

**Constitution Revision Commission
Finance and Taxation Committee
Proposal Analysis**

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

Proposal #: CS/P 94

Relating to: MISCELLANEOUS, Comprehensive Statewide Tobacco Education And Prevention Program

Introducer(s): Finance and Taxation Committee and Commissioner Nuñez

Article/Section affected: Article X, section 27

Date: February 23, 2018

	REFERENCE	ACTION
1.	<u>GP</u>	Favorable
2.	<u>FT</u>	Favorable

I. SUMMARY:

Currently, s. 27 of Art. X of the Florida Constitution provides that fifteen percent of the funds paid to the state of Florida for the tobacco settlement are to be used for a statewide tobacco education and prevention program. The education and prevention program is divided into five components, including an advertising campaign to discourage the use of tobacco.

The proposal revises s. 27 of Art. X of the Florida Constitution to add cancer research as a new component of the comprehensive statewide tobacco education and prevention program.

The proposal provides that the funds appropriated for cancer research shall be distributed evenly between competitive cancer research projects that are administered by the biomedical research advisory council. After consultation with the biomedical research advisory council, the state surgeon general shall award the grants.

The proposal also eliminates the current requirement that one-third of the funds available pursuant to s. 27 of Art X of the Florida Constitution be used for an advertising campaign to discourage the use of tobacco.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida Tobacco Settlement

In August 1997, tobacco companies (Phillip Morris, Inc., R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corp., and Lorillard Tobacco Company) entered into a multi-billion dollar tobacco settlement agreement with Florida for all past, present and future claims by the state, including reimbursement of Medicaid expenses, fraud, RICO, and punitive damages.¹ In November 2006, Florida's voters approved a state Constitutional amendment, creating Article X, Section 27, calling for a comprehensive tobacco education and use prevention program.²

Comprehensive Statewide Tobacco Education and Prevention Program

Section 381.84, F.S, provides that the Department of Health (DOH), through the Bureau of Tobacco Free Florida (BTFF), administers the statewide tobacco education and use prevention program outlined in s. 27 of Art. X of the Florida Constitution. The statute requires BTFF's programs to focus on tobacco use by youth and specifies the primary goals of the program are to "reduce the prevalence of tobacco use among youth, adults, and pregnant women; reduce per capita tobacco consumption; and reduce exposure to environmental tobacco smoke, and enforcing the "Florida Clean Indoor Air Act". As directed by statute, BTFF organizes and administers the program in accordance with the CDC Best Practices for Comprehensive Tobacco Control Programs, with a "focus on educating people, particularly youth and their parents, about the health hazards of tobacco and discouraging the use of tobacco."

Funding From the Tobacco Settlement

Section 27(b) of Article X of the Florida Constitution, directs the legislature to appropriate 15 percent of the funds paid to the state in 2005 under the tobacco settlement for the statewide tobacco education and use prevention program ("Program").³ The legislature appropriates the remaining 85% of the annual tobacco settlement trust fund amount to programs outside of BTFF.

The following are the funds appropriated for FY16-17 and FY17-18 and estimates for the next years:

- FY16-17: \$66.3 million

¹ *The State of Florida et al., vs. The American Tobacco Company, et al.*, Civil Action #95-1466AH (Circuit Court of the 15th Judicial Circuit, Palm Beach Co., FL August 25, 1997).

² The Protect People, Especially Youth, from Addiction, Disease, and other Health Hazards of using Tobacco Amendment passed in the 2006 general election .See

<http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=41791&seqnum=1> (last visited 02/23/18).

³ Sec. 27(b), Art. X, Fla. Const., sets the base amount at 15% of the funds paid in 2005 and then adjusted annually for inflation.

- FY17-18: \$69.0 million
- FY18-19: \$70.3 million
- FY19-20: \$71.5 million
- FY20-21: \$73.0 million
- FY21-22: \$75.1 million
- FY22-23: \$77.1 million⁴

Section 27(a) of Article X of the Florida Constitution, provides five components to the Program, which the above funds are appropriated to support:

- An advertising campaign to discourage the use of tobacco;
- Evidence based curricula and programs to educate youth about tobacco and to discourage their use of it;
- Programs of local community-based partnerships that discourage the use of tobacco;
- Enforcement of laws, regulations, and policies against the sale or other provision of tobacco to minors; and
- Publicly-reported annual evaluations to ensure that moneys appropriated pursuant to this section are spent properly.

Section 27(a)(1) of Article X of the Florida Constitution also requires that one third of the total appropriation be used for an advertising campaign to discourage the use of tobacco.⁵

Florida Biomedical Research Advisory Council

The Biomedical Research Advisory Council (BMRC) advises the State Surgeon General as to the direction and scope of the James and Esther King Biomedical Research Program and Bankhead-Coley Cancer Research Program.⁶ The BMRC's responsibilities are include:

- Providing advice on program priorities and emphases.
- Providing advice on the overall program budget.
- Participating in periodic program evaluation.
- Assisting in the development of guidelines to ensure fairness, neutrality, and adherence to the principles of merit and quality in the conduct of the program.
- Assisting in the development of appropriate linkages to nonacademic entities, such as voluntary organizations, health care delivery institutions, industry, government agencies, and public officials.
- Developing criteria and standards for the award of research grants.

⁴ Estimates are from the *Tobacco Settlement Trust Fund Financial Outlook Statement*, 12/08/17, by the Florida Office of Economic and Demographic Research. http://edr.state.fl.us/content/revenues/outlook-statements/tobacco-settlement-tf/171208_TSTFoutl.pdf (last visited 02/23/18).

⁵ For more information, see Tobacco Free Florida website: <http://tobaccofreeflorida.com/> (last visited 02/23/18).

⁶ See Florida Department of Health website: <http://www.floridahealth.gov/provider-and-partner-resources/brac/index.html>

- Developing guidelines relating to solicitation, review, and award of research grants and fellowships, to ensure an impartial, high-quality peer review system.⁷
- Reviewing reports of peer review panels and making recommendations for research grants and fellowships.
- Developing and providing oversight regarding mechanisms for the dissemination of research results.

The BMRC is established pursuant to s. 215.5602, Florida Statutes.

B. EFFECT OF PROPOSED CHANGES:

The proposal revises s. 27 of Art. X of the Florida Constitution to add cancer research as an additional component of the comprehensive statewide tobacco education and prevention program. This change allows the legislature the option to appropriate funds to cancer research as part of the Program.

The proposal provides that the funds appropriated for cancer research shall be distributed evenly between competitive cancer research projects that are administered by the BMRC. After consultation with the BMRC, the state surgeon general shall award the grants.

The proposal also eliminates the current requirement that one-third of the funds available pursuant to s. 27 of Art X of the Florida Constitution be used for an advertising campaign to discourage the use of tobacco. Advertising remains a component of the program, but the amount appropriated is at the discretion of the legislature.

C. FISCAL IMPACT:

The amount of funding directed to cancer research and/or advertising as components of the Program are at the discretion of the legislature.

The following fiscal impact was provided by the Florida Department of Health:⁸

Modeling from BTFF's independent external evaluator indicates redirecting current funding from prevention to cancer treatment research would significantly increase health care costs to the state. Conservative projections indicate small redirections in funding could equate to \$1.9 billion increase in personal health care costs (including \$.5 billion to Medicaid), a moderate estimate could equate to \$3.9 billion in increased costs (\$.9 billion to Medicaid), and maximum estimate of \$21.4 billion (\$4.5 billion to Medicaid) in increased costs from 2019-2028.⁹

⁷ *Id.*

⁸ Florida Department of Health Analysis of CS/Proposal 94 (on file with CRC staff).

⁹ Research Triangle Institute International. (2017). Prevalence Scenarios and Health Care Costs 2011-2028: Ad hoc report (from analysis by Florida Department of Health).

Redirecting funding would result in significant reductions in contractual agreements with State University Systems for provision of BTFF services.¹⁰

To implement the proposal, DOH is directed to distribute funds “evenly between competitive cancer research projects that are administered by the BMRC. The BMRC at DOH would likely receive an additional 90 grant applications with this shift in funds. The peer review vendor contracted by DOH is reimbursed at a set fee for review of up to 200 applications and is reimbursed for review of additional applications in batches of up to 50 at a rate of \$30,193.00 per batch. In the last two fiscal years, DOH has received around 200 applications between the Bankhead-Coley Cancer Research Program and the James and Esther King Biomedical Research Program. This fiscal year, with the addition of the Live Like Bella Pediatric Cancer Research Initiative, DOH has received a total of 230 applications. It is fair to assume that this shift in funds would bring the total number of applications received up to 320, which would trigger the purchase of two additional batches resulting in additional cost of \$60,386. Each application is reviewed by at least three peer reviewers, compensated at a rate of \$500/review. With an additional 90 applications, this would come to an additional cost of \$135,000.¹¹

Each grant that is awarded for a period of greater than 12 months must submit a cumulative progress report in January of each year following the grant’s date of execution. This report undergoes peer review by at least 3 reviewers who are compensated at a rate of \$100/review. Reviews are purchased in batches of 25 at a rate of \$8,623/batch. The average grant award is for a period of 3 years, requiring two cumulative progress reports. It is estimated that DOH could award up to 15 additional research grants due to this shift in funds. This would require review of an additional 30 cumulative progress reports by three peer reviewers each, resulting in an additional cost of \$9,000 in reviewer honoraria. The purchase of two additional review batches would result in a cost of \$17,246. It is estimated that DOH could award up to 15 additional research grants due to this shift in funds. This would require an additional FTE for management of these grants. The total position cost including salary, fringe, and expenses for year 1 is \$82,572. The total estimated fiscal impact to state government for implementation of new cancer research funding is \$304,204

III. Additional Information:

A. Statement of Changes:

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

At the Finance and Taxation Committee meeting on 01/11/18, the proposal was amended to add cancer research as a component of the Program and deleted a required funding amount for cancer research. The amendment also eliminated the one-third funding requirement for an advertising campaign.

¹⁰ Bureau of Tobacco Free Florida. (2017). Budget reduction exercise (from analysis by Florida Department of Health).

¹¹ Office of Public Health Research (2017). Analysis for CRC Proposal 94 (from analysis by Florida Department of Health).

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.