

**Constitution Revision Commission
Executive Committee
Proposal Analysis**

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

Proposal #: P 68

Relating to: EXECUTIVE, Cabinet

Introducer(s): Commissioner Lee

Article/Section affected: Article IV, section 4

Date: November 24, 2017

	REFERENCE	ACTION
1.	<u>EX</u>	<u>Pre-meeting</u>
2.	<u>FT</u>	<u></u>

I. SUMMARY:

The Chief Financial Officer (CFO) is an elected constitutional Cabinet member. The CFO serves as the chief fiscal officer of the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities.

Proposal 68 revises Article IV, section 4(c) of the Florida Constitution to expand the responsibilities of the CFO. The proposal provides that the CFO participates as a principal in consensus economic, demographic, and revenue estimating conferences.

Additionally, the proposal requires the CFO to review and certify contracts proposed by or on behalf of any state agency, entity, or officer of the executive branch, if the contract requires payment of more than \$10 million from funds appropriated to the agency, entity, or officer. The review must ensure that the contract complies with state law regarding its procurement and content, and that any payments do not exceed that amount appropriated for the fiscal year or the amount authorized for the contract. Every four years, the dollar threshold required for CFO review and certification must be adjusted by general law to reflect the rate of inflation or deflation of the Consumer Price Index.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chief Financial Officer

The CFO is an elected constitutional Cabinet member.¹ The CFO serves as the chief fiscal officer of the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities.² Such responsibilities include, but are not limited to, auditing and adjusting accounts of officers and those indebted to the state,³ paying state employee salaries,⁴ and reporting all disbursements of funds administered by the CFO.⁵ The CFO is the head of the Department of Financial Services (DFS), which executes the duties of the CFO.⁶

State Procurement of Contracts for Personal Property and Services

Chapter 287, F.S., regulates state agency⁷ procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.⁸ DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.⁹

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and

¹ Article IV, s. 4, FLA. CONST.

² Article IV, s. 4(c), FLA. CONST. and s. 17.001, F.S.

³ Section 17.04, F.S.

⁴ See s. 17.09, F.S.

⁵ Section 17.11, F.S.

⁶ See s. 20.121, F.S.

⁷ Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

⁸ Sections 287.032 and 287.042, F.S.

⁹ *Id.*

- Invitations to negotiate, which are used when negotiations are determined to be necessary obtain the best value and involve a request for complex, customized, mission-critical services.¹⁰

Section 287.136, F.S., requires the CFO to perform audits of executed contract documents and contract manager's records to ensure that adequate internal controls are in place for complying with the terms and conditions of the contract and for the validation and receipt of goods and services. The CFO must discuss the audit and potential findings with the official whose office is subject to the audit and the final audit must be submitted to the agency head.¹¹ The agency head must submit a written statement of explanation or rebuttal concerning audit findings requiring corrective action within 30 days after receipt of the final audit report.¹²

Consensus Estimating Conferences

Sections 216.133-138, F.S., establish the consensus estimating conferences that provide official data, forecasts, and estimates for the state's planning and budgeting functions and outline consensus estimating conference procedures. Consensus estimating conferences are within the legislative branch.¹³ The principals of each conference consist of professional staff from the Executive Office of the Governor, the Office of Economic and Demographic Research, the Florida Senate, and the Florida House of Representatives.¹⁴ Official information developed by each estimating conference is determined by unanimous consent of all the principals.¹⁵ Consensus estimating conferences include:

- Economic Estimating Conference;
- Demographic Estimating Conference;
- Revenue Estimating Conference;
- Education Estimating Conference;
- Criminal Justice Estimating Conference;
- Social Services Estimating Conference;
- Workforce Estimating Conference;
- Early Learning Programs Estimating Conference;
- Self-Insurance Estimating Conference; and
- Florida Retirement System Actuarial Assumption Conference.¹⁶

B. EFFECT OF PROPOSED CHANGES:

Proposal 68 revises Article IV, section 4(c) of the Florida Constitution to expand the responsibilities of the CFO. The proposal provides that the CFO participates as a principal in consensus economic, demographic, and revenue estimating conferences.

¹⁰ Section 287.057, F.S.

¹¹ Section 287.136(1), F.S.

¹² Section 287.136(2), F.S.

¹³ Section 216.134(4), F.S.

¹⁴ Section 216.134(4)(c), F.S.

¹⁵ Sections 216.133(3) and 216.134(1), F.S.

¹⁶ Section 216.136, F.S.

Additionally, the proposal requires the CFO to review and certify contracts proposed by or on behalf of any state agency, entity, or officer of the executive branch, if the contract requires payment of more than \$10 million from funds appropriated to the agency, entity, or officer. The review and certification must occur before the execution of the contract. The review must ensure that the contract complies with state law regarding its procurement and content, and that any payments do not exceed that amount appropriated for the fiscal year or the amount authorized for the contract. Every four years, the dollar threshold required for CFO review and certification must be adjusted by general law to reflect the rate of inflation or deflation of the Consumer Price Index.

C. FISCAL IMPACT:

The proposal may have a significant fiscal impact due to additional staff required to perform contract review and certification tasks within DFS as a result of the additional workload and potential substantive regulatory area knowledge requirements.¹⁷ Additionally, information provided by DFS indicates that information technology (IT) modifications are necessary to facilitate the tracking, delegation, and codification of contract review and audit results. Proposed options for IT modifications may be in excess of \$1.5 million with licensing and maintenance costs of approximately \$300,000 annually thereafter.¹⁸

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

Article II, section 3 of the Florida Constitution provides:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

¹⁷ Department of Financial Services, Analysis of Senate Joint Resolution 792 (2017), p. 2-3, on file with Executive Committee staff.

¹⁸ *Id.* at p. 3, 5-6.

The separation of powers doctrine encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. The second is that no branch may delegate to another branch its constitutionally assigned power.¹⁹ Legislative power involves the exercise of policy-related discretion over the content of law.²⁰ Under the nondelegation doctrine the Legislature may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law.²¹ Further, the nondelegation doctrine precludes the Legislature from delegating its powers absent ascertainable minimal standards and guidelines.²² Sufficient legislative standards are necessary to ensure that decisions are judicially reviewable and not an exercise of unrestricted discretion.²³ It is permissible to delegate the task of implementing policy to another body only when adequate safeguards are in place.²⁴ The Legislature is required to “clearly define the power delegated” to guide administrative agencies in performance of their duties.²⁵

Proposal 68 permits the CFO to audit and certify certain state agency, entity, or officer contracts before they are executed. The responsibilities provided in the proposal may be relevant to separation of powers issues if the courts determine that the proposal does not provide legislative standards or thresholds specifying the CFO’s obligations and parameters for contract review and certification, or refusal to certify. The separation of powers doctrine may be relevant in constitutional amendments, as the Florida Supreme Court has previously considered whether a proposed constitutional amendment would empower the Department of Health “to make the types of primary policy decisions that are prohibited under the doctrine of non-delegation of legislative power.”²⁶

¹⁹ *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 264 (Fla. 1991).

²⁰ *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719, 720-21 (Fla. 1937).

²¹ *Sims v. State*, 754 So. 2d 657, 668 (Fla. 2000).

²² *Dep’t of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So. 2d 359, 361 (Fla. 1st DCA 1985).

²³ *Florida State Bd. of Architecture v. Wasserman*, 377 So. 2d 653 (Fla. 1979).

²⁴ *Askew v. Cross Key Waterways*, 372 So. 2d 913 (Fla. 1978).

²⁵ *Florida Dep’t of State, Div. of Elections v. Martin*, 916 So. 2d 763, 770 (Fla. 2005); *Avatar Dev. Corp. v. State*, 723 So. 2d 199, 205 (Fla. 1998).

²⁶ *Advisory Opinion to the Attorney General re Use of Marijuana for Debilitating Medical Conditions*, 181 So. 3d 471, 478 (Fla. 2015).