

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

Date

April 27, 2017

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB17-1303 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, page 4, line 20, strike "13-5.5-114." and substitute
2 "13-5.5-115."

3 Page 4, before line 21 insert:
4 "(7) "IMPROVEMENT PLAN" MEANS AN INDIVIDUAL JUDICIAL
5 IMPROVEMENT PLAN DEVELOPED AND IMPLEMENTED PURSUANT TO
6 SECTION 13-5.5-110."

7 Renumber succeeding subsections accordingly.

8 Page 5, after line 9 insert:

9 "(14) "VOLUNTEER COURTROOM OBSERVER PROGRAM" MEANS A
10 SYSTEMWIDE PROGRAM COMPRISED OF VOLUNTEERS WHO PROVIDE
11 COURTROOM OBSERVATION REPORTS FOR USE BY STATE AND DISTRICT
12 COMMISSIONS IN JUDICIAL PERFORMANCE EVALUATIONS. THE STATE
13 COMMISSION SHALL DEVELOP RULES, GUIDELINES, AND PROCEDURES FOR
14 THE VOLUNTEER COURTROOM OBSERVER PROGRAM PURSUANT TO SECTION
15 13-5.5-105 (2)(i)."

16 Page 6, line 19, strike "**conflicts. (1) (a)**" and substitute "**conflicts -
17 repeal. (1)**".

18 Page 6, line 27, after the period add "JUSTICES AND JUDGES ACTIVELY
19 PERFORMING JUDICIAL DUTIES MAY NOT BE APPOINTED TO SERVE ON A
20 COMMISSION. FORMER JUSTICES AND JUDGES ARE ELIGIBLE TO BE

1 APPOINTED AS ATTORNEY COMMISSIONERS; EXCEPT THAT A FORMER
2 JUSTICE OR JUDGE MAY NOT BE ASSIGNED OR APPOINTED TO PERFORM
3 JUDICIAL DUTIES WHILE SERVING ON A COMMISSION.

4 (2)(a) EACH COMMISSION CONSISTS OF TEN MEMBERS, APPOINTED
5 AS FOLLOWS:

6 (I) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL
7 APPOINT ONE ATTORNEY AND ONE NONATTORNEY;

8 (II) THE PRESIDENT OF THE SENATE SHALL APPOINT ONE ATTORNEY
9 AND ONE NONATTORNEY;

10 (III) THE GOVERNOR SHALL APPOINT ONE ATTORNEY AND TWO
11 NONATTORNEYS; AND

12 (IV) THE CHIEF JUSTICE OF THE SUPREME COURT SHALL APPOINT
13 ONE ATTORNEY AND TWO NONATTORNEYS.

14 (b) (I) THE TERMS OF COMMISSIONERS APPOINTED PRIOR TO THE
15 EFFECTIVE DATE OF THIS SECTION SHALL CONTINUE THROUGH JANUARY
16 31, 2019.

17 (II) NOTWITHSTANDING THE TERM FOR WHICH THE COMMISSIONER
18 WAS APPOINTED, THE GOVERNOR'S ATTORNEY APPOINTMENT TO A
19 DISTRICT COMMISSION MADE PURSUANT TO SUBSECTION (2)(a)(III) OF THIS
20 SECTION AND THE CHIEF JUSTICE'S TWO NONATTORNEY APPOINTMENTS TO
21 A DISTRICT COMMISSION MADE PURSUANT TO SUBSECTION (2)(a)(IV) OF
22 THIS SECTION EXPIRE ON JANUARY 31, 2019.

23 (III) EXCEPT AS PROVIDED FOR IN SUBSECTION (2)(b)(II) OF THIS
24 SECTION, THE TERM OF A COMMISSIONER APPOINTED PRIOR TO JANUARY
25 31, 2019, SHALL CONTINUE AFTER THIS SUBSECTION (2) IS REPEALED UNTIL
26 SUCH TIME AS THE COMMISSIONER'S TERM WAS ORIGINALLY SET TO
27 EXPIRE.

28 (c) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE JANUARY 31,
29 2019.

30 (3) (a) THE STATE COMMISSION CONSISTS OF ELEVEN MEMBERS,
31 APPOINTED ON OR BEFORE MARCH 1, 2019, AS FOLLOWS:

32 (I) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL
33 APPOINT ONE ATTORNEY AND ONE NONATTORNEY;

34 (II) THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES
35 SHALL APPOINT ONE NONATTORNEY;

36 (III) THE PRESIDENT OF THE SENATE SHALL APPOINT ONE
37 ATTORNEY AND ONE NONATTORNEY;

38 (IV) THE MINORITY LEADER OF THE SENATE SHALL APPOINT ONE
39 NONATTORNEY;

40 (V) THE CHIEF JUSTICE OF THE SUPREME COURT SHALL APPOINT
41 TWO ATTORNEYS; AND

1 (VI) THE GOVERNOR SHALL APPOINT TWO NONATTORNEYS AND
2 ONE ATTORNEY.

3 (b) THE TERMS OF STATE COMMISSIONERS APPOINTED PRIOR TO
4 JANUARY 31, 2019, SHALL CONTINUE UNTIL SUCH TIME AS HIS OR HER
5 TERM WAS ORIGINALLY SET TO EXPIRE; EXCEPT THAT THE TERM OF THE
6 NONATTORNEY APPOINTED BY THE CHIEF JUSTICE OF THE SUPREME COURT
7 PURSUANT TO SUBSECTION (2)(a)(IV) OF THIS SECTION EXPIRES ON
8 JANUARY 31, 2019.

9 (c) THIS SUBSECTION (3) BECOMES EFFECTIVE FEBRUARY 1, 2019.

10 (4) (a) EACH DISTRICT COMMISSION CONSISTS OF TEN MEMBERS,
11 APPOINTED ON OR BEFORE MARCH 1, 2019, AS FOLLOWS:

12 (I) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL
13 APPOINT ONE ATTORNEY AND ONE NONATTORNEY;

14 (II) THE PRESIDENT OF THE SENATE SHALL APPOINT ONE ATTORNEY
15 AND ONE NONATTORNEY;

16 (III) THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES
17 SHALL APPOINT ONE NONATTORNEY;

18 (IV) THE MINORITY LEADER OF THE SENATE SHALL APPOINT ONE
19 NONATTORNEY;

20 (V) THE CHIEF JUSTICE OF THE SUPREME COURT SHALL APPOINT
21 TWO ATTORNEYS; AND

22 (VI) THE GOVERNOR SHALL APPOINT TWO NONATTORNEYS.

23 (b) THE TERMS OF DISTRICT COMMISSIONERS APPOINTED PRIOR TO
24 JANUARY 31, 2019, SHALL CONTINUE UNTIL SUCH TIME AS HIS OR HER
25 TERM WAS ORIGINALLY SET TO EXPIRE; EXCEPT THAT THE FOLLOWING
26 COMMISSIONERS' TERMS EXPIRE ON JANUARY 31, 2019:

27 (I) THE NONATTORNEY APPOINTED BY THE CHIEF JUSTICE OF THE
28 SUPREME COURT PURSUANT TO SUBSECTION (2)(a)(IV) OF THIS SECTION;
29 AND

30 (II) THE ATTORNEY APPOINTED BY THE GOVERNOR PURSUANT TO
31 SUBSECTION (2)(a)(III) OF THIS SECTION.

32 (c) THIS SUBSECTION (4) BECOMES EFFECTIVE FEBRUARY 1, 2019.

33 (5) (a) THE TERM FOR A COMMISSIONER IS FOUR YEARS AND
34 EXPIRES ON NOVEMBER 30 OF AN ODD-NUMBERED YEAR. THE TERM OF A
35 COMMISSIONER APPOINTED TO REPLACE A MEMBER AT THE END OF THE
36 COMMISSIONER'S TERM BEGINS ON DECEMBER 1 OF THE SAME YEAR.

37 (b) THE ORIGINAL APPOINTING AUTHORITY SHALL FILL ANY
38 VACANCY ON A COMMISSION, BUT A COMMISSIONER SHALL NOT SERVE
39 MORE THAN TWO FULL TERMS INCLUDING ANY BALANCE REMAINING ON AN
40 UNEXPIRED TERM IF THE INITIAL APPOINTMENT WAS TO FILL A VACANCY.
41 WITHIN FIVE DAYS AFTER A VACANCY ARISES ON A COMMISSION, THE

1 COMMISSION WITH THE VACANCY SHALL NOTIFY THE ORIGINAL
2 APPOINTING AUTHORITY OF THE VACANCY. THE ORIGINAL APPOINTING
3 AUTHORITY SHALL MAKE AN APPOINTMENT WITHIN FORTY-FIVE DAYS
4 AFTER THE DATE OF THE VACANCY. IF THE ORIGINAL APPOINTING
5 AUTHORITY FAILS TO MAKE THE APPOINTMENT WITHIN FORTY-FIVE DAYS
6 AFTER THE DATE OF THE VACANCY, THE GOVERNOR SHALL MAKE THE
7 APPOINTMENT.

8 (c) THE APPOINTING AUTHORITY MAY REMOVE A COMMISSIONER
9 WHOM HE OR SHE APPOINTED FOR CAUSE.

10 (6) EACH COMMISSION SHALL ELECT A CHAIR EVERY TWO YEARS
11 BY A VOTE OF THE MEMBERSHIP.

12 (7) STATE AND DISTRICT COMMISSIONERS AND EMPLOYEES OF THE
13 STATE OR A DISTRICT COMMISSION ARE IMMUNE FROM SUIT IN ANY
14 ACTION, CIVIL OR CRIMINAL, BASED UPON OFFICIAL ACTS PERFORMED IN
15 GOOD FAITH AS COMMISSIONERS AND EMPLOYEES OF THE STATE OR A
16 DISTRICT COMMISSION.

17 (8) A COMMISSIONER SHALL RECUSE HIMSELF OR HERSELF FROM
18 AN EVALUATION OF THE PERSON WHO APPOINTED THE COMMISSIONER TO
19 THE COMMISSION."

20 Strike page 7.

21 Page 8, strike lines 1 through 18.

22 Page 9, line 4, after "OBSERVATION" insert "BY COMMISSIONERS".

23 Page 9, strike lines 5 through 7 and substitute "OF JUSTICES AND JUDGES,
24 AS WELL AS INFORMATION PROVIDED TO THE COMMISSIONS BY THE
25 VOLUNTEER COURTROOM OBSERVER PROGRAM;"

26 Page 9, strike line 14 and substitute "JUDGES; AND".

27 Page 9, strike lines 15 through 27 and substitute:

28 "(f) AT AN INDIVIDUAL COMMISSION'S DISCRETION AFTER IT
29 COMPLETES AN INTERIM EVALUATION OF A JUSTICE OR JUDGE PURSUANT
30 TO SECTION 13-5.5-109, TO RECOMMEND THAT THE CHIEF JUSTICE OR
31 APPROPRIATE CHIEF JUDGE DEVELOP AN INDIVIDUAL JUDICIAL
32 IMPROVEMENT PLAN PURSUANT TO SECTION 13-5.5-110;"

33 Page 10, strike lines 1 through 5.

1 Page 10, line 7, strike "5.5," and substitute "5.5 AND SECTION
2 13-5.5-106,".

3 Page 10, line 25, strike "GUIDELINES" and substitute "RULES,
4 GUIDELINES,".

5 Page 11, line 2, strike "GUIDELINES" and substitute "RULES, GUIDELINES,".

6 Page 11, line 6, strike "GUIDELINES" and substitute "RULES, GUIDELINES,".

7 Page 11, line 17, strike "PROCEDURES" and substitute "RULES,
8 GUIDELINES, AND PROCEDURES".

9 Page 11, line 22, strike "13-5.5-106;" and substitute "13-5.5-106
10 CONCERNING:

11 (I) THE EVALUATION OF JUSTICES AND JUDGES BASED ON
12 PERFORMANCE EVALUATION CRITERIA SET FORTH IN SECTION 13-5.5-107;

13 (II) THE CREATION OF A STANDARDS MATRIX RELATED TO THE
14 PERFORMANCE EVALUATION CRITERIA SET FORTH IN SECTION 13-5.5-107
15 AND A CLEAR DESCRIPTION OF THE THRESHOLDS FOR THE
16 RECOMMENDATIONS OF "MEETS PERFORMANCE STANDARD" OR "DOES NOT
17 MEET PERFORMANCE STANDARD" AND HOW THAT INFORMATION WILL BE
18 MADE AVAILABLE TO THE PUBLIC; AND

19 (III) THE CONTINUOUS COLLECTION OF DATA FOR USE IN THE
20 EVALUATION PROCESS, INCLUDING SURVEYS DEVELOPED PURSUANT TO
21 SUBSECTION (2)(d) OF THIS SECTION;

22 (i) TO DEVELOP RULES, GUIDELINES, AND PROCEDURES
23 CONCERNING A SYSTEMWIDE JUDICIAL TRAINING PROGRAM AND A
24 SYSTEMWIDE VOLUNTEER COURTROOM OBSERVER PROGRAM;".

25 Reletter succeeding paragraph accordingly.

26 Page 11, line 24, strike "13-5.5-113." and substitute "13-5.5-114.".

27 Page 12, line 7, before "AND" insert "RACIAL DISPARITY,".

28 Page 12, line 25, strike "**Guidelines**" and substitute "**Rules, guidelines**,".

29 Page 12, line 26, strike "GUIDELINES" and substitute "RULES,
30 GUIDELINES,".

- 1 Page 13, line 1, strike "GUIDELINES" and substitute "RULES, GUIDELINES,".
- 2 Page 13, line 3, strike "SUGGESTED" and substitute "PROPOSED".
- 3 Page 13, line 4, strike "GUIDELINES" and substitute "RULES, GUIDELINES,".
- 4 Page 13, strike line 8 and substitute "RULES, GUIDELINES, OR PROCEDURES.
5 THE STATE COMMISSION SHALL SUBMIT ANY RULES, GUIDELINES, OR
6 PROCEDURES ADOPTED PURSUANT TO THIS SECTION OR SECTION
7 13-5.5-105 TO THE INDEPENDENT ETHICS COMMISSION ESTABLISHED
8 PURSUANT TO SECTION 24-18.5-101."
- 9 Page 13, line 9, strike "GUIDELINES" and substitute "RULES, GUIDELINES,".
- 10 Page 13, line 13, strike "GUIDELINES" and substitute "RULES,
11 GUIDELINES,".
- 12 Page 13, line 21, strike "GUIDELINE" and substitute "RULE, GUIDELINE,".
- 13 Page 13, line 23, strike "GUIDELINE" and substitute "RULE, GUIDELINE,".
- 14 Page 16, line 22, strike "13-5.5-105 (1)(f)," and substitute "13-5.5-110".
- 15 Page 16, line 25, strike "ADDRESSED OR" and substitute "ADDRESSED, OR
16 A STATEMENT FROM THE CHIEF JUSTICE OR APPROPRIATE CHIEF JUDGE
17 THAT", and strike "PLAN" and substitute "PLAN, IF ANY, WAS".
- 18 Page 18, line 10, strike "FINDINGS" and substitute "FINDINGS, INCLUDING
19 ANY RECOMMENDATIONS FOR IMPROVEMENT PLANS,".
- 20 Page 18, line 15, strike "FINDINGS" and substitute "FINDINGS, INCLUDING
21 ANY RECOMMENDATIONS FOR IMPROVEMENT PLANS,".
- 22 Page 18, after line 16 insert:
23 "(2) IF A COMMISSION RECOMMENDS AN IMPROVEMENT PLAN, THE
24 PROCEDURE DEVELOPMENT AND IMPLEMENTATION FOR SUCH A PLAN WILL
25 FOLLOW THE GUIDELINES SET FORTH IN SECTION 13-5.5-110."
- 26 Renumber succeeding subsections accordingly.
- 27 Page 19, after line 1 insert:

1 **"13-5.5-110. Individual judicial improvement plans.** (1) (a) IF
2 THE STATE COMMISSION OR A DISTRICT COMMISSION RECOMMENDS,
3 PURSUANT TO SECTION 13-5.5-109(1), THAT A JUSTICE OR JUDGE RECEIVE
4 AN INDIVIDUAL JUDICIAL IMPROVEMENT PLAN, THE COMMISSION SHALL
5 COMMUNICATE SUCH RECOMMENDATION TO THE CHIEF JUSTICE OR
6 APPROPRIATE CHIEF JUDGE. THE CHIEF JUSTICE OR CHIEF JUDGE SHALL
7 THEN DEVELOP AN IMPROVEMENT PLAN FOR SUCH JUDGE AND SHALL SEND
8 THE IMPROVEMENT PLAN TO THE STATE COMMISSION FOR REVIEW. AFTER
9 THE STATE COMMISSION REVIEWS AND APPROVES THE IMPROVEMENT
10 PLAN, THE CHIEF JUSTICE OR CHIEF JUDGE SHALL HAVE THE
11 RESPONSIBILITY FOR IMPLEMENTING AND OVERSEEING THE IMPROVEMENT
12 PLAN.

13 (b) ONCE THE JUSTICE OR JUDGE HAS COMPLETED THE
14 IMPROVEMENT PLAN, THE CHIEF JUSTICE OR CHIEF JUDGE SHALL CONVEY
15 THE RESULTS OF THE IMPROVEMENT PLAN ACTIVITIES TO THE APPROPRIATE
16 COMMISSION, WHICH WILL THEN MAINTAIN A COPY OF THE IMPROVEMENT
17 PLAN AND THE STATEMENT OF RESULTS IN ITS FILES.

18 (2) IF A JUSTICE OR JUDGE IS REQUIRED TO COMPLETE AN
19 IMPROVEMENT PLAN PURSUANT TO THIS SECTION, AND HE OR SHE FAILS TO
20 SATISFACTORILY COMPLETE THE REQUIREMENTS OF SUCH IMPROVEMENT
21 PLAN, THE APPROPRIATE COMMISSION SHALL AUTOMATICALLY ISSUE A
22 "DOES NOT MEET PERFORMANCE STANDARD" DESIGNATION ON HIS OR HER
23 PERFORMANCE EVALUATION SUMMARY."

24 Renumber succeeding sections accordingly.

25 Page 19, strike lines 3 through 19 and substitute "(1) EVERY THIRD YEAR
26 FOLLOWING THE INITIAL APPOINTMENT OF A SENIOR JUDGE TO THE BENCH
27 THROUGH A CONTRACT PURSUANT TO SECTION 24-51-1105, THE STATE
28 COMMISSION SHALL CONDUCT A PERFORMANCE EVALUATION OF THE
29 SENIOR JUDGE BASED ON THE JUDICIAL PERFORMANCE EVALUATION
30 CRITERIA SET FORTH IN SECTION 13-5.5-107. THE STATE COMMISSION
31 SHALL COMPLETE THE PERFORMANCE EVALUATION OF SUCH SENIOR JUDGE
32 AND COMMUNICATE THE RELATED NARRATIVE TO THE CHIEF JUSTICE NO
33 LATER THAN FORTY-FIVE DAYS PRIOR TO THE EXPIRATION OF THE SENIOR
34 JUDGE'S CONTRACT FOR THAT YEAR. THE NARRATIVE MUST INCLUDE AN
35 ASSESSMENT OF THE SENIOR JUDGE'S STRENGTHS AND WEAKNESSES WITH
36 RESPECT TO THE JUDICIAL PERFORMANCE EVALUATION CRITERIA SET
37 FORTH IN SECTION 13-5.5-107."

38 Renumber succeeding subsection accordingly.

- 1 Page 22, strike lines 25 through 27.
- 2 Strike pages 23 and 24.
- 3 Page 25, strike lines 1 through 6.
- 4 Renumber succeeding sections accordingly.
- 5 Page 25, line 26, strike "13-5.5-114." and substitute "13-5.5-115".
- 6 Page 26, line 7, strike "13-5.5-114," and substitute "13-5.5-115,".
- 7 Page 26, line 18, strike "13-5.5-114." and substitute "13-5.5-115".
- 8 Page 26, line 19, strike "(1) Except".
- 9 Page 26, strike line 20 and substitute "This act takes".
- 10 Page 27, strike line 3.

** *** ** *** **