S.B. 176 to acquire lands at Lake Tahoe and anywhere else in Nevada could adversely influence the lawsuits now pending in the state and federal courts regarding the Rabe Estate.

4. I am certain it is not the intention of this committee to act so as to affect litigation pending in Nevada state and federal courts filed nearly two and one-half years ago in the instant case -- and involving the title to lands which SB 176 could directly affect.

5. On November 17, 1978, in Civil No. 9402, in the (then) First Judicial District Court of the State of Nevada in and for the County of Douglas, styled Edwin Carl Sarman, et al, as Co-Executors of the Estate of Elizabeth Schulz Rabe vs. First Judicial District Court, et al, the Rabe Estate sought judicial relief to void a sale of a 239-acre tract at Lake Tahoe to the Forest Service, for asserted failure, inter alia, to comply with the provisions of NRS 328.140. The district

EXHIBIT A

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court having granted a defendant's motion to dismiss, that matter is now on appeal pending in the Supreme Court of Nevada, in Rabe vs. First Judicial District Court, et al, as No. 13015 in that court.

6. Because of the possibility of retroactively affecting the status of the Rabe property by the enactment of SB 176 and because of the pending actions in the Nevada Supreme Court and the federal District Court we believe the Rabe property should be exempted from the operation of SB 176.

7. Additionally, on April 12, 1981, a counterpart Federal action was filed in the United States District Court for the District of Nevada at Reno, being Civil No. R-81-96, BRT, in that court, and styled Edwin Carl Sarman and Lois Elizabeth Rabe Sarman, as Co-Executors of the Estate of Elizabeth Schulz Rabe, et al, vs. United States of America, et al. The Federal action -- designed to assure reaching the federal agency involved just as the state court action goes to the Nevada probate court -- seeks judicial relief to quiet title in the Rabe Estate to the same 239-acre tract for asserted failure, inter alia of the Forest Service to comply with the provisions of NRS 328.140. Alternative relief sought would still permit the Forest Service to acquire the property, subject to additional, and lawful conditions which the Federal court is asked to impose.

8. In any case, because of the pending action in the United States District Court at Reno, we believe the Rabe Estate subject property should be exempted from the operation of SB 176.

9. Copy of the Federal court action complaint, explaining the basis for both Nevada Supreme Court and Federal court actions, is attached hereto.

10. In both instances -- the pending Nevada Supreme Court proceeding and the Federal court proceeding at Reno -- the court is asked to decide whether the transfer of land to the Forest Service was in compliance with law, or was not in compliance with law -- as applied to the subject Rabe Estate property. If it was a lawful transfer, then the Forest Service is fully protected in its position; if it was not a lawful transfer -- I trust this committee will agree -- then it will be so declared, and the interests of the Rabe Estate and its heirs will be fully protected; at the same time, the Forest Service will have an opportunity to make a lawful acquisition.

Yours very truly


George W. Abbott

CHARLES
1981.

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWIN CARL SARMAN and LOIS ELIZABETH
RABE SARMAN, as Co-Executors of the
Estate of ELIZABETH SCHULZ RABE, and
as Guardians and next friends of
MICHAEL L. SARMAN and PAUL ANDREW
SARMAN, minor children,

Appellants,

vs.

No. 13015

THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF DOUGLAS; ROBERT COWLES;
and LESTER BERKSON,

Respondents.

OPENING BRIEF FOR APPELLANTS

On Appeal from an Order by the Ninth (formerly First)
Judicial District Court of the State of Nevada in and
for the County of Douglas Granting Motions to Dismiss.

GEORGE W. ABBOTT, Esq.
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Attorney for Appellants
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FILED

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CLERK, U. S. DISTRICT COURT
DISTRICT OF NEVADA

BY.....DEPUT

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6 Attorney for Plaintiffs

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF NEVADA

10
11 EDWIN CARL SARMAN and
12 LOIS ELIZABETH RABE SARMAN,
13 as Co-Executors of the Estate
14 of ELIZABETH SCHULZ RABE, and
15 as Guardians and next friends
16 of MICHAEL L. SARMAN and
17 PAUL ANDREW SARMAN, minor
18 children,

19 Plaintiffs,

20 vs.

21 UNITED STATES OF AMERICA and
22 JOHN R. BLOCK, Secretary
23 of the United States Depart-
24 ment of Agriculture,

25 Defendants.

CV-R - 81 - 96

BRT

COMPLAINT

26 Plaintiffs allege:

27 I. JURISDICTION AND VENUE

28 1. The United States District Court for the District of
29 Nevada has jurisdiction to hear this action pursuant to the
30 provisions of 28 USC, sec. 1346(f), in combination with the
31 provisions of 28 USC, sec. 2409a.

32 2. This district court, independently of secs. 1346(f)
and 2409a of Title 28, has jurisdiction pursuant to the pro-
visions of 28 USC, sec. 1331(a) as a civil action arising
under the Fifth and Fourteenth Amendments to the Constitution
of the United States.