MINUTES

WAYS AND MEANS COMMITTEE

NEVADA STATE LEGISLATURE - 60th SESSION

April 5, 1979

Chairman Mello called the meeting to order at 8:05 a.m.

MEMBERS PRESENT: Chairman Mello, Mr. Barengo, Mrs. Cavnar, Mr. Glover, Mr. Hickey, Mr. Vergiels, Mrs. Wagner, Mr. Webb

MEMBERS ABSENT: Vice-Chairman Bremner (excused); Mr. Mann (excused)

ALSO PRESENT: Bill Bible, Fiscal Analyst; Judy Matteucci, Deputy Fiscal Analyst; Mike Alastuey, Deputy Budget Director; Chief Justice Mowbray; Justice Noel Manoukian; Mr. John DeGraff, Court Administrator; Judge Peter Breen; Mr. Bart Jacka, Director, Department of Motor Vehicles; Mrs. Sharon Alcamo, Chief, Drivers License Division; Mr. Jim Jones, Administrator, Real Estate Division; Mrs. Susan Simmons, Deputy Administrator; Mr. Gene Milligan; Ms. Norma Wolverton, Assistant to the Administrator of the Real Estate Division; Assemblyman Joe Dini; Mr. Hal Smith, Burrows, Smith and Company; Mr. Gordon Harding, Administrator of Central Data Processing

AJR 2 of the 59th Session

Chief Justice Mowbray noted that the subcommittee on personnel and administrative programs of the court system met in the Legislative building in Carson City on May 14 and 15, 1976, at which time the feasibility of an intermediate appellate court system for Nevada was discussed. He said that Chief Judge Herbert M. Schwab, of the Oregon Court of Appeals, told the subcommittee that California and other states in the west already have intermediate courts of appeals. Chief Justice Mowbray said that Chief Judge Schwab commented on the two separate and distinct functions of the courts at the appellate level: (1) the law-stating function, best performed by a Supreme Court supplied with ample time for reflection and study; (2) the law-applying function, best performed by the intermediate court of appeals as the task involves primarily a review of the case to determine if the law had been correctly applied in that instance.

Chief Justice Mowbray pointed out that according to Chief Judge Schwab that a 50% increase in population predicted for the next 10 years and the resultant increase in criminal trials can be handled with the following alternatives: (1) a state may expand the Supreme Court; (2) it may create separate criminal courts; (3) or a state may create an intermediate court of appeals.

Chief Justice Mowbray urged the Committee to approve the passage of the pending Legislation creating the appellate court. (EXHIBIT A)

Chairman Mello pointed out an amendment to AJR 2 that he had received and asked if it changed the resolution and, if adopted, did the approval process on AJR 2 have to be started again.

Justice Noel Manoukian stated that the amendment would not interfere with the constitutional amendment process, and would not cause a regression on AJR 2.

Assembly

Chairman Mello stated that anytime a member of the Legislature or member of a committee drafts an amendment to a resolution or a bill in the committee's name, permission must be obtained from that committee. He further asked if the amendment was really necessary.

Justice Manoukian said that information contained in the amendment is already covered in AJR 2, and is not necessary.

Mr. Daykin, who was called in to explain the amendment, clarified the situation by stating the Consitituion, Section 1 of Article 16, requires that if a section of the Constitution affected by pending amendment was previously amended by vote of the people, the pending section must be modified to take into account the amendment already made by the people so that they will be voting only on what is new in the section that has already been amended. He noted that this amendment is designed for that purpose because Section 4 of Article 6 of the Constitution was amended in the 1978 general election in the Question 2 which set up the flexible jurisdiction of the courts of justices of the peace. He said that this is simply a technical amendment and conforms Section 4 to the present Constitution.

Chairman Mello commented that a technical amendment would not delay the amendment process of the bill and Mr. Daykin said that was correct.

Mr. Hickey asked for caseload figures that reflect the number of cases that would require an opinion versus the number of cases that don't have to be processed through the high court.

Mr. John DeGraff, Court Administrator, said that those figures were presented at the budget hearings and could be reproduced and presented again.

Mr. Hickey commented that he would like statistical information to justify the appeal court and the costs that will be incurred because of the court. Mr. DeGraff pointed out that general court statistics are not broken down by cases that require opinions. He said that some previous studies revealed that 15 to 35 authored opinions are the most a justice can produce a year.

Mr. DeGraff pointed out two functions of the Supreme Court: (1) review for correctness; (2) review of precedent or a law stating function. He said that the Supreme Court should only be involved with the law stating function and the appellate court should be involved only with review for correctness.

Justice Manoukian pointed out that some cases are frivolous and should not even get into the district court let alone into the Supreme Court.

Mrs. Wagner asked how the appellate court system can reduce the caseload from the Supreme Court.

Chief Justice Mowbray presented the following statistics on the projected growth: 1979 the estimated population is 722,209 and 1,281 filings are expected; 1980 the estimated population is 766,000 and 1,484 filings are expected; 1981 the estimated population is 807,619 and 1,618 filings are expected. He said that each case requires the supervision of a justice. He noted that if the appellate court existed, it could handle routine appeal matters and allow the Supreme Court to handle the opinion writing.

Mrs. Wagner asked if the appellate court system would look at the law only for correctness.

Justice Manoukian said that the Legilsature would determine which cases the Supreme Court will continue to handle and would establish the boundaries of its jurisdiction. He noted that the right to appeal is a statutory right; not a constitutional right.

Mrs. Wagner asked if AJR 2 would have any bearing on the district court level. Judge Peter Breen, Administrative Judge for Washoe County, commented that AJR 2 has nothing to do with the trial courts.

Chairman Mello asked how many states have appellate courts and where the appellate court would be housed.

Justice Manoukian responded that approximately 50% of the states have an appellate court system. He noted that it would be ideal to have separate chambers for the appellate court but, as an example, the North Las Vegas City Commission Chambers could be used. He added that Oregon houses their appellate court in the Supreme Court.

Mr. Rhoads asked how the other 50% of the states function without an appellate court system.

Justice Manoukian noted that some states have less population and some have expanded their Supreme Courts.

Mr. DeGraff pointed out that some states do not have an appeal of rights which means the state Supreme Court takes only cases that have a law-stating question. He said that an appeal is not a right, it is given to the people by the Legislature.

Mr. Rhoads asked if an appellate court is a better choice than expanding the Supreme Court system.

Justice Manoukian stated that other states have increased the monetary jurisdiction of their justice courts and the district courts, like the California Superior Courts then become the courts of last resort and their action is final. He noted that the California Supreme Court was a selective jurisdiction court even before their court of appeals was implemented.

Mr. Glover noted that there is no room in the present court facilities and asked where the judges and their staff will be housed.

Mr. DeGraff responded that the intermediate appellate court will use the same clerk's office as the Supreme Court and would necessitate only 1 or 2 extra employees in the clerk's office. He noted that the Supreme Court building can be used when the Governor moves out; however, an addition to the Supreme Court building was considered.

Mr. DeGraff stated that the Public Works Board made an estimate for the addition to the Supreme Court building and the Law Library in the amount of 1.7 million dollars. He said that a substantial amount of that money would go for the Law Library that is needed now.

Mr. Glover then asked if the judges would be housed in the Supreme Court building and Mr. DeGraff said that was correct. Mr. Glover noted that in two years the 1.7 million dollar figure for the addition to the Supreme Court building will be 24% higher due to inflation.

Chief Justice Mowbray remarked that the appellate court could use the court building as it is only used one week a month; secondly, the library would be available.

Chairman Mello noted the Committee's concern is that after the measure is passed there are no facilities to house the judges or their staff. He also pointed out a bill that is pending for 2 more judges in Washoe County and asked if there are facilities available for them.

Judge Breen said that there are facilities in the Washoe County court house.

Mrs. Wagner asked which western states have an appellate court system. Mr. DeGraff responded that New Mexico, Oregon, Colorado, Arizona, Washington and California have appellate courts and Idaho is in the process.

Mr. Barengo asked if <u>AJR 2</u> is passed but no jurisdiction is given by the Legislature, would the Supreme Court implement it anyway.

Justice Manoukian responded that the Nevada Supreme court has always historically given deference to the Legislature.

Mr. Barengo asked for assurance that if AJR 2 passes and no jurisdiction given, that it will not be implemented anyway.

Chief Justice Mowbray stated that as Chief Justice, he would never over-ride the Legislature in this area.

Mr. DeGraff suggested that the Legislature could apportion the jurisdiction as the Constitution specifically states.

AB 294

Mr. Bart Jacka, Director of the Department of Motor Vehicles, introduced Mrs. Sharon Alcamo, Chief of the Drivers License Division and stated that AB 294 is an appropriation for $81,938 to the Department of Motor Vehicles for additional personnel to take care of the back-log that exists in the Drivers License Division. He said that it is a one-time appropriation. Mr. Jacka said that if AB 294 passes, it is the intention of the Department to hire 8 or 9 personnel as key-punch operators and administrative aids to take care of the back-log.

Mr. Jacka detailed the backlog as follows: 39,000 data cards that need to be filed; 9,000 original applications that are not on file; 96,000 traffic citations that are not on file and are useless as a referral for law enforcement; 16,000 out-of-state citations, and 26,000 accident memos that are not filed. Mr. Jacka noted that with the additional personnel, hopefully the backlog can be taken care of in a year's period of time.

Mr. Barengo asked if it were true that if you sign a citation and don't show up in court you don't get points added to your driving record.

Mr. Jacka said that currently that is correct and that there is a piece of Legislation in the Senate that will take care of that. He said that the prior administration was not interested in assessing points and he agreed with the Justice Court Judges Association which initiated the legislation that states points should be assessed.

Mr. Barengo asked that if you post a bond and don't show up, does it work the same way.

Mrs. Alcamo said no, that forfeiture of the bond was considered a conviction as specified in NRS, and points are assessed in this instance.

AB 520

Mr. Jim Jones, Administrator, Real Estate Division, noted that some confusion took place at the end of the 1977 session regarding the Real Estate Division and its licensing fees.

Chairman Mello remarked that comments had been made to the Commerce Committee that money collected from license fees had been spent.

Mr. Jones said that the money reverted to the General Fund.

Mrs. Susan Simmons, Deputy Administrator, said that at the Commerce Committee meeting she had been asked where the funds were and if the Division had spent them. She said that she had been unable to answer the question but did report to Mr. Jeffrey the next morning that the money did go into the General Fund.

Chairman Mello asked Mr. Jones if he had been at the meeting and he said he was not.

Chairman Mello said that several members of the Committee said they were under the impression that the money was spent.

Mr. Glover asked how much money the Real Estate Division reverted to the General Fund.

Mr. Jones said that for fiscal years 1977-78, Real Estate License fees were received in the amount of $768,000 and that other fees received were $199,000 totaling $968,000. He said that the budget for that year was $624,000 which left a net gain of $344,000 to the General Fund.

Mr. Gene Milligan stated that during the 1977 session a bill was introduced to provide for continuing education of real estate licensees for a two year period and the Legislature at that time decided that since the education was based on a two year period, the license procedure should also be extended to a two year period. Mr. Milligan noted that the two year period would have doubled the annual license fee but inadvertently the one year license fee was not taken out of the bill so, in effect, it quadrupled the fees.

Ms. Norma Wolverton, Assistant to the Administrator of the Real Estate Division, referred to Section 2 of AB 520 where it states that the "Real Estate Division of the Department of Commerce shall upon the next renewal of a license by a realtor, broker-salesman, corporate broker or real estate salesman credit to his account any amount of money which was paid by him between July 1, 1978, and the effective dates of this act for the biennial renewal of his license."

Ms. Wolverton said that some clarification was needed in this situation as to whether any penalty payments for licensees who did not renew in a timely manner and subsequently had to pay reinstatement fees should have to be returned. Ms. Wolverton said that the wording should be clarified to state it would be exclusive of any penalty that would have been paid.

Chairman Mello noted that the Real Estate Division is trying to recoup the money for the people that over paid and Ms. Wolverton said that was correct. Chairman Mello pointed out that would cost the General Fund about a half of a million dollars.

Chairman Mello said that total blame for this situation cannot be placed on the Legislature.

Ms. Wolverton asked that if the bill were passed in its present form, would there be a special fund created whereby refund of actual monies would be paid to those individuals who do not renew or would it come out of the general revenue receipts of the Division in that given year.

Mr. Milligan said that the real estate industry would not object if the fee repayment or credit was amended out of AB 520.

Chairman Mello said that the Legislature should not take the full burden for this error and that the State should not be penalized since the real estate representatives did not catch the error in the 1977 session. Chairman Mello said that he did not object to returning the fees to the previous status.

Mr. Barengo said that Section 2 should be amended out of AB 520.

Chairman Mello said that the Committee wants assurance that is Section 2 is amended out that the real estate industry would support the amendment in the Senate.

Mr. Milligan assured the Committee that the amendment would be supported in the Senate.

AB 548

Assemblyman Dini said that the intent of AB 548 is to establish an economic assistance account to assist counties suffering economic hardship because of decreased mining activity. He said that a feasability study is projected at a cost of approximately $100,000 to determine the possibilities of turning the Anaconda Pit into an industrial park.

Assemblyman Dini said that Lyon County applied to the Four Corners Commission for a grant but as yet it has not been processed. He said that there is a plan to develop the pit into a reservoir and has tremendous possibility for recreation purposes.

Mr. Rhoads asked if any State agency, such as Comprehensive Statewide Planning Agency, has the mechanics to do the feasibility study.

Assemblyman Dini said that through the State Planning Coordinator there is some potential for developing the feasibility study. He added that this project has received aid from the previous administrator of Economic Development, but that he was disappointed in the current administration's efforts on Lyon County's behalf. He pointed out that it is the intent of the legislation to divert some money to that project.

Mrs. Wagner asked if the grant is processed by the Four Corners Commission, then the money from AB 520 would not be necessary and Mr. Dini said that was correct.

Mrs. Wagner asked what type of agreement was made with Anaconda.

Assemblyman Dini said that at the present time there is no agreement, but there is an attempt being made to purchase the property. He noted that it has potential for industrial development and there are 235 houses already available.

AB 293

Mr. Hal Smith, Burrows, Smith and Company, Financial Consultants to municipal governments said that he is involved with most of the bond issues under consideration.

Chairman Mello asked Mr. Alastuey to explain the purpose of this bill.

Mr. Alastuey said that essentially AB 293 appropriates $16,500,000 to the State Treasurer to be deposited at interest, the proceeds of which through the fiscal year 1997 would be sufficient to retire outstanding state general obligation indebtedness. He said that the estimate of General Fund appropriations necessary to support principal and interest payments through 1997 is approximately 26 million dollars, and the $16,500,000 deposited at interest now would be sufficient to take care of that. He added that the appropriation is not to buy the bonds but rather to make appropriations to pay interest and principal now instead of in the future.

Mr. Smith pointed out several possible amendments the Committee may want to consider. He said that the bill is appropriate, but some clarification should be made for future Legislatures so that other indebtedness is not confused with the bonds that are being considered under AB 293.

Mr. Smith pointed out that there are 10 issues, the first one being in 1965 and the latest in 1977, totaling $19,120,000 as of March 1, 1979. He said that $16,500,000 invested at 7% may not be sufficient to retire the bonds and there may be a request for future appropriation to finalize the debt repayment.

Mr. Smith said another problem may be that in each of the sales of each of the issues, according to constitutional provision, you cannot go past 20 years from the time that the enactment was authorized. He said that most of these issues are for shorter periods of time than 20 years and in all of them the "call provision" occurs after the 10th year of the bond life. He further commented that a change in Line 8 is necessary to provide for payment of premiums which will be required due to the early call for prior redemption on these bonds, which would be an additional expenditure not currently authorized in AB 293.

Mr. Smith remarked that the line that provides for the placement of funds in interest bearing accounts could also be broadened to read "allowable investments" in order to receive the highest possible rate of interest; whereas now the interpretation might be limited to the account where normal interest is collected rather than the maximum that could be earned.

Mr. Smith stated that further there should be some capability to handle the surplus that will result if the bonds are retired in their correct order and there has been no provision made to revert that surplus to the General Fund.

Mr. Smith reiterated the fact that this does not retire the debt; all AB 293 does is provide the funds up front and provides for a better cash flow in future years.

Mrs. Wagner asked Mr. Smith for an explanation why this approach is better than the way it was handled before.

Mr. Smith responded that in the past appropriations have been made in the budget to retire the bond debt for that current biennium. He said that by putting the current surplus money in the debt retirement fund, the 2 million dollars that would have been appropriated will be available for other purposes; basically providing for a better cash flow.

Mr. Barengo asked if Mr. Smith recommended prudent investment standards.

Mr. Smith said that there is now sufficient language to provide for more investment capabilities.

Mr. Barengo asked what the implementation of AB 293 will do to the bond rating. Mr. Smith said that it will do nothing to the bond rating. He continued that if the bonds were refunded and go from an A-1, which they currently are, to a AAA, the holders of the existing bonds would have a much more marketable security.

Mr. Bible asked if the 7% interest is a reasonable assumption. Mr. Smith said he was uninformed of the actuarial provisions. Mr. Bible asked what is the current yield of Federal securities and Mr. Smith said it is in excess of 8.5%.

Mr. Alastuey pointed out that 7% is considered reasonable in view of the long-term nature of the project.

Mr. Bible asked if upon receipt of the $16,500,000 Federal "instruments" would be bought that would mature the same time as the bonds.

Mr. Alastuey said that the original intent of AB 293 was to initiate a mechanism similar to that in the Revenue Sharing Trust Account where the average cash balance in the State treasury over a period of time is compared to the cash balance attributed to this particular project and interest transferred on a periodic basis by the Treasurer.

Mr. Bible asked if there had been an actuarial study as background on AB 293 and Mr. Alastuey said that the calculations were not done by an actuary.

Mr. Smith said that without a full study of the security schedules that exist in every issue, he could not estimate the amount of money or what rates of interest that are needed to recapture the difference between the $16,500,000 and the $19,120,000 that is currently outstanding.

Mr. Smith observed that AB 293 will not defease the existing State debt.

AB 514

Mr. Gordon Harding, Administrator of Central Data Processing, said that AB 514 appropriates $40,000 to Central Data Processing to develop and place into effect a plan for computer security. Mr. Harding said that currently the State has invested between 30 and 40 million dollars in data processing equipment, files and programs.

Mr. Harding pointed out that at the present time there is no formal procedure to protect the data processing equipment from loss. He noted two sources of loss: (1) physical loss such as fire; (2) loss which is associated with the mis-use of information such as divulging confidential information.

Mr. Barengo asked if this plan would prevent CDP employees who teach data processing and their students from using the computer for their classes. Mr. Harding said that this plan would preclude this usage, to the best of its ability. He added that there is no such thing as a secure computer system.

Mrs. Wagner requested additional information regarding the plan to prevent misuse of the computer facility.

Mr. Harding said that CDP first wants to identify all of the known risks, assess the dollar exposure associated with those risks, determine the action to be taken to eliminate or minimize the risks, formulate a plan, and implement a plan. Mr. Harding said there are many reasons for losses occurring within the computer industry, some of which are: negligence, fire, fraud, water, deliberate destruction by an employee who has been fired and pranksters.

Mr. Hickey said that some of the problems regarding use of computer facilities appeared to be primarily lack of efficient management and asked what the $40,000 will be used for. Mr. Harding said that advise would be requested from accounting firms and consultants specializing in data processing security to formulate a plan and a second firm would validate and evaluate the recommendations of the first consultants.

Mr. Hickey asked what percentage of misuse is negligence. Mr. Harding said that negligence is about 50 to 60% of the problem.

Mr. Glover asked what measures could be utilized to prevent fire damage to the computer. Mr. Harding said that a chemical substance may be used. He said that currently there is a direct fire alarm from the computer facility to the fire department. Mr. Glover asked if there have been any fires at the Carson City computer facility. Mr. Harding said that the only fire had been one of very minor consequence due to careless cigarette smoking. He added that now no smoking is allowed in the computer facility hardware room as cigarette smoke is bad for the equipment.

Mrs. Cavnar asked how the figure of $40,000 was determined.

Mr. Harding said that $40,000 was requested to conduct a risk analysis and with the information from that analysis, additional funding will be necessary to implement the program.

Mrs. Cavnar observed that perhaps the bill title indicating that the plan could be put into effect with part of the requested appropriation was in error.

Chairman Mello asked why security measures had not been put into effect from the beginning.

Mr. Harding said that he did not have the authority to implement the security measures, and noted that that responsibility belongs to the Data Processing Commission.

Mrs. Wagner asked why information on other security programs, from either private industry or some state agencies, that have already been implemented could not be utilized in the formation of a security plan for the computer facility rather than spending additional dollars to develop another plan.

Mr. Harding noted that his main problem is lack of funding and that as a service bureau, his employees do work for which they are reimbursed.

Chairman Mello noted that many of the security measures that Mr. Harding previously mentioned had not been implemented and should have been. He observed many of the measures mentioned could be implemented now at no additional cost to the taxpayer.

AB 294

DO PASS motion made by Mr. Rhoads; seconded by Mr. Webb. Motion approved.

AB 520

Motion to delete Section 2 from the bill made by Mr. Hickey; seconded by Mrs. Wagner. Motion approved. Mr. Webb voted NO.

DO PASS as amended made by Mr. Hickey; seconded by Mrs. Wagner. Motion approved.

SB 210

Mr. Alastuey referred to his previous testimony on SB 210 which replenishes the Reserve or Statutory Contingency Fund. He expanded on his previous testimony in which he said that after current obligations are paid, approximately $50,000 would remain as a cash balance. He said that from a cash standpoint that is true; but the approximately $63,000 of the special sick leave appropriation remains in the fund with which all outstanding obligations of the fund are being supported. He pointed this out as a matter of clarification to the Committee.

The meeting was adjourned at 10:45 a.m.

IN PREPARING FOR THESE REMARKS THIS MORNING, I NOTE THAT THE SUB-COMMITTEE ON PERSONNEL AND ADMINISTRATIVE PROGRAMS OF THE COURT SYSTEM MET IN THE LEGISLATIVE BUILDING IN CARSON CITY ON MAY 14 and 15, 1976, AT WHICH TIME, THEY HEARD DISTINGUISHED SPEAKERS FROM THROUGHOUT THE UNITED STATES DISCUSS THE FEASIBILITY OF AN INTERMEDIATE APPELLATE COURT SYSTEM FOR NEVADA. INCLUDED IN THAT GROUP WAS CHIEF JUDGE, HERBERT M. SCHWAB, OF THE OREGON COURT OF APPEALS. CHIEF JUDGE SCHWAB TOLD THE COMMITTEE THAT CALIFORNIA AND OTHER STATES IN THE WEST, AS WELL AS MOST OF THE EASTERN STATES, ALREADY HAVE INTERMEDIATE COURTS OF APPEALS, BECAUSE THE SUPREME COURTS, IN THOSE STATES ALONE, CANNOT HANDLE THE NUMBER OF CASES COMING BEFORE THE COURT. SCHWAB FOCUSED THE ATTENTION OF THE COMMITTEE ON THE TWO SEPARATE AND DISTINCT FUNCTIONS OF COURTS ON THE APPELLATE LEVEL: (1) THE LAW STATING FUNCTION IS BEST PERFORMED BY A SUPREME COURT SUPPLIED WITH AMPLE TIME FOR REFLECTION AND STUDY; (2) THE LAW APPLYING FUNCTION IS BEST PERFORMED BY THE INTERMEDIATE COURT OF APPEALS AS THE TASK INVOLVES PRIMARILY A REVIEW OF THE CASE TO DETERMINE IF THE LAW HAD BEEN CORRECTLY APPLIED IN THAT INSTANCE.

JUDGE SCHWAB NOTED THAT A JUSTICE CANNOT EXPECT A SUPREME COURT OF A STATE TO DO BOTH FUNCTIONS WHEN EACH

JUDGE IS FACED WITH ABOUT 60 OPINIONS YEARLY. IN CONTRAST, THE UNITED STATES SUPREME COURT, NOTED FOR ITS HIGH CALIBER OF PERSONNEL AND ADEQUACY OF RESEARCH FACILITIES, PROCESSES ONLY ABOUT 14 TO 15 OPINIONS PER YEAR PER JUDGE.

JUDGE SCHWAB STRESSED THAT AN INTERMEDIATE COURT OF APPEALS COULD HANDLE THE INCREASE IN CRIMINAL MATTERS AND APPELLATE WORK, AND THUS FREE THE JUDGES OF THE SUPREME COURT FOR THE LAW STATING DUTIES.

SCHWAB FURTHER REMINDED THE COMMITTEE THAT THE PRESENT POPULATION WOULD INCREASE BY 50% IN THE NEXT 10 YEARS, AND THAT THIS GROWTH WOULD BE ACCOMPANIED BY AN EVEN GREATER INCREASE IN CRIMINAL TRIALS. SCHWAB THEN SAID THERE ARE SEVERAL ALTERNATIVES FOR MEETING THE PROBLEM OF INCREASED APPEALS: (1) A STATE MAY EXPAND THE SUPREME COURT; (2) IT MAY, AS TEXAS AND OKLAHOMA, CREATE SEPARATE CRIMINAL COURTS; (3) OR A STATE MAY CREATE AN INTERMEDIATE COURT OF APPEALS.

SCHWAB THEN WENT ON TO FOCUS HIS REMARKS ON THE EXPERIENCE OF OREGON IN CREATING SUCH A COURT OF APPEALS. HE STRESSED AND REMINDED THE COMMITTEE THAT THE OREGON EXPERIENCE HAD NOT RESULTED IN THE CREATION OF YET ANOTHER LAYER OF TIME AND EXPENSE IN THE LITIGATION PROCESS. THE APPELLATE COURT DOES NOT HAVE A SEPARATE LIBRARY OR COURTROOM, AS THE FACILITIES ARE SHARED WITH THE SUPREME COURT.

I NOTED IN THE REPORT OF THE BARENGO COMMITTEE BULLETIN #77-3 OF THE LEGISLATIVE COMMISSION, SEPTEMBER 1976, ON PAGE 7, THE FOLLOWING RECOMMENDATIONS:

"FROM ITS HEARINGS AND ITS OWN DELIBERATIONS UPON MATERIAL SUPPLIED BY THE STAFF, THE SUBCOMMITTEE HAS PREPARED A SERIES OF RECOMMENDATIONS UPON SPECIFIC PROBLEMS FOUND. SOME OF THESE CAN BE CARRIED OUT IMMEDIATELY BY STATUTE, SOME CAN BE CARRIED OUT BY STATUTE IF CONSTITUTIONAL AMENDMENTS NOW PENDING ARE ADOPTED, AND SOME REQUIRE THE PROPOSAL OF CONSTITUTIONAL AMENDMENTS. EACH IS EXPLAINED BRIEFLY, WITH A REFERENCE TO THE DRAFT BILL OR CONSTITUTIONAL AMENDMENT OR THE TEXT OF THE RECOMMENDATION IF IT DEPENDS UPON A PENDING AMENDMENT.

A. INTERMEDIATE APPELLATE COURT. THE SUBCOMMITTEE IS FULLY PERSUADED THAT OVER THE LONG TERM THE CREATION OF AN INTERMEDIATE APPELLATE COURT WILL BE A MORE SATISFACTORY METHOD OF RELIEVING CONGESTION OF THE SUPREME COURT THAN ENLARGEMENT OF THE LATTER AND DIVISION INTO PANELS AS CONTEMPLATED BY S.J.R. 30 OF THE 57th SESSION. IF THE PANEL METHOD IS USED, CONFLICTS OF DECISION BETWEEN PANELS MUST BE RESOLVED BY THE FULL COURT, AND EXPERIENCE OF THE UNITED STATES COURTS OF APPEALS (OF WHICH THE NINTH CIRCUIT IS A CLASSIC EXAMPLE) DEMONSTRATES THAT THIS BECOMES UNWIELDY AS THE COURT INCREASES IN SIZE.

THE KEY TO EFFECTIVE USE OF AN INTERMEDIATE APPELLATE COURT IS TO KEEP BOTH ITS SIZE AND ITS JURISDICTION FLEXIBLE, SO THAT THOSE CATEGORIES OF CASES WHICH AT A PARTICULAR TIME ARE OVERLOADING THE SUPREME COURT MAY BE SIFTED THROUGH THE INTERMEDIATE COURT WITHOUT DEPRIVING ANY LITIGANT OF THE RIGHT TO ONE APPEAL, AND THE NUMBER OF JUDGES MAY BE INCREASED OR DIMINISHED AS THESE CATEGORIES AND THE NUMBER OF CASES IN THEM CHANGE . . . ."

I NOTE FROM THE MINUTES OF THE SENATE JUDICIARY COMMITTEE OF MARCH 30, 1977, THAT SENATOR DODGE STATED HE WAS ON THE INTERIM COMMITTEE THAT HEARD JUDGE SCHWAB'S TESTIMONY, AND THAT HE WAS IMPRESSED. THE SENATOR STATED THAT UN DER THIS INTERMEDIATE APPELLATE COURT PROCEDURE, "THAT YOU COULD GET SUBSTANTIALLY MORE MILEAGE OUT OF EACH ADDITIONAL JUDGE THAT IS APPOINTED ON THAT INTERMEDIATE COURT BY WHAT IS REFERRED TO IN OUR BILL AS A PANEL OF 3."

AS YOU KNOW, THE RESOLUTION DID PASS THE LEGISLATURE, AND IS NOW BEFORE YOU FOR THE SECOND TIME. WE COULD PRODUCE ALL OF THESE DIGNITARIES AGAIN TO REPEAT WHAT THEY TOLD YOU TWO YEARS AGO, BUT I DON'T THINK THAT ADDITIONAL EXPENSE IS WARRANTED, AND I HOPE NOT NECESSARY. SUFFICE IT TO SAY THAT IF YOU THOUGHT AN INTERMEDIATE COURT WAS WARRANTED IN 1977, THE CASE IS EVEN STRONGER FOR ITS CREATION TODAY THAN IT WAS THEN. FOR INSTANCE, AT THE CLOSE OF THE YEAR 1977, THERE WERE 1,351

FILINGS, AND AT THE YEAR'S END, THERE REMAINED, UNDISPOSED, 453 CASES. AT THE END OF 1978, THERE HAD BEEN 1,484 FILINGS, AND AT THE YEAR'S END, THE INVENTORY OF UNDISPOSED CASES AMOUNTED TO 667. CERTAINLY, IT DOES NOT TAKE A PROPHET OR ONE WITH A CRYSTAL BALL TO APPRECIATE THE DYNAMIC GROWTH OF THIS GREAT STATE, PARTICULARLY IN THE TWO METROPOLITAN AREAS OF THE SOUTH AND THE NORTH, AND CERTAINLY AS I POINTED OUT IN MY REPORT TO YOU, WE ARE WELL AWARE OF WHAT I THINK IS OUR GREATEST PROBLEM -- CRIME, WHICH IS OF TREMENDOUS CONCERN TO OUR CITZENRY.

I WOULD RESPECTFULLY URGE THAT YOU APPROVE THE PASSAGE OF THE PENDING LEGISLATION CREATING THE APPELLATE COURT, SO THAT THE PEOPLE OF OUR STATE CAN BE GIVEN AN OPPORTUNITY TO DECIDE WHETHER THEY WANT THIS ADDITIONAL SERVICE.

Cost Reductions From Supreme Court

Personnel	$173,035	
Operating	40,000	
	$213,035	
Net Costs		$382,686[7]

[1]At current cost. The salaries are calculated using the current compensation schedule and would be based on to legislatively approved cost of living increases. Other costs are at present prices. No inflation has been added.

[2]These positions have been requested by the Supreme Court at this session to deal with the caseload facing the court. It is intended that if these positions are approved, and if AJR 2 passes the Legislature and the general election, these positions will be transferred to the Intermediate Appellate Court upon its creation.

[3]The in-state travel is based upon the court sitting in one location. If the court sits in two locations, or more, the costs would rise accordingly.

[4]The operating costs are based upon current costs with no allowance for inflation. They are also predicated upon shared resources with the Supreme Court. If the Intermediate Appellate Court does not sit in close physical proximity to the Supreme Court, these costs would be higher.

[5]First year costs only. After the initial outlay, costs be roughly $2,000 per year.

[6]First year costs only This would provide filing equipment. Annual costs would be approximately $2,000.

[7]Does not include facilities cost and is a first year total.

The cost after the first year, again based on current costs and salaries, would drop to $350,000, exclusive of facilities.

There are currently no facilities available for an Intermediate Appellate Court in the Supreme Court Building. The Public Works Board prepared an estimate for an addition to the building, but that project was dropped from the priority list. If the Intermediate Appellate Court sits in other facilities, the estimated lease would cost approximately $42,000 per year (based on 5,000 square feet at 70¢ per month) in addition to the increased operating costs.

If the Intermediate Appellate Court is physically separate from the Supreme Court, the estimated annual cost is between $400,000 and $425,000 per year, based on current costs and salaries.

COST ESTIMATES
Intermediate Appellate Court

Item	Amount
Salary[1]	
Judges (3)	$135,375
Management Asst. IV (3)	38,280
[2]Law Clerks (3)	52,569
[2]Legal Advisor	26,674
[2]Legal Assistants (5)	91,670
Clerk	17,974
[2]Student	2,895
[2]Management Asst. II	10,680
[2]Administrative Aide II (3)	22,761
	$398,878
Employer Costs[1]	55,843
	$454,721
Travel[1]	
In-State[3]	$ 3,000
Out-of-State	2,000
	$ 5,000
Operating[4]	
Office Supplies	$ 8,000
Operating Supplies	5,000
Communication Expense	15,000
Print., Dupl., Copying	40,000
Contractual Services	18,000
Other	5,000
	$ 91,000
Equipment[1]	
Office Furniture & Equip.[5]	$ 20,000
Other Furniture & Equip.[6]	25,000
	$ 45,000
TOTAL COSTS	$595,721[7]

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