

By the Committee on Governmental Oversight and Accountability;
and Senator Alexander

585-03026-09

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1 A bill to be entitled
2 An act relating to state financial matters; amending
3 s. 216.292, F.S.; providing that certain transfers of
4 appropriations by the head of an agency or the Chief
5 Justice may be made only if specific authority is
6 provided in the General Appropriations Act; amending
7 s. 216.311, F.S.; prohibiting an agency or branch of
8 state government from contracting to pay, without
9 legislative authority, liquidated damages or any other
10 moneys resulting from the breach or early termination
11 of a contract or agreement, from contracting to pay
12 interest because of insufficient budget authority to
13 pay an obligation in the current year, from obligating
14 the state to make future payments to cover unpaid
15 current payments, or from granting to a party to a
16 contract or agreement the right to collect fees or
17 other revenues from nonparties; providing that such
18 contracts are null and void; prohibiting an agency
19 from entering into certain lease or lease-purchase
20 agreements unless expressly authorized by the
21 Legislature; providing exceptions for certain agency
22 contracts or agreements; defining the terms "contract"
23 and "agreement"; creating s. 216.312, F.S.; requiring
24 the executive and judicial branch to notify the
25 Governor and the Legislature before entering into
26 contracts or agreements in excess of a certain amount,
27 which authorize expenditures in anticipation of
28 revenues, or for which payment is delayed for a
29 certain time after expenditure; transferring,

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30 renumbering, and amending s. 287.0582, F.S.; requiring
31 a state contract to identify the appropriation that
32 funds the contract; providing an exception; expanding
33 the statement that must be included in state contracts
34 to include grounds for terminating the contract based
35 on budget deficits; requiring the judicial branch to
36 include the statement in its contracts; providing an
37 exception; requiring the agency head or chief judge to
38 sign contracts that exceed a certain amount; requiring
39 the agency head or chief judge to review certain
40 contracts and certify compliance with ch. 216, F.S.;
41 requiring contracts exceeding a specified amount to
42 require written acceptance or rejection of contract
43 deliverables; providing that contracts in violation of
44 these provisions are null and void; providing
45 penalties; amending s. 287.063, F.S.; prohibiting
46 certain lease or deferred payment purchases by state
47 agencies unless expressly authorized by the
48 Legislature in the appropriations act; amending s.
49 287.064, F.S.; prohibiting certain master equipment
50 financing agreements unless expressly authorized by
51 the Legislature in the appropriations act; providing
52 for application; providing an effective date.

53
54 Be It Enacted by the Legislature of the State of Florida:

55
56 Section 1. Subsection (2) of section 216.292, Florida
57 Statutes, is amended to read:

58 216.292 Appropriations nontransferable; exceptions.—

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59 (2) If the Legislature grants a state agency or the
60 judicial branch specific authority in the General Appropriations
61 Act, the following transfers may be ~~are authorized to be~~ made by
62 the head of the agency ~~each department~~ or the Chief Justice of
63 the Supreme Court whenever it is deemed necessary by reason of
64 changed conditions:

65 (a) The transfer of appropriations funded from identical
66 funding sources, except appropriations for fixed capital outlay,
67 and the transfer of amounts included within the total original
68 approved budget and plans of releases of appropriations as
69 furnished pursuant to ss. 216.181 and 216.192, as follows:

70 1. Between categories of appropriations within a budget
71 entity, if no category of appropriation is increased or
72 decreased by more than 5 percent of the original approved budget
73 or \$250,000, whichever is greater, by all action taken under
74 this subsection.

75 2. Between budget entities within identical categories of
76 appropriations, if no category of appropriation is increased or
77 decreased by more than 5 percent of the original approved budget
78 or \$250,000, whichever is greater, by all action taken under
79 this subsection.

80 3. Any agency exceeding salary rate established pursuant to
81 s. 216.181(8) on June 30th of any fiscal year may ~~shall not be~~
82 ~~authorized to~~ make transfers pursuant to subparagraphs 1. and 2.
83 in the subsequent fiscal year.

84 4. Notice of proposed transfers under subparagraphs 1. and
85 2. shall be provided to the Executive Office of the Governor and
86 the chairs of the legislative appropriations committees at least
87 3 days prior to agency implementation in order to provide an

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88 opportunity for review. The review is ~~shall be~~ limited to
89 ensuring that the transfer is in compliance with the
90 requirements of this paragraph.

91 (b) After providing notice at least 5 working days prior to
92 implementation:

93 1. The transfer of funds within programs identified in the
94 General Appropriations Act from identical funding sources
95 between the following appropriation categories without
96 limitation so long as such a transfer does not result in an
97 increase, to the total recurring general revenue or trust fund
98 cost of the agency or entity of the judicial branch in the
99 subsequent fiscal year: other personal services, expenses,
100 operating capital outlay, food products, state attorney and
101 public defender operations, data processing services, operating
102 and maintenance of patrol vehicles, overtime payments, salary
103 incentive payments, compensation to retired judges, law
104 libraries, and juror and witness payments.

105 2. The transfer of funds and positions from identical
106 funding sources between salaries and benefits appropriation
107 categories within programs identified in the General
108 Appropriations Act. Such transfers must be consistent with
109 legislative policy and intent and may not adversely affect
110 achievement of approved performance outcomes or outputs in any
111 program.

112 (c) The transfer of funds appropriated to accounts
113 established for disbursement purposes upon release of such
114 appropriation upon request of a department and approval by the
115 Chief Financial Officer. Such transfer may only be made to the
116 same appropriation category and the same funding source from

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117 which the funds are transferred.

118 (d) The transfer of funds by the Executive Office of the
119 Governor from appropriations for public school operations to a
120 fixed capital outlay appropriation for class size reduction
121 based on recommendations of the Florida Education Finance
122 Program Appropriation Allocation Conference or the Legislative
123 Budget Commission pursuant to s. 1003.03(4)(a). Actions by the
124 Governor under this subsection are subject to the notice and
125 review provisions of s. 216.177.

126 Section 2. Section 216.311, Florida Statutes, is amended to
127 read:

128 216.311 Unauthorized contracts ~~in excess of appropriations;~~
129 penalty.-

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

133 (a) To spend, any moneys in excess of the amount
134 appropriated to such agency or branch unless specifically
135 authorized by law, ~~and any contract or agreement in violation of~~
136 ~~this chapter shall be null and void.~~

137 (b) That requires the state to pay liquidated damages or
138 any other moneys resulting from a breach or early termination of
139 a contract by such agency or branch unless the Legislature
140 specifically authorizes the agency or branch by law to commit
141 funds for the purpose of paying moneys for breach or early
142 termination.

143 (c) That requires the state to pay interest to another
144 party because the agency or branch has insufficient budget
145 authority to pay the underlying obligation of the contract or

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146 agreement in the current year.

147 (d) That binds the state to make future-year payments to
148 offset payments not made in the current year due to the
149 insufficiency of current-year appropriations in order to pay for
150 current-year costs under the contract or agreement, unless the
151 Legislature expressly authorizes the agency or branch to enter
152 into such contract or agreement.

153 (e) To grant to any party the right or privilege to collect
154 fees or other revenues from persons or entities not party to the
155 contract or agreement, unless the agency is specifically
156 authorized by law to enter into such contracts or agreements.

157 (2) Notwithstanding any law authorizing an agency to enter
158 into a lease, an agency may not enter into a lease or lease-
159 purchase agreement for tangible personal property which requires
160 the state to pay more than \$500,000 over the term of the lease
161 or agreement if the term of the lease or agreement exceeds 1
162 fiscal year unless such lease or agreement is expressly
163 authorized by the Legislature.

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

166 (4)~~(2)~~ Any public officer or employee ~~person~~ who willfully
167 enters into a contract or other agreement in violation of this
168 section ~~commits contracts to spend, or enters into an agreement~~
169 ~~to spend, any money in excess of the amount appropriated to the~~
170 ~~agency or branch for whom the contract or agreement is executed~~
171 ~~is guilty of a misdemeanor of the first degree, punishable as~~
172 provided in s. 775.082 or s. 775.083.

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

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175 (a) In order to spend funds appropriated for the approved
176 5-year work program, the Department of Transportation may enter
177 into contracts and other agreements that require the state to
178 pay liquidated damages as a result of a breach of those
179 contracts or agreements.

180 (b) In order to administer the state group insurance
181 program as provided in s. 110.123, the Department of Management
182 Services may enter into contracts and other agreements that
183 permit health care providers, health maintenance organizations,
184 preferred provider organizations, and insurers to collect
185 premiums and copayments from participants in the group insurance
186 program.

187 (c) In order to administer the state Medicaid plan and the
188 Florida Healthy Kids program, the Agency for Health Care
189 Administration may enter into contracts and other agreements
190 that permit health care providers to collect premiums and
191 copayments from participants in the Medicaid plan and the
192 Healthy Kids program.

193 (6) For purposes of this section and ss. 216.312 and
194 216.313, the terms "contract" and "agreement" include the
195 initial contract or agreement, any amendment to the contract or
196 agreement, and any extension or renewal of the contract or
197 agreement.

198 Section 3. Section 216.312, Florida Statutes, is created to
199 read:

200 216.312 Reporting contract expenditures.—

201 (1) At least 30 days before an executive or judicial branch
202 public officer or employee enters into any contract or
203 agreement, or any series of contracts or agreements between the

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204 same parties, on behalf of the state which requires payments by
205 the state in excess of \$5 million in any fiscal or calendar
206 year, the officer or employee must notify the Governor, the
207 President of the Senate, and the Speaker of the House of
208 Representatives of the intent to enter into such contract or
209 agreement or series of contracts or agreements.

210 (2) At least 30 days before an executive or judicial branch
211 public officer or employee enters into any contract or agreement
212 on behalf of the state which requires minimal or no payments by
213 the state or authorizes the other party to make expenditures in
214 anticipation of revenues, the officer or employee must notify
215 the Governor, the President of the Senate, and the Speaker of
216 the House of Representatives of the intent to enter into such
217 contract or agreement.

218 (3) At least 30 days before an executive or judicial branch
219 public officer or employee enters into any contract or agreement
220 on behalf of the state which requires initial expenditures by
221 the other party and for which the other party will not receive
222 payment from the state within 180 days after the expenditure,
223 the officer or employee must notify the Governor, the President
224 of the Senate, and the Speaker of the House of Representatives
225 of the intent to enter into such contract or agreement.

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

229 Section 4. Section 287.0582, Florida Statutes, is
230 transferred and renumbered as section 216.313, Florida Statutes,
231 and amended to read:

232 216.313 ~~287.0582~~ Contract appropriations ~~Contracts which~~

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233 ~~require annual appropriation;~~ contingency statement.-

234 (1) An executive or judicial branch public officer or
235 employee may not enter into any contract or agreement on behalf
236 of the state or judicial branch which binds the state or its
237 executive agencies or the judicial branch for the purchase of
238 services or tangible personal property unless the contract
239 identifies the specific appropriation of state funds from which
240 the state will make payment under the contract in the first year
241 of the contract, or unless the Legislature expressly authorizes
242 the agency or the judicial branch to enter into such contract
243 absent a specific appropriation of funds.

244 (2) An ~~Ne~~ executive or judicial branch public officer or
245 employee may not ~~shall~~ enter into any contract or agreement on
246 behalf of the state, which ~~contract~~ binds the state ~~or its~~
247 ~~executive agencies~~ for the purchase of services or tangible
248 personal property ~~for a period in excess of 1 fiscal year,~~
249 unless the following statements are ~~statement is~~ included in the
250 contract:

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

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

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

261 2. A deficit reduction plan implemented by the Governor or

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262 Chief Justice pursuant to section 216.221(10), Florida Statutes,
263 or by an act of the Legislature, after a determination by the
264 Chief Financial Officer that a deficit will occur with respect
265 to the appropriations from a specific trust fund in the current
266 fiscal year."

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

268 (a) The CATEGORY TWO threshold amount provided in s.
269 287.017 must be signed by the agency head, executive director,
270 or chief judge, as appropriate.

271 (b) A term of 12 months may not be executed by any
272 executive or judicial branch agency unless the agency head,
273 executive director, or chief judge, as appropriate, determines
274 that the contract is in compliance with the requirements of this
275 chapter and certifies such compliance in writing within the
276 contract or agreement.

277 (c) The CATEGORY FIVE threshold amount provided in s.
278 287.017 must require the written acceptance or rejection of
279 contract deliverables.

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

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

286 Section 5. Subsection (4) of section 287.063, Florida
287 Statutes, is amended to read:

288 287.063 Deferred-payment commodity contracts; preaudit
289 review.—

290 (4) Beginning July 1, 2009, an agency may not enter into a

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291 lease or deferred payment purchase arrangement for the
292 acquisition of equipment that has a total cost greater than
293 \$500,000 unless the Legislature has expressly authorized such
294 lease or deferred payment purchase arrangement in the General
295 Appropriations Act. For purposes of this section, deferred-
296 payment commodity contracts for replacing the state accounting
297 and cash management systems may include equipment, accounting
298 software, and implementation and project management services.

299 Section 6. Subsection (9) of section 287.064, Florida
300 Statutes, is amended to read:

301 287.064 Consolidated financing of deferred-payment
302 purchases.—

303 (9) Beginning July 1, 2009, an agency may not enter into a
304 master equipment financing agreement that has a total cost
305 exceeding \$500,000 unless the Legislature has expressly
306 authorized such agreement in the General Appropriations Act. For
307 purposes of this section, deferred payment commodity contracts
308 for replacing the state accounting and cash management systems
309 may include equipment, accounting software, and implementation
310 and project management services.

311 Section 7. This act shall take effect July 1, 2009, and
312 applies to initial contracts and agreements, amendments to a
313 contract or agreement, and extensions or renewals of a contract
314 or agreement which are executed on or after that date.