

1 A bill to be entitled
 2 An act relating to court rules of process and procedure;
 3 amending s. 25.371, F.S.; providing that statutes
 4 supersede court rules; creating s. 43.45, F.S.; providing
 5 that no court rule may conflict with general law; creating
 6 s. 43.46, F.S.; creating a judicial conference;
 7 designating a chairman; providing membership of the
 8 judicial conference; providing for the duties of the
 9 judicial conference; requiring an annual report; requiring
 10 creation of an advisory committee and subcommittees;
 11 providing for appointments; limiting membership on the
 12 judicial conference; providing that the judicial
 13 conference is administratively housed in the state courts
 14 system; requiring that the judicial conference establish a
 15 website; creating s. 43.47, F.S.; providing a process for
 16 creation and adoption of court rules, administrative
 17 orders, forms and jury instructions; providing
 18 definitions; prohibiting rules, local rules,
 19 administrative orders, forms and jury instructions from
 20 conflicting with general law; requiring the judicial
 21 conference to publish procedures for adoption and review
 22 of proposed rules, local rules, administrative orders,
 23 forms and jury instructions; creating a process for rule
 24 adoption; requiring proposed rules to be published and
 25 heard before a subcommittee, the rules committee, and the
 26 judicial conference before being submitted to the
 27 legislature; providing that rules go into effect if the
 28 legislature does not act; providing exceptions; creating

29 s. 43.48, F.S.; providing exceptions; providing for
 30 adoption of certain specific court rules in effect on the
 31 effective date of this act; providing conditional adoption
 32 of existing court rules, local rules, administrative
 33 orders, forms and jury instructions in effect prior to the
 34 effective date of this act; providing a conditional
 35 effective date.
 36

37 Be It Enacted by the Legislature of the State of Florida:
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39 Section 1. Section 25.371, Florida Statutes, is amended to
 40 read:

41 25.371 Effect of rules.—When a rule is adopted by the
 42 supreme court concerning practice and procedure, and such rule
 43 conflicts with a statute, the statutory provision ~~rule~~
 44 supersedes the rule ~~statutory provision~~.

45 Section 2. Section 43.45, Florida Statutes, is created to
 46 read:

47 43.45 Court rules of practice and procedure.—No court rule
 48 may abridge, enlarge or modify any substantive right. Court
 49 rules of practice and procedure shall not conflict with general
 50 law.

51 Section 3. Section 43.46, Florida Statutes, is created to
 52 read:

53 43.46 The judicial conference.—

54 (1) There is hereby created within the judicial branch a
 55 judicial conference. The chief justice of the supreme court
 56 shall be the chair of the judicial conference.

57 (2) The members of the judicial conference are:
 58 (a) The chief justice.
 59 (b) The chief judge of each of the district courts.
 60 (c) One circuit judge from each of the appellate districts,
 61 chosen by the chief judge of the district.

62 (3) The judicial conference shall carry on a continuous
 63 study of the operation and effect of rules of practice and
 64 procedure in all state courts. Such amendments of existing rules
 65 or addition of new rules as the judicial conference may deem
 66 desirable to promote simplicity in procedure, fairness in
 67 administration, the just determination of litigation, the
 68 elimination unjustifiable expense and delay, when not
 69 inconsistent with general law, shall be recommended by the
 70 judicial conference to the supreme court for its consideration
 71 and adoption, modification or rejection, in accordance with law.
 72 The judicial conference shall also create, revise and implement
 73 forms for use in court proceedings, approve local rules of
 74 court, approve form jury instructions, and any other task or
 75 duty prescribed by law or designated by the chief justice.

76 (4) On the first business day of December of every year the
 77 chief justice shall submit to the Speaker of the House of
 78 Representatives and the President of the Senate an annual report
 79 of the proceedings of the judicial conference, proposed rule
 80 amendments and adoptions, and recommendations for legislation
 81 respecting general rules of practice and procedure before the
 82 state courts.

83 (5) The judicial conference shall create advisory
 84 committees and subcommittees to assist the judicial conference

85 in the performance of its duties. The judicial conference shall
86 create a standing committee on court rules, which committee
87 shall make recommendations on rule amendments and adoptions. The
88 committee on court rules shall have, at a minimum, advisory
89 subcommittees in each of these areas: appellate court rules,
90 civil procedure rules, code & rules of evidence, criminal
91 procedure rules, family law rules, probate rules, juvenile court
92 rules, rules of judicial administration, small claims rules,
93 traffic court rules.

94 (6) The chief justice shall appoint the chair and members
95 of advisory committees and subcommittees. Advisory committees
96 and subcommittees must be chaired by a state court judge
97 currently in office. Advisory committees and subcommittees shall
98 include practicing attorneys, legal academics, and at least one
99 member of the general public who is not an attorney or an
100 academic.

101 (7) Any justice or judge who has been impeached by the
102 House of Representatives or is awaiting disposition after a
103 finding of probable cause by the Judicial Qualifications
104 Commission is disqualified from serving on the judicial
105 conference or any advisory committee of the judicial conference.

106 (8) The judicial conference shall be administratively
107 housed in the state courts system.

108 (9) The judicial conference shall be given a prominent link
109 on the primary web page of the state courts system. The judicial
110 conference shall maintain a group of connected web pages on the
111 website of the state courts system dedicated to the work of the
112 judicial conference, the work of the advisory committees, and

113 the court rulemaking process. The website shall include a
 114 fillable form by which any member of the public can suggest a
 115 rule adoption or change, and shall include contact information
 116 or forms by which members of the public may comment on rule
 117 proposals. All rule proposals, subcommittee and committee
 118 agendas, and subcommittee and committee reports shall be
 119 published on the website. The website shall allow any interested
 120 person to receive email notifications of the work of any
 121 subcommittee, committee, or the judicial conference. Access to
 122 the website shall be free of charge.

123 Section 4. Section 43.47, Florida Statutes, is created to
 124 read:

125 43.47 Creation and amendment of court rules of practice
 126 and procedure, local rules, administrative orders, forms and
 127 jury instructions.-

128 (1) The supreme court shall recommend general rules of
 129 practice and procedure in all courts. Recommended rules may be
 130 adopted, amended or rejected by the legislature as provided by
 131 this section. Any court may create administrative orders and
 132 forms that apply in that court and in inferior courts, subject
 133 to any limitation in general law and subject to the
 134 administrative authority of the supreme court.

135 (2) For purposes of ss. 43.45, 43.46 and this section, the
 136 term:

137 (a) "Rule" or "court rule" means a rule of practice or
 138 procedure adopted to facilitate the uniform conduct of
 139 litigation applicable to all proceedings, all parties, and all
 140 attorneys. A rule has statewide impact.

141 (b) "Local rule" means a rule of practice or procedure for
 142 circuit or county application only that, because of local
 143 conditions, supplies an omission in or facilitates application
 144 of a rule of statewide application.

145 (c) "Administrative order" means a directive necessary to
 146 administer properly the court's affairs but not inconsistent
 147 with the constitution or with court rules.

148 (d) "Form" means a form created for use by the parties in a
 149 court action.

150 (e) "Jury instruction" means a standard suggested
 151 instruction to juries on the law of a case.

152 (3) No rule, local rule, administrative order, form or jury
 153 instruction may abridge, enlarge or modify any substantive
 154 right.

155 (4) Forms are subordinate to rules and to administrative
 156 orders, and administrative orders are subordinate to rules. All
 157 rules, local rules, administrative orders, forms and jury
 158 instructions are subordinate to general law.

159 (5) The judicial conference shall prescribe and publish the
 160 procedures for the consideration of proposed rules, local rules,
 161 forms and jury instructions under this section. The
 162 administrative process for changes to court rules shall include
 163 the minimum following procedures:

164 (a) Suggestions from the general public shall be referred
 165 to the chair of the appropriate subcommittee. If the chair
 166 believes the suggestion has merit, the chair shall request a
 167 member of the subcommittee to sponsor it.

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168 (b) Any member of an advisory subcommittee may sponsor a
169 proposed rule adoption or amendment for consideration. The
170 judicial conference shall establish a uniform numbering system
171 for proposals.

172 (c) An advisory subcommittee shall publish an agenda at
173 least 20 days prior to its meeting that sets forth all initial
174 proposals scheduled by the chair for consideration.

175 (d) If the advisory subcommittee determines by a majority
176 vote that a proposal has merit, the subcommittee may place the
177 proposal on the next agenda for consideration. Before the next
178 meeting, the subcommittee shall create an explanatory note on
179 the proposed rule, together with a fiscal estimate of the cost
180 of the rule to the state, to local government, and to the
181 general public. The explanatory note and fiscal estimate must be
182 published on the judicial conference webpage at least 30 days
183 prior to any subcommittee meeting at which the proposal will be
184 voted on.

185 (e) At a meeting in which a proposal is up for final
186 subcommittee consideration, the subcommittee shall consider the
187 proposal and the draft report. By majority vote, the
188 subcommittee may reject, adopt, or amend the proposal or the
189 explanatory note or fiscal estimates. Alternatively, the
190 subcommittee may move consideration of the proposal to the next
191 meeting of the subcommittee.

192 (f) If the subcommittee adopts the proposal, the
193 subcommittee shall prepare a report to the rules committee
194 indicating the majority view and the fiscal estimates. Any
195 member of the subcommittee may object to the proposal, the

196 explanatory note, or the fiscal estimates by filing a minority
 197 report with the rules committee, which must be sent to the rules
 198 committee within 20 days of subcommittee adoption.

199 (g) The chair of the rules committee shall set the agenda
 200 for the rules committee. The agenda shall be published at least
 201 20 days prior to a meeting. No proposal may be heard unless it
 202 was passed by a subcommittee at least 60 days prior to the
 203 committee meeting. The rules committee may adopt, amend, reject,
 204 continue to another meeting, or return to the subcommittee for
 205 further consideration any proposal. Any member of the rules
 206 committee may object to a proposal, the explanatory note, or the
 207 fiscal estimates by filing a minority report with the judicial
 208 conference, which must be sent to the rules committee within 20
 209 days of committee adoption.

210 (h) The chief justice shall set the agenda for the judicial
 211 conference. The agenda shall be published at least 20 days prior
 212 to a meeting. No proposal may be heard unless it was passed by
 213 the rules committee at least 120 days prior to the judicial
 214 conference meeting. The judicial conference may adopt, amend,
 215 reject, continue to another meeting, or return to the rules
 216 committee for further consideration any proposal. Any member of
 217 the judicial conference may object to a proposal, the
 218 explanatory note, or the fiscal estimates by filing a minority
 219 report with the judicial conference, which must be filed within
 220 20 days of judicial conference adoption.

221 (i) All meetings of the judicial conference, the rules
 222 committee, or a subcommittee shall be open to the public.

223 (6) The judicial conference shall submit proposed changes
 224 to general rules of court to the supreme court annually no later
 225 than August 1. The supreme court may adopt, modify or reject any
 226 recommendation of the judicial conference. The supreme court
 227 shall submit to the Speaker of the House of Representatives and
 228 the President of the Senate not later than the first business
 229 day of December of the year preceding the year in which a rule
 230 prescribed under this section is to become effective. Such
 231 proposed rule shall take effect July 1 of the following year
 232 unless otherwise provided by law.

233 (7) Rules recommended by the supreme court do not have the
 234 force of law and are not effective unless affirmatively approved
 235 by the legislature with or without legislative amendment or the
 236 legislature having met in regular session subsequent to the
 237 submission of the rule to the presiding officers, adjourned sine
 238 die without enacting legislation rejecting or amending the
 239 proposed rule. The supreme court may fix the extent to which
 240 rules, once effective, shall apply to proceedings then pending,
 241 except that the supreme court shall not require the application
 242 of such rule to further proceedings to the extent that, in the
 243 opinion of the court in which such proceedings are pending, the
 244 application of the new rule in such proceedings would not be
 245 feasible or would work injustice in which event the former rule
 246 applies. However:

247 (a) No rule of evidence shall be effective unless the
 248 legislature shall have affirmatively adopted the same in general
 249 law.

250 (b) No rule shall require the payment of any court cost or
 251 fee unless the legislature affirmatively adopts the cost or fee
 252 in general law.

253 (c) If the legislature passes a bill amending or rejecting
 254 a recommended rule, and the governor vetoes the bill, the
 255 recommended rule shall not be adopted. Should the legislature
 256 override the veto, however, then the rule shall be as provided
 257 in the act.

258 (8) Local rules, administrative orders, forms and jury
 259 instructions are not required to be affirmed by the legislature,
 260 but may be repealed or amended by general law. Once repealed or
 261 amended, they shall not be re-amended or re-adopted unless in
 262 conformity with the general law. Additionally:

263 (a) Local rules may be promulgated by inferior courts if
 264 permitted by the judicial conference and the supreme court. No
 265 local rule may abridge, enlarge or modify any substantive right.
 266 No local rule may conflict with general law. No local rule may
 267 require parties or attorneys to pay or incur any cost or fee
 268 unless such cost or fee is authorized by general law.

269 (b) Administrative orders may be promulgated by inferior
 270 courts if permitted by the judicial conference and the supreme
 271 court. Administrative orders are not required to be submitted to
 272 the legislature or approved under this subsection. No
 273 administrative order of any court may abridge, enlarge or modify
 274 any substantive right. No administrative order may conflict with
 275 general law. No rule of court may be enacted in the form of an
 276 administrative order. No administrative order may require

277 parties or attorneys to pay or incur any cost or fee unless such
 278 cost or fee is authorized by general law.

279 (c) Advisory committees may recommend forms for use by the
 280 courts. Forms are not required to be submitted to the
 281 legislature or approved under this subsection. No form may
 282 abridge, enlarge or modify any substantive right. No form may
 283 conflict with general law.

284 (d) Advisory committees may recommend jury instructions for
 285 use by the courts. Jury instructions are not required to be
 286 submitted to the legislature or approved under this subsection.
 287 No jury instruction may abridge, enlarge or modify any
 288 substantive right. No jury instruction may conflict with general
 289 law.

290 (9) Matters related to the admissibility of evidence may
 291 only be enacted by general law. Notwithstanding the foregoing, a
 292 rule of court may prohibit the admission of certain evidence for
 293 failure to comply with a court rule and a court may prohibit
 294 admission of certain evidence in a case for failure to comply
 295 with a court order that is specific to that case.

296 Section 5. Section 43.48, Florida Statutes, is created to
 297 read:

298 43.48 Exceptions.—Provided they do not conflict with the
 299 constitution or with general law, and subject to the
 300 administrative supervision power of the supreme court, the
 301 following areas are not prohibited or limited by ss. 43.45,
 302 43.46 or 43.47:

303 (1) Rules regulating the admission of persons to the
 304 practice of law and the discipline of persons admitted, provided

305 such rules are consistent with art. V, s. 15 of the state
 306 constitution.

307 (2) Internal operating procedures of a court, including
 308 personnel rules and personnel actions, provided such procedures
 309 and actions are consistent with general law.

310 (3) Administrative orders, policies and procedures related
 311 to the assignment of a case or cases to a judge or panel.

312 (4) Rules, local rules, or administrative orders that are
 313 limited to creation of an advisory committee.

314 Section 6. It is the legislative intent that court rules as
 315 they read on the effective date of this act are presumed valid.
 316 If a court determines that the amendment to art. V, s. 2(a) of
 317 the state constitution has the effect of implied repeal of all
 318 court rules, then the legislature hereby, as of the effective
 319 date of this act, provides that the following court rules as
 320 they read on the day before the effective date of this act are
 321 specifically adopted, shall have full force and effect, and
 322 shall remain in effect unless subsequently repealed or amended
 323 by general law: Rules of Judicial Administration 2.410, 2.420,
 324 2.430, 2.440, and 2.450. It is the intent of the legislature by
 325 this section that all public records laws affecting the courts,
 326 including those grandfathered in at the adoption of art. I, s.
 327 24 of the state constitution, shall remain in effect unless
 328 amended or repealed by general law enacted after the effective
 329 date of this act.

330 Section 7. It is the legislative intent that court rules as
 331 they read on the effective date of this act are presumed valid.
 332 If a court determines that the amendment to art. V, s. 2(a) of

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333 the state constitution has the effect of implied repeal of all
334 court rules, then the legislature hereby provides, as of the
335 effective date of this act, other than those rules specified in
336 section 6, that all court rules, local rules, administrative
337 orders, forms and jury instructions that were in effect on the
338 day before the effective date of this act and that are not
339 otherwise in conflict with general law shall be deemed adopted,
340 shall have full force and effect, and shall remain in effect
341 unless subsequently repealed or amended by general law.

342 Section 8. This act shall take effect on the effective date
343 of House Joint Resolution _____, or a similar joint resolution
344 having substantially the same specific intent and purpose, if
345 that joint resolution is approved by the electors at the general
346 election to be held in November 2012.