The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL:	SJR 2084
INTRODUCER:	Judiciary Committee
SUBJECT:	Repeal of Supreme Court Rule by General Law
DATE:	April 1, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Boland/Maclure	Maclure	JU	**Pre-meeting**
2.			BC	
3.			RC	
4.				
5.				
6.				

I. Summary:

Currently under the State Constitution, the power to make rules of practice and procedure in all courts lies solely with the Supreme Court. The one caveat to that power is that the Legislature may, by a two-thirds vote of each house, enact general laws that repeal rules of court. This joint resolution proposes an amendment to the State Constitution to replace the provision requiring a "two-thirds vote of the membership of each house of the legislature" with one requiring a three-fifths vote to enact general laws repealing Supreme Court rules. Thus, the proposed amendment allows rules of court to be repealed by general law adopted by three-fifths of the membership of each house of the Legislature and further provides that the Supreme Court may not readopt a rule within three years after the rule has been repealed by general law.

The joint resolution amends section 2, Article V of the Florida Constitution.

II. Present Situation:

Rules for Practice and Procedure

Section 2, Article V the Florida Constitution provides that 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.

Committees of The Florida Bar frequently draft, and propose to the Supreme Court, amendments to court rules of procedure. However, the Court has the sole power to adopt rules of the court for

the practice and procedure of law. A Florida statute states that when a rule is adopted by the Supreme Court concerning practice and procedure, and such rule conflicts with a statute, the rule supersedes the statutory provision.[1] Furthermore, the Florida Supreme Court has held that the Court has the exclusive power to create rules of practice and procedure and statutes that encroach on that power, if not merely incidental to substantive legislation, are unconstitutional under the notion of separation of powers.[2]

The Florida Supreme Court has defined substantive law as follows:

> Substantive law has been defined as that part of the law which creates, defines, and regulates rights, or that part of the law which courts are established to administer. It includes those rules and principles which fix and declare the primary rights of individuals with respect towards their persons and property.[3]

The Court has defined practice and procedure as follows:

> Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. "Practice and procedure" may be described as the machinery of the judicial process as opposed to the product thereof.
>
> Examination of many authorities leads me to conclude that substantive law includes those rules and principles which fix and declare the primary rights of individuals as respects their persons and their property. As to the term "procedure," I conceive it to include the administration of the remedies available in cases of invasion of primary rights of individuals. The term "rules of practice and procedure" includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution.[4]

Repeal of Court Rules by General Law

Article V, section 2 of the State Constitution articulates a check and balance on the Supreme Court's power to make rules of practice and procedure. Specifically, it provides that rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature. The provision is silent, however, on Supreme Court readoption of a rule repealed by general law.

Constitutional Amendments

Section 1, Article X of the State Constitution authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election

[1] Section 25.371, F.S.
[2] *Massey v. David*, 979 So. 2d 931, 937 (Fla. 2008).
[3] *Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So. 2d 730, 732 (Fla. 1991) (internal citation omitted).
[4] *Allen v. Butterworth*, 756 So. 2d 52, 60 (Fla. 2000) (quoting *In re Florida Rules of Criminal Procedure*, 272 So. 2d 65, 66 (Fla. 1972) (Adkins, J., concurring)).

held after the proposal has been filed with the Secretary of State's office, or at a special election held for that purpose. Section 5(e), Article XI of the State Constitution requires 60-percent voter approval for a constitutional amendment to take effect. An approved amendment will be effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.[5]

III. Effect of Proposed Changes:

The joint resolution proposes an amendment to Article V, section 2 of the Florida Constitution. The proposed amendment would replace the current constitutional requirement, that a general law repealing a rule of court must be enacted by a two-thirds vote of the membership of each house of the Legislature, with a requirement that a general law repealing a rule of court must be enacted by a three-fifths vote of the membership of each house of the Legislature. Furthermore, the proposed amendment adds a provision to the end of Article V, subsection 2(a) which would prohibit the Supreme Court from readopting a rule within three years after the rule has been repealed by general law.

The joint resolution provides four different ballot summaries. The first ballot summary directs that it will be placed on the ballot, and each subsequent ballot summary provides that it will be placed on the ballot in the event that a court declares the preceding ballot summary defective and the decision of the court is not reversed. This feature appears to have the effect of allowing the proposed amendment to survive up to three successful challenges to the amendment for a defective ballot summary.

An effective date for the amendment is not specified. Therefore, the amendment, if approved by the voters, will take effect on the first Tuesday after the first Monday in January following the election at which it is approved.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[5] FLA. CONST. art. XI, s. 5(e).

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the joint resolution is passed by the Legislature, the Department of State will bear the costs associated with twice publishing the proposed amendment and notice of the date of the election at which it will be submitted to electors in one newspaper of general circulation in each county in which a newspaper is published.[6] The department estimates that the cost for publication of a proposed constitutional amendment is $106.14 per word.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[6] FLA. CONST. art. XI, s. 5(d).