

Committee Report

REGULAR CALENDAR

February 16, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on Judiciary to which
was referred CACR 6,**

**AN ACT relating to the retirement age of judges.
Providing that the retirement age of judges be
increased. Having considered the same, report the
same with the following resolution: RESOLVED, that it
is INEXPEDIENT TO LEGISLATE.**

Rep. Mark McLean

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	CACR 6
Title:	relating to the retirement age of judges. Providing that the retirement age of judges be increased.
Date:	February 16, 2021
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill looks to amend the New Hampshire Constitution by increasing the mandatory age at which a judge must retire from 70 to 75. While the committee recognized that life expectancy has increased since this provision was first enacted in the 18th century, it also understood that competence due to age is not the only reason for this provision. Extending the age of retirement might impede turnover and inhibit the introduction of fresh perspectives to the bench. Since there is no shortage of candidates for the bench, the majority of the committee felt that there was no demonstrated need compelling enough to merit a constitutional change at this time.

Vote 17-4.

Rep. Mark McLean
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

CACR 6, relating to the retirement age of judges. Providing that the retirement age of judges be increased. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. Mark McLean for the **Majority** of Judiciary. This bill looks to amend the New Hampshire Constitution by increasing the mandatory age at which a judge must retire from 70 to 75. While the committee recognized that life expectancy has increased since this provision was first enacted in the 18th century, it also understood that competence due to age is not the only reason for this provision. Extending the age of retirement might impede turnover and inhibit the introduction of fresh perspectives to the bench. Since there is no shortage of candidates for the bench, the majority of the committee felt that there was no demonstrated need compelling enough to merit a constitutional change at this time. **Vote 17-4.**

Original: House Clerk

Cc: Committee Bill File

REGULAR CALENDAR

February 16, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on Judiciary to which
was referred CACR 6,**

**AN ACT relating to the retirement age of judges.
Providing that the retirement age of judges be
increased. Having considered the same, and being
unable to agree with the Majority, report with the
following amendment, and the recommendation that
the bill OUGHT TO PASS WITH AMENDMENT.**

Rep. Rebecca McBeath

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	CACR 6
Title:	relating to the retirement age of judges. Providing that the retirement age of judges be increased.
Date:	February 16, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2021-0291h

STATEMENT OF INTENT

The minority of the committee supports the raising of the constitutionally prescribed age limit of 70 years old on judges appointed to serve the NH judicial branch. Raising the age limit of judges serving will allow for the consideration of greater diversity in judicial appointments by allowing candidates to join the judiciary if law is their second career as well as encourage appointment of seasoned attorneys that are not choosing a judicial appointment as a career. In addition, the minority believes that the 70-year age cap on judges is arbitrary, as productive contributory professional abilities do not adhere to this 237-year-old standard.

Rep. Rebecca McBeath
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

CACR 6, relating to the retirement age of judges. Providing that the retirement age of judges be increased. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Rebecca McBeath for the **Minority** of Judiciary. The minority of the committee supports the raising of the constitutionally prescribed age limit of 70 years old on judges appointed to serve the NH judicial branch. Raising the age limit of judges serving will allow for the consideration of greater diversity in judicial appointments by allowing candidates to join the judiciary if law is their second career as well as encourage appointment of seasoned attorneys that are not choosing a judicial appointment as a career. In addition, the minority believes that the 70-year age cap on judges is arbitrary, as productive contributory professional abilities do not adhere to this 237-year-old standard.

Original: House Clerk

Cc: Committee Bill File

Amendment to CACR 6

1 Amend the resolution by replacing paragraph I with the following:

2

3 I. That article 78 of the second part of the constitution be amended to read as follows:

4 [Art.] 78. [Judges and Sheriffs, When Disqualified by Age.] No person shall hold the office of
5 ~~[Judge of any Court, or Judge of Probate, or]~~ Sheriff of any county, after he *or she* has attained the
6 age of seventy years. ***No person shall hold the office of Judge or serve as a Judge of any***
7 ***court in any case or controversy after he or she has attained the age of 75 years.***

8

9 Amend the resolution by replacing paragraph IV with the following:

10

11 IV. That the wording of the question put to the qualified voters shall be:

12 "Are you in favor of amending article 78 of the second part of the constitution to read as follows:

13 [Art.] 78. [Judges and Sheriffs, When Disqualified by Age.] No person shall hold the office of
14 Sheriff of any county, after he or she has attained the age of seventy years. No person shall hold the
15 office of Judge or serve as a Judge of any court in any case or controversy after he or she has
16 attained the age of 75 years."

17

18 Amend the resolution by replacing paragraph VII with the following:

19

20 VII. Voters' Guide.

21 AT THE PRESENT TIME, a judge must retire by the age of 70.

22 IF THE AMENDMENT IS ADOPTED, the retirement age of judges will be raised to

23 75.

Amendment to CACR 6
- Page 2 -

2021-0291h

AMENDED ANALYSIS

This constitutional amendment concurrent resolution extends the time a judge may serve to age 75.

UNAPPROVED

Voting Sheets

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK



1/22/2021 10:07:24 AM
Roll Call Committee Registers
Report

2021 SESSION

Judiciary

Bill #: CACR6 Motion: _____ AM #: _____ Exec Session Date: /2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman			
McLean, Mark Vice Chairman			
Sylvia, Michael J.			
Wuelper, Kurt F. Clerk			
Alexander, Joe H.			
Rice, Kimberly A.			
Silber, Norman J.			
Greene, Bob J.			
Kelley, Diane E.			
Tausch, Lindsay			
Trottier, Douglas R.			
Smith, Marjorie K.			
Berch, Paul S.			
Horrigan, Timothy O.			
DiLorenzo, Charlotte I.			
Chase, Wendy			
Kenney, Cam E.			
Langley, Diane M.			
McBeath, Rebecca Susan			
Paige, Mark			
Simpson, Alexis			
TOTAL VOTE:			

Rep Kurt Wuelper *Kurt Wuelper*

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK



1/22/2021 10:07:24 AM
Roll Call Committee Registers
Report

2021 SESSION

Judiciary

Bill #: CACR6 Motion: _____ AM #: _____ Exec Session Date: /2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman			
McLean, Mark Vice Chairman			
Sylvia, Michael J.			
Wuelper, Kurt F. Clerk			
Alexander, Joe H.			
Rice, Kimberly A.			
Silber, Norman J.			
Greene, Bob J.			
Kelley, Diane E.			
Tausch, Lindsay			
Trottier, Douglas R.			
Smith, Marjorie K.			
Berch, Paul S.			
Horrigan, Timothy O.			
DiLorenzo, Charlotte I.			
Chase, Wendy			
Kenney, Cam E.			
Langley, Diane M.			
McBeath, Rebecca Susan			
Paige, Mark			
Simpson, Alexis			
TOTAL VOTE:			

Rep Kurt Wuelper *Kurt Wuelper*

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK



1/22/2021 10:07:24 AM
Roll Call Committee Registers
Report

2021 SESSION

Judiciary

Bill #: CACR6 Motion: ITL AM #: _____ Exec Session Date: 2/16/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman	Y		
McLean, Mark Vice Chairman	Y		
Sylvia, Michael J.	Y		
Wuelper, Kurt F. Clerk	Y		
Alexander, Joe H.	Y		
Rice, Kimberly A.	Y		
Silber, Norman J.	Y		
Greene, Bob J.	Y		
Kelley, Diane E.	Y		
Tausch, Lindsay	Y		
Trottier, Douglas R.	Y		
Smith, Marjorie K.	Y		
Berch, Paul S.		N	
Horrigan, Timothy O.		N	
DiLorenzo, Charlotte I.	Y		
Chase, Wendy	Y		
Kenney, Cam E.		N	
Langley, Diane M.	Y		
McBeath, Rebecca Susan	Y		
Paige, Mark	Y		
Simpson, Alexis		N	
TOTAL VOTE:			

Rep Kurt Wuelper *Kurt Wuelper*

Amendment to CACR 6

1 Amend the resolution by replacing paragraph I with the following:

2

3 I. That article 78 of the second part of the constitution be amended to read as follows:

4 [Art.] 78. [Judges and Sheriffs, When Disqualified by Age.] No person shall hold the office of
5 ~~[Judge of any Court, or Judge of Probate, or]~~ Sheriff of any county, after he *or she* has attained the
6 age of seventy years. ***No person shall hold the office of Judge or serve as a Judge of any***
7 ***court in any case or controversy after he or she has attained the age of 75 years.***

8

9 Amend the resolution by replacing paragraph IV with the following:

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11 IV. That the wording of the question put to the qualified voters shall be:

12 "Are you in favor of amending article 78 of the second part of the constitution to read as follows:

13 [Art.] 78. [Judges and Sheriffs, When Disqualified by Age.] No person shall hold the office of
14 Sheriff of any county, after he or she has attained the age of seventy years. No person shall hold the
15 office of Judge or serve as a Judge of any court in any case or controversy after he or she has
16 attained the age of 75 years."

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18 Amend the resolution by replacing paragraph VII with the following:

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20 VII. Voters' Guide.

21 AT THE PRESENT TIME, a judge must retire by the age of 70.

22 IF THE AMENDMENT IS ADOPTED, the retirement age of judges will be raised to

23 75.

Amendment to CACR 6
- Page 2 -

2021-0291h

AMENDED ANALYSIS

This constitutional amendment concurrent resolution extends the time a judge may serve to age 75.

UNAPPROVED

Public Hearing

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON CACR 6,

BILL TITLE: relating to the retirement age of judges. Providing that the retirement age of judges be increased

DATE:1/26/2021

LOB ROOM: 208

Time Public Hearing Called to Order: 9:04 AM

Time Adjourned: 10:59

Committee Members: Reps. Gordon, McLean, Wuelper, Sylvia, Alexander Jr., Rice, Silber, Greene, D. Kelley, Tausch, Trottier, M. Smith, Berch, Horrigan, DiLorenzo, Chase, Kenney, Langley, McBeath, Paige and Simpson

Bill Sponsors:

Rep. Lynn

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Lynn Support Introduced the bill

CACR 6 would change mandatory retirement age in the Constitution from 70 to 75. Life expectancy in 1784 was far lower than it is today. I know a judge who remained in Senior status until he died at age 97. I would not support removing age limit completely. Many people might feel uncomfortable with a 90-year-old judge. This is an incremental change. The bill includes a provision for the Governor and Council to review Judges after age 70. It is a safety valve. This wouldn't apply to me or Justice Conboy.

Donna Sytek: Neutral I support changing age of retirement to 75 without the review process. I am former chairman of the House judiciary Committee and was part of this reviewing the retirement age. In NH, judges are insulated from public opinion. I chaired the Judicial conduct committee and cam part of the Governor's judicial selection committee. Judges. The review process introduces politics into the selection of judges. A clean bill without the review process is better.

Rep Israel Piedra Opposed but more neutral than anything Justices Lynn and Conboy would still be great judges I do not think the bill is necessary. Competence isn't the only reason we have mandatory retirement. One is the value of regular turnover on the bench. Retiring older judges guards against long-serving judges losing touch with the typical practices. Only ¼ of Superior court judges are women and only one is a person of color. Earlier retirement contributes to improving diversity. NH isn't alone with age 70 retirement-about 17 states have that. Also, retired judges can still serve in a judicial role.

Q Rep McBeath: Couldn't the diversity question be dealt with through the retirement system? A Yes, any way we increase turnover would be a good thing, but I'm not sure it would be effective without keeping the mandatory retirement age.

Bill Woodbury NHAJ Support We support the bill with reservations about the Governor and Council review provision. We suggest an evaluation review process should be performed by the Judicial Conduct Commission which h is well equipped for that function and not part of the execute branch.

Rep Silber Supports Judges are appointed by Governor and Council. Judges approaching age 70 are often at their peak of knowledge and experience.

Hearing Recessed at 10:23 R3econvended 10:51

Carol Ann Conboy Supports I served on the Supreme Court for 8 years and Superior Court for 17 years. I left private practice. I was forced to retire at age 70. Life span in the late 1700s was less than 40. 70 would have been extremely old. Current age restriction causes loss of highly qualified judges. About 17 states have no mandatory retirement age. CACR 6 provides a way for judges to continue after age 70. I would prefer a simple extension of the age to 75, but this compromise will expand the appeal of this extension to skeptics.

House Remote Testify

Judiciary Committee Testify List for Bill CACR6 on 2021-01-26

Support: 6 Oppose: 2 Neutral: 1 Total to Testify: 6

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Lynn, Bob	rjlynn4@gmail.com	An Elected Official	Myself as sponsor of the bill	Support	Yes (0m)	No	1/24/2021 12:51 PM
Conboy, Carol Ann	graystonecac@comcast.net	A Member of the Public	Myself	Support	Yes (0m)	No	1/25/2021 10:44 AM
Woodbury, Bill	wwoodbury@nco-law.com	A Member of the Public	NHAJ	Support	Yes (0m)	No	1/25/2021 11:55 AM
Sytek, Donna	donnasytek@gmail.com	A Member of the Public	Myself	Neutral	Yes (0m)	No	1/25/2021 7:57 PM
Piedra, Israel	israel.piedra@leg.state.nh.us	An Elected Official	Myself	Oppose	Yes (0m)	No	1/25/2021 7:17 PM
Silber, Norm	njs@silbersnh.com	An Elected Official	Myself	Support	Yes (0m)	No	1/25/2021 11:32 PM
ploszaj, tom	tom.ploszaj@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/26/2021 9:34 AM
See, Alvin	absee@4Liberty.net	A Member of the Public	Myself	Oppose	No	No	1/25/2021 11:23 PM
Rathbun, Eric	ericrathbun@gmail.com	A Member of the Public	Myself	Support	No	No	1/25/2021 7:12 PM

Testimony



NEW HAMPSHIRE
ASSOCIATION FOR

JUSTICE

Engage ■ Truth ■ Advance ■ Justice

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Manchester

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Christopher Seufert

Franklin

AAJ Revitalization Governor

Anthony Carr

Concord

AAJ Minority Delegate

Israel Piedra

Nashua

January 25, 2021

House Judiciary Committee

Hon. Ned Gordon, Chair

Re: CACR 6, increasing the retirement age of judges

Dear Honorable Committee members,

We submit the following testimony for your consideration regarding CACR 6. Our Board is supportive of increasing the mandatory minimum retirement age from 70 to 75, however we oppose that increase being subject to a vote by the Governor and Executive Council.

NHAJ is a statewide professional trade association of approximately 400 trial attorneys who predominantly practice in the areas of personal injury, family law, medical malpractice, civil rights, employment law, workers' compensation, and consumer protection matters. As New Hampshire is a small state with a collegial bar, that list of practice areas is not exhaustive. If our organization can ever be of assistance or serve as a legal resource to any of you, or your constituents, please do not hesitate to give me a call.

As members of the New Hampshire legal community, our association supports increasing the mandatory retirement age for judges from 70 to 75. Plaintiffs and defendants, average citizens and corporations, would all benefit from a greater availability of judges, increased availability of court time, and most importantly, the wisdom borne from experience.

Experience has proven time and again that judges can perform some of their best work after 70. Good judges are not just intellectually able, they are wise. With existing checks and balances in the judicial system to remove judges who prove themselves to be unqualified, the current age limit has proven unnecessary.

The New Hampshire Supreme Court created a Judicial Conduct Committee since 1977. Per its website, “...in carrying out its responsibilities, the Judicial Conduct Committee helps to preserve the public's confidence in the judiciary and to safeguard the integrity of the judicial system. It is also important, of course, that the independence of judges not be compromised or chilled in the process, and the Judicial Conduct Committee strives to maintain the necessary balance between public accountability and judicial independence.”¹ As there is already a well-established and nonpartisan system for vetting the performance of our judges, we do not believe it necessary or wise to hold them to a political test for an additional five years of tenure.

Before the pandemic and only exacerbated since, there has been a shortage of judges and court time, and qualified judges have been barred from doing work by an antiquated mandate. In addition to filling judicial vacancies that currently exist, keeping experienced judges who are still able to and want to perform their duties on the bench would benefit New Hampshire.

Thank you for your time and consideration. Please do not hesitate to contact our Executive Director, Marissa Chase, with any questions you may have or if we can be of any assistance.

Sincerely,

John Kenison
President, NH Association for Justice (2020-2021)

¹ State of New Hampshire Judicial Conduct Committee,
<https://www.courts.state.nh.us/committees/judconductcomm/overview.htm>

Bill as
Introduced

CACR 6 - AS INTRODUCED

2021 SESSION

21-0253

06/11

CONSTITUTIONAL AMENDMENT

CONCURRENT RESOLUTION **6**

RELATING TO: the retirement age of judges.

PROVIDING THAT: the retirement age of judges be increased.

SPONSORS: Rep. Lynn, Rock. 7

COMMITTEE: Judiciary

ANALYSIS

This constitutional amendment concurrent resolution extends the time a judge may serve to age 75 unless the governor and council determine that the judge's service shall terminate at age 70.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

CONCURRENT RESOLUTION PROPOSING CONSTITUTIONAL AMENDMENT

RELATING TO: the retirement age of judges.

PROVIDING THAT: the retirement age of judges be increased.

Be it Resolved by the House of Representatives, the Senate concurring, that the Constitution of New Hampshire be amended as follows:

1 I. That article 78 of the second part of the constitution be amended to read as follows:

2 [Art.] 78. [Judges and Sheriffs, When Disqualified by Age.] No person shall hold the office of
3 ~~[Judge of any Court, or Judge of Probate, or]~~ Sheriff of any county, after he has attained the age of
4 seventy years. ***No person who has attained the age of seventy years shall hold the office of***
5 ***Judge or serve as a Judge of any court in any case or controversy, provided however that a***
6 ***Judge’s service may be extended to age seventy-five in accordance with the following***
7 ***procedure. Not more than 180 days nor less than 90 days before reaching age seventy, a***
8 ***Judge who desires to extend his service shall provide notice thereof in writing to the***
9 ***Governor and Council. Upon receipt of said notice, the Governor and Council may***
10 ***undertake such examination of the Judge’s continuing fitness and qualifications to hold***
11 ***office, and may hold such hearings, as the Governor and Council deem necessary. The***
12 ***Judge’s term of service shall be extended to age seventy-five unless prior to the Judge***
13 ***attaining age seventy both the Governor and the Council, by majority vote of Council***
14 ***members, determine that the Judge’s service shall terminate at age seventy.***

15 II. That the above amendment proposed to the constitution be submitted to the qualified
16 voters of the state at the state general election to be held in November, 2022.

17 III. That the selectmen of all towns, cities, wards and places in the state are directed to
18 insert in their warrants for the said 2022 election an article to the following effect: To decide
19 whether the amendments of the constitution proposed by the 2021 session of the general court shall
20 be approved.

21 IV. That the wording of the question put to the qualified voters shall be:

22 "Are you in favor of amending article 78 of the second part of the constitution to read as follows:

23 [Art.] 78. [Judges and Sheriffs, When Disqualified by Age.] No person shall hold the office of
24 Sheriff of any county, after he has attained the age of seventy years. No person who has attained the
25 age of seventy years shall hold the office of Judge or serve as a Judge of any court in any case or
26 controversy, provided however that a Judge’s service may be extended to age seventy-five in
27 accordance with the following procedure. Not more than 180 days nor less than 90 days before

CACR 6 - AS INTRODUCED

- Page 2 -

1 reaching age seventy, a Judge who desires to extend his service shall provide notice thereof in
2 writing to the Governor and Council. Upon receipt of said notice, the Governor and Council may
3 undertake such examination of the Judge's continuing fitness and qualifications to hold office, and
4 may hold such hearings, as the Governor and Council deem necessary. The Judge's term of service
5 shall be extended to age seventy-five unless prior to the Judge attaining age seventy both the
6 Governor and the Council, by majority vote of Council members, determine that the Judge's service
7 shall terminate at age seventy."

8 V. That the secretary of state shall print the question to be submitted on a separate ballot or
9 on the same ballot with other constitutional questions. The ballot containing the question shall
10 include 2 squares next to the question allowing the voter to vote "Yes" or "No." If no cross is made in
11 either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall
12 be the same as the regular official ballot except that the words "Questions Relating to Constitutional
13 Amendments proposed by the 2021 General Court" shall be printed in bold type at the top of the
14 ballot.

15 VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it
16 becomes effective when the governor proclaims its adoption.

17 VII. Voters' Guide.

18 AT THE PRESENT TIME, a judge must retire by the age of 70.

19 IF THE AMENDMENT IS ADOPTED, A judge will be able to serve to age 75 unless
20 the governor and council determine that the judge's service shall terminate at age 70.