

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

House Joint Resolution

A joint resolution proposing an amendment to Section 2 of Article V of the State Constitution to provide that no court may adopt rules of practice and procedure; the Supreme Court may recommend rules to be adopted, amended, or rejected by the Legislature; and, in the event of conflict, a statute supersedes a rule.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 2 of Article V of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 2. Administration; practice and procedure.-

(a) No court ~~The supreme court~~ shall have the power, express or implied, to adopt rules for ~~the~~ practice and procedure in any court. Court rules of practice and procedure may be recommended by the supreme court to be adopted, amended, or rejected by the legislature in a manner prescribed by general law. If there is a conflict between general law and a court rule, the general law supersedes the court rule ~~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~~

HJR 7025

2011

29 ~~jurisdiction of another court has been improvidently invoked,~~  
 30 ~~and a requirement that no cause shall be dismissed because an~~  
 31 ~~improper remedy has been sought. The supreme court shall adopt~~  
 32 ~~rules to allow the court and the district courts of appeal to~~  
 33 ~~submit questions relating to military law to the federal Court~~  
 34 ~~of Appeals for the Armed Forces for an advisory opinion. Rules~~  
 35 ~~of court may be repealed by general law enacted by two thirds~~  
 36 ~~vote of the membership of each house of the legislature.~~

37 (b) The chief justice of the supreme court shall be chosen  
 38 by a majority of the members of the court; shall be the chief  
 39 administrative officer of the judicial system; and shall have  
 40 the power to assign justices or judges, including consenting  
 41 retired justices or judges, to temporary duty in any court for  
 42 which the judge is qualified and to delegate to a chief judge of  
 43 a judicial circuit the power to assign judges for duty in that  
 44 circuit.

45 (c) A chief judge for each district court of appeal shall  
 46 be chosen by a majority of the judges thereof or, if there is no  
 47 majority, by the chief justice. The chief judge shall be  
 48 responsible for the administrative supervision of the court.

49 (d) A chief judge in each circuit shall be chosen from  
 50 among the circuit judges as provided by supreme court rule. The  
 51 chief judge shall be responsible for the administrative  
 52 supervision of the circuit courts and county courts in his  
 53 circuit.

54 BE IT FURTHER RESOLVED that the following statement be  
 55 placed on the ballot:

56 CONSTITUTIONAL AMENDMENT

## ARTICLE V, SECTION 2

57  
58 RULES OF COURT.—Proposing an amendment to the State  
59 Constitution regarding court rulemaking.

60 Under the current State Constitution, Florida court rules  
61 are adopted solely by the state Supreme Court, and laws that are  
62 adopted by the Legislature and approved by the Governor which  
63 conflict with court rules are ruled invalid by the same state  
64 Supreme Court. One state court has expressed an opinion that the  
65 courts have an inherent right to enact rules even if this right  
66 is not provided for in the State Constitution. By contrast, in  
67 the federal court system, court rules of practice and procedure  
68 are subordinate to general federal law and are subject to the  
69 approval of Congress before they are enacted.

70 By this amendment, no state court, including the Florida  
71 Supreme Court, will have the express or implied power to adopt  
72 court rules of practice and procedure. The state Supreme Court  
73 may recommend rules of practice and procedure that may be  
74 adopted, amended, or rejected in a manner provided for in  
75 general law. If there is a conflict between a court rule and a  
76 general law, the general law would prevail.

77 In short, a general law in Florida is enacted if passed by  
78 a majority of members voting in each of the two legislative  
79 chambers and then either signed by the Governor or, if vetoed by  
80 the Governor, then passed by a two-thirds vote of the members  
81 voting in each of the two legislative chambers.

82 Specifically, the proposal amends subsection (a) of section  
83 2 of Article V of the State Constitution, to read as set forth

84 below. The words ~~stricken~~ are deletions; words underlined are  
 85 additions:

86 SECTION 2. Administration; practice and procedure.—

87 (a) No court ~~The supreme court~~ shall have the power,  
 88 express or implied, to adopt rules for the practice and  
 89 procedure in any court. Court rules of practice and procedure  
 90 may be recommended by the supreme court to be adopted, amended,  
 91 or rejected by the legislature in a manner prescribed by general  
 92 law. If there is a conflict between general law and a court  
 93 rule, the general law supersedes the court rule ~~all courts~~  
 94 ~~including the time for seeking appellate review, the~~  
 95 ~~administrative supervision of all courts, the transfer to the~~  
 96 ~~court having jurisdiction of any proceeding when the~~  
 97 ~~jurisdiction of another court has been improvidently invoked,~~  
 98 ~~and a requirement that no cause shall be dismissed because an~~  
 99 ~~improper remedy has been sought. The supreme court shall adopt~~  
 100 ~~rules to allow the court and the district courts of appeal to~~  
 101 ~~submit questions relating to military law to the federal Court~~  
 102 ~~of Appeals for the Armed Forces for an advisory opinion. Rules~~  
 103 ~~of court may be repealed by general law enacted by two-thirds~~  
 104 ~~vote of the membership of each house of the legislature.~~