

FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB4078 _____
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

Adopted: _____

Amendment submitted by: Chris Kannady

Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

FLOOR SUBSTITUTE

FOR

HOUSE BILL NO. 4078

By: Wallace

FLOOR 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; requiring Board expenses be approved; providing for confidentiality of certain information; creating Administrator position; prescribing duties of Administrator; prescribing duties and powers of Office; 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; allowing response from Justice or judge; requiring performance evaluations be shared with certain persons; authorizing improvement plans; prescribing process; providing for conflicts of interest; providing recusal process for certain persons; requiring information be kept confidential; prescribing Board of Judicial Performance Evaluation duties and powers; providing for codification; and providing an effective date.

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

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

4 As used in this act:

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

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

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

14 4. "Initial evaluation" and "interim evaluation" mean
15 evaluations conducted by the Office of Judicial Performance
16 Evaluation pursuant to Section 5 of this act of a Justice or judge;

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

20 6. "Justice" means a Justice of the Oklahoma Supreme Court.

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

24

1 A. There is hereby created within the Council on Judicial
2 Complaints the Office of Judicial Performance Evaluation and the
3 Board of Judicial Performance Evaluation. The purpose of the Office
4 and the Board shall be to:

5 1. Provide Justices and judges with useful information
6 concerning their own performances; and

7 2. Conduct statewide judicial performance evaluations using
8 uniform criteria and procedures pursuant to the provisions of this
9 act.

10 B. 1. The Office of Judicial Performance Evaluation shall
11 present completed performance evaluations and recommendations to the
12 Board of Judicial Performance Evaluation which shall consist of nine
13 (9) members, only five of whom shall be members of the Bar of the
14 State of Oklahoma and only five of whom shall constitute a quorum.
15 Three members shall be appointed by the Speaker of the Oklahoma
16 House of Representatives; three members shall be appointed by the
17 President Pro Tempore of the Oklahoma State Senate; and three
18 members shall be appointed by the Governor. No more than five
19 members of the Board shall be, or shall have been in the previous
20 six (6) months, members of the same political party. Appointments
21 may include retired judicial officers, but shall not include members
22 of the Council on Judicial Complaints or Judicial Nominating
23 Commission.

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

13 C. All expenses of the Office of Judicial Performance
14 Evaluation shall be approved by the Chair of the Council on Judicial
15 Complaints, by the Council on Judicial Complaints upon a majority
16 vote of its members, or by the Administrative Director to the
17 Council on Judicial Complaints as directed by the Chair of the
18 Council on Judicial Complaints.

19 D. Meetings of the Board of Judicial Performance Evaluation
20 convened for the purpose of conducting, discussing, or deliberating
21 any matter relating to performance evaluations or improvement plans
22 are confidential and are not subject to the Oklahoma Open Meeting
23 Act.
24

1 E. Records of the Office of Judicial Performance Evaluation
2 created for the purpose of or in furtherance of summarizing,
3 drafting, conducting, discussing, or deliberating any matter
4 relating to an election-year evaluation, improvement plan, or
5 interim evaluation are confidential and are not subject to
6 disclosure under the Oklahoma Open Records Act.

7 F. There is hereby created the position of Administrator to the
8 Office of Judicial Performance Evaluation who shall be a state
9 employee hired by the Administrative Director to the Council on
10 Judicial Complaints. The Administrator, operations, and staffing of
11 the Office shall be overseen by the Administrative Director to the
12 Council on Judicial Complaints.

13 G. The Administrator shall notify the members of the Board of
14 Judicial Performance Evaluation of the number of completed
15 performance evaluations ready for review and consideration by the
16 Board five (5) days before the Board's regular meeting. The
17 Administrator shall attend meetings of the Board concerning
18 performance evaluations and business of the Office, keep records
19 concerning performance evaluations, prepare reports required by
20 statute, and perform other tasks as the Council shall direct.

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

24 A. The Office of Judicial Performance Evaluation shall:

1 1. Train members of the Board of Judicial Performance
2 Evaluation as needed and requested to fulfil the duties established
3 pursuant to Section 10 of this act;

4 2. Collect and disseminate data on judicial performance
5 evaluations, including judicial performance surveys developed,
6 collected, and distributed pursuant to paragraph 5 of subsection B
7 of this section; and

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

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

12 1. Review any available case management data and statistics
13 related to individual Justices and judges;

14 2. Review written judicial opinions and orders authorized by
15 Justices and judges;

16 3. Interview Justices and judges under the Board of Judicial
17 Performance Evaluation's oversight;

18 4. Accept information and documentation from interested persons
19 as necessary;

20 5. Develop surveys to evaluate the performance of Justices and
21 judges which shall be completed by attorneys, jurors, represented
22 and unrepresented litigants, law enforcement personnel, attorneys
23 within the district attorneys' and public defenders' offices,
24

1 employees of the court, court interpreters, employees of probation
2 offices, and employees of local departments of social services;

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

7 7. Prepare narratives for the Board of Judicial Performance
8 Evaluation that reflect the performance of Justices and judges;

9 8. Submit any information concerning or appearing to concern a
10 complaint or violation of the Code of Judicial Conduct or other law
11 by a judicial officer to the Administrative Director to the Council
12 on Judicial Complaints;

13 9. Submit performance evaluations of Justices and judges to the
14 Board of Judicial Performance Evaluation for approval or rejection;
15 and

16 10. Recommend, at the Office's discretion after it completes an
17 evaluation of a Justice or judge pursuant to Section 5 of this act,
18 to the Board of Judicial Performance Evaluation that it develop an
19 individual judicial improvement plan pursuant to Section 7 of this
20 act.

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

1 The Office of Judicial Performance Evaluation shall evaluate
2 each Justice and judge in Oklahoma utilizing the powers and duties
3 conferred in Section 3 of this act. The evaluations shall only
4 include the following performance evaluation criteria:

5 1. Integrity including, but not limited to, whether the Justice
6 or judge:

- 7 a. avoids impropriety or the appearance of impropriety,
- 8 b. displays fairness and impartiality toward all
- 9 participants, and
- 10 c. avoids ex parte communications;

11 2. Legal knowledge including, but not limited to, whether the
12 Justice or judge:

- 13 a. demonstrates, through well-reasoned opinions and
- 14 courtroom conduct, an understanding of substantive law
- 15 and relevant rules of procedure and evidence,
- 16 b. demonstrates, through well-reasoned opinions and
- 17 courtroom conduct, attentiveness to factual and legal
- 18 issues before the court, and
- 19 c. adheres to precedent or clearly explains the legal
- 20 basis for departure from precedent and appropriately
- 21 applies statutes or other sources of legal authority;

22 3. Communication skills including, but not limited to, whether
23 the Justice or judge:

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

4. Judicial temperament including, but not limited to, whether the Justice or judge:

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

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

- a. demonstrates preparation for oral arguments, trials, and hearings, as well as attentiveness to and appropriate control over judicial proceedings,
- b. manages workload and court time effectively and efficiently,
- c. issues opinions, findings of fact, conclusions of law, and orders in a timely manner and without unnecessary delay,

1 d. participates in a proportionate share of the court's
2 workload, takes responsibility for more than his or
3 her own caseload, and is willing to assist other
4 Justices or judges, and

5 e. understands and complies, as necessary, with
6 directives of the Oklahoma Supreme Court, Oklahoma
7 Court of Criminal Appeals, Oklahoma Court of Civil
8 Appeals, the presiding judge of his or her
9 administrative district, or the chief judge of the
10 judicial district, as applicable; and

11 6. Service to the legal profession and the public by
12 participating in service-oriented efforts designed to educate the
13 public about the legal system and improve the legal system.

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

17 A. Within the first two (2) years of a Justice's or judge's
18 appointment to the bench, the Office of Judicial Performance
19 Evaluation shall conduct an initial evaluation of each Justice and
20 judge. The Office shall complete and communicate the initial
21 evaluations, including any recommendations for improvement plans, to
22 the Board of Judicial Performance Evaluation for approval or
23 rejection. Once approved, the Office shall communicate the initial
24 evaluation to the Justice or judge in writing.

1 B. Within two (2) years of the approval of the initial
2 evaluation of a Justice or judge by the Board or within two (2)
3 years of the effective date of this act, the Office shall conduct an
4 interim evaluation of each Justice and judge. The Office shall
5 complete and communicate the interim evaluations, including any
6 recommendations for improvement plans, to the Board of Judicial
7 Performance Evaluation for approval or rejection. Once approved,
8 the Office shall communicate the interim evaluation to the Justice
9 or judge in writing.

10 C. For judges not required to stand for reelection or retention
11 election, the Office shall conduct additional interim evaluations of
12 such judges within two (2) years of the previously finalized interim
13 evaluation. The Office shall complete and communicate the interim
14 evaluations, including any recommendations for improvement plans, to
15 the Board of Judicial Performance Evaluation for approval or
16 rejection. Once approved, the Office shall communicate the interim
17 evaluation to the judge in writing.

18 D. The Board shall grant each Justice or judge who receives
19 initial and interim evaluations the opportunity to meet with the
20 Board at its next meeting or otherwise respond to the initial or
21 interim evaluations no later than ten (10) days following the
22 Justice's or judge's receipt of the initial or interim evaluation.
23 If a meeting is held or a response is made, the Board may revise the
24 initial or interim evaluation as it sees fit.

1 E. Once the initial or interim performance evaluations are
2 finalized, the Office shall share the performance evaluations as
3 follows:

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

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

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

16 A. The Office of Judicial Performance Evaluation shall conduct
17 an election-year evaluation for each Justice or judge whose term is
18 to expire and who must stand for reelection or retention election.

19 B. 1. The Office shall complete an election-year evaluation
20 and related narrative to be approved by the Board of Judicial
21 Performance Evaluation. Once approved, the election-year evaluation
22 shall be communicated in writing to the Justice or judge no later
23 than forty-five (45) days prior to the last day available for the
24

1 Justice or judge to declare his or her intent to stand for
2 reelection or retention election.

3 2. The narrative prepared for an election-year evaluation must
4 include an assessment of the Justice's or judge's strengths and
5 weaknesses with respect to the judicial performance criteria
6 provided for in Section 4 of this act, a discussion regarding any
7 deficiency identified in an initial or interim evaluation prepared
8 pursuant to Section 5 of this act, a review of any improvement plan
9 developed pursuant to Section 7 of this act, and a statement of
10 whether the Board concludes that any deficiency identified has been
11 satisfactorily addressed, or a statement from the Board that an
12 improvement plan, if any, was satisfactorily followed by the Justice
13 or judge.

14 3. The Board shall grant each Justice or judge who receives an
15 election-year evaluation the opportunity to meet with the Board at
16 its next meeting or otherwise respond to the evaluation no later
17 than ten (10) days following his or her receipt of the evaluation.
18 If the meeting is held or a response is made, the Board may revise
19 the evaluation as it sees fit.

20 C. After the requirements of subsection B of this section are
21 met, the Council shall make a recommendation regarding the
22 performance of each Justice or judge who declares his or her intent
23 to stand for reelection or retention. The recommendations must be
24 stated as "meets performance standard" or "does not meet performance

1 standard". For a Justice or judge to receive a designation of "does
2 not meet performance standard", there must be a majority vote by the
3 Council members that the particular Justice or judge should receive
4 such a recommendation.

5 D. Once the election-year evaluation is finalized, the Office
6 shall share the performance evaluations for district and associate
7 judges with the Chief Justice of the Supreme Court and the Director
8 of the Administrative Office of the Courts.

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

12 A. 1. If the Office of Judicial Performance Evaluation
13 recommends, pursuant to Section 5 of this act, that a Justice or
14 judge receive an improvement plan, the Board of Judicial Performance
15 Evaluation shall determine whether an individual judicial
16 improvement plan is appropriate. If the Board determines an
17 improvement plan is appropriate, the Office shall then develop an
18 improvement plan for such Justice or judge. After the Board reviews
19 and approves the improvement plan, the Office shall have the
20 responsibility for implementing and overseeing the improvement plan.

21 2. Once the Justice or judge has completed the improvement
22 plan, the Office shall convey the results of the improvement plan
23 to the Board. The Office shall maintain a copy of the improvement
24 plan and the results in its files.

1 B. If a Justice or judge is required to complete an improvement
2 plan pursuant to this section and he or she fails to satisfactorily
3 complete the requirements of such improvement plan, the Board shall
4 automatically issue a "does not meet performance standard"
5 designation on his or her performance evaluation and shall advise
6 the Council on Judicial Complaints of such designation in the form
7 of a complaint.

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

10 1. For special judges, with the Chief Justice of the Supreme
11 Court, the Presiding Administrative Judge of the judicial district
12 in which the special judge serves and any judge by administrative
13 orders in the role of a direct supervisor of the special judge of
14 the judicial district in which the special judge serves, and the
15 Director of the Administrative Office of the Courts; and

16 2. For district and associate judges, with the Chief Justice of
17 the Supreme Court and the Director of the Administrative Office of
18 the Courts.

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

22 A member of the Board of Judicial Performance Evaluation or an
23 employee of the Office of Judicial Performance Evaluation shall
24 disclose any professional or personal relationship with a Justice or

1 judge that may affect an unbiased evaluation of the Justice or
2 judge, including involvement with any litigation involving the
3 Justice or judge and the member or employee, the member's or
4 employee's family, or the member's or employee's financial
5 interests. The Board may require, by a vote, the recusal of one of
6 its members or the Office's employee because of a relationship with
7 a Justice or judge.

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

11 A. 1. Except as specifically provided by law, all performance
12 evaluations, personal information, oral or written information,
13 content of any improvement plans, narratives, recommendations, and
14 any matter discussed by the Board of Judicial Performance Evaluation
15 concerning a performance evaluation or improvement plan is
16 confidential.

17 2. All surveys must allow for the participant's name to remain
18 confidential. Comments in surveys are confidential but may be
19 summarized in aggregate for use in performance evaluation
20 narratives.

21 B. Members of the Board of Judicial Performance Evaluation and
22 employees of the Office of Judicial Performance Evaluation shall not
23 publicly discuss the performance evaluation of a particular Justice
24 or judge.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1664 of Title 20, unless there is created a duplication in numbering, reads as follows:

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

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

1. Promulgate rules concerning:

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

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

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

3. Approve or reject the performance evaluations of Justices and judges submitted by the Office of Judicial Performance Evaluation;

4. Vote as to whether the Justice or judge meets the performance standard based upon the member's review of all the

1 information available to the Council and the Office's performance
2 evaluation; and

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

5 SECTION 11. This act shall become effective November 1, 2022.

6

7 58-2-11057 AQH 03/07/22

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24