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LEGISLATIVE ACTION

Senate

House

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The Conference Committee on CS for CS for SB 2694 recommended the following:

**Senate Conference Committee Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 216.311, Florida Statutes, is amended to read:

216.311 Unauthorized contracts ~~in excess of appropriations;~~ penalty.—

(1) An ~~No~~ agency or branch of state government may not enter into any ~~shall contract to spend, or enter into any~~



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12 agreement:

13 (a) To spend, any moneys in excess of the amount  
14 appropriated to such agency or branch unless specifically  
15 authorized by law, and any contract or agreement in violation of  
16 this chapter shall be null and void.

17 (b) That requires the state to pay liquidated damages or  
18 early termination fees for a breach or early termination of a  
19 contract or agreement by such agency or branch due to an act of  
20 the Legislature which provides less than full funding for the  
21 contract during the fiscal year.

22 (c) That requires the state to pay interest, other than  
23 interest paid pursuant to s. 215.422, to another party because  
24 the agency or branch has insufficient budget authority to pay  
25 the underlying obligation of the contract or agreement in the  
26 current year.

27 (d) That binds the state to make future-year payments to  
28 offset payments not made in a prior year due to insufficient  
29 budget authority, unless the Legislature expressly authorizes  
30 the agency or branch to enter into such contract or agreement.

31 (e) To grant to any party the right or privilege to collect  
32 and retain fees or other revenues from persons who are not a  
33 party to the contract which would otherwise be payable to the  
34 state and deposited into the State Treasury, unless the  
35 Legislature expressly authorizes the agency or branch to enter  
36 into such contract or agreement.

37 (2) Notwithstanding any law authorizing an agency to enter  
38 into a lease, an agency may not enter into a lease or lease-  
39 purchase agreement for tangible personal property which requires  
40 the state to pay more than \$500,000 over the term of the lease



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41 or agreement if the term of the lease or agreement exceeds 1  
42 fiscal year unless such lease or agreement is expressly  
43 authorized by the Legislature.

44 (3) Any contract or agreement in violation of this section  
45 is null and void.

46 (4)~~(2)~~ Any public officer or employee ~~person~~ who willfully  
47 enters into a contract or other agreement in violation of this  
48 section commits ~~contracts to spend, or enters into an agreement~~  
49 ~~to spend, any money in excess of the amount appropriated to the~~  
50 ~~agency or branch for whom the contract or agreement is executed~~  
51 ~~is guilty of a misdemeanor of the first degree, punishable as~~  
52 provided in s. 775.082 or s. 775.083.

53 (5) Notwithstanding subsection (1), the following agencies  
54 may enter into the following contracts or agreements:

55 (a) In order to spend funds appropriated for the approved  
56 5-year work program, the Department of Transportation may enter  
57 into contracts and other agreements that require the state to  
58 pay liquidated damages as a result of a breach of those  
59 contracts or agreements.

60 (b) In order to administer the state group insurance  
61 program as provided in s. 110.123, the Department of Management  
62 Services may enter into contracts and other agreements that  
63 permit health care providers, health maintenance organizations,  
64 preferred provider organizations, and insurers to collect  
65 premiums and copayments from participants in the group insurance  
66 program.

67 (c) In order to administer the state Medicaid plan and the  
68 Florida Healthy Kids program, the Agency for Health Care  
69 Administration may enter into contracts and other agreements



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70 that permit health care providers to collect premiums and  
71 copayments from participants in the Medicaid plan and the  
72 Healthy Kids program.

73 (6) Notwithstanding subsection (2), in order to administer  
74 the real estate and other investment portfolios as provided in  
75 s. 215.47, the State Board of Administration may enter into  
76 contracts and such other agreements that are necessary to carry  
77 out the investment duties of the board.

78 (7) For purposes of this section and ss. 216.312 and  
79 216.313, the terms "contract" and "agreement" include the  
80 initial contract or agreement, any amendment to the contract or  
81 agreement, and any extension or renewal of the contract or  
82 agreement.

83 Section 2. Section 216.312, Florida Statutes, is created to  
84 read:

85 216.312 Reporting contract expenditures.—

86 (1) At least 30 days before an executive or judicial branch  
87 public officer or employee enters into any contract or  
88 agreement, or any series of contracts or agreements between the  
89 same parties, on behalf of the state which requires payments by  
90 the state in excess of \$10 million in any fiscal or calendar  
91 year, the officer or employee must notify the Governor, the  
92 President of the Senate, and the Speaker of the House of  
93 Representatives of the intent to enter into such contract or  
94 agreement or series of contracts or agreements.

95 (2) At least 30 days before an executive or judicial branch  
96 public officer or employee enters into any contract or agreement  
97 on behalf of the state which requires minimal or no payments by  
98 the state or authorizes the other party to make expenditures in



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99 anticipation of revenues, the officer or employee must notify  
100 the Governor, the President of the Senate, and the Speaker of  
101 the House of Representatives of the intent to enter into such  
102 contract or agreement.

103 (3) At least 30 days before an executive or judicial branch  
104 public officer or employee enters into any contract or agreement  
105 on behalf of the state which requires initial expenditures by  
106 the other party and for which the other party will not receive  
107 payment from the state within 180 days after the expenditure,  
108 the officer or employee must notify the Governor, the President  
109 of the Senate, and the Speaker of the House of Representatives  
110 of the intent to enter into such contract or agreement.

111 (4) The execution of any contract or agreement described in  
112 this section is an action or proposed action that is subject to  
113 s. 216.177(2)(b).

114 Section 3. Section 287.0582, Florida Statutes, is  
115 transferred and renumbered as section 216.313, Florida Statutes,  
116 and amended to read:

117 216.313 ~~287.0582~~ Contract appropriations ~~Contracts which~~  
118 ~~require annual appropriation~~; contingency statement.-

119 (1) An executive or judicial branch public officer or  
120 employee may not enter into any contract or agreement on behalf  
121 of the state or judicial branch which binds the state or its  
122 executive agencies or the judicial branch for the purchase of  
123 services or tangible personal property unless the contract  
124 identifies the specific appropriation of state funds from which  
125 the state will make payment under the contract in the first year  
126 of the contract, or unless the Legislature expressly authorizes  
127 the agency or the judicial branch to enter into such contract



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128 absent a specific appropriation of funds.

129 (2) An ~~Ne~~ executive or judicial branch public officer or  
130 employee may not shall enter into any contract or agreement on  
131 behalf of the state, which contract binds the state or its  
132 executive agencies for the purchase of services or tangible  
133 personal property for a period in excess of 1 fiscal year,  
134 unless the following statements are statement is included in the  
135 contract:

136 (a) "The State of Florida's performance and obligation to  
137 pay under this contract is contingent upon an annual  
138 appropriation by the Legislature."

139 (b) "This contract may be terminated by the state upon 30  
140 days' written notice if funding for this contract is  
141 specifically eliminated pursuant to:

142 1. A deficit reduction plan implemented by the Governor or  
143 the Chief Justice or by an act of the Legislature after  
144 certification pursuant to section 216.221, Florida Statutes,  
145 that a deficit will occur in the General Revenue Fund; or

146 2. A deficit reduction plan implemented by the Governor or  
147 Chief Justice pursuant to section 216.221(10), Florida Statutes,  
148 or by an act of the Legislature, after a determination by the  
149 Chief Financial Officer that a deficit will occur with respect  
150 to the appropriations from a specific trust fund in the current  
151 fiscal year."

152 (3) A contract or other agreement that exceeds:

153 (a) The CATEGORY TWO threshold amount provided in s.  
154 287.017 must be signed by the agency head, executive director,  
155 or chief judge, as appropriate, or a designated senior  
156 management employee.



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157           (b) A term of 12 months may not be executed by any  
158 executive or judicial branch agency unless the agency head,  
159 executive director, or chief judge, as appropriate, determines  
160 that the contract is in compliance with the requirements of this  
161 chapter and certifies such compliance in writing within the  
162 contract or agreement.

163           (c) The CATEGORY FIVE threshold amount provided in s.  
164 287.017 must require the written acceptance or rejection of  
165 contract deliverables.

166           (4) Any contract or other agreement in violation of this  
167 section is null and void.

168           (5) Any public officer or employee who willfully enters  
169 into a contract or other agreement in violation of this section  
170 commits a misdemeanor of the first degree, punishable as  
171 provided in s. 775.082 or s. 775.083.

172           Section 4. Subsection (4) of section 287.063, Florida  
173 Statutes, is amended to read:

174           287.063 Deferred-payment commodity contracts; preaudit  
175 review.-

176           (4) Beginning July 1, 2009, an agency may not enter into a  
177 lease or deferred payment purchase arrangement for the  
178 acquisition of equipment that has a total cost greater than  
179 \$500,000 unless the Legislature has expressly authorized such  
180 lease or deferred payment purchase arrangement in the General  
181 Appropriations Act. ~~For purposes of this section, deferred-~~  
182 ~~payment commodity contracts for replacing the state accounting~~  
183 ~~and cash management systems may include equipment, accounting~~  
184 ~~software, and implementation and project management services.~~

185           Section 5. Subsection (9) of section 287.064, Florida



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186 Statutes, is amended to read:

187 287.064 Consolidated financing of deferred-payment  
188 purchases.—

189 (9) Beginning July 1, 2009, an agency may not enter into a  
190 master equipment financing agreement that has a total cost  
191 exceeding \$500,000 unless the Legislature has expressly  
192 authorized such agreement in the General Appropriations Act. For  
193 ~~purposes of this section, deferred-payment commodity contracts~~  
194 ~~for replacing the state accounting and cash management systems~~  
195 ~~may include equipment, accounting software, and implementation~~  
196 ~~and project management services.~~

197 Section 6. This act shall take effect July 1, 2009, and  
198 applies to initial contracts and agreements, amendments to a  
199 contract or agreement, and extensions or renewals of a contract  
200 or agreement which are executed on or after that date.

201  
202 ===== T I T L E A M E N D M E N T =====

203 And the title is amended as follows:

204 Delete everything before the enacting clause  
205 and insert:

206 A bill to be entitled  
207 An act relating to state financial matters; amending  
208 s. 216.311, F.S.; prohibiting an agency or branch of  
209 state government from contracting to pay, without  
210 legislative authority, liquidated damages or early  
211 termination fees resulting from the breach or early  
212 termination of a contract or agreement, from  
213 contracting to pay interest because of insufficient  
214 budget authority to pay an obligation in the current





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215 year, from obligating the state to make future  
216 payments to cover unpaid payments, or from granting to  
217 a party the right to collect fees or other revenues  
218 from nonparties; providing that such contracts are  
219 null and void; prohibiting an agency from entering  
220 into certain lease or lease-purchase agreements unless  
221 expressly authorized by the Legislature; providing  
222 exceptions for certain agency contracts or agreements;  
223 authorizing the State Board of Administration to enter  
224 into contracts and other agreements that are necessary  
225 to carry out the investment duties of the board;  
226 defining the terms "contract" and "agreement";  
227 creating s. 216.312, F.S.; requiring the executive and  
228 judicial branch to notify the Governor and the  
229 Legislature before entering into contracts or  
230 agreements in excess of a certain amount, which  
231 authorize expenditures in anticipation of revenues, or  
232 for which payment is delayed for a certain time after  
233 expenditure; transferring, renumbering, and amending  
234 s. 287.0582, F.S.; requiring a state contract to  
235 identify the appropriation that funds the contract;  
236 providing an exception; expanding the statement that  
237 must be included in state contracts to include grounds  
238 for terminating the contract based on budget deficits;  
239 requiring the judicial branch to include the statement  
240 in its contracts; providing an exception; requiring  
241 the agency head, executive director, or chief judge,  
242 as appropriate, or a designated senior management  
243 employee to sign contracts that exceed a certain



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244 amount; requiring the agency head, executive director,  
245 or chief judge to review certain contracts and certify  
246 compliance with ch. 216, F.S.; requiring contracts  
247 exceeding a specified amount to require written  
248 acceptance or rejection of contract deliverables;  
249 providing that contracts in violation of these  
250 provisions are null and void; providing penalties;  
251 amending s. 287.063, F.S.; prohibiting certain lease  
252 or deferred payment purchases by state agencies unless  
253 expressly authorized by the Legislature in the  
254 appropriations act; amending s. 287.064, F.S.;  
255 prohibiting certain master equipment financing  
256 agreements unless expressly authorized by the  
257 Legislature in the appropriations act; providing for  
258 application; providing an effective date.