

1 A bill to be entitled
2 An act relating to state financial matters; amending s.
3 216.311, F.S.; defining the terms "contract" and
4 "agreement"; prohibiting an agency or branch of state
5 government from contracting, without legislative
6 authority, to pay liquidated damages or early termination
7 fees resulting from the breach or early termination of a
8 contract or agreement, to pay interest because of
9 insufficient budget authority to pay an obligation in the
10 current year, from obligating the state to make future
11 payments to cover unpaid payments, or from granting to a
12 party the right to collect fees or other revenues from
13 nonparties; providing exceptions for certain agency
14 contracts or agreements; prohibiting an agency from
15 entering into certain lease or lease-purchase agreements
16 unless expressly authorized by the Legislature; providing
17 an exception for the State Board of Administration to
18 enter into contracts and other agreements that are
19 necessary to carry out the investment duties of the board;
20 providing penalties; creating s. 216.312, F.S.; requiring
21 the executive and judicial branch to notify the Governor
22 and the Legislature before entering into contracts or
23 agreements in excess of a certain amount, which authorize
24 expenditures in anticipation of revenues, or for which
25 payment is delayed for a certain time after expenditure;
26 transferring, renumbering, and amending s. 287.0582, F.S.;
27 requiring a state contract to identify the appropriation
28 that funds the contract; providing an exception; expanding

29 | the statement that must be included in state contracts to
30 | include grounds for terminating the contract based on
31 | budget deficits; requiring the judicial branch to include
32 | the statement in its contracts; requiring the agency head,
33 | executive director, or chief judge, as appropriate, or a
34 | designated senior management employee to sign contracts
35 | that exceed a certain amount; requiring the agency head,
36 | executive director, or chief judge to review certain
37 | contracts and certify compliance with ch. 216, F.S.;
38 | requiring contracts exceeding a specified amount to
39 | require written acceptance or rejection of contract
40 | deliverables; providing that contracts in violation of
41 | these provisions are null and void; providing penalties;
42 | amending s. 287.0573, F.S.; requiring the Council on
43 | Efficient Government to develop standards and criteria for
44 | the disclosure of chief executive officer compensation and
45 | executive compensation packages by prospective contractors
46 | under consideration for a proposed outsourcing; amending
47 | s. 287.0574, F.S.; requiring a contract for a proposed
48 | outsourcing by the state to disclose the contractor's
49 | chief executive officer compensation and executive
50 | compensation packages; requiring a contract for a proposed
51 | outsourcing by the state to prohibit a contractor from
52 | authorizing an automatic increase in the salary or
53 | benefits of an employee of the contractor if the employee
54 | is providing an activity or service under the contract;
55 | provides requirements and procedures for approval of such
56 | an increase; requires the Office of Program Policy

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57 Analysis and Government Accountability to submit an annual
 58 report; amending s. 287.063, F.S.; prohibiting certain
 59 lease or deferred-payment purchases by state agencies
 60 unless expressly authorized by the Legislature in the
 61 appropriations act; amending s. 287.064, F.S.; prohibiting
 62 certain master equipment financing agreements unless
 63 expressly authorized by the Legislature in the
 64 appropriations act; amending ss. 376.3075 and 403.1837,
 65 F.S.; conforming cross-references; providing for
 66 application; providing an effective date.

67

68 Be It Enacted by the Legislature of the State of Florida:

69

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

72 216.311 Unauthorized contracts ~~in excess of~~
 73 ~~appropriations~~; penalty.—

74 (1) As used in this section and ss. 216.312 and 216.313,
 75 the terms "contract" and "agreement" include the initial
 76 contract or agreement, any amendment to the contract or
 77 agreement, and any extension or renewal of the contract or
 78 agreement.

79 (2)-(1) An agency or branch of state government may not
 80 enter into any ~~shall~~ ~~contract to spend,~~ ~~or enter into any~~
 81 ~~agreement:~~

82 (a) To spend, any moneys in excess of the amount
 83 appropriated to such agency or branch unless specifically
 84 authorized by law, ~~and any contract or agreement in violation of~~

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85 ~~this chapter shall be null and void.~~

86 (b) That requires the state to pay liquidated damages or
87 early termination fees for a breach or early termination of a
88 contract or agreement by such agency or branch due to an act of
89 the Legislature which provides less than full funding for the
90 contract during the fiscal year.

91 (c) That requires the state to pay interest, other than
92 interest paid pursuant to s. 215.422, to another party because
93 the agency or branch has insufficient budget authority to pay
94 the underlying obligation of the contract or agreement in the
95 current year.

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

100 (e) To grant to any party the right or privilege to
101 collect and retain fees or other revenues from persons who are
102 not a party to the contract which would otherwise be payable to
103 the state and deposited into the State Treasury, unless the
104 Legislature expressly authorizes the agency or branch to enter
105 into such contract or agreement.

106 (3) Notwithstanding subsection (2), the following agencies
107 may enter into the following contracts or agreements:

108 (a) In order to spend funds appropriated for the approved
109 5-year work program, the Department of Transportation may enter
110 into contracts and other agreements that require the state to
111 pay liquidated damages as a result of a breach of those
112 contracts or agreements.

113 (b) In order to administer the state group insurance
 114 program as provided in s. 110.123, the Department of Management
 115 Services may enter into contracts and other agreements that
 116 permit health care providers, health maintenance organizations,
 117 preferred provider organizations, and insurers to collect
 118 premiums and copayments from participants in the group insurance
 119 program.

120 (c) In order to administer the state Medicaid plan and the
 121 Florida Healthy Kids program, the Agency for Health Care
 122 Administration may enter into contracts and other agreements
 123 that permit health care providers to collect premiums and
 124 copayments from participants in the Medicaid plan and the
 125 Healthy Kids program.

126 (4) Notwithstanding any law authorizing an agency to enter
 127 into a lease, an agency may not enter into a lease or lease-
 128 purchase agreement for tangible personal property which requires
 129 the state to pay more than \$500,000 over the term of the lease
 130 or agreement if the term of the lease or agreement exceeds 1
 131 fiscal year unless such lease or agreement is expressly
 132 authorized by the Legislature. However, in order to administer
 133 the real estate and other investment portfolios as provided in
 134 s. 215.47, the State Board of Administration may enter into
 135 contracts and such other agreements as necessary to carry out
 136 the investment duties of the board.

137 (5) Any contract or agreement in violation of this section
 138 is null and void.

139 (6)-(2) Any public officer or employee ~~person~~ who willfully
 140 enters into a contract or other agreement in violation of this

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141 ~~section commits contracts to spend, or enters into an agreement~~
 142 ~~to spend, any money in excess of the amount appropriated to the~~
 143 ~~agency or branch for whom the contract or agreement is executed~~
 144 ~~is guilty of a misdemeanor of the first degree, punishable as~~
 145 provided in s. 775.082 or s. 775.083.

146 Section 2. Section 216.312, Florida Statutes, is created
 147 to read:

148 216.312 Reporting contract expenditures.-

149 (1) At least 30 days before an executive or judicial
 150 branch public officer or employee enters into a contract or
 151 agreement, or a series of contracts or agreements between the
 152 same parties, on behalf of the state which require payments by
 153 the state in excess of \$10 million in any fiscal or calendar
 154 year, the officer or employee must notify the Governor, the
 155 President of the Senate, and the Speaker of the House of
 156 Representatives of the intent to enter into such contract or
 157 agreement or series of contracts or agreements.

158 (2) At least 30 days before an executive or judicial
 159 branch public officer or employee enters into a contract or
 160 agreement on behalf of the state which requires minimal or no
 161 payments by the state or authorizes the other party to make
 162 expenditures in anticipation of revenues, the officer or
 163 employee must notify the Governor, the President of the Senate,
 164 and the Speaker of the House of Representatives of the intent to
 165 enter into such contract or agreement.

166 (3) At least 30 days before an executive or judicial
 167 branch public officer or employee enters into a contract or
 168 agreement on behalf of the state which requires initial

169 expenditures by the other party and for which the other party
 170 will not receive payment from the state within 180 days after
 171 the expenditure, the officer or employee must notify the
 172 Governor, the President of the Senate, and the Speaker of the
 173 House of Representatives of the intent to enter into such
 174 contract or agreement.

175 (4) The execution of any contract or agreement described
 176 in this section is an action or proposed action subject to s.
 177 216.177(2) (b) .

178 Section 3. Section 287.0582, Florida Statutes, is
 179 transferred, renumbered as section 216.313, Florida Statutes,
 180 and amended to read:

181 216.313 ~~287.0582~~ Contract appropriation ~~Contracts which~~
 182 ~~require annual appropriation;~~ contingency statement;
 183 requirements; penalty.-

184 (1) An executive or judicial branch public officer or
 185 employee may not enter into any contract or agreement on behalf
 186 of the state or judicial branch which binds the state or its
 187 executive agencies or the judicial branch for the purchase of
 188 services or tangible personal property unless the contract
 189 identifies the specific appropriation of state funds from which
 190 the state will make payment under the contract in the first year
 191 of the contract, or unless the Legislature expressly authorizes
 192 the agency or the judicial branch to enter into such contract
 193 absent a specific appropriation of funds.

194 (2) An ~~No~~ executive or judicial branch public officer or
 195 employee may not ~~shall~~ enter into any contract or agreement on
 196 behalf of the state, ~~which contract binds the state or its~~

197 ~~executive agencies~~ for the purchase of services or tangible
 198 personal property ~~for a period in excess of 1 fiscal year,~~
 199 unless the following statements are ~~statement is~~ included in the
 200 contract:

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

204 (b) "This contract may be terminated by the state upon 30
 205 days' written notice if funding for this contract is
 206 specifically eliminated pursuant to a deficit reduction plan
 207 implemented by:

208 1. The Governor or the Chief Justice or by an act of the
 209 Legislature after certification pursuant to section 216.221,
 210 Florida Statutes, that a deficit will occur in the General
 211 Revenue Fund; or

212 2. The Governor or Chief Justice pursuant to section
 213 216.221(10), Florida Statutes, or by an act of the Legislature,
 214 after a determination by the Chief Financial Officer that a
 215 deficit will occur with respect to appropriations from a
 216 specific trust fund in the current fiscal year."

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

218 (a) The CATEGORY TWO threshold amount provided in s.
 219 287.017 must be signed by the agency head, executive director,
 220 or chief judge, as appropriate, or a designated senior
 221 management employee.

222 (b) A term of 12 months may not be executed by any
 223 executive or judicial branch agency unless the agency head,
 224 executive director, or chief judge, as appropriate, determines

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225 that the contract is in compliance with the requirements of this
 226 chapter and certifies such compliance in writing within the
 227 contract or agreement.

228 (c) The CATEGORY FIVE threshold amount provided in s.
 229 287.017 must require the written acceptance or rejection of
 230 contract deliverables.

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

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

237 Section 4. Paragraph (i) is added to subsection (8) of
 238 section 287.0573, Florida Statutes, to read:

239 287.0573 Council on Efficient Government; membership;
 240 duties.-

241 (8) The council shall:

242 (i) For the purpose of fulfilling the contract
 243 requirements specified in s. 287.0574(5)(m), develop standards
 244 and criteria for the disclosure of chief executive officer
 245 compensation and executive compensation packages by prospective
 246 contractors under consideration for a proposed outsourcing. The
 247 council shall develop the standards and criteria based upon
 248 established standards for disclosure of executive compensation
 249 such as Item 402 of Regulation S-K of the Securities and
 250 Exchange Commission. Required disclosure must include, but is
 251 not limited to:

252 1. Compensatory information for the contracting entity's
 253 chief executive officer and its four most highly compensated
 254 executive officers other than the chief executive officer.

255 2. A series of tables setting forth each compensatory
 256 element for a particular year.

257 3. A report by the contractor or subcontractor
 258 articulating the bases for their compensation decisions,
 259 including the relationship to corporate performance.

260 4. Where applicable, a comparison of total shareholder
 261 returns of the contracting entity against those of a broad
 262 market index and a peer group.

263 Section 5. Paragraphs (m) and (n) are added to subsection
 264 (5) of section 287.0574, Florida Statutes, to read:

265 287.0574 Business cases to outsource; review and analysis;
 266 requirements.—

267 (5) In addition to the contract requirements provided in
 268 s. 287.058, each contract for a proposed outsourcing, pursuant
 269 to this section, must include, but need not be limited to, the
 270 following contractual provisions:

271 (m) A provision that requires disclosure of the
 272 contractor's chief executive officer compensation and executive
 273 compensation packages in accordance with the standards and
 274 criteria developed by the council under s. 287.0573(8)(i).

275 (n) A provision that:

276 1. Prohibits the contractor from authorizing an automatic
 277 increase in the salary or benefits of an employee of the
 278 contractor if the employee is providing an activity or service
 279 under the contract.

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280 2. Requires the contractor to submit a written request to
281 the agency for approval of an increase in the salary or benefits
282 of an employee described in subparagraph 1.

283 3. Requires the agency, if the agency approves any
284 increase in salary or benefits pursuant to subparagraph 2., to
285 inform the contractor of the reasons that justify the approval
286 of the increase, including the employee's original base salary
287 and the percentage of the approved increase.

288
289 By July 1, 2011, and annually thereafter, the Office of Program
290 Policy Analysis and Government Accountability shall submit a
291 report to the President of the Senate and the Speaker of the
292 House of Representatives which contains the total number of
293 requests by contractors pursuant to this paragraph for increases
294 in salaries or benefits of employees, the number of approved
295 requests, the percentage increase of each approved request for a
296 salary increase or a description of increased benefits for any
297 approved request for a benefit increase, and the reasons for
298 granting approval of the request.

299 Section 6. Subsection (4) of section 287.063, Florida
300 Statutes, is amended to read:

301 287.063 Deferred-payment commodity contracts; preaudit
302 review.—

303 (4) Beginning July 1, 2010, an agency may not enter into a
304 lease or deferred-payment purchase arrangement for the
305 acquisition of equipment that has a total cost greater than
306 \$500,000 unless the Legislature has expressly authorized such
307 lease or deferred-payment purchase arrangement in the General

308 ~~Appropriations Act. For purposes of this section, deferred-~~
 309 ~~payment commodity contracts for replacing the state accounting~~
 310 ~~and cash management systems may include equipment, accounting~~
 311 ~~software, and implementation and project management services.~~

312 Section 7. Subsection (9) of section 287.064, Florida
 313 Statutes, is amended to read:

314 287.064 Consolidated financing of deferred-payment
 315 purchases.—

316 (9) Beginning July 1, 2010, an agency may not enter into a
 317 master equipment financing agreement that has a total cost
 318 greater than \$500,000 unless the Legislature has expressly
 319 authorized such agreement in the General Appropriations Act. ~~For~~
 320 ~~purposes of this section, deferred-payment commodity contracts~~
 321 ~~for replacing the state accounting and cash management systems~~
 322 ~~may include equipment, accounting software, and implementation~~
 323 ~~and project management services.~~

324 Section 8. Subsections (4) and (9) of section 376.3075,
 325 Florida Statutes, are amended to read:

326 376.3075 Inland Protection Financing Corporation.—

327 (4) The corporation may enter into one or more service
 328 contracts with the department to provide services to the
 329 department in connection with financing the functions and
 330 activities provided in ss. 376.30-376.317. The department may
 331 ~~enter into one or more such service contracts with the~~
 332 ~~corporation and provide payment for ~~payments~~~~ under such
 333 contracts pursuant to s. 376.3071(4)(o), subject to annual
 334 appropriation by the Legislature. The proceeds from such service
 335 contracts may be used for the corporation's administrative costs

336 and expenses after payments as set forth in subsection (5). Each
 337 service contract may have a term of up to 20 years. Amounts
 338 annually appropriated and applied to make payments under such
 339 service contracts may not include any funds derived from
 340 penalties or other payments received from any property owner or
 341 private party, including payments received under s.
 342 376.3071(6) (b). In compliance with s. 216.313 ~~287.0641~~ and other
 343 applicable provisions of law, the obligations of the department
 344 under such service contracts do not constitute a general
 345 obligation of the state or a pledge of the faith and credit or
 346 taxing power of the state nor may such obligations be construed
 347 in any manner as an obligation of the State Board of
 348 Administration or entities for which it invests funds, other
 349 than the department as provided in this section, but are payable
 350 solely from amounts available in the Inland Protection Trust
 351 Fund, subject to annual appropriation. ~~In compliance with this~~
 352 ~~subsection and s. 287.0582,~~ The service contract must expressly
 353 include the statements required under s. 216.313(2). ~~following~~
 354 ~~statement: "The State of Florida's performance and obligation to~~
 355 ~~pay under this contract is contingent upon an annual~~
 356 ~~appropriation by the Legislature."~~

357 (9) The corporation is not a special district for the
 358 purposes of chapter 189 or a unit of local government for the
 359 purposes of part III of chapter 218. The provisions of chapters
 360 120 and 215, except the limitation on interest rates provided by
 361 s. 215.84 which applies to obligations of the corporation issued
 362 pursuant to this section, and part I of chapter 287, except s.
 363 ~~ss. 287.0582 and 287.0641,~~ does ~~de~~ not apply to this section,

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364 the corporation, the service contracts entered into pursuant to
 365 this section, or debt obligations issued by the corporation as
 366 contemplated in this section.

367 Section 9. Subsections (5) and (10) of section 403.1837,
 368 Florida Statutes, are amended to read:

369 403.1837 Florida Water Pollution Control Financing
 370 Corporation.—

371 (5) The corporation may enter into one or more service
 372 contracts with the department under which the corporation shall
 373 provide services to the department in connection with financing
 374 the functions, projects, and activities provided ~~for~~ in s.
 375 403.1835. The department may ~~enter into one or more service~~
 376 ~~contracts with the corporation and provide~~ payment for payments
 377 under those contracts pursuant to s. 403.1835(9), subject to
 378 annual appropriation by the Legislature. The service contracts
 379 may provide for the transfer of all or a portion of the funds in
 380 the Wastewater Treatment and Stormwater Management Revolving
 381 Loan Trust Fund to the corporation for use by the corporation
 382 for costs incurred by the corporation in its operations,
 383 including, but not limited to, payment of debt service,
 384 reserves, or other costs in relation to bonds issued by the
 385 corporation, for use by the corporation at the request of the
 386 department to directly provide the types of local financial
 387 assistance provided for in s. 403.1835(3), or for payment of the
 388 administrative costs of the corporation. The department may not
 389 transfer funds under any service contract with the corporation
 390 without specific appropriation for such purpose in the General
 391 Appropriations Act, except for administrative expenses incurred

392 by the State Board of Administration or other expenses necessary
 393 under documents authorizing or securing previously issued bonds
 394 of the corporation. The service contracts may also provide for
 395 the assignment or transfer to the corporation of any loans made
 396 by the department. The service contracts may establish the
 397 operating relationship between the department and the
 398 corporation and must ~~shall~~ require the department to request the
 399 corporation to issue bonds before any issuance of bonds by the
 400 corporation, to take any actions necessary to enforce the
 401 agreements entered into between the corporation and other
 402 parties, and to take all other actions necessary to assist the
 403 corporation in its operations. In compliance with s. 287.0641
 404 and other applicable provisions of law, the obligations of the
 405 department under the service contracts do not constitute a
 406 general obligation of the state or a pledge of the faith and
 407 credit or taxing power of the state, nor may the obligations be
 408 construed in any manner as an obligation of the State Board of
 409 Administration or entities for which it invests funds, or of the
 410 department except as provided in this section as payable solely
 411 from amounts available under any service contract between the
 412 corporation and the department, subject to appropriation. The ~~In~~
 413 ~~compliance with this subsection and s. 287.0582,~~ service
 414 contracts must expressly include the statements required under
 415 s. 216.313(2). ~~following statement: "The State of Florida's~~
 416 ~~performance and obligation to pay under this contract is~~
 417 ~~contingent upon an annual appropriation by the Legislature."~~

418 (10) The corporation is not a special district for
 419 purposes of chapter 189 or a unit of local government for

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420 purposes of part III of chapter 218. The provisions of chapters
421 120 and 215, except the limitation on interest rates provided by
422 s. 215.84, which applies to obligations of the corporation
423 issued under this section, and part I of chapter 287, except s.
424 ~~ss. 287.0582 and 287.0641~~, does ~~de~~ not apply to this section,
425 the corporation created in this section, the service contracts
426 entered into under this section, or debt obligations issued by
427 the corporation as provided in this section.

428 Section 10. This act shall take effect July 1, 2010, and
429 applies to initial contracts and agreements, amendments to a
430 contract or agreement, and extensions or renewals of a contract
431 or agreement which are executed on or after that date.