

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 83 Congressional Term Limits
SPONSOR(S): Caldwell and others
TIED BILLS: **IDEN./SIM. BILLS:** SM 672

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------|-----------|----------|--|
| 1) Federal Affairs Subcommittee | 10 Y, 3 N | Bennett | Camechis |
| 2) State Affairs Committee | 10 Y, 5 N | Camechis | Hamby |

SUMMARY ANALYSIS

This memorial asks Congress to propose an amendment to the U.S. Constitution to limit the number of consecutive terms a member of Congress may serve in the same office. The memorial does not, however, suggest a specific number of consecutive terms to which a member should be limited.

Membership in the U.S. Congress is governed by the U.S. Constitution, which specifies that members of the House serve two-year terms and members of the Senate serve six-year terms. The Constitution does not limit the number of terms or years a member may serve in the same office.

In 1992, Florida voters amended the State Constitution to prohibit members of the U.S. House and Senate from serving more than eight consecutive years in the same office. In 1995, the U.S. Supreme Court decided that state-imposed term limits on federal legislators violates the U.S. Constitution, and that any term limit for federal legislators must be imposed by amendment to the U.S. Constitution. In 1999, the Florida Supreme Court concluded that the provision in Florida's Constitution limiting terms of federal legislators is "undoubtedly void." Thus, in practice, members of Congress are not subject to a limit on the number of years they may serve, even though this State's Constitution appears to impose a limit.

During the 111th Congress (2009-2010), five joint resolutions were filed proposing an amendment to the U.S. Constitution to limit terms of federal legislators; none were heard in committee. During the current 112th Congress, five joint resolutions have been filed proposing similar amendments; none have been heard in committee.

In order to be added to the U.S. Constitution, an amendment proposed by Congress must be approved by two-thirds of the members in Congress, and then ratified by three-fourths of the states. In Florida, a proposed amendment is ratified if a majority of the members present and voting in each house of the Legislature vote in favor of a concurrent resolution approving the amendment.

In 2011, an identical memorial, CS/HM 685, was adopted by Florida's House of Representatives. The memorial was sent to the Senate where it was withdrawn from consideration and died in messages.

This memorial does not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

According to this memorial, “a continuous and growing concern has been expressed that the best interests of this nation will be served by limiting the terms of members of Congress, a concern expressed by the founding fathers, incorporated into the Articles of Confederation, attempted through legislation adopted by state legislatures, and documented in recent media polls....” Thus, the memorial petitions the U.S. Congress to propose an amendment to the U.S. Constitution to limit the number of consecutive terms that members of the U.S. House and Senate may serve. The memorial does not, however, suggest a specific number of years or terms a member may serve, or suggest a term limit that would permanently ban election to the same office after a member serves a set number of terms or years. Under a consecutive term limit approach that does not impose a permanent ban, a member could be re-elected to the same position as long as there is a break between periods of service.

Historical Background

The U.S. Constitution creates three branches of government: Executive, Legislative, and Judicial. The term limitations, or lack thereof, for offices within each branch are as follows:

- Executive: A person may not hold the office of the presidency for more than two four-year terms.¹
- Judicial: Supreme Court Justices are not subject to term limits; they may serve until retirement, death, or impeachment.²
- Legislative: Members of the U.S. House and Senate are not subject to any term limitations.³

The concept of imposing term limits on members of Congress is not a new one. Prior to the ratification of the United States Constitution in 1788, delegates to the Continental Congress were subject to term limits.⁴ When it was decided that the Articles of Confederation would be replaced, the Framers of the Constitution debated the issue of imposing congressional term limits, known at the time as “rotation requirements.”⁵ Ultimately, consensus was not reached and term limits were omitted from the U.S. Constitution.⁶

The issue remained dormant for some time because, until the 1900s, it was uncommon for members of Congress to serve more than a few terms in office.⁷ At each election, new representatives were elected thirty to sixty percent of the time; thus, high political turnover made term limits a non-issue.⁸ Attempts to impose term limits resurfaced in 1947 in response to Franklin D. Roosevelt’s election to his fourth term as President.⁹

In 1947, Congress proposed the 22nd amendment to the U.S. Constitution to impose a two-term limit on the office of the President.¹⁰ The amendment was ratified by the states in 1951. During the debate on presidential term limits, the first “modern” proposal seeking to impose term limits on members of Congress

¹ U.S. Const. amend. XXII, § 1.

² U.S. Const. art. III, § 1.

³ The “qualifications clauses” of the U.S. Constitution read as follows: “No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the [U.S.], and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.” U.S. Const. art. I, § 2, cl. 2. “No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the [U.S.], and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.” U.S. Const. art. I, § 3, cl. 3.

⁴ Under the Articles of Confederation members were limited to three one-year terms over a period of six years. Text for Articles of Confederation found at: www.ourdocuments.gov/doc.php?flash=true&doc=3&page=transcript

⁵ See Dwayne A. Vance, *State-Imposed Congressional Term Limits: What Would the Framers of the Constitution Say?* 1994 B.Y.U. L. Rev. 429 (1994) (for example, Hamilton and Madison opposed term limits; Jefferson supported term limits).

⁶ *Id.* at 437.

⁷ Tiffanie Kovacevich, *Constitutionality of Term Limitations: Can States Limit the Terms of Members of Congress?*, 23 Pac. L.J. 1677, 1680 (1992)

⁸ *Id.* at 1681.

⁹ *Id.* at 1682.

¹⁰ See U.S. Const. amend. XXII, § 1

was introduced.¹¹ The proposal received one vote and the issue again remained dormant until the modern term limit movement began in the 1990s.

Modern Congressional Term Limit Movement

A movement within the states to enact term limits began gaining traction in the early 1990s as voters became dissatisfied with incumbent politicians. While not universally accepted,¹² a total of twenty-three states, including Florida, passed laws that attempted to impose term limits on federal legislators.¹³

In 1992, following the successful “Eight is Enough” campaign to establish eight-year term limits, 76.8% of Floridians voted to amend the State’s Constitution to include article VI, section 4(b).¹⁴ The provision provides that no person may appear on the ballot for reelection to the state or federal legislature “if, by the end of the current term of office, the person will have served . . . in that office for eight consecutive years.”¹⁵

Florida’s attempt to impose term limits on federal legislators was effectively invalidated, along with the attempts made by twenty-two other states, by the 1995 U.S. Supreme Court decision in *U.S. Term Limits, Inc. v Thornton*.¹⁶ In that case, the Court concluded that state-imposed candidacy limitations on federal legislative office violates the U.S. Constitution's Qualifications Clauses, and that term limits on federal legislators may only be imposed by amendment to the U.S. Constitution.¹⁷ In 1999, the Florida Supreme Court held that Florida’s constitutional provision imposing term limits on *state* legislators is valid, while the provision placing term limits on *federal* legislators is “undoubtedly void.”¹⁸ Thus, amendments to State Constitutions to limit terms of federal legislators are considered unenforceable, making federal term limits valid only if imposed through amendment to the U.S. Constitution.

In order for a proposed amendment to pass Congress, it must be approved by a two-thirds vote in both chambers (290 votes in the House and 67 votes in the Senate). If approved, the proposed amendment is sent to the states for ratification. If the legislatures or ratifying conventions of at least three-fourths of the states (38 states) approve the proposed amendment, it is ratified and becomes part of the U.S. Constitution.¹⁹ In order for the Florida Legislature to ratify an amendment, a majority of the members present and voting in each house must vote in favor of a concurrent resolution approving the amendment.²⁰

Between 1995 and the present day, about 70 joint resolutions have been filed in Congress proposing amendments to the U.S. Constitution to limit terms of federal legislators. It appears that only two were subject to a vote of the full House, one in 1995 and one in 1997, but neither received the two-thirds vote necessary to send the proposed amendments to the states for ratification. It appears that two proposed amendments have been heard by a Senate committee, one in 1995 and one in 1998, but neither was subject to a final vote of the full Senate. Since 1999, none of the proposed amendments filed in Congress have received a committee hearing. (See Appendix A)

During the 111th Congress (2009-2010), five joint resolutions were filed proposing an amendment to the U.S. Constitution to limit terms of federal legislators; none were heard in committee.²¹ During the current 112th Congress, five joint resolutions proposed similar amendments; none have been heard in committee.²²

¹¹ See Kovacevich, supra n. 4, at 1682 (Introduced by Sen. O’Daniel, bill sought to limit all federal legislators to one six-year term).

¹² See Kovacevich, supra n. 4, at 1685. (For example, the voters of Washington State originally rejected a term limitation proposal which would have restricted the terms of both state legislators and state representatives in Congress.)

¹³ U.S. Congressional Research Service. Term Limits for Members of Congress: State Activity (No. 96-152 GOV; Nov. 22, 1996), by Sula P. Richardson. Text at: <http://digital.library.unt.edu/ark:/67531/metacrs582/m1/>; Accessed: September 20, 2011. (States that passed some form of congressional term limits: AK, AR, AZ, CA, CO, FL, ID, ME, MA, MI, MO, MT, NE, NH, NV, ND, OH, OK, OR, SD, UT, WA, WY.)

¹⁴ Florida Department of State, Division of Elections, November 3, 1992 General Election Results (November 16, 1992).

¹⁵ Fla. Const. art. VI, § 4(b), (1992)

¹⁶ *U.S. Term Limits, Inc. v Thornton*, 514 U.S. 779, 881 (1995).

¹⁷ *Id.*

¹⁸ *Ray v. Mortham*, 742 So. 2d 1276, 1281 (Fla. 1999)

¹⁹ U.S. Const., art. V.

²⁰ House Rules 5.10 (a), 10.8, and 13.6.

²¹ H.J. RES. 14, H.J. RES. 63, H.J. RES. 67, S.J. RES. 1, S.J. RES. 21

²² H.J. RES. 20, H.J. RES. 53, H.J. RES. 71, S.J. RES. 1, S.J. RES. 11

B. SECTION DIRECTORY: None.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

APPENDIX A

JOINT RESOLUTIONS FILED IN CONGRESS SINCE 1995 PROPOSING A CONSTITUTIONAL AMENDMENT TO LIMIT TERMS OF SERVICE IN CONGRESS²³

| Congress | House Joint Resolutions | Senate Joint Resolutions | Total Filed |
|---|--|--|------------------------|
| 104th 1995-1996 | Filed: HJRs 2, 3, 5, 8, 12, 24, 25, 29, 34, 38, 44, 52, 65, 66, 73, 75, 76, 77, 82, 91, 92 Heard in committee: HJRs 2, 3, 5, 8, 73 Voted on by House: HJR 73 was considered on the House floor in 1995 but failed to obtain a 2/3 vote (227-204) | Filed: SJRs 19, 21, 36 Heard in committee: SJR 21 was approved by committee in 1995 but was not submitted to a vote of the full Senate. Voted on by Senate: None | 24 H-21 S-3 |
| 105th 1997-1998 | Filed: HJRs 2, 3, 5, 6, 8, 16, 22, 23, 27, 31, 33, 34, 42, 49 Heard in committee: None Voted on by House: HJR 2 was considered on the House floor in 1997 but failed to obtain a 2/3 vote (217-211). | Filed: SJRs 16, 52 Heard in committee: SJR 16 was approved by committee in 1998 but was not submitted to a vote of the full Senate. Voted on by Senate: None | 16 H-14 S-2 |
| 106th 1999-2000 | Filed: HJRs 2, 15, 16, 18 None heard in committee | Filed: SJR 45 None heard in committee | 5 H-4 S-1 |
| 107th 2001-2002 | Filed: HJRs 57, 58 None heard in committee | None filed | 2 H-2 S-0 |
| 108th 2003-2004 | Filed: HJRs 16, 43, 66, 81 None heard in committee | None filed | 4 H-4 S-0 |
| 109th 2005-2006 | Filed: HJRs 11, 80 None heard in committee | Filed: SJR 3 None heard in committee | 3 H-2 S-1 |
| 110th 2007-2008 | Filed: HJRs 24, 60, 71, 98 None heard in committee | Filed: SJR 2 None heard in committee | 5 H-4 S-1 |
| 111th 2009-2010 | Filed: HJRs 14, 63, 67 None heard in committee | Filed: SJRs 1, 21 None heard in committee | 5 H-3 S-2 |
| 112th 2011-2012 | Filed: HJRs 20, 53, 71 None heard in committee | Filed: SJRs 1, 11 None heard in committee | 5 H-3 S-2 |
| TOTAL RESOLUTIONS FILED: 69 (57 HJRs and 12 SJRs) | | | |
| TOTAL HJRs HEARD IN COMMITTEE: 6 | | | |
| TOTAL VOTED ON BY THE HOUSE: 2 (Neither obtained 2/3 approval) | | | |
| TOTAL SJRs HEARD IN COMMITTEE: 2 | | | |
| TOTAL VOTED ON BY THE SENATE: 0 | | | |

²³ The information on this table was compiled on September 28, 2011, by performing searches of the Library of Congress website, www.thomas.gov.