

**Seventy-Eighth Oregon Legislative Assembly - 2015 Regular Session**  
**STAFF MEASURE SUMMARY**  
**Senate Committee On Judiciary**

**MEASURE: SJR 4**

**Fiscal:** Fiscal impact issued

**Revenue:** No Revenue Impact

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**Action Date:** 02/17/15

**Action:** Do Adopt And Refer To Rules By Prior Reference.

**Meeting Dates:** 02/17

**Senate**

**Yeas:** 5 - Burdick, Gelser, Thatcher, Prozanski, Kruse

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**Prepared By:** Laura Handzel, Administrator

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**WHAT THE MEASURE DOES:**

Amends Oregon Constitution to prohibit fixed age for mandatory retirement of judges. Refers amendment to people for approval or rejection at next regular general election.

**ISSUES DISCUSSED:**

- Minimal impact of Senate Joint Resolution 4
- Age of United State Supreme Court Justices
- Judges' desire to continue working over the age of 75 years
- Benefits of having older judges on the bench, including depth of experience
- Case of Attorney Agnes Peterson
- Equal treatment – discrimination against women and the elderly
- Existing mechanism contained at ORS 1.310 to address involuntary retirement of judges due to physical or mental incapacitation
- Oregon Commission on Judicial Fitness and Disability
- Legislative history of Section 1a, Article VII

**EFFECT OF COMMITTEE AMENDMENT:**

No amendment.

**BACKGROUND:**

There is no mandatory retirement age for judges at the federal level. At the state level, 33 states plus the District of Columbia currently have a mandatory retirement age for judges, but that number is in flux as mandatory retirement has been the topic of several initiatives as well as court cases throughout the nation with mixed results.

Oregon's judicial retirement requirement is contained in Section 1a, Article VII of the Oregon Constitution, which mandates that a judge of any court retire at the end of the calendar year in which "he" reaches the age of 75 years. This section also states that the Legislative Assembly or the people may by law fix a lesser age for mandatory retirement not to be earlier than the end of the calendar year in which the judge attains the age of 70 years. Oregon's mandatory retirement age was most recently challenged in 2014 by Attorney Agnes Peterson via an alternative writ of mandamus filed against the Secretary of State alleging age and gender discrimination, as well as the unconstitutionality of Section 1a. That case was dismissed.

Section 1a of Article VII is the result of Senate Joint Resolution 3 (1959) adopted by the people in 1960. In turn, Senate Joint

Resolution 3 was the result of a recommendation by a 21-member statewide Legislative Interim Committee on Judicial Administration created in 1957. In 1959, that committee issued its report, which included the determination that a mandatory retirement age would address the issues of judicial congestion and delay.

Senate Joint Resolution 4 repeals the mandatory retirement age and instead states that the Legislative Assembly or the people may not fix an age for mandatory retirement for judges of any court. If passed, Senate Joint Resolution 4 will be submitted to the people for their approval or rejection at the next statewide regular general election.