

STORAGE NAME: h1031.jud

DATE: March 13, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HJR 1031

RELATING TO: Administration of Supreme Court

SPONSOR(S): Representative Crist and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) JUDICIARY

(2)

(3)

(4)

(5)

I. SUMMARY:

HJR 1031 proposes an amendment to Article V, Section 2 of the Florida Constitution. The amendment provides that nothing in Article V, Section 2 shall limit the authority of the Florida Legislature to enact by general law limitations on actions or requirements for expediting particular classes of cases. The amendment also provides that nothing in the constitution may be construed to limit the authority of the Legislature to prescribe by general law the time within which persons sentenced to death may challenge their convictions and sentences in state courts. The bill also requires that rules adopted by the Florida Supreme Court be consistent with general law. Finally, the amendment would allow repeal or modification of rules of court by general law enacted by the Legislature.

The bill appears to meet the requirements of s. 101.61, F.S.

If adopted, the proposed amendment would be voted on by the electorate in the November 2000 general election.

The bill will have a fiscal impact associated with the advertising of the proposed constitutional amendment.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Judicial Branch Procedural Rulemaking Authority

Article V, Section 1 of the Florida Constitution establishes the judicial power in the court system. Article V, Section 2 of the Constitution directs the Supreme Court to “adopt rules for the practice and procedure in all courts including the time for seeking appellate review, [and] the administrative supervision of all courts...” This provision allows the Legislature to repeal such rules by two-thirds vote. See, e.g., Johnson v. State, 336 So.2d 93 (Fla. 1976).

The Legislature does not have any constitutional authority to enact any law relating to practice or procedure in the courts. See Art. V, s. 2, Fla. Const.; In re Clarification of Florida Rules of Practice and Procedure, 281 So.2d 204 (Fla. 1973). The Supreme Court has defined substantive law as it relates to criminal law and procedure as “that which declares what acts are crimes and prescribes the punishment therefor...” In re Florida Rules of Criminal Procedure, 272 So.2d 65 (Fla. 1972)(Adkins, J., concurring). The court has defined procedural law as “that which provides or regulates the steps by which one who violates a criminal statute is punished.” Id.

The term “practice and procedure” may also be defined as “encompass[ing] the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion.” Id. at 66. More generally, substantive law has been defined as that which “creates, defines, adopts and regulates rights, while procedural law prescribes the method of enforcing those rights.” Id. at 65. (citations omitted). Federal courts define rules of practice and procedure as those “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.” Id. (citing Kellman v. Stoltz, 1 F.R.D. 726 (N.D. Iowa 1941)).

The Legislature has the authority to limit the time for filing actions through statutes of limitations or repose. See, e.g., s. 768.28, F.S. However, the rules governing appeals in criminal and civil cases have been promulgated by the Supreme Court under its rulemaking authority conferred by Article V, Section 2 of the Florida Constitution. Benyard v. Wainwright, 322 So.2d 473 (Fla. 1975).

Other States

According to a 1989 study by the National Center for State Courts, 14 states allow the legislative branch to formally adopt, amend, or repeal rules of procedure promulgated by the supreme court. In Alaska, the legislature may amend a Supreme Court rule by two-thirds

majority vote. In Iowa, the state supreme court and the legislature have concurrent power to make procedural rules, and the legislature may amend rules promulgated by the supreme court within 60 days of their effectiveness date. In Maryland, the legislature may amend supreme court rules. In Missouri, the legislature may amend rules, but only after specifically designating the rule, the purpose behind the change, and then passing that change specifically. In New York, only civil rules may be amended, enacted, or repealed by the legislature. In Ohio and South Carolina the legislature has the power to disapprove rules promulgated by the supreme court. In Utah the legislature may amend rules by two-thirds vote. In Virginia, the supreme court must promulgate rules that do not conflict with general law and the legislature may override a rule by general law.

Constitutional Amendments

A constitutional amendment proposed for the ballot by the Legislature must be approved by three-fifths of the members of the Senate and House of Representatives. Art. XI, s.1, Fla. Const. Ordinarily, the proposed amendment must then be submitted to the electors at the next general election held more than 90 days after the joint resolution proposing it is filed with the Secretary of State. Art. XI, s. 5(a), Fla.Const.

If the amendment is adopted by the electorate, it is effective on the first Tuesday after the first Monday in January following the election, unless another date or specified in the amendment. Art. XI, s. 5(c), Fla.Const.

Amendments to the state constitution are construed *in pari materia* with all other constitutional provisions that bear on the same subject. Sylvester v. Tindall, 18 So.2d 892 (Fla. 1944). Under this rule of construction, provisions of a statute or constitution are to be read together to glean the overall intent of the drafters. In construing the constitution, the Florida Supreme Court has stated that the "leading purpose should be to ascertain and effectuate the intent and object designed to be accomplished." State ex rel. West v. Butler, 70 Fla. 102, 125; 69 So. 771, 776 (Fla. 1915). A constitutional provision that is susceptible of two meanings, one consistent with other provisions and one inconsistent with those provisions, should be construed as consistent. Butler, supra. However, if there is a clear conflict between an amendment to the constitution and pre-existing provisions, the amendment will prevail. Tindall, supra.

C. EFFECT OF PROPOSED CHANGES:

The proposed amendment applies to Article V, Section 2 of the Florida Constitution, and states:

Nothing in this section shall limit the authority of the legislature to enact by general law limitations on actions or requirements for expediting particular classes of cases. Nothing in this constitution shall be construed to limit the authority of the legislature to limit by general law the time within which persons sentenced to death may challenge their convictions and sentences in state courts. Rules adopted by the supreme court shall be consistent with general law.

The proposed amendment also provides that rules of court may be repealed or modified by a simple majority vote of the Legislature.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The Division of Elections is required to advertise proposed constitutional amendments in newspapers of general circulation in each county two times prior to the general election at an estimated cost of \$46,000 per amendment.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

At least one Florida case has held that rules that affect the length of time served by an inmate are substantive and therefore within the Legislature's authority to control by general law. See Benyard v. Wainwright, 322 So.2d 473 (Fla. 1975)(construing concurrent sentence rule).

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson, J.D.

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