

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 Committee on Judiciary

BILL: CS/SJR 792

INTRODUCER: Ethics and Elections Committee and Senator Lee

SUBJECT: Chief Financial Officer

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	Fav/CS
2.	Cibula	Cibula	JU	Pre-meeting
3.			RC	

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SJR 792 is a joint resolution to amend the State Constitution which delegates additional responsibilities to the state's Chief Financial Officer. Specifically, the resolution provides that the Chief Financial Officer shall participate as a principal in consensus economic, demographic, and revenue estimating conferences. The resolution further provides the Chief Financial Officer with the authority to review and certify state contracts in excess of \$10 million before they are executed.

Each house of the Legislature must pass the joint resolution by a three-fifths vote in order for it to be placed on the ballot for approval by the electors.

II. Present Situation:

Chief Financial Officer

The Chief Financial Officer is a constitutional officer and member of the Cabinet. The CFO's duties, as described by the Florida Constitution, are to serve as the chief fiscal officer of the state, settle and approve accounts against the state, and keep all state funds and securities.¹ Among the CFO's many statutory responsibilities is the responsibility to "examine, audit, and settle all accounts, claims, and demands, whatsoever, against the state, arising under any law or resolution of the Legislature, and issue a warrant directing the payment out of the State Treasury of such

¹ FLA. CONST. art. IV, s. 4(a) and (c).

amount as he or she allows thereon.”² The CFO must also train agency contract managers and the CFO may audit executed agency contracts.³

Requirement for State Contracts

Chapter 287, F.S., Procurement of Personal Property and Services, contains most of the statutes governing contracting by state agencies. These requirements become more detailed as the value of the contracts increase. Contract documents must also contain provisions required by statute based on the value of goods and services involved or the type of contract.

In some cases, for example, an agency contract must:

- State that agency contractors and subcontractors must comply with the public records laws.⁴
- Include specifications that clearly establish all the tasks that a contractor is required to perform.⁵
- State that the government’s obligation to pay under the contract is contingent upon an annual appropriation by the Legislature, if the contract binds the state for longer than 1 fiscal year.⁶
- State that bills for fees or other compensation for services or expenses must be submitted in detail sufficient to allow for a proper preaudit and postaudit of the bills or fees.⁷
- Identify the financial consequences that the agency will apply if the contractor fails to perform the contract.⁸
- Address the property rights in intellectual property related to the contract and the state’s rights regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.⁹

State Planning and Budgeting Processes

Under article III, section 19(a)(1) of the Florida Constitution, the Legislature is required to prescribe by general law “the adoption of annual state budgetary and planning processes.” These constitutionally required planning and budgetary processes are set forth in detail in chapter 216, F.S.

Under these processes, ten consensus estimating conferences are required to develop the official information within their areas of responsibility, by consensus, which is needed for purposes of the state planning and budgeting system.¹⁰ Official information includes data, forecasts, estimates, analyses and studies on a particular matter, and the consensus process requires the unanimous consent of the principals of an estimating conference.¹¹ Once official information is

² Section 17.03(1), F.S.

³ Sections 287.057(14) and 287.136, F.S.

⁴ Section 287.0571(5)(j), F.S.

⁵ Section 287.056(1)(a), F.S.

⁶ Section 287.0582, F.S.

⁷ Section 287.058(1)(a), F.S.

⁸ Section 287.058(1)(h), F.S.

⁹ Section 287.058(1)(i), F.S.

¹⁰ Section 216.134(1), F.S.

¹¹ Section 216.133, F.S.

developed by a conference, state agencies and the judicial branch must use the information in carrying out their duties under the state planning and budgetary system.¹²

The principals of a consensus conference include:

- Professional staff of the Executive Office of the Governor who are designated by the Governor;
- The coordinator of the Office of Economic and Demographic Research and other professional staff of EDR which are designated by the coordinator to serve as a principal; and
- Professional staff of the Senate designated by the President of the Senate, and professional staff of the House of Representatives designated by the Speaker of the House of Representatives.¹³

The ten consensus estimating conferences and a general description of their areas of responsibility are set forth below:

- **Economic Estimating Conference**—develops official information with respect to the national and state economies, as the conference determines is needed for the state planning and budgeting system. This information includes long-term trend forecasts.¹⁴
- **Demographic Estimating Conference**—develops official information with respect to the population of the nation and state by age, race, and sex, as the conference determines is needed for the state planning and budgeting system.¹⁵
- **Revenue Estimating Conference**—develops official information with respect to anticipated state and local government revenues, as the conference determines is needed for the state planning and budgeting system. This information may include estimates of trust fund revenues.¹⁶
- **Education Estimating Conference**—develops official information relating to the state public and private educational system, including forecasts of student enrollments, the national average of tuition and fees at public postsecondary educational institutions, the number of students qualified for state financial aid programs and for the William L. Boyd, IV, Florida Resident Access Grant Program and the appropriation required to fund the full award amounts for each program, fixed capital outlay needs, and Florida Education Finance Program formula needs, as the conference determines is needed for the state planning and budgeting system.¹⁷
- **Criminal Justice Estimating Conference**—develops official information relating to the criminal justice system, including forecasts of prison admissions and population and of supervised felony offender admissions and population, as the conference determines is needed for the state planning and budgeting system.¹⁸
- **Social Services Estimating Conference**—develops official information relating to the social services system of the state, including forecasts of social services caseloads, utilization, and expenditures, as the conference determines is needed for the state planning and budgeting

¹² Section 216.135, F.S.

¹³ Section 216.134(4)(c), F.S.

¹⁴ Section 216.136(1), F.S.

¹⁵ Section 216.136(2), F.S.

¹⁶ Section 216.136(3), F.S.

¹⁷ Section 216.136(4), F.S.

¹⁸ Section 216.136(5), F.S.

system. The conference also develops information relating to the Florida Kidcare program which the conference determines is needed to plan for and project future budgets and the drawdown of federal matching funds.¹⁹

- **Workforce Estimating Conference**—develops official information on the workforce development system planning process, as it relates to the personnel needs of current, new, and emerging industries as the conference determines is needed by the state planning and budgeting system. This information must include at least: short-term and long-term forecasts of employment demand for jobs by occupation and industry; entry and average wage forecasts among those occupations; and estimates of the supply of trained and qualified individuals available or potentially available for employment in those occupations, with special focus upon those occupations and industries which require high skills and have high entry wages and experienced wage levels.²⁰
- **Early Learning Programs Estimating Conference**—develops estimates and forecasts of the unduplicated count of children eligible for the school readiness program and of children eligible for the Voluntary Prekindergarten Education Program, as the conference determines are needed to support the state planning, budgeting, and appropriations processes.²¹
- **Self-Insurance Estimating Conference**—develops official information on self-insurance related issues, as the conference determines is needed by the state planning and budgeting system.²²
- **Florida Retirement System Actuarial Assumption Conference**—develops official information with respect to the economic and noneconomic assumptions and funding methods of the Florida Retirement System necessary to perform the system actuarial study.²³

III. Effect of Proposed Changes:

The joint resolution amends the State Constitution to require the state Chief Financial Officer to participate as a principal in consensus economic, demographic, and revenue estimating conferences.

The joint resolution also requires the CFO to review and certify, before execution, certain state contracts proposed by or on behalf of any state agency, entity, or officer of the executive branch. This provision specifically applies only to state contracts which require a payment or aggregate payments in excess of \$10 million from appropriated funds. This \$10 million threshold will be adjusted for inflation every 4 years.

The purpose of the contract review is to ensure that contracts comply with state procurement law and contain the provisions required by statute. The CFO must also review contracts to ensure that any payments required to be made by the state agency, entity, or officer under the contract in any fiscal year do not exceed the amount appropriated for that fiscal year or the amount authorized by law for the purpose of the contract.

¹⁹ Section 216.136(6), F.S.

²⁰ Section 216.136(7), F.S.

²¹ Section 216.136(8), F.S.

²² Section 216.136(9), F.S.

²³ Section 216.136(10), F.S.

The joint resolution expressly requires that the processes for review and certification of contracts be established by implementing legislation. However, implementing legislation will also be required to enable the CFO to participate as a principle in the consensus economic, demographic, and revenue estimating conferences.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, section 1 of the Florida Constitution authorizes the Legislature to propose amendments to the Florida 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 held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

Article XI, section 5(a) of the Florida Constitution and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts use a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”²⁴

Article XI, section 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁴ *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

B. Private Sector Impact:

To the extent that the joint resolution, when implemented by law, ensures that expenditures of public funds comply with law, the public may receive more public goods and services at a lower cost.

C. Government Sector Impact:*Impact of Contract Reviews:*

The pre-execution review of contracts exceeding \$10 million, may slow the negotiations for the contracts in some instances. Additionally, the CFO will likely need some additional staff to perform the reviews. However, the pre-execution contract reviews may lessen the staff time required for post-execution audits of the contracts.

Advertising Costs:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment is to be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

According to the Division, the projected cost to advertise constitutional amendments for the 2018 primary and general election cycle was \$120.31 per word. Using those rates, the cost to advertise this amendment in newspapers and produce booklets for the 2018 general election could be \$76,396.85, at a minimum. This cost estimate is contingent on multiple amendments needing advertising, as there is an inverse relationship between the price per word and the length of the advertisements. If no other amendments need to be advertised, the price per word may be significantly higher. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known.

Total expenses related to constitutional amendment advertising for the 2018 election cycle are likely to be significant, as the 2018 ballot will include amendments placed there by the Constitutional Revision Commission (when the Commission last met in 1998, 13 amendments were placed on the ballot). Amendments can also be placed on the ballot via the initiative petition process, or by a joint resolution of the Florida Legislature. So far, four amendments will appear on the 2018 ballot.

VI. Technical Deficiencies:

Lines 56-57 of the joint resolution require the Legislature “to implement this paragraph.” This paragraph, however, is a reference to paragraph (c)(4) of article IV, section 4 of the Florida Constitution, which relates to the requirements for pre-execution contract reviews. Because the requirement that the Chief Financial Officer participate in the consensus economic, demographic, and revenue estimating conferences is located in paragraph (c)(3), the Legislature may wish to revise the reference to “this paragraph” to state “this subsection.” Alternatively, the

Legislature could omit the requirement for implementing legislation because the Legislature has a duty to implement all constitutional requirements.²⁵

VII. Related Issues:

None.

VIII. Statutes Affected:

This joint resolution substantially amends article IV, section 4 of the Florida Constitution.
Additional Information:

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

CS by Ethics and Elections on January 30, 2018:

The Committee Substitute differs from the original bill in that it makes technical structural changes and specifically requires the Legislature to implement the changes via implementing legislation.

- B. **Amendments:**

None.

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

²⁵ See *Dade County Classroom Teachers Ass'n, Inc. v. Legislature* 269 So. 2d 684, 688 (Fla. 1972) (stating that the Legislature must implement the constitutional right to collective bargaining by public employees within a reasonable time).