

STAFF MEASURE SUMMARY**House Committee On Judiciary****Fiscal:** Fiscal impact issued**Revenue:** No Revenue Impact**Action Date:** 05/12/15**Action:** Be Adopted And Be Referred To Rules By Prior Reference**Meeting Dates:** 05/12**Vote:**

Yeas: 7 - Barker, Barton, Greenlick, Olson, Post, Sprenger, Williamson

Exc: 2 - Krieger, Lininger

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WHAT THE MEASURE DOES:

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

ISSUES DISCUSSED:

- Restrictions on elected judges in Oregon
- Other judges over age of 75 years working in Oregon
- No age limits on federal judges
- United States Supreme Court justices over age of 75 years
- Discrimination
- Examples of individuals over age of 75 years doing great work in other fields
- Case of Attorney Agnes Peterson
- No mandatory retirement requirements for other public officials in Oregon
- ORS 1.310 addressing involuntary retirement of judges due to physical or mental incapacitation
- Oregon's progress in ending discrimination of all kinds

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-A repeals language from the Oregon Constitution addressing mandatory retirement ages for judges. If passed, Senate Joint Resolution 4-A will be submitted to the people for their approval or rejection at the next statewide regular general election.