

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: February 24, 1998 Revised: _____

Subject: Criminal Procedure

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Erickson</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>_____</u>	<u>_____</u>	<u>RC</u>	<u>Withdrawn</u>
3.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

I. Summary:

Senate Joint Resolution 1234 proposes an amendment to Article V, Section 2, of the Florida Constitution. Section 2 provides, among other things, that the Florida Supreme Court shall adopt rules for the practice and procedure in all courts, and that such rules may be repealed by general law enacted by two-thirds vote of each house of the Legislature. The proposed amendment provides that the Legislature may, by majority vote of each house of the Legislature, repeal a rule or provision of a rule of criminal procedure, and may enact a law relating to and governing criminal procedure, and that law prevails over any conflicting rule of criminal procedure or provision of such a rule. The proposed amendment, if approved by a three-fifths vote of each house of the Legislature, would be submitted to the Florida electorate at the next general election or at an earlier special election specifically authorized by law for that purpose.

The constitutional amendment proposed in this joint resolution substantially amends Article V, Section 2, of the Florida Constitution.

II. Present Situation:

Article V, Section 2(a), of the Florida Constitution, provides:

- (a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. These

rules may be repealed by two-thirds vote of the membership of each house of the legislature.

Article V, Section 3, of the 1885 Constitution was adopted in the general election of November 6, 1956. This section provided that “[t]he practice and procedure of all courts shall be governed by rules adopted by the supreme court.” According to Professor Talbot “Sandy” D’Alemberte, in his commentary to this 1956 revision of Article V, the amendment provided “a statewide uniformity of procedure in all state, county and municipal courts and allow[ed] the Supreme Court a great measure of legislative power. The limits of that power and the conflicts with the power of the legislative branch have not been fully explored.” Commentary, Art. 5. § 2, F.S.A.

Effective January 1, 1973, Article V of the Florida Constitution was amended. Article V, Section (2)(a) is similar to the previous Article V, Section 3.

Prior to Article V, Section 3, and Article V, Section (2)(a), the Florida Supreme Court held that the Legislature was authorized to “prescribe rules of practice and this court may prescribe such rules not inconsistent with those passed by the legislature, but those passed by the legislature will not be respected if they hamper the administration of justice or are for any reason unconstitutional.” *Petition of Florida State Bar Ass’n for Promulgation of New Florida Rules of Civil Procedure*, 199 So. 57, 58-59 (Fla. 1940).

With the 1956 adoption of Article V, Section 3, to the 1885 Constitution, the Court no longer recognized any authority of the Legislature to enact laws relating to practice and procedures of the courts (*e.g. School Board of Broward County v. Surette*, 281 So.2d 481 (Fla. 1973)), and laws relating to practice and procedure in conflict with rules of procedure adopted by the Florida Supreme Court pursuant to the Court’s rulemaking power conferred by Article V, Section 2, were held to be superseded by these rules to the extent the laws conflicted with the rules, (*e.g., Jaworski v. City of Opa-Locka*, 149 So.2d 33 (Fla. 1963)). The Court had to determine, as it still does today, whether laws challenged as encroaching on the judiciary’s rulemaking authority are procedural or substantive in nature. “The limits of procedural and substantive law have not been defined and no two would agree where the one leaves off and the other begins. There is also between the two a hiatus or twilight zone that has been constantly entered by the courts and the Legislatures.” *Petition of Florida State Bar Ass’n*, 199 So. at 59. The Court has also noted that “the current of substantive law and procedural law often coalesce. What is regarded as substantive law today may become procedural law tomorrow, and vice versa.” *Id.* If the Court deems the law to create procedures, or conflict with procedures adopted by rule, the law encroaches on the Court’s Article V jurisdiction. If the Court deems the law to affect only substantive rights, than the Court’s Article V jurisdiction is not implicated.

The rule of law is essentially the same with the 1973 amendment of Article V, of the Florida Constitution (1968), creating Section (2)(a), except that the Court recognizes its rulemaking power is subject to the power of the Legislature pursuant to Section (2)(a) to repeal a rule of procedure by two-thirds vote of each house of the Legislature. *See e.g., Rowe v. State*, 417 So.2d 981 (Fla. 1982).

Article XI, Section 1, of the Florida Constitution provides that an “[a]mendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member shall be entered on the journal of each house.”

III. Effect of Proposed Changes:

Senate Joint Resolution 1234 proposes an amendment to Article V, Section 2, of the Florida Constitution.

The proposed amendment provides that the Legislature may, by majority vote of each house of the Legislature, repeal a rule or provision of a rule of criminal procedure, and may enact a law relating to and governing criminal procedure, and that law prevails over any conflicting rule of criminal procedure or provision of such a rule.

The proposed amendment does not confer on the Legislature any expanded authorization to enact laws relating to *civil* procedure. Consequently, only the Florida Supreme Court has the authority to adopt rules of *civil* procedure, which are subject to repeal by a two-thirds vote of each house of the Legislature.

The proposed amendment, if approved by a three-fifths vote of each house of the Legislature, would be submitted to the Florida electorate at the next general election or at an earlier special election specifically authorized by law for that purpose.

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:

The proposed amendment explicitly authorizes the Legislature to enact laws relating to criminal procedure. Prior to the changes to Florida’s Constitution that conferred on the Florida Supreme Court the rulemaking power, the Court determined that the Legislature

could enact rules relating to procedure. The Legislature's authority was based on reading together two provisions of the 1885 Constitution. Article III, Section 20, provided that "[t]he Legislature shall not pass special or local laws . . . regulating the practice of courts of justice, except municipal courts." Article III, Section 20, provided that "[a]ll laws shall be general and of uniform operation throughout the state." The quoted provisions were construed together to "constitute an express recognition of the continuing power of the legislative department to enact general statutes 'regulating the practice of Courts of Justice'. . . ." *Petition of Florida State Bar Ass'n*, 199 So. at 60 (Whitfield, concurring). The proposed amendment is actually a more explicit constitutional mandate than the previously recognized constitutional mandate.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Staff anticipates that the Office of the Attorney General will experience some temporary workload increase in defending the amendment against any challenges to its constitutionality. The fiscal impact of this workload increase cannot be ascertained at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.