

By the Policy and Steering Committee on Ways and Means; the Committee on Governmental Oversight and Accountability; and Senator Alexander

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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 early
10 termination fees resulting from the breach or early
11 termination of a contract or agreement, from
12 contracting to pay interest because of insufficient
13 budget authority to pay an obligation in the current
14 year, from obligating the state to make future
15 payments to cover unpaid payments, or from granting to
16 a party the right to collect fees or other revenues
17 from nonparties; providing that such contracts are
18 null and void; prohibiting an agency from entering
19 into certain lease or lease-purchase agreements unless
20 expressly authorized by the Legislature; providing
21 exceptions for certain agency contracts or agreements;
22 authorizing the State Board of Administration to enter
23 into contracts and other agreements that are necessary
24 to carry out the investment duties of the board;
25 defining the terms "contract" and "agreement";
26 creating s. 216.312, F.S.; requiring the executive and
27 judicial branch to notify the Governor and the
28 Legislature before entering into contracts or
29 agreements in excess of a certain amount, which

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

52 prohibiting certain master equipment financing
53 agreements unless expressly authorized by the
54 Legislature in the appropriations act; providing for
55 application; providing an effective date.

56
57 Be It Enacted by the Legislature of the State of Florida:
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59 Section 1. Subsection (2) of section 216.292, Florida
60 Statutes, is amended to read:

61 216.292 Appropriations nontransferable; exceptions.—

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

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

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

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

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

87 4. Notice of proposed transfers under subparagraphs 1. and

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88 2. shall be provided to the Executive Office of the Governor and
89 the chairs of the legislative appropriations committees at least
90 3 days prior to agency implementation in order to provide an
91 opportunity for review. The review is ~~shall be~~ limited to
92 ensuring that the transfer is in compliance with the
93 requirements of this paragraph.

94 (b) After providing notice at least 5 working days prior to
95 implementation:

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

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

115 (c) The transfer of funds appropriated to accounts
116 established for disbursement purposes upon release of such

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117 appropriation upon request of a department and approval by the
118 Chief Financial Officer. Such transfer may only be made to the
119 same appropriation category and the same funding source from
120 which the funds are transferred.

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

129 Section 2. Section 216.311, Florida Statutes, is amended to
130 read:

131 216.311 Unauthorized contracts ~~in excess of appropriations;~~
132 penalty.—

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

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

140 (b) That requires the state to pay liquidated damages or
141 early termination fees for a breach or early termination of a
142 contract or agreement by such agency or branch due to an act of
143 the Legislature which provides less than full funding for the
144 contract during the fiscal year.

145 (c) That requires the state to pay interest, other than

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146 interest paid pursuant to s. 215.422, to another party because
147 the agency or branch has insufficient budget authority to pay
148 the underlying obligation of the contract or agreement in the
149 current year.

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

154 (e) To grant to any party the right or privilege to collect
155 and retain fees or other revenues from persons who are not a
156 party to the contract which would otherwise be payable to the
157 state and deposited into the State Treasury, unless the
158 Legislature expressly authorizes the agency or branch to enter
159 into such contract or agreement.

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

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

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

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175 provided in s. 775.082 or s. 775.083.

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

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

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

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

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

201 (7) For purposes of this section and ss. 216.312 and
202 216.313, the terms "contract" and "agreement" include the
203 initial contract or agreement, any amendment to the contract or

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204 agreement, and any extension or renewal of the contract or
205 agreement.

206 Section 3. Section 216.312, Florida Statutes, is created to
207 read:

208 216.312 Reporting contract expenditures.—

209 (1) At least 30 days before an executive or judicial branch
210 public officer or employee enters into any contract or
211 agreement, or any series of contracts or agreements between the
212 same parties, on behalf of the state which requires payments by
213 the state in excess of \$5 million in any fiscal or calendar
214 year, the officer or employee must notify the Governor, the
215 President of the Senate, and the Speaker of the House of
216 Representatives of the intent to enter into such contract or
217 agreement or series of contracts or agreements.

218 (2) 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 minimal or no payments by
221 the state or authorizes the other party to make expenditures in
222 anticipation of revenues, the officer or employee must notify
223 the Governor, the President of the Senate, and the Speaker of
224 the House of Representatives of the intent to enter into such
225 contract or agreement.

226 (3) At least 30 days before an executive or judicial branch
227 public officer or employee enters into any contract or agreement
228 on behalf of the state which requires initial expenditures by
229 the other party and for which the other party will not receive
230 payment from the state within 180 days after the expenditure,
231 the officer or employee must notify the Governor, the President
232 of the Senate, and the Speaker of the House of Representatives

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233 of the intent to enter into such contract or agreement.

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

237 Section 4. Section 287.0582, Florida Statutes, is
238 transferred and renumbered as section 216.313, Florida Statutes,
239 and amended to read:

240 216.313 287.0582 Contract appropriations ~~Contracts which~~
241 ~~require annual appropriation;~~ contingency statement.-

242 (1) An executive or judicial branch public officer or
243 employee may not enter into any contract or agreement on behalf
244 of the state or judicial branch which binds the state or its
245 executive agencies or the judicial branch for the purchase of
246 services or tangible personal property unless the contract
247 identifies the specific appropriation of state funds from which
248 the state will make payment under the contract in the first year
249 of the contract, or unless the Legislature expressly authorizes
250 the agency or the judicial branch to enter into such contract
251 absent a specific appropriation of funds.

252 (2) An ~~No~~ executive or judicial branch public officer or
253 employee may not ~~shall~~ enter into any contract or agreement on
254 behalf of the state, ~~which contract binds the state or its~~
255 ~~executive agencies~~ for the purchase of services or tangible
256 personal property ~~for a period in excess of 1 fiscal year,~~
257 unless the following statements are ~~statement is~~ included in the
258 contract:

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

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

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

269 2. A deficit reduction plan implemented by the Governor or
270 Chief Justice pursuant to section 216.221(10), Florida Statutes,
271 or by an act of the Legislature, after a determination by the
272 Chief Financial Officer that a deficit will occur with respect
273 to the appropriations from a specific trust fund in the current
274 fiscal year."

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

276 (a) The CATEGORY TWO threshold amount provided in s.
277 287.017 must be signed by the agency head, executive director,
278 or chief judge, as appropriate.

279 (b) A term of 12 months may not be executed by any
280 executive or judicial branch agency unless the agency head,
281 executive director, or chief judge, as appropriate, determines
282 that the contract is in compliance with the requirements of this
283 chapter and certifies such compliance in writing within the
284 contract or agreement.

285 (c) The CATEGORY FIVE threshold amount provided in s.
286 287.017 must require the written acceptance or rejection of
287 contract deliverables.

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

290 (5) Any public officer or employee who willfully enters

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291 into a contract or other agreement in violation of this section
292 commits a misdemeanor of the first degree, punishable as
293 provided in s. 775.082 or s. 775.083.

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

296 287.063 Deferred-payment commodity contracts; preaudit
297 review.—

298 (4) Beginning July 1, 2009, an agency may not enter into a
299 lease or deferred payment purchase arrangement for the
300 acquisition of equipment that has a total cost greater than
301 \$500,000 unless the Legislature has expressly authorized such
302 lease or deferred payment purchase arrangement in the General
303 Appropriations Act. ~~For purposes of this section, deferred-~~
304 payment commodity contracts for replacing the state accounting
305 and cash management systems may include equipment, accounting
306 software, and implementation and project management services.

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

309 287.064 Consolidated financing of deferred-payment
310 purchases.—

311 (9) Beginning July 1, 2009, an agency may not enter into a
312 master equipment financing agreement that has a total cost
313 exceeding \$500,000 unless the Legislature has expressly
314 authorized such agreement in the General Appropriations Act. ~~For~~
315 purposes of this section, deferred-payment commodity contracts
316 for replacing the state accounting and cash management systems
317 may include equipment, accounting software, and implementation
318 and project management services.

319 Section 7. This act shall take effect July 1, 2009, and

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320 applies to initial contracts and agreements, amendments to a
321 contract or agreement, and extensions or renewals of a contract
322 or agreement which are executed on or after that date.