

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 16, 1998 Revised: 04/21/98 \_\_\_\_\_

Subject: Candidates for Congress; Term Limits; Ballot Designations

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	<u>_____</u>	<u>_____</u>	<u>JU</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>RC</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

**I. Summary:**

Senate Bill 456 is a “ballot labeling” bill which requires current United States Senators and Representatives from Florida to support a “term limits” amendment to the United States Constitution or have the phrase “DISREGARDED TERM LIMITS INSTRUCTION” printed adjacent to their name on all primary and general election ballots. The bill requires non-incumbent, congressional candidates to pledge to support such an amendment, if elected, or have the designation “DECLINED TO PLEDGE TO SUPPORT TERM LIMITS” printed adjacent to their name on all primary and general election ballots. The specific amendment contemplated by the bill sponsor would limit the number of terms of U.S. Senators to no more than two (12 years) and U.S. Representatives to no more than three (6 years).

This bill substantially amends sections 101.181 and 101.191, Florida Statutes, and creates new unnumbered sections of the Florida Statutes.

**II. Present Situation:**

Although several states limit the number of years which select elected officials may serve, there is no similar “term limits” provision in the U.S. Constitution. In 1992, Florida voters approved a term limit amendment to the Florida Constitution, which prevents a person elected to any one of the following offices from having their name listed on the ballot for reelection if, by the end of their current term of office, they will have served in that office for eight consecutive years:

- (1) Florida representative;
- (2) Florida senator;
- (3) Florida Lieutenant Governor;
- (4) Any office of the Florida cabinet;

- (5) U.S. Representative from Florida; or
- (6) U.S. Senator from Florida.

Art VI, s. 4, Fla. Const. The provision of Florida's term limits which expressly apply to U.S. Congressional members are generally understood to violate the U.S. Constitution. *U.S. Term Limits, Inc. v. Thornton*, 115 S.Ct. 1842 (1995) (qualification clauses detailing age, citizenship, and residency requirements preclude the people of the states and their state legislatures from prescribing any additional requirements for their congressional delegations). Changes in the qualification requirements for members of Congress must be effected through an amendment to the U.S. Constitution pursuant to article V. *Id.* at 1871.

There is currently a nationwide effort underway to effect a term limits amendment to the federal Constitution. In November of 1996, voters in nine states, including Arkansas, Missouri, and Idaho, approved these "informed voter" initiative and referendum measures requiring their congressional delegations and non-incumbent congressional candidates to support (or, in the case of non-incumbent candidates, pledge to support) a term limits amendment to the federal Constitution, or have a designation placed on the ballot indicating they did not support such measures.

### III. Effect of Proposed Changes:

Senate Bill 456 provides that a U.S. Representative or Senator from Florida who fails to actively support a term limits amendment in Congress will have the following designation printed adjacent to his or her name on each election ballot: "DISREGARDED TERM LIMITS INSTRUCTION." A non-incumbent, congressional candidate who refused to take a pledge to support the term limits amendment (12 years for U.S. Senators; 6 years for U.S. Representatives) in Washington would have the following designation placed adjacent to his or her name on the election ballot: "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS."

The decision whether to place the designation on the election ballot shall be made by the Department of State. The bill provides that the Department of State's decision may be appealed administratively or judicially. If the Department decides that the aforementioned terms *should* be placed next to the candidate's name on the ballot, the burden of proof is *on the candidate* to demonstrate the contrary by *clear and convincing evidence*.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

A number of federal and state courts outside Florida have held similar language unconstitutional. See, e.g., *Gralike v. Cook*, 1998 WL 59228 (W.D.Mo. Jan. 29, 1998) (Federal District Court); *League of Women Voters v. Gwadosky*, 966 F. Supp. 52 (D. Maine 1997); *Morrissey v. State*, 1998 WL 18012 (Colo. Jan. 20, 1998) (Colorado Supreme Court); *Simpson v. Cenarrusa*, 944 P.2d 1372 (Idaho 1997); *Donovan v. Priest*, 931 S.W.2d 119 (Ark. 1996), *cert. denied*, 117 S.Ct. 1081 (1996). None of these cases are binding on a Florida court, but they do represent persuasive authority.

The majority of these cases have been decided on procedural grounds, with the courts ruling that the citizen initiative and referendum process cannot be used to effectuate an amendment to the United States Constitution. See, e.g., *Donovan*, 931 S.W.2d at 127-28 (Arkansas initiative was a coercive and extortive attempt to bind legislators into supporting term limits at the risk of their “potential political deaths” in violation of Article V of the Constitution, which provides that amendments to the U.S. Constitution may only be proposed by a 2/3 vote of both houses of Congress, or upon the application of 2/3 of the states.) Of course, such procedural considerations would not apply to SB 456 since it is not a citizen initiative, and thus does not implicate the same Article V concerns ruled on in a majority of these cases.

Nonetheless, some of the courts have reached the substantive issue and held that the ballot labeling language violates other federal constitutional provisions, including First Amendment free speech rights and the legislative immunity clause (Art. I, s. 6, U.S. Const.). *Gralike*, 1998 WL 59228 at 6-8; *Simpson*, 944 P.2d at 1375. Also, at least one federal district court has found such ballot labeling language unconstitutionally vague and overbroad. *Gralike*, 1998 WL 59228 at 8-10.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

Because of technical drafting considerations, SB 456 references a Congressional term limits amendment in an unnumbered Senate memorial. The bill needs to be amended to include this missing memorial number in a number of locations.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Executive Business, Ethics and Elections:  
Inserts missing memorial number.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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