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April 3, 2015

Senator Jane Kitchel, Chair
Senate Appropriations, Room 5
Statehouse, 115 State Street
Montpelier, VT 05633

Re: Judiciary Response to H.490 (the House FY 2016 Big Bill):

Dear Senator Kitchel:

As the Senate prepares its FY 2016 State budget plan, the following are items of concern or for discussion regarding H.490 (the House FY 2016 Big Bill) as it affects the Vermont Judiciary. On behalf of the Supreme Court and the entire Vermont Judiciary, we understand and appreciate the challenging circumstances facing the legislature, and the difficult choices that the House was forced to make in passing its budget bill. Nonetheless, there are **four items of significant concern** in the House plan for which we request the attention of the Senate Appropriations Committee. We also address other items in the House bill related to the Judiciary.

Items of Significant Concern:

1. **Section B.204: $500K Base Budget Reduction and Section C.104(a)(3) one-time funding**:

The House bill appropriates $37,707,850 of base General Funds in FY 2016 to the Judiciary in Section B.204. This represents a $500,000 reduction from the Governor's Recommendation. While the House plan subsequently adds back $500,000 to the Judiciary in Section C.104(a)(3) as temporary one-time funds, this base reduction creates an additional structural shortfall for the Judiciary in FY 2017 and beyond.

Specifically, the language in Section C.104(a)(3) states:

> *The amount of $500,000 shall be appropriated to the Judiciary in fiscal year 2015 to be reserved for use in fiscal year 2016. These funds shall be used by the Judiciary as bridge funding as the Branch and its partners implement changes that result in cost reductions that align the Judiciary's future funding needs with a sustainable budget.*

As we have said, we have an additional $700K-$900K of existing budget pressures not funded in the Governor's recommendation. Absent FY 2016 funding for these pressures, we will be forced to realize additional vacancy savings – pushing the branch's vacancy rate to 8% or more, with the associated operational strains and case backlogs. Such a vacancy savings rate is double the vacancy savings that has been budgeted. Adding $500K of base reduction in FY 2017 after the expiration of the one-time funds will put the branch into a zone that is unsustainable for current judicial operations.

Further, the language in Section E.204.5 (discussed below) makes clear that the proposal for restructuring may generate savings "***within all aspects of the justice system.***" To book $500K in savings specifically to the Judiciary ***eliminates the incentive for other participants to identify savings from within their own operations, given that they have every reason to believe in advance that the savings have been pegged to the Judiciary***.

The Administration advised the Judiciary late in 2014 that it wanted to achieve savings by "consolidating courthouses." The Supreme Court, after deliberations and consulting with justice community partners, did not propose closing courts. Rather, the video arraignment project was identified at the meeting of justice partners as the idea most likely to produce sustainable structural savings in the justice system. It appears that, notwithstanding the fact that the video project is moving forward, with hopes of significant savings in general funds in the Executive Branch in FY17 and beyond, the Administration continues to want to close courts. The House, by adopting the Administration's proposed additional $500,000 cut in the Judiciary's base budget for FY17, has also put closing courts on the table, notwithstanding the Supreme Court's previous consideration and rejection of this proposal.

We request that if Senate Appropriations does not intend to restore the last-minute $500,000 cut to the Judiciary's base budget, the Committee identify which courts it would like to close to achieve the $500,000 savings so that the Supreme Court can provide information to the legislature about the impact on access to justice and about the budget impacts from the proposal to close the specifically-identified courts.

Otherwise, we request that the Senate move the $500K in one-time appropriation in Section C.104(a)(3) back to the Judiciary's base appropriation in Section B.204.

2. **<u>Section B.1105 – Pay Act Appropriation Reduction</u>**:

Section B.1105 of the House bill reduces the Judiciary's FY 2016 Pay Act appropriation by $619,216. By way of background, we note that the $1.044M appropriated to the branch in FY 2016 by the FY15-16 Pay Act funds specific items, reflecting four groups of branch employees, as follows:

- Judicial Officers (60 count; $281K total): salaries set by statute (3.3% increase);
- Fully Exempt (4 count; $17K total): high level managerial/confidential employees, similar to Executive Branch exempt (3.3% increase);
- Supervisory/Managerial (77 count; $267K total): by Pay Act language and precedent, this group follows the classifieds relative to annual salary increases (4.2% increase);
- Classifieds (220 count: $479K total): Subject to collective bargaining (4.2% increase, reflects 2.5% ABI and 1.7% average step value);
- Total: 361 employees - $1,044,179 Pay Act appropriation.

The House bill does not state how it expects the Judiciary to accomplish this Pay Act reduction. In Section B.1106, the House does offer suggestions as to how the Executive Branch might accomplish the reductions in Sections B.1104 ($5M labor savings) and B.1105 ($5.8M total Pay Act cut), but does not specifically identify or allocate the reductions to the Executive Branch.

Some might argue that given that the Judiciary is not subject to the $5M reduction in Section B.1104, that the Judiciary's Pay Act is reasonable. This argument is not correct, for several reasons.

- First, as a separate branch of government, the Judiciary had no role in the Administration's decision to cut Pay Act funding and impose a $5M labor savings reduction with no supported plan of action behind it. (This is one of a series of funding decisions made without our input.) Had we been consulted, we would have advised – as we consistently have – that any Pay Act commitments need to be consistent with the Pay Act funding availability.
- Second, as identified above, the Judiciary's FY 2016 budget contains $700K-$900K of unfunded pressures **prior** to any additional reductions. Simply underfunding the branch's Pay Act would force us deeper into the financial difficulties from which we are trying to emerge.
- Third, as described above, Pay Act costs are not driven by the Judiciary. We have our own collective bargaining agreement with Judiciary employees, and we are obligated by applicable law to comply with that Agreement. The salaries of the Judicial Officers are set by the legislature and have not been changed by H.490.
- Fourth, 83% of the Judiciary's budget is comprised of salary, fringe benefits, and fee-for-space. General funds account for 87% of the Judiciary's funding. We have few tools to manage the cost drivers of the Pay Act without corresponding Pay Act funding. (It should be noted that the annualized impact of the FY 2016 Pay Act cost drivers will necessarily be part of the Judiciary's FY 2017 request, notwithstanding the arbitrary FY 2016 appropriation reduction.)

The Judiciary therefore requests that the Senate restore the $619K Pay Act appropriation reduction. As we have stated, we are available to discuss other options, including revenues, to keep the budget on equal footing upon restoration of this reduction. For example, it is estimated that a 20% average increase in filing fees would raise $630K. (Each 1% average filing fee increase raises approximately $31,505 in revenues.)

3. **Sections B.1108, B.1113, and B.1114: Language changes related to Judicial Officer salaries:**

Section B.1108 adds language related to officer compensation as follows: "An officer whose compensation is established by this chapter [Chapter 15] may choose to be compensated at a lower rate." Chapter 15 includes the compensation provisions for all appointed and elected Judicial Officers. Sections B.1113 and B.1114 modify the compensation language for Assistant Judges and Probate Judges respectively to state they are "entitled to receive compensation" at the statutory amount.

The Judiciary interprets these provisions of the House plan as an intent that the Judiciary – as a branch or individually as to Judicial Officers – should pay / request compensation lower than the statutory amount. It should be noted that the legislature set these statutory salaries last year, and that Judicial Officers received increases lower than that provided in the collective bargaining agreement for classified employees (3.3% versus effective 4.2%). Vermont's appointed judges are among the lowest-paid in the nation.

It should be emphasized that, unlike the Executive Branch, where the statutory salaries constitute a tiny fraction of total branch salary and fringe benefits, the Judiciary's statutory salaries (and salary-based fringe benefits) constitute approximately one-third of the branch's salary-based costs. Therefore, the legislature's action regarding Executive Branch statutory officials is essentially symbolic relative to the spectrum of possible budget solutions. In our case, however, this ambiguous action disrupts a central component of the Judicial Branch's operations.
Senator Jane Kitchel, Chair

The Executive Branch statutory salary provisions set a range of permissible salaries, while the Judicial Officer provisions set specific salary amounts. These specific figures are established by the legislature; it is not appropriate for the legislature to then ask the Judiciary to rely on the personal decisions of many independent appointed and elected judicial officers as a budget management technique for the Judicial Branch.

The Judiciary requests these provisions in the House bill be struck. The Judiciary has offered suggestions regarding other opportunities to improve the State's financial position without the use of this disruptive and counterproductive compensation proposal.

4. **Section C.104(a)(2) – One-Time Funding for Video Conferencing Acquisition:**

Section C.104(a)(2) provides one-time funds in the amount of $210,088:

> "*to the Secretary of Administration in fiscal year 2015 to be utilized to reimburse costs to facilitate the implementation of video conferencing and other actions to reduce the long-term spending needs of the Judiciary and other components of the criminal justice system.*"

The Executive and Legislative Branches have recognized the work that the Judiciary has already undertaken to identify savings from restructuring of the justice process. At the February 9 summit hosted by the Chief Justice and attended by a variety of the justice partners, over a dozen suggestions were explored for potential savings. Video arraignments and other uses of video conferencing were identified as the most likely source for near-term savings, as well as other measures, primarily due to reduced prisoner transports.

We presented our policy brief on video arraignments to a variety of legislative committees, including the Senate Appropriations Committee. One issue identified in the brief is an estimated $300K-$350K one-time acquisition cost of the video equipment. (This does not include one-time infrastructure or staffing costs at the Department of Corrections.)

While the Judiciary appreciates the commitment – and associated funding – we have several concerns, as follows:

- First, if the $210K of one-time funding is expected to cover the entire video technology acquisition cost, it is unlikely to be sufficient. As noted above, the video equipment costs are estimated to be $300-$350K;

- Second, the one-time funds are appropriated to the Secretary of Administration, rather than to the Judiciary or other justice partners. How are we expected to incur the expenses or otherwise engage this initiative with no control? Is it the intention of the legislature that the Judiciary should be submitting bills to the Executive Branch as if the Judiciary were an agency of the Executive?

- Third, the language does not identify whether – and how much of – the funds are reserved for the Judiciary or other justice partners. This may cause confusion and competition for payments against the same funds.

We support the intent of the one-time funding for the video start-up, but only if the issues raised above get resolved in the Senate bill.

Other Items Related to the Judiciary:

- **Sections E.204 through E.204.3 – "Lightening the Load" provisions:**

Sections E.204 through E.204.3 contain portions of our proposed "Lightening the Load" bill that the House Appropriations Committee felt were budget-related as opposed to substantive, and hence appropriate for inclusion in the Big Bill. These include: 1) repealing the restriction on video arraignments; 2) service by the petitioner instead of the Court in magistrate cases; 3) service of the petition by the State's Attorney instead of the Court in juvenile delinquency cases; and 4) service by the State's Attorney instead of the Court of the summons to appear, order, or warrant due to failure-to-appear in juvenile delinquency cases.

The Judiciary supports these provisions, which the branch initiated in order to pursue the video arraignment pilot, and to reduce the expense and administrative burden of the courts serving petitions and summons in these Family Division matters (making service requirements the obligation of the parties, consistent with other Divisions.) (We are also working with the Executive Director of the States Attorneys to find some additional cost savings in these areas.)

We further request that the Committees with jurisdiction take testimony on the portions of the "Lightening the Load" proposal that are not included in the House version of the Big Bill. Those additional provisions, which include regional venue and the shift of about 150 cases from the overburdened Superior Court directly to the Supreme Court, are deemed by the Supreme Court to be necessary to enable the court system to take advantage of efficiencies that will reduce the Superior Court workload burden and reduce rising court backlogs. Regional venue, in particular, is necessary to address TPR cases and the most advantageous use of video in the court system to determine the feasibility of having county residents and their attorneys use their home courts to appear in preliminary stages of a proceeding that may be heard by a judicial officer located elsewhere.

- **Sections E.204.4 - Consideration of on-the-record appeals:**

Sections E.204.4 provides following language:

> *The House Committee on Judiciary and other committees with affected jurisdiction shall consider the appropriate use of on-the-record appeals in executive, administrative, judicial, and other matters within the jurisdiction of the committee. Each committee shall evaluate how on-the-record appeals may be employed to improve efficiency and reduce expense while preserving access to justice for Vermonters.*

The Judiciary supports this language and looks forward to working the House and Senate Judiciary Committees regarding opportunities for efficient and effective use of on-the-record appeals.

- **Sections E.204.5 – "Achieving Efficiencies in the Justice System" Working Group:**

Section E.204.5 creates an "Achieving Efficiencies in the Justice System" working group and associated report. The group consists of eight members across the justice partners, and is directed to study and make specific recommendations on the following ***within all aspects of the justice system***:

- How to increase efficiencies;
- How to reduce costs, eliminate redundancies, and streamline processes;
- Current and future filing fees and their relationship to access to justice and funding of the Judiciary; and,
- Consolidation of contracts for courthouse security.

The Working Group is required to report regularly to the Criminal Justice Oversight Committee during calendar year 2015 and to submit a written report to the General Assembly on or before November 6, 2015, with its findings and recommendations.

The Judiciary supports this proposal for a Working Group, which is consistent with the February 9 summit and other initiatives being spearheaded by the branch. We note that the language makes clear that potential savings may be found *within all aspects of the justice system*, and therefore object to the House's plan to target the $500K base reduction specifically to the Judiciary. Savings from the prisoner transport budget will not accrue to the Judiciary. Savings from the Corrections transport budget will not accrue to the Judiciary.

We also note that any recommendations regarding courthouse security must not jeopardize the safety of court users. Our current security structure is already under-funded and below the level of best practices as recommended by national security experts.

- **Sections E.204.6 (Collection of Penalties, Fines, and Fees) and Section E.204.7 (Payment Report):**

Section E.204.6 requires the Judiciary to:

> *… employ all reasonable measures authorized by law to collect monetary penalties, fines, and fees ordered by a court. To encourage timely compliance with court-ordered payments, the Judiciary shall ensure that a person who is ordered to pay may satisfy the judgment by cash, check, debit card, or credit card, or may establish a payment schedule to discharge the judgment at the time and place the penalty, fine, or fee is ordered.*

The Judiciary does not object to this language. The Judiciary notes that most forms of payment are currently accepted at most locations, and if this language were enacted, the branch would implement the proposed language as soon as possible.

Section E.207 requires the Court Administrator to:

> *... conduct a review regarding collection of monetary penalties, fines, and fees by the Judiciary to determine successful strategies, as well as existing impediments, to efficient collections. The Court Administrator shall report his or her findings and recommendations to increase efficiency in collection and encourage compliance with court-ordered payments to the Joint Fiscal Committee on or before November 1, 2015.*

The Judiciary supports the intent of best practices regarding revenue collections, as it has repeatedly stated at multiple hearings this legislative session. The Judiciary will continue to pursue these best practices. The Judiciary notes, however, that Section E.100.4(c) (1) of the House bill specifically seeks to reduce the number of legislatively mandated reporting requirements, due to the associated administrative burden. On that basis, the Judiciary opposes the reporting requirement as unnecessary, given the branch's continued commitment to best practices for revenue collection.

- **Sections E.204.8 - Judicial Branch Mileage Report:**

Section E.204.8 requires the Court Administrator to:

> *...consult with the Commissioner of Buildings and General Services and the Secretary of Administration regarding how judges and other employees of the Judicial Branch are compensated for mileage and other expenses and how to reduce these expenses. The Court Administrator shall report his or her findings and recommendations to the Joint Fiscal Committee on or before November 1, 2015.*

The Judiciary does not object to consultation regarding fleet and mileage issues. As noted in our March 19 letter to House Appropriations Committee (on which you were copied), the branch is already actively managing its fleet, and other policies, to reduce mileage costs. In FY 2015, the branch expanded its fleet by 33% and imposed a mileage reimbursement limit for judicial officers. As a result, the branch expects to save $7K in FY 2015, and $14K in FY 2016. Based on a variety of factors, including: the branch's estimate of "break-even" for fleet versus mileage; the effect of next year's judicial assignment rotation; changes in lease costs; and changes in mileage reimbursement policies; it is possible that the branch could reduce mileage expenses further, and will pursue such opportunities, including consultation with BGS. Any such savings, however, are likely to be relatively small – i.e., consistent with the savings that have already been achieved.

The Judiciary supports the intent of best practices regarding mileage expense reimbursement, and will continue to pursue these best practices. The Judiciary notes, however, that Section E.100.4(c) (1) of the House bill specifically seeks to reduce the number of legislatively mandated reporting requirements, due to the associated administrative burden. On that basis, the Judiciary opposes the reporting requirement as unnecessary, given the branch's continued commitment to best practices in this area, including consultation with BGS.

Thank you for the opportunity to address our significant concerns and other issues. We look forward to the opportunity to discuss our concerns with you as the Senate budget plan develops.

Sincerely,

Patricia Gabel, Esq.
State Court Administrator

cc: Rep. Mitzi Johnson, Chair, House Appropriations
Rep. Maxine Jo Grad, Chair, House Judiciary
Senator Dick Sears, Chair, Senate Judiciary
Supreme Court Justices
Matt Riven, Chief of Finance & Administration
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