

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1022 _____
 _____ Of the printed Bill
 Page _____ Section _____ Lines _____
 _____ Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Kevin Wallace _____

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

1st Extraordinary Session of the 59th Legislature (2023)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 1022X

By: Wallace and Martinez of the
House

and

Thompson (Roger) and Hall
of the Senate

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to courts; defining terms; creating the Office of Judicial Performance Evaluation; providing purpose of Office; creating Board of Judicial Performance Evaluation; stating purpose of Board; providing for terms of office for members of the Board of Judicial Performance Evaluation; imposing certain conditions with respect to membership; providing for payment to members of the Board of Judicial Performance Evaluation; providing for travel reimbursement; requiring approval for expenses of the Office of Judicial Performance Evaluation; providing certain meetings of the Board of Judicial Performance Evaluation confidential and exempt from Oklahoma Open Meeting Act; providing for confidentiality of certain information and exempt from Oklahoma Open Records Act; creating Administrator position; prescribing duties of Administrator; prescribing duties and powers of Office of Judicial Performance Evaluation; prescribing criteria for judicial performance evaluations; requiring initial evaluations; requiring interim evaluations; allowing response from justice or judge; requiring performance evaluations be shared with certain persons; requiring election-year evaluations; prescribing content of narratives;

1 allowing response from justice or judge; requiring
2 performance evaluations be shared with certain
3 persons; authorizing improvement plans; prescribing
4 process; prescribing procedures based upon failure to
5 complete plan; providing for disclosure of certain
6 conflicts of interest; providing recusal process for
7 certain persons; requiring information be kept
8 confidential; prescribing Board of Judicial
9 Performance Evaluation duties and powers; authorizing
10 promulgation of rules; providing for codification;
11 and providing an effective date.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1671 of Title 20, unless there
is created a duplication in numbering, reads as follows:

As used in this act:

1. "Attorney" means a person admitted to practice law before
the courts of this state;

2. "Election-year evaluation" means a judicial performance
evaluation conducted by the Office of Judicial Performance
Evaluation pursuant to Section 6 of this act of a justice or judge
whose term is to expire and who must stand for reelection or
retention election;

3. "Improvement plan" means an individual judicial improvement
plan developed and implemented pursuant to Section 7 of this act;

1 4. "Initial evaluation" and "interim evaluation" mean
2 evaluations conducted by the Office of Judicial Performance
3 Evaluation pursuant to Section 5 of this act of a justice or judge;

4 5. "Judge" means all active district judges, associate district
5 judges, special judges, Judges of the Oklahoma Court of Criminal
6 Appeals, and Judges of the Oklahoma Court of Civil Appeals; and

7 6. "Justice" means a justice of the Oklahoma Supreme Court.

8 SECTION 2. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1672 of Title 20, unless there
10 is created a duplication in numbering, reads as follows:

11 A. There is hereby created within the Council on Judicial
12 Complaints the Office of Judicial Performance Evaluation and the
13 Board of Judicial Performance Evaluation. The purpose of the Office
14 and the Board shall be to:

15 1. Provide justices and judges with useful information
16 concerning their own performances; and

17 2. Conduct statewide judicial performance evaluations using
18 uniform criteria and procedures pursuant to the provisions of this
19 act.

20 B. 1. The Office of Judicial Performance Evaluation shall
21 present completed performance evaluations and recommendations to the
22 Board of Judicial Performance Evaluation which shall consist of nine
23 (9) members, only five (5) of whom shall be members of the Bar of
24 the State of Oklahoma and only five (5) of whom shall constitute a

1 quorum. Three (3) members shall be appointed by the Speaker of the
2 Oklahoma House of Representatives; three (3) members shall be
3 appointed by the President Pro Tempore of the Oklahoma State Senate;
4 and three (3) members shall be appointed by the Governor. No more
5 than five (5) members of the Board shall be, or shall have been in
6 the previous six (6) months, members of the same political party.
7 Appointments may include retired judicial officers, but shall not
8 include members of the Council on Judicial Complaints or Judicial
9 Nominating Commission.

10 2. Of the members first appointed to the Board of Judicial
11 Performance Evaluation, three shall serve for three (3) years and
12 until a successor is appointed and qualified; three shall serve for
13 four (4) years and until a successor is appointed and qualified; and
14 three shall serve for five (5) years and until a successor is
15 appointed and qualified. The respective terms of the first members
16 shall be determined by lot at the first meeting of the Board, and
17 the results thereof shall be certified to the Secretary of State and
18 to the appointing authority for each individual member. Thereafter,
19 each appointee shall serve for a term of five (5) years and until a
20 successor is appointed and qualified. No person shall be eligible
21 to serve more than two terms on the Board.

22 3. The members of the Board of Judicial Performance Evaluation
23 shall receive for their services the sum of One Hundred Dollars
24 (\$100.00) for each day, or fraction thereof, of attendance at its

1 meetings or other official business of the Board, and reimbursement
2 for travel expenses pursuant to the State Travel Reimbursement Act.

3 C. All expenses of the Office of Judicial Performance
4 Evaluation shall be approved by the Chair of the Council on Judicial
5 Complaints, by the Council on Judicial Complaints upon a majority
6 vote of its members, or by the Administrative Director to the
7 Council on Judicial Complaints as directed by the Chair of the
8 Council on Judicial Complaints.

9 D. Meetings of the Board of Judicial Performance Evaluation
10 convened for the purpose of conducting, discussing, or deliberating
11 any matter relating to performance evaluations or improvement plans
12 are confidential and are not subject to the Oklahoma Open Meeting
13 Act.

14 E. Records of the Office of Judicial Performance Evaluation
15 created for the purpose of or in furtherance of summarizing,
16 drafting, conducting, discussing, or deliberating any matter
17 relating to an election-year evaluation, improvement plan, or
18 interim evaluation are confidential and are not subject to
19 disclosure under the Oklahoma Open Records Act.

20 F. There is hereby created the position of Administrator to the
21 Office of Judicial Performance Evaluation who shall be a state
22 employee hired by the Administrative Director to the Council on
23 Judicial Complaints. The Administrator, operations, and staffing of
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1 the Office shall be overseen by the Administrative Director to the
2 Council on Judicial Complaints.

3 G. The Administrator shall notify the members of the Board of
4 Judicial Performance Evaluation of the number of completed
5 performance evaluations ready for review and consideration by the
6 Board five (5) days before the Board's regular meeting. The
7 Administrator shall attend meetings of the Board concerning
8 performance evaluations and business of the Office, keep records
9 concerning performance evaluations, prepare reports required by
10 statute, and perform other tasks as the Council shall direct.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1673 of Title 20, unless there
13 is created a duplication in numbering, reads as follows:

14 A. The Office of Judicial Performance Evaluation shall:

15 1. Train members of the Board of Judicial Performance
16 Evaluation as needed and requested to fulfill the duties established
17 pursuant to Section 10 of this act;

18 2. Collect and disseminate data on judicial performance
19 evaluations, including judicial performance surveys developed,
20 collected, and distributed pursuant to paragraph 5 of subsection B
21 of this section; and

22 3. Perform other tasks as the Board of Judicial Performance
23 Evaluation or the Council on Judicial Complaints shall direct.

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1 B. The Office of Judicial Performance Evaluation shall have the
2 following powers and duties:

3 1. Review any available case management data and statistics
4 related to individual justices and judges;

5 2. Review written judicial opinions and orders authorized by
6 justices and judges;

7 3. Interview justices and judges under the Board of Judicial
8 Performance Evaluation's oversight;

9 4. Accept information and documentation from interested persons
10 as necessary;

11 5. Develop surveys to evaluate the performance of justices and
12 judges which shall be completed by attorneys, jurors, represented
13 and unrepresented litigants, law enforcement personnel, attorneys
14 within the district attorneys' and public defenders' offices,
15 employees of the court, court interpreters, employees of probation
16 offices, and employees of local departments of social services;

17 6. Determine the validity of completed surveys developed
18 pursuant to paragraph 5 of this subsection, report to the Council on
19 the validity of the surveys, and prepare alternatives to surveys
20 where sample populations are inadequate to produce valid results;

21 7. Prepare narratives for the Board of Judicial Performance
22 Evaluation that reflect the performance of justices and judges;

23 8. Submit any information concerning or appearing to concern a
24 complaint or violation of the Code of Judicial Conduct, or other

1 law, by a judicial officer to the Administrative Director to the
2 Council on Judicial Complaints;

3 9. Submit performance evaluations of justices and judges to the
4 Board of Judicial Performance Evaluation for approval or rejection;
5 and

6 10. Recommend, at the Office's discretion after it completes an
7 evaluation of a justice or judge pursuant to Section 5 of this act,
8 to the Board of Judicial Performance Evaluation that it develop an
9 individual judicial improvement plan pursuant to Section 7 of this
10 act.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1674 of Title 20, unless there
13 is created a duplication in numbering, reads as follows:

14 The Office of Judicial Performance Evaluation shall evaluate
15 each justice and judge in Oklahoma utilizing the powers and duties
16 conferred in Section 3 of this act. The evaluations shall only
17 include the following performance evaluation criteria:

18 1. Integrity including, but not limited to, whether the justice
19 or judge:

- 20 a. avoids impropriety or the appearance of impropriety,
- 21 b. displays fairness and impartiality toward all
22 participants, and
- 23 c. avoids ex parte communications;

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1 2. Legal knowledge including, but not limited to, whether the
2 justice or judge:

- 3 a. demonstrates, through well-reasoned opinions and
4 courtroom conduct, an understanding of substantive law
5 and relevant rules of procedure and evidence,
- 6 b. demonstrates, through well-reasoned opinions and
7 courtroom conduct, attentiveness to factual and legal
8 issues before the court, and
- 9 c. adheres to precedent or clearly explains the legal
10 basis for departure from precedent and appropriately
11 applies statutes or other sources of legal authority;

12 3. Communication skills including, but not limited to, whether
13 the justice or judge:

- 14 a. presents clearly written and understandable opinions,
15 findings of fact, conclusions of law, and orders,
- 16 b. presents clearly stated and understandable questions
17 or statements during oral arguments or presentations,
18 and, for trial judges, clearly explains all oral
19 decisions, and
- 20 c. clearly presents information to the jury, as
21 necessary;

22 4. Judicial temperament including, but not limited to, whether
23 the justice or judge:

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- 1 a. demonstrates courtesy toward attorneys, litigants,
- 2 court staff, and others in the courtroom, and
- 3 b. maintains and requires order, punctuality, and
- 4 appropriate decorum in the courtroom;

5 5. Administrative performance including, but not limited to,
6 whether the justice or judge:

- 7 a. demonstrates preparation for oral arguments, trials,
- 8 and hearings, as well as attentiveness to and
- 9 appropriate control over judicial proceedings,
- 10 b. manages workload and court time effectively and
- 11 efficiently,
- 12 c. issues opinions, findings of fact, conclusions of law,
- 13 and orders in a timely manner and without unnecessary
- 14 delay,
- 15 d. participates in a proportionate share of the court's
- 16 workload, takes responsibility for more than his or
- 17 her own caseload, and is willing to assist other
- 18 justices or judges, and
- 19 e. understands and complies, as necessary, with
- 20 directives of the Oklahoma Supreme Court, Oklahoma
- 21 Court of Criminal Appeals, Oklahoma Court of Civil
- 22 Appeals, the presiding judge of his or her
- 23 administrative district, or the chief judge of the
- 24 judicial district, as applicable; and

1 6. Service to the legal profession and the public by
2 participating in service-oriented efforts designed to educate the
3 public about the legal system and improve the legal system.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1675 of Title 20, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Within the first two (2) years of a justice's or judge's
8 first appointment or election to the bench, the Office of Judicial
9 Performance Evaluation shall conduct an initial evaluation of each
10 justice and judge. The Office shall complete and communicate the
11 initial evaluations, including any recommendations for improvement
12 plans, to the Board of Judicial Performance Evaluation for approval
13 or rejection. Once approved, the Office shall communicate the
14 initial evaluation to the justice or judge in writing.

15 B. Within two (2) years of the approval of the initial
16 evaluation of a justice or judge by the Board or within two (2)
17 years of the effective date of this act, the Office shall conduct an
18 interim evaluation of each justice and judge. The Office shall
19 complete and communicate the interim evaluations, including any
20 recommendations for improvement plans, to the Board of Judicial
21 Performance Evaluation for approval or rejection. Once approved,
22 the Office shall communicate the interim evaluation to the justice
23 or judge in writing.

1 C. For judges not required to stand for reelection or retention
2 election, the Office shall conduct additional interim evaluations of
3 such judges within two (2) years following a general election. The
4 Office shall complete and communicate the interim evaluations,
5 including any recommendations for improvement plans, to the Board of
6 Judicial Performance Evaluation for approval or rejection. Once
7 approved, the Office shall communicate the interim evaluation to the
8 judge in writing.

9 D. The Board shall grant each justice or judge who receives
10 initial and interim evaluations the opportunity to meet with the
11 Board at its next meeting or otherwise respond to the initial or
12 interim evaluations no later than ten (10) days following the
13 justice's or judge's receipt of the initial or interim evaluation.
14 If a meeting is held or a response is made, the Board may revise the
15 initial or interim evaluation as it sees fit.

16 E. Once the initial or interim performance evaluations are
17 finalized, the Office shall share the performance evaluations as
18 follows:

19 1. For special judges, with the Chief Justice of the Supreme
20 Court, the Presiding Administrative Judge of the judicial district
21 in which the special judge serves and any judge by administrative
22 orders in the role of a direct supervisor of the special judge of
23 the judicial district in which the special judge serves, and the
24 Director of the Administrative Office of the Courts; and

1 2. For district and associate judges, with the Chief Justice of
2 the Supreme Court and the Director of the Administrative Office of
3 the Courts.

4 SECTION 6. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1676 of Title 20, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The Office of Judicial Performance Evaluation shall conduct
8 an election-year evaluation for each justice or judge whose term is
9 to expire and who must stand for reelection or retention election.

10 B. 1. The Office shall complete an election-year evaluation
11 and related narrative to be approved by the Board of Judicial
12 Performance Evaluation. Once approved, the election-year evaluation
13 shall be communicated in writing to the justice or judge no later
14 than forty-five (45) days prior to the last day available for the
15 justice or judge to declare his or her intent to stand for
16 reelection or retention election.

17 2. The narrative prepared for an election-year evaluation must
18 include an assessment of the justice's or judge's strengths and
19 weaknesses with respect to the judicial performance criteria
20 provided for in Section 4 of this act, a discussion regarding any
21 deficiency identified in an initial or interim evaluation prepared
22 pursuant to Section 5 of this act, a review of any improvement plan
23 developed pursuant to Section 7 of this act, and a statement of
24 whether the Board concludes that any deficiency identified has been

1 satisfactorily addressed, or a statement from the Board that an
2 improvement plan, if any, was satisfactorily followed by the justice
3 or judge.

4 3. The Board shall grant each justice or judge who receives an
5 election-year evaluation the opportunity to meet with the Board at
6 its next meeting or otherwise respond to the evaluation no later
7 than ten (10) days following his or her receipt of the evaluation.
8 If the meeting is held or a response is made, the Board may revise
9 the evaluation as it sees fit.

10 C. After the requirements of subsection B of this section are
11 met, the Council shall make a recommendation regarding the
12 performance of each justice or judge who declares his or her intent
13 to stand for reelection or retention. The recommendations must be
14 stated as "meets performance standard" or "does not meet performance
15 standard". For a justice or judge to receive a designation of "does
16 not meet performance standard", there must be a majority vote by the
17 Council members that the particular justice or judge should receive
18 such a recommendation.

19 D. Once the election-year evaluation is finalized, the Office
20 shall share the performance evaluations for district and associate
21 judges with the Chief Justice of the Supreme Court and the Director
22 of the Administrative Office of the Courts.

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1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1677 of Title 20, unless there
3 is created a duplication in numbering, reads as follows:

4 A. 1. If the Office of Judicial Performance Evaluation
5 recommends, pursuant to Section 5 of this act, that a justice or
6 judge receive an improvement plan, the Board of Judicial Performance
7 Evaluation shall determine whether an individual judicial
8 improvement plan is appropriate. If the Board determines an
9 improvement plan is appropriate, the Office shall then develop an
10 improvement plan for such justice or judge. After the Board reviews
11 and approves the improvement plan, the Office shall have the
12 responsibility for implementing and overseeing the improvement plan.

13 2. Once the justice or judge has completed the improvement
14 plan, the Office shall convey the results of the improvement plan to
15 the Board. The Office shall maintain a copy of the improvement plan
16 and the results in its files.

17 B. If a justice or judge is required to complete an improvement
18 plan pursuant to this section and he or she fails to satisfactorily
19 complete the requirements of such improvement plan, the Board shall
20 automatically issue a "does not meet performance standard"
21 designation on his or her performance evaluation and shall advise
22 the Council on Judicial Complaints of such designation in the form
23 of a complaint.

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1 C. Upon the completion of an improvement plan, the Office shall
2 share the results of the improvement plan as follows:

3 1. For special judges, with the Chief Justice of the Supreme
4 Court, the Presiding Administrative Judge of the judicial district
5 in which the special judge serves and any judge by administrative
6 orders in the role of a direct supervisor of the special judge of
7 the judicial district in which the special judge serves, and the
8 Director of the Administrative Office of the Courts; and

9 2. For district and associate judges, with the Chief Justice of
10 the Supreme Court and the Director of the Administrative Office of
11 the Courts.

12 SECTION 8. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1678 of Title 20, unless there
14 is created a duplication in numbering, reads as follows:

15 A member of the Board of Judicial Performance Evaluation or an
16 employee of the Office of Judicial Performance Evaluation shall
17 disclose any professional or personal relationship with a justice or
18 judge that may affect an unbiased evaluation of the justice or
19 judge, including involvement with any litigation involving the
20 justice or judge and the member or employee, the member's or
21 employee's family, or the member's or employee's financial
22 interests. The Board may require, by a vote, the recusal of one of
23 its members or the Office's employee because of a relationship with
24 a justice or judge.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1679 of Title 20, unless there
3 is created a duplication in numbering, reads as follows:

4 A. 1. Except as specifically provided by law, all performance
5 evaluations, personal information, oral or written information,
6 content of any improvement plans, narratives, recommendations, and
7 any matter discussed by the Board of Judicial Performance Evaluation
8 concerning a performance evaluation or improvement plan is
9 confidential.

10 2. All surveys must allow for the participant's name to remain
11 confidential. Comments in surveys are confidential but may be
12 summarized in aggregate for use in performance evaluation
13 narratives.

14 B. Members of the Board of Judicial Performance Evaluation and
15 employees of the Office of Judicial Performance Evaluation shall not
16 publicly discuss the performance evaluation of a particular justice
17 or judge.

18 SECTION 10. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1680 of Title 20, unless there
20 is created a duplication in numbering, reads as follows:

21 A. The Board of Judicial Performance Evaluation shall promptly
22 approve or reject judicial performance evaluations submitted by the
23 Office of Judicial Performance Evaluation.

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1 B. The Board of Judicial Performance Evaluation shall have the
2 following powers and duties:

3 1. Promulgate rules concerning:

4 a. the performance evaluation of justices and judges by
5 the Office of Judicial Performance Evaluation based on
6 performance evaluation criteria set forth in Section 4
7 of this act, and

8 b. the creation of a standards matrix or scorecard
9 related to the performance evaluation criteria set
10 forth in Section 4 of this act;

11 2. Review data, prepared narratives, and recommendations made
12 by the Office of Judicial Performance Evaluation;

13 3. Approve or reject the performance evaluations of justices
14 and judges submitted by the Office of Judicial Performance
15 Evaluation;

16 4. Vote as to whether the justice or judge meets the
17 performance standard based upon the member's review of all the
18 information available to the Council and the Office's performance
19 evaluation; and

20 5. Determine whether information submitted during the
21 performance evaluation process shall be deemed a complaint.

22 SECTION 11. This act shall become effective November 1, 2023.

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