

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Steve Morris at 10:45 a.m. on January 26, 2001 in Room 123-S of the Capitol.

All members were present except: Senator David Adkins - excused
Senator Jim Barone - excused
Senator Dave Jackson - excused

Committee staff present:

Alan Conroy, Chief Fiscal Analyst, Kansas Legislative Research Department
Debra Hollon, Kansas Legislative Research Department
Amory Lovin, Kansas Legislative Research Department
Michael Corrigan, Assistant Revisor, Revisor of Statutes Office
Julie Weber, Administrative Assistant to the Chairman
Carolyn Rampey, Kansas Legislative Research Department
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Justice Edward Larson, Kansas Supreme Court
Terry Humphrey, Kansas Trial Lawyers
Ed Collister, Practicing Attorney, Lawrence
Kathy Porter, Office of Judicial Administration

Others attending: See attached guest list

Bill Introductions

Senator Jordan moved, with a second by Senator Schodorf, to introduce two bills (1rs0222) concerning wildlife and parks relating to certain fees and (1rs0025) concerning fishing licenses. Motion carried by a voice vote.

The Chairman opened the public hearing on:

SB 49 – Submittance of judicial branch budget to the legislature without executive branch revision

Staff briefed the Committee on the bill (Attachment 1). Committee questions and discussion followed.

Proponents:

Chairman Morris welcomed Justice Edward Larson, Kansas Supreme Court, Hays, Kansas, who spoke in support of **SB 49**. (No written testimony was submitted.) Justice Larson spoke to the Committee regarding the role of departmental justice toward the judicial branch in the budget process. He noted that the judicial branch feels that its budget has been reduced as far as possible before it is approved by the Supreme Court and the additional review by the staff of the executive branch is not necessary. The Chairman thanked Justice Larson for his appearance before the Committee.

Chairman Morris welcomed Terry L. Humphrey, Executive Director, Kansas Trial Lawyers Association (Attachment 2). Ms. Humphrey mentioned that the Kansas Trial Lawyers Association supports **SB 49** which would allow the judicial branch to submit its annual budget directly to the Kansas Legislature for consideration. The Chairman thanked Ms. Humphrey for appearing before the Committee.

Chairman Morris welcomed Edward G. Collister, Jr., practicing attorney, Lawrence, Kansas (Attachment 3). Mr. Collister urged approval of **SB 49**. The Chairman thanked Mr. Collister for appearing before the Committee.

CONTINUATION SHEET

Chairman Morris welcomed Kathy Porter, Office of Judicial Administration (Attachment 4). Ms. Porter mentioned that **SB 49** would delete from current law the Director of the Budget's authority to review and make recommendations for proposed changes in the judicial branch budget. This would allow the judicial branch budget to be presented directly to the Legislature without the budget cuts traditionally made by the Division of the Budget and the Governor. The Chairman thanked Ms. Porter for her appearance before the Committee.

Written testimony was received from Jill Docking, Co-Chairperson, Kansas Citizens' Justice Initiative, in support of **SB 49** (Attachment 5).

Senator Morris mentioned that the public hearing on **SB 49** will continue during the week of January 31, 2001.

The meeting was adjourned at 11:25 a.m. The next meeting is scheduled for January 29, 2001.

**SENATE WAYS AND MEANS COMMITTEE
GUEST LIST**

DATE January 26, 2001

NAME	REPRESENTING
Duane Goossen	DOB
Edward Larson	SC
PATRICIA HENSHALL	OJA
Jerry Sloan	OJA
Kathy Pulte	OJA
Howard Schwartz	OJA
Paul Davis	KS Bar Assn.
Tom Kumpke	KS Trial Lawyers Assn.
Ed Calcutt	KBA
← HELBY → SMEX	—
JACK FOWLER	KS Sup LT
C Nat Riley	KDWP
Gina Brunner	Aderico Consulting
Melinda Gaul	DOB
Jeff Ayon	Division of the Budget
Aaron Durrell	DOB

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January 26, 2001

To: Senate Ways and Means Committee

From: Carolyn Rampey, Principal Analyst

Re: Senate Bill No. ~~46~~ 46 49

SB 49 was introduced on behalf of the Judicial Branch and would exempt the Judicial Branch from certain steps in the budget process that currently apply to all state agencies.

Under current law:

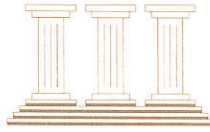
- State agencies have to file budget estimates for the next fiscal year with the Division of the Budget by October 1.
- Statutes specifically dealing with the Judicial Branch (KSA 2000 Supp. 20-158) require that the Judicial Branch's budget be submitted to the Division of the Budget and that the Budget Director review the budget and, if appropriate, propose changes in the budget to the Legislature.
- Under current law, agencies must be notified of any changes to their budget requests by November 1. Agencies may request a hearing before the Secretary of Administration on their tentative budgets, which must be held no later than December 15.
- Agency budget requests and the Governor's recommended funding for each agency must be included in the *Governor's Budget Report* presented to the Legislature at the beginning of each session.

SB 49 applies to the budget of the Judicial Branch and would delete the authorization for the Budget Director to review the budget and recommend changes to the Legislature (page 1, lines 29-30). In addition, it would prohibit the Director of the Budget from revising the budget as submitted by the Judicial Branch (page 2, lines 10-12). SB 49 further provides that the budget estimate for the Judicial Branch, as it was submitted to the Budget Director, shall be included in the *Governor's Budget Report*.

SB 49 is similar to HB 2450, which was introduced during the 1999 Session and died in the House during the 2000 Session.

CR/aem

Senate Ways and means
1-26-01
Attachment 1



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Ways and Means Committee

FROM: Terry L. Humphrey
Executive Director
Kansas Trial Lawyers Association

RE: 2001 SB 49

DATE: Jan. 26, 2001

Sen. Morris and members of the Senate Ways and Means Committee, thank you for the opportunity to comment on Senate Bill 49 which proposes a change in the budgeting process for the judicial branch.

It is vital to all Kansans that their constitutional right to “justice administered without delay” is assured at all levels. The availability of adequate resources for the judicial branch of Kansas government is a major component to protecting that constitutional right. The Legislature has recognized the inadequacies in the judicial budget and taken steps over the past several years to improve judicial funding and address the resource needs of the judiciary.

KTLA supports SB 49, allowing the judicial branch to submit its annual budget directly to the Kansas Legislature for consideration. The Kansas and U.S. Constitutions are based on the principle of separation of powers between three co-equal branches of government. This bill appropriately recognizes the judiciary as a separate and equal branch of government and would allow the Legislature a full and accurate view of the needs of the judicial branch.

Thank you for allowing us to comment on SB 49 and we respectfully request your support.

Terry Humphrey, Executive Director

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E-Mail: triallaw@ink.org

*Senate Ways and Means
1-26-01
Attachment 2*

TESTIMONY BEFORE THE
SENATE WAYS AND MEANS COMMITTEE
Re: Senate Bill 49

January 27, 2001

Ladies & Gentlemen:

Thank you very much, ladies and gentlemen, for allowing me to testify concerning SB 49. After I learned of the hearing earlier this week, I gave some thought to how I might approach this topic so that we all might have some feeling for what is happening to the judicial system in the first place, and secondly why this legislation is significant. After some thought I decided to consider several different subjects in some detail.

The first issue that occurred to me is to consider why legislation about the judiciary's operation, and how it is funded for operation, should be significant to every one of us. Having practiced law going on 37 years it has been common place for me to hear or read about a lawyer's interest in the judicial system as being nothing more than protecting the lawyers' collective turf. It is commonly perceived that courts ultimately are important to lawyers because it is important to the lawyer's pocketbook. If you think about that approach for just a minute, the fallacy in the conclusion is apparent. Lawyers represent clients who are the ones that ultimately pay them. Regardless of the efficiency of the judicial system lawyers will have clients and those clients will be obligated to pay for services. If the court system runs badly, is adequate, is inadequate, etc., there will still be lawyers in court representing their clients. The lawyers are still going to have the

Senate ways and means
1-26-01
Attachment 3

same clients that they would otherwise have, and they are still going to have to be compensated for their services just like any other business person. So to say that lawyers work to assist the judicial system or ask for improvements or benefits in the system simply to feather their own nest is inaccurate.

Think about who are the true patrons or customers of the services offered by the judicial branch. It is not the lawyers, it is the clients. It is people like all of you and every other citizen of the State of Kansas who may have a legal problem that has to be resolved in the court. And, it does not even have to be a bad legal problem. Lawyers protect the individual rights of citizens in criminal cases, juvenile cases, civil cases, divorce cases, probate cases, business related cases, property related cases, and others. One never knows when there will be a legal problem to be faced, that unfortunately results in an adjudication of rights in court. It is those who need the services of the court; the clients, or in other words the average person, whose interests lawyers advocate in the courts. Ultimately, if the judicial system is not provided with adequate resources to operate, it is the citizen who suffer, or in other words your constituents, not the lawyer.

Let me take a minute to give you just one example. Five years ago, after the criminal sentencing guidelines were adopted by this legislature, I represented a young man who had been charged with a first-degree murder and child abuse in a case in which he was accused of participating in the child's death; a shaken baby syndrome case. The issue was whether or not he caused the death or was an innocent bystander. There was a trial; he was acquitted of first-degree

murder and was convicted of a felony child abuse. I handled only the appeal. From the time his jail time started applying to his sentence until the time the appeal was over he had served the entire guidelines sentence for the crime. The Appellate Court set aside the conviction and sent the case back for further proceeding. I thought were pretty clear severe errors that occurred in the trial. After realizing that the law precluded being charged with both of those crimes for the same incident, in other words being charged in violation of double jeopardy protection, the case was dismissed. This young man has no felony record, his constitutional rights were protected, principally based on pretty strong evidence produced during the trial that factually he did not commit the crime, but regardless he had still served the entire sentence even though he was innocent. He could not afford bond during the process; his lawyers were court appointed; the result being he was in custody all the time until the conviction was reversed. That result does not sit well. His case was in the system that long in part because of the press of business. The length of time cannot be attributed solely to the appellate system because there were lack of resources throughout the system, *i.e.*, court reporter, clerk's office, trial court, attorney preparation, as well as the time on appeal, that contributed to the delay. One significant cause through the system is lack of resources to handle the case load. Now, some of that delay that was attributable to the appellate system has been alleviated. There are plans that hopefully will be brought to fruition to increase the number of court of appeals judges. But, the system is not functioning smoothly. And, it

is not the judges who suffer, it is not the lawyers who suffer, it is the parties, the customers who suffer. If you think that criminal cases are the only area where problems occur, you are wrong. Comparable problems occur in civil cases, divorce cases, every type of case that may go to court.

So, please consider this perspective. Everything that happens in your judicial system relating to disposition of cases is most important to your constituents, not to me or other lawyers.

I know that this is a committee that considers finances. I am sure you have a lot of statistics that you collectively consider about the business of operating state government. I am sure you know a heck of a lot more about state finances than the rest of us. But, the issue of placing judicial branch operations in perspective to the entire state finance picture is interesting. And, relatively speaking, the response to the financial needs of the judicial branch is major in amount comparatively. I got so interested in this topic last year that I took the time to collect information and write an article for a legal publication. If you are interested, it can be found at Volume 9, No. 2 of the Kansas Journal of Law and Public Policy, Winter 1999. I did not write this article for lawyers. I wrote it for anyone who has an interest in how the judicial branch of government is operating, how it is functioning and what are the stresses that it is facing.

I discovered some very interesting statistics. I want to share just a few of them with you. The statistics concerning the court activity have been updated to reflect fiscal year 1999 figures.

Judicial Business Increase (not including traffic)

Civil Case Filings

FY	1990	131,441
FY	1999	<u>185,376</u>
		41% increase

Felony Case Filings

FY	1990	11,436
FY	1999	<u>19,007</u>
		66% increase

Misdemeanor Case Filings

FY	1990	16,919
FY	1999	<u>19,977</u>
		18% increase

These statistics show a tremendous increase in business. The increase is all the more significant because the increase in felony case filings is the greatest. Due to constitutional protections, felony criminal cases are the cases that really drive the court system. Compare those increases in business with the increase in both non-judicial personnel and judges, the people who administer to that increase in business.

Judiciary - Employee Changes 1990-1999

Appellate Judges	0% increase
District Court Judges	4% increase
Non-judicial personnel	7% increase

In addition, the individual case load of judges has increased by 80% between 1992 and 1999.

And, if one were to speculate whether in general today's proceedings were more complicated or less complicated, one would quickly conclude the proceedings are much more complicated on the average.

Next, one could say that while the business of the judicial branch has gone up, so has their budget. Well, that is true but let me give you two other kinds of comparisons that should impact one's perspective. The budget of the executive branch of government has increased from 4.6 billion in 1990 to 8.2 billion in fiscal 1999, a 78% increase. The increase of the judicial branch of government budget has increased from 57.9 million in 1990 to 78.9 million in 1999, a 36% increase. In fiscal 1999 the budget of SRS was 18.86 times the total budget of the entire judicial branch of government. The following examples are all in the same year. The budget of Wichita State University was 1.55 times the entire budget of the judicial branch of government. The budget of the Department of Adult Corrections was 1.26 times the entire budget of the judicial branch of government. If you add in the budget of the Juvenile Justice system, the total corrections budget was 2.73 times the total budget of the entire judicial branch of government. What is particularly interesting about the corrections department budget is the following. DOC gets its entire business from the court system. DOC's business from the court system is solely from felony convictions. Felony case filings, which is a greater number than convictions, make up only approximately 7% of the business of the judicial branch of government, albeit a

very significant impact-wise portion of business (The Exhibit attached addresses figures and sources of data.)

Here are some personnel statistics for fiscal 1999:

Judicial branch:	1,787 non-judicial personnel
SRS:	4,182
Kansas State University:	3,145
Kansas University:	4,514
Wichita State University:	1,731
Department of Corrections:	3,046
Juvenile Justice:	608

Relatively speaking, the budget of the judicial branch of government is not a big item in the total scheme of state financial considerations. Remember my client who served 32 months in prison even though he was determined to be innocent of a crime; which equaled the total sentence in the case. It would have cost the State of Kansas, according to estimates given me, approximately \$275,000.00 a year to add a judge to the court of appeals to help speed up disposition of cases. Almost 3 years of this young man's life was gone. How many dollars could have avoid or significantly impacted that problem for a number of similarly situated individuals? A minuscule figure relative to the loss of significant years of one's life. Compared to the amount of money that some state agencies receive it would have been a drop in the bucket.

Some may say that is all well and good but last year we provided additional money for non-judicial personnel. You did. Thank you very much. The clerk's offices that I have talked to are most appreciative. But, the job is not yet completed. Starting position wages are more competitive for helping

positions in clerk's and other judicial branch jobs. But, compared to other governmental jobs of like quality once you get past the initial two steps in the pay scales for those jobs, gross disparities between non-judicial personnel and other governmental entity comparable positions exist. Consequently, the judicial branch is asking for help again this year.

However, the issue today is not precise needs, but the structure of the system to considering budget requests. The bill before you allows the judicial branch to submit its budget directly to the legislature as opposed to requiring that it receive approval and be processed through the executive branch process. Why should that issue make a difference? It makes a difference for several reasons. The first reason is a legal and constitutional one. History, political science classes, and legal circles regularly consider in discussions of government the doctrine of separation of powers. Basically it means that there are in many constitutions in the United States and particularly in the Kansas constitution a division of the sovereign individual's grant of power to a government is split into three separate, but equal, branches of the government. One is the legislature to make the laws; one is the executive to enforce the laws; and one is the judicial branch to interpret the laws. This structure establishes the position of an independent judiciary. For example, the current Kansas statute book containing the Constitution of the State of Kansas indicates there are three articles or sections of the main body of the constitution. Article 1 is the executive, Article 2 is the legislative, and Article 3 is the judicial. The constitution grants powers to

each of these three equal branches of government to carry out its particular function.

To my knowledge this legislature does not submit its budget to the governor for approval. You may send to the executive branch information concerning the budget you are considering for yourselves, but you do not ask the executive to approve it. The other equal branch of government, the judicial branch, however, is currently required to send its budget to the executive branch for approval and recommendation prior to it coming to you. As a theoretical matter why should the judicial branch be any different than the legislative branch? They are each independent; they are each equal. The person who divides up the money to spend it, the legislature, ought to consider how to do that in the first instance for both the other co-equal branches of government.

In addition to the constitutional argument, the practical effect of the process and its results also suggest the same result.

1. Consider that the Governor supervises the state agencies. They are all part of the executive branch of government, and they are all responsible for enforcement of the law. That means that the Governor (the executive) should (a) consider the responsibilities, obligations, duties, efficiency, and ability to handle tasks for the agencies of law enforcement (which is all the agencies) he supervises; and (b) that the executive should be responsible for the direction and reduction or increase in services, wherever applicable.

When we consider the judicial branch, however, the Governor (a) does not and constitutionally cannot supervise the judiciary and therefore cannot consider the substance of the judiciary's responsibilities, obligations, duties, the efficiency and ability of the judiciary to handle its tasks the way the executive would for the agencies; and (b) does not and constitutionally cannot be responsible for the direction of the judicial branch or the reduction or increase in services, wherever applicable. The judicial branch is simply not within the ambit of responsibility of the executive.

Is the executive going to be more considerate of the financial requests for budget purposes of the agencies whom the executive supervises, or the judicial branch over which the executive has little or no authority? And particularly, is the executive qualified, even in the face of the constitutional prohibitions, of supervising the direction and degree of services of the judicial branch? The answer to both question has to be no.

2. The next practical problem in requiring the executive to approve the budget of the judicial branch is the built-in conflict of interest involved. Human nature being what it is, if the choice of how to spend dollars is between one or more agencies for which the executive is responsible, including the responsibility of direction and degree of services, versus a branch of government over which the executive has no responsibility and no authority in the area of direction and degree of services, who do you think is going to get any benefit of

the doubts for dollars or any apportionment of contested dollars during the budget process? I do not believe it is going to be the judicial branch.

For years the Kansas judiciary did send their budget directly to the legislature. That process was apparently changed in about 1972 following court unification, at a time when there was no appreciable administrative arm of the Supreme Court, a condition that is not so today. The administrative arm of the Supreme Court today does have the capability of performing the tasks that it did not have contemporaneously with court unification.

It would be an understatement to say that it is difficult to get lawyers to agree as a group on issues. I have been on the Board of Governors of the Bar Association for four years and I have consulted others who were there before me; there is overwhelming if not unanimous support among the lawyers for the proposition that the judicial budget should be sent directly to the legislature. I urge you to recommend approval of SB 49.

Yours very truly,



Edward G. Collister, Jr.
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(785) 842-3126

COMPARISONS:

Executive	FY	1999	\$8,213,680,712 ¹	
	FY	1990	\$4,611,614,632 ²	
Judicial	FY	1999	\$78,924,366 ³	
	FY	1990	\$57,946,099 ⁴	
Executive	FY	1999	FTE Positions	39687.2 ⁵
Judicial	FY	1999	FTE Positions	2035 ⁶

Judicial Business Increase (not including traffic)

Civil Case Filings

FY	1990	131,441 ⁷
FY	1999	<u>185,376⁸</u>
		41% increase

Felony Case Filings

FY	1990	11,436 ⁹
FY	1999	<u>19,007¹⁰</u>
		66% increase

Misdemeanor Case Filings

FY	1990	16,919 ¹¹
FY	1999	<u>19,977¹²</u>
		18% increase

¹ Governor's Budget Report, Vol. 1, Fiscal Year 2001, Schedule 2.1, p. 223.

² Governor's Budget Report, Vol. 1, Fiscal Year 1992, Schedule 2.1, p. 191.

³ Governor's Budget Report, Vol. 1, Fiscal Year 2001, Schedule 2.1, p. 223.

⁴ Governor's Budget Report, Vol. 1, Fiscal Year 1992, Schedule 2.1, p. 191.

⁵ Governor's Budget Report, Vol. 1, Fiscal Year 1999, Schedule 7.

⁶ Annual Report of the Courts of Kansas, Fiscal Year 1999, draft; Governor's Budget Report, Vol. 1, Fiscal Year 1999, Schedule 7.

⁷ Annual Report of the Courts of Kansas, Fiscal Year 1990-1991, p. 1.

⁸ Annual Report of the Courts of Kansas, Fiscal Year 1999, p. 3.

⁹ Annual Report of the Courts of Kansas, Fiscal Year 1990-1991, p. 1.

¹⁰ Annual Report of the Courts of Kansas, Fiscal Year 1999, p. 3.

¹¹ Annual Report of the Courts of Kansas, Fiscal Year 1990-1991, p. 1.

¹² Annual Report of the Courts of Kansas, Fiscal Year 1999, p. 3.

Appellate - Filing Changes

Filings Commenced

FY	1990	1487 ¹³
FY	1999	2073 ¹⁴

Motions

FY	1990	5361 ¹⁵
FY	1999	9409 ¹⁶

Relative Comparison Budget Increases 1990 to 1999

Executive Budget	78.58 times judiciary budget in 1990 ¹⁷
Executive Budget	103.07 times judiciary budget in 1999 ¹⁸

Judiciary - Employee Changes 1990-1999

Appellate Judges	0% increase ¹⁹
District Court Judges	4% increase ²⁰
Non-judicial personnel	7% increase ²¹

Per Judge Case Load

1992	.1333 ²²
1996	.2322 ²³
1999	.2113 ²⁴

Agency versus Judiciary comparisons

Social Rehabilitation Services	17.51 times judiciary ²⁵
Wichita State University	1.57 times judiciary ²⁶
Department of Corrections	1.21 times judiciary ²⁷

¹³ Annual Report of the Courts of Kansas, Fiscal Year 1990-1991, p. 139.

¹⁴ Annual Report of the Courts of Kansas, Fiscal Year 1999, p. 141.

¹⁵ Annual Report of the Courts of Kansas, Fiscal Year 1990-1991, p. 142.

¹⁶ Annual Report of the Courts of Kansas, Fiscal Year 1999, p. 144.

¹⁷ Governor's Budget Report, Vol. 1, Fiscal Year 1992, Schedule 2.1, p. 191

¹⁸ Governor's Budget Report, Vol. 1, Fiscal Year 2001, Schedule 2.1, p. 223.

¹⁹ Annual Report of the Courts of Kansas, Fiscal Year 1999, p. 148-48; Annual Report of the Courts of Kansas, Fiscal Year 1990-1991, p. 145-46.

²⁰ Annual Report of the Courts of Kansas, Fiscal Year 1999, p. 156-57; Annual Report of the Courts of Kansas, Fiscal Year 1990-1991, p. 148-155.

²¹ Governor's Budget Report, Vol.2, Fiscal Year 1992, p. 351, 353; Annual Report of the Courts of Kansas, Fiscal Year 1990-1991, p. 145-46, 148-155; Governor's Budget Report, Vol. 2, Fiscal Year 2001, p. 284, 286; Annual Report of the Courts of Kansas, Fiscal Year 1999, p. 148-149, 156-57.

²² Annual Report of the Courts of Kansas, Fiscal Year 1992-1993.

²³ Annual Report of the Courts of Kansas, Fiscal Year 1995-1996.

²⁴ Annual Report of the Courts of Kansas, Fiscal Year 1999, p. 155.

²⁵ Governor's Budget Report, Vol. 1, Fiscal Year 2001, Schedule 2.1, p. 223.

²⁶ Governor's Budget Report, Vol. 1, Fiscal Year 2001, Schedule 2.1, p. 224.

²⁷ Governor's Budget Report, Vol. 1, Fiscal Year 2001, Schedule 2.1, p. 224.



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Testimony on Senate Bill 49
Senate Ways and Means Committee
January 26, 2001

Kathy Porter

Office of Judicial Administration

The preparation and submission of the Judicial Branch budget is perhaps the single most important responsibility of the Kansas Supreme Court in its duty to administer the operations of the Kansas district and appellate courts. Without the appropriation of the necessary level of funding, our courts are unable to provide required services. Virtually all Judicial Branch operations are mandated by the Kansas Constitution or Kansas statutes.

Senate Bill 49 would delete from current law the Director of the Budget's authority to review and make recommendations for proposed changes in the Judicial Branch budget. This would allow the Judicial Branch budget to be presented to the Legislature without the budget cuts traditionally made by the Director of Budget and the Governor.

Prior to court unification, the Supreme Court did submit its budget directly to the Legislature. The Judicial Study Advisory Committee, which recommended court unification statewide in the 1970s, recommended that this practice continue, and made the following recommendation about the Judicial Branch budget:

The present practices of forwarding the Supreme Court approved state court budget to the Legislature without amendment by the Governor should be continued. To permit the Governor to amend the court budget prior to its submission to the Legislature would be to treat the court system as an arm of the Executive Branch, which it is not.

When the Chief Justice spoke with you, she noted that, in the early years of court unification, some assistance from the Division of the Budget was viewed as a helpful measure when the salaries of district court personnel were added into what had been the Supreme Court's budget. In 1978, K.S.A. 20-158 was amended to allow the Director of the Budget to make "recommendations to the legislature for proposed changes" in the budget as the Director deemed "necessary and appropriate."

*Senate ways and means
1-26-01
Attach # 4*

In 1985, the Judicial Council Court Unification Advisory Committee, which was created as a result of a request from the Legislative Coordinating Council (the LCC) to review court unification, included the following statement in its report:

The Committee agrees in principle with the position of the Supreme Court that the Judicial Branch budget should be submitted to the Legislature, without change, as it was submitted to the Director of the Budget by the Chief Justice. The Committee goes somewhat further and suggests that the Court's budget be submitted directly to the Legislature.

The Committee went on to recommend an amendment to K.S.A. 20-158 that required the Chief Justice to submit the Judicial Branch budget to the Legislature and deliver a copy of the budget to the Governor. The Committee recommended deleting the sentence in K.S.A.20-158 stating the Director of the Budget "shall review and make such recommendations to the legislature for proposed changes in such budget as the director deems necessary and appropriate." The Committee's recommendations were not carried out. Attachment A shows the relevant current and historical statutory language.

Direct submission of the Judicial Branch budget could help to focus both legislative and judicial time and energy on the real issues present in the Judicial Branch budget, rather than focusing on cuts made by the Executive Branch.

Approximately 97% of the funding in the Judicial Branch budget goes toward salaries. The remainder is used for other operating expenses (OOE). Jerry Sloan is going to go over Attachment B from the Chief Justice's remarks, which shows the recent history of Judicial Branch SGF expenditures for OOE.

Your collective memories will be correct when you recall that you have added positions and funding year after year to the Judicial Branch budget. Those positions, however, have not resulted in a significant increase to the Judicial Branch workforce. Positions added from 1993 until 1998 have only filled in a hole created by the loss of 54.5 FTE positions in FY 1992, due to a 1% across-the-board State General Fund cut. In FY 1998, after several years of the Legislature adding positions, the Judicial Branch reached the same level of FTE staffing that it had in FY 1991. Attachment C shows the history of district court nonjudicial personnel from FY 1991 to FY 2001. Again, Jerry Sloan will provide that attachment.

In 1997, the Legislative Post Audit report, *Reviewing the Kansas Court System's Allocation of Staff Resources to the District Courts*, noted that, from 1987 to 1996, the court system experienced a 40% increase in caseload growth, excluding traffic cases. During the same time period, the report notes, the number of judges grew 4% and the number of nonjudicial personnel grew 7%. Since that time, matters have not improved. The caseload growth from 1987 to 2000 was 51.9%, with a 10% increase in both judges and nonjudicial personnel.

The situation with the Judicial Branch turnover rate is no different than the FTE situation. When the budget comes to you, as it does this year, with a turnover rate that cannot be met without a crippling hiring freeze and a significant cut in OOE expenditures, providing the Judicial Branch with a workable budget places the Legislature in the extremely difficult position of adding funding when every dollar you add must be cut from some other program. While the Judicial Branch budget has experienced growth over the past few years, that growth does not come close to meeting the level of caseload growth with which we have had to contend. The Judicial Branch cannot continue to absorb more and more cases and duties with few additional staff. Attachment D shows nine years of the hiring freeze history with which we have had to contend, and this has further complicated our personnel situation.

Amending current law to allow the Judicial Branch budget to be submitted directly to the Legislature does not change the budgetary bottom line. As always, the Judicial Branch would be able to spend only the amount of funding appropriated or approved by the Legislature. The same budget analysis and legislative review would take place. Any amount requested by the Judicial Branch and not approved by the Legislature would simply be available for the Legislature to spend on other items, or would remain unexpended in the State General Fund.

One question that has arisen is how this proposal would impact the 7.5% ending balance requirement. The Governor could simply include the Judicial Branch budget request in calculating the level of expenditures he could recommend under the ending balance law. Attachment E shows a five-year history of the amount the Judicial Branch requested from the State General Fund, the Governor's recommendation, the dollar difference between the two amounts, the total State General Fund expenditures the Governor recommended for that year, and the difference expressed as a percentage of total recommended State General Fund expenditures.

Including the entire amount included in the Judicial Branch budget estimate as an expenditure in the Governor's budget recommendation would not significantly decrease the amount of funding available to the Governor. While it is true that the total amount included in the Judicial Branch's budget request from the State General Fund always exceeds the amount recommended by the Governor, the amount requested in excess of the amount recommended is only a fraction of a percent of the total State General Fund budget.

Thank you for your consideration of Senate Bill 49.

Judicial Branch Budget Submission to Governor Issue
History of Statutory Provisions

L.1976, Ch. 146, §42

New Sec. 42. The chief justice of the supreme court shall be responsible for the preparation of the budget for the judicial branch of state government, with such assistance as the chief justice may require from the judicial administrator and shall submit to the director of the budget, at the time prescribed by law, the annual budget request for the judicial branch of state government for inclusion in the annual budget document for appropriations for the judiciary.

L. 1978, Ch. 108, §5

Sec. 5. K.S.A. 1977 Supp. 20-158 is hereby amended to read as follows: 20-158. The chief justice of the supreme court shall be responsible for the preparation of the budget for the judicial branch of state government, with such assistance as the chief justice may require for the judicial administrator ~~and, the chief judge of the court of appeals and the administrative judge of each judicial district.~~ *Each district court and the court of appeals shall submit their budget requests to the chief justice in such form and at such time as the chief justice may require. The chief justice shall submit to the director of the budget, at the time prescribed by law, the annual budget request for the judicial branch of state government for inclusion, without any changes therein, in the annual budget document for appropriations for the judiciary. Such budget shall be prepared and submitted in the manner provided by K.S.A. 75-3716 and 75-3717.*

L. 1979, Ch. 290, §1

Section 1. K.S.A. 1978 supp. 20-158 is hereby amended to read as follows: 20-158. The chief justice of the supreme court shall be responsible for the preparation of the budget for the judicial branch of state government, with such assistance as the chief justice may require from the judicial administrator, the chief judge of the court of appeals and the administrative judge of each judicial district. Each district court and the court of appeals shall submit their budget requests to the chief justice in such form and at such time as the chief justice may require. The chief justice shall submit to the director of the budget the annual budget request for the judicial branch of state government for inclusion, ~~without any changes therein,~~ in the annual budget document for appropriations for the judiciary. Such budget shall be prepared and submitted in the manner provided by K.S.A. 75-3716 and K.S.A. 1978 Supp. 75-3717. *The director of the budget shall review and may make such recommendations to the legislature for proposed changes in such budget as the director deems necessary and appropriate.*

Attachment A

Judicial Branch SGF Request History

Judicial Branch SGF Request	Governor's Recommended SGF	Difference	Total Governor's Recommendation for SGF Expenditures*	Difference as a Percentage of SGF Recommended Expenditures
FY 2001 \$82,415,555**	\$77,502,339	\$4,913,216	\$4,425,900,000	0.11% (eleven one-hundredths of one percent)
FY 2000 \$79,189,087	\$76,404,385	\$2,784,702	\$4,419,200,000	0.06% (six one-hundredths of one percent)
FY 1999 \$74,838,457	\$73,645,877	\$1,192,580	\$4,082,200,000	0.03% (three one-hundredths of one percent)
FY 1998 \$70,245,773	\$69,508,739	\$737,034	\$3,753,100,000	0.02% (two one-hundredths of one percent)
FY 1997 \$69,672,067	\$66,913,844	\$2,758,223	\$3,521,800,000	0.08% (eight one-hundredths of one percent)

*Amounts rounded to the nearest million as noted in *The Governor's Budget Report*.

**FY 2001 requested expenditures exclude funding of \$2,364,646 requested for the Nonjudicial Salary Initiative, which later was amended as a request from docket fees.

This table shows a five-year history of the amount requested from the State General Fund, the Governor's recommendation, the dollar difference between those two amounts, the total State General Fund expenditures recommended, and the difference expressed as a percentage of total recommended State General Fund expenditures.

January 26, 2001

The Honorable Stephen Morris
Chairperson, Senate Ways and Means Committee
Room 123-S, Statehouse
Topeka, Kansas 66612

Dear Senator Morris and Senate Ways and Means Committee Members:

Please accept this letter in support of SB 49, which would allow the Judicial Branch budget to be submitted directly to the Legislature. I am sorry that due to a scheduling conflict, I am unable to appear in person.

Current law requires the Judicial Branch budget to be submitted first to the Executive Branch. Often, therefore, a significant number of the Judicial Branch budget items are removed or reduced before the Legislature reviews the budget.

My support of the direct submission of the Judicial Branch budget to the Legislature is based on my work as co-chair of the Kansas Citizen's Justice Initiative Commission. This 46-member Commission was actively working between September 1997 and April 1999. The Commission's work was ultimately summarized in a number of recommendations, including several recommendations which recognized the fact that the Kansas Judicial Branch is underfunded and understaffed.

Recommendation 5 addressed allocation of judicial resources and stated that the Legislature should fund the court system adequately. Recommendation 6 addressed compensation of district court judges and nonjudicial personnel, and recommended significant increases for both in order to reflect increased caseloads over the last several years. Recommendation 7 addressed the need for more judges and research attorneys in the appellate courts. The report specifically stated that because of increased frequency and intensity of the public's use of the court system, as well as increased *pro se* litigation, the volume of work to be performed by the courts has exploded, and that increased funding and staffing are absolutely necessary.

The adverse consequences to the Judicial Branch budget resulting from the current requirement to submit the budget to the Executive Branch are undoubtedly being fully explained by members of the Judicial Branch. Therefore, I will not go into great detail on that topic. However, I do believe that the Justice Initiative recommendations are much more likely to be achieved in the event that SB 49 becomes law. I request that the Committee's support of the bill.

Sincerely,


Jill Docking
Co-Chairperson, Kansas Citizens' Justice Initiative

Senate Ways and Means
1-26-01
Attachment 5