

By Senator Alexander

17-01901A-10

20101706\_\_

1                   A bill to be entitled  
2           An act relating to state financial matters; amending  
3           s. 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  
7           termination fees resulting from the breach or early  
8           termination of a contract or agreement, to pay  
9           interest because of insufficient budget authority to  
10          pay an obligation in the current year, from obligating  
11          the state to make future payments to cover unpaid  
12          payments, or from granting to a party the right to  
13          collect fees or other revenues from nonparties;  
14          providing exceptions for certain agency contracts or  
15          agreements; prohibiting an agency from entering into  
16          certain lease or lease-purchase agreements unless  
17          expressly authorized by the Legislature; providing an  
18          exception for the State Board of Administration to  
19          enter into contracts and other agreements that are  
20          necessary to carry out the investment duties of the  
21          board; creating s. 216.312, F.S.; requiring the  
22          executive and judicial branch to notify the Governor  
23          and the Legislature before entering into contracts or  
24          agreements in excess of a certain amount, which  
25          authorize expenditures in anticipation of revenues, or  
26          for which payment is delayed for a certain time after  
27          expenditure; transferring, renumbering, and amending  
28          s. 287.0582, F.S.; requiring a state contract to  
29          identify the appropriation that funds the contract;

17-01901A-10

20101706\_\_

30 providing an exception; expanding the statement that  
31 must be included in state contracts to include grounds  
32 for terminating the contract based on budget deficits;  
33 requiring the judicial branch to include the statement  
34 in its contracts; requiring the agency head, executive  
35 director, or chief judge, as appropriate, or a  
36 designated senior management employee to sign  
37 contracts that exceed a certain amount; requiring the  
38 agency head, executive director, or chief judge to  
39 review certain contracts and certify compliance with  
40 ch. 216, F.S.; requiring contracts exceeding a  
41 specified amount to require written acceptance or  
42 rejection of contract deliverables; providing that  
43 contracts in violation of these provisions are null  
44 and void; providing penalties; amending s. 287.063,  
45 F.S.; prohibiting certain lease or deferred-payment  
46 purchases by state agencies unless expressly  
47 authorized by the Legislature in the appropriations  
48 act; amending s. 287.064, F.S.; prohibiting certain  
49 master equipment financing agreements unless expressly  
50 authorized by the Legislature in the appropriations  
51 act; amending ss. 376.3075 and 403.1837, F.S.;

52 conforming cross-references; providing for  
53 application; providing an effective date.

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

56  
57 Section 1. Section 216.311, Florida Statutes, is amended to  
58 read:

17-01901A-10

20101706\_\_

59           216.311 Unauthorized contracts ~~in excess of appropriations;~~  
60 penalty.-

61           (1) As used in this section and ss. 216.312 and 216.313,  
62 the terms "contract" and "agreement" include the initial  
63 contract or agreement, any amendment to the contract or  
64 agreement, and any extension or renewal of the contract or  
65 agreement.

66           (2)-(1) An ~~no~~ agency or branch of state government may not  
67 enter into any ~~shall~~ contract to ~~spend,~~ or ~~enter into any~~  
68 agreement:

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

73           (b) That requires the state to pay liquidated damages or  
74 early termination fees for a breach or early termination of a  
75 contract or agreement by such agency or branch due to an act of  
76 the Legislature which provides less than full funding for the  
77 contract during the fiscal year.

78           (c) That requires the state to pay interest, other than  
79 interest paid pursuant to s. 215.422, to another party because  
80 the agency or branch has insufficient budget authority to pay  
81 the underlying obligation of the contract or agreement in the  
82 current year.

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

87           (e) To grant to any party the right or privilege to collect

17-01901A-10

20101706

88 and retain fees or other revenues from persons who are not a  
89 party to the contract which would otherwise be payable to the  
90 state and deposited into the State Treasury, unless the  
91 Legislature expressly authorizes the agency or branch to enter  
92 into such contract or agreement.

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

95 (a) In order to spend funds appropriated for the approved  
96 5-year work program, the Department of Transportation may enter  
97 into contracts and other agreements that require the state to  
98 pay liquidated damages as a result of a breach of those  
99 contracts or agreements.

100 (b) In order to administer the state group insurance  
101 program as provided in s. 110.123, the Department of Management  
102 Services may enter into contracts and other agreements that  
103 permit health care providers, health maintenance organizations,  
104 preferred provider organizations, and insurers to collect  
105 premiums and copayments from participants in the group insurance  
106 program.

107 (c) In order to administer the state Medicaid plan and the  
108 Florida Healthy Kids program, the Agency for Health Care  
109 Administration may enter into contracts and other agreements  
110 that permit health care providers to collect premiums and  
111 copayments from participants in the Medicaid plan and the  
112 Healthy Kids program.

113 (4) Notwithstanding any law authorizing an agency to enter  
114 into a lease, an agency may not enter into a lease or lease-  
115 purchase agreement for tangible personal property which requires  
116 the state to pay more than \$500,000 over the term of the lease

17-01901A-10

20101706

117 or agreement if the term of the lease or agreement exceeds 1  
118 fiscal year unless such lease or agreement is expressly  
119 authorized by the Legislature. However, in order to administer  
120 the real estate and other investment portfolios as provided in  
121 s. 215.47, the State Board of Administration may enter into  
122 contracts and such other agreements as necessary to carry out  
123 the investment duties of the board.

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

126 (6)-(2) Any public officer or employee person who willfully  
127 enters into a contract or other agreement in violation of this  
128 section commits contracts to spend, or enters into an agreement  
129 to spend, any money in excess of the amount appropriated to the  
130 agency or branch for whom the contract or agreement is executed  
131 is guilty of a misdemeanor of the first degree, punishable as  
132 provided in s. 775.082 or s. 775.083.

133 Section 2. Section 216.312, Florida Statutes, is created to  
134 read:

135 216.312 Reporting contract expenditures.-

136 (1) At least 30 days before an executive or judicial branch  
137 public officer or employee enters into a contract or agreement,  
138 or a series of contracts or agreements between the same parties,  
139 on behalf of the state which require payments by the state in  
140 excess of \$10 million in any fiscal or calendar year, the  
141 officer or employee must notify the Governor, the President of  
142 the Senate, and the Speaker of the House of Representatives of  
143 the intent to enter into such contract or agreement or series of  
144 contracts or agreements.

145 (2) At least 30 days before an executive or judicial branch

17-01901A-10

20101706

146 public officer or employee enters into a contract or agreement  
147 on behalf of the state which requires minimal or no payments by  
148 the state or authorizes the other party to make expenditures in  
149 anticipation of revenues, the officer or employee must notify  
150 the Governor, the President of the Senate, and the Speaker of  
151 the House of Representatives of the intent to enter into such  
152 contract or agreement.

153 (3) At least 30 days before an executive or judicial branch  
154 public officer or employee enters into a contract or agreement  
155 on behalf of the state which requires initial expenditures by  
156 the other party and for which the other party will not receive  
157 payment from the state within 180 days after the expenditure,  
158 the officer or employee must notify the Governor, the President  
159 of the Senate, and the Speaker of the House of Representatives  
160 of the intent to enter into such contract or agreement.

161 (4) The execution of any contract or agreement described in  
162 this section is an action or proposed action subject to s.  
163 216.177(2)(b).

164 Section 3. Section 287.0582, Florida Statutes, is  
165 transferred and renumbered as section 216.313, Florida Statutes,  
166 and amended to read:

167 216.313 ~~287.0582~~ Contract appropriation ~~Contracts which~~  
168 ~~require annual appropriation; contingency statement;~~  
169 ~~requirements; penalty.-~~

170 (1) An executive or judicial branch public officer or  
171 employee may not enter into any contract or agreement on behalf  
172 of the state or judicial branch which binds the state or its  
173 executive agencies or the judicial branch for the purchase of  
174 services or tangible personal property unless the contract

17-01901A-10

20101706

175 identifies the specific appropriation of state funds from which  
176 the state will make payment under the contract in the first year  
177 of the contract, or unless the Legislature expressly authorizes  
178 the agency or the judicial branch to enter into such contract  
179 absent a specific appropriation of funds.

180 (2) An ~~Ne~~ executive or judicial branch public officer or  
181 employee ~~may not shall~~ enter into any contract or agreement on  
182 behalf of the state, which ~~contract~~ binds the state ~~or its~~  
183 ~~executive agencies~~ for the purchase of services or tangible  
184 personal property ~~for a period in excess of 1 fiscal year,~~  
185 unless the following statements are ~~statement is~~ included in the  
186 contract:

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

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

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

198 2. The Governor or Chief Justice pursuant to section  
199 216.221(10), Florida Statutes, or by an act of the Legislature,  
200 after a determination by the Chief Financial Officer that a  
201 deficit will occur with respect to appropriations from a  
202 specific trust fund in the current fiscal year."

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

17-01901A-10

20101706\_\_

204       (a) The CATEGORY TWO threshold amount provided in s.  
205 287.017 must be signed by the agency head, executive director,  
206 or chief judge, as appropriate, or a designated senior  
207 management employee.

208       (b) A term of 12 months may not be executed by any  
209 executive or judicial branch agency unless the agency head,  
210 executive director, or chief judge, as appropriate, determines  
211 that the contract is in compliance with the requirements of this  
212 chapter and certifies such compliance in writing within the  
213 contract or agreement.

214       (c) The CATEGORY FIVE threshold amount provided in s.  
215 287.017 must require the written acceptance or rejection of  
216 contract deliverables.

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

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

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

225       287.063 Deferred-payment commodity contracts; preaudit  
226 review.—

227       (4) Beginning July 1, 2010, an agency may not enter into a  
228 lease or deferred payment purchase arrangement for the  
229 acquisition of equipment that has a total cost greater than  
230 \$500,000 unless the Legislature has expressly authorized such  
231 lease or deferred payment purchase arrangement in the General  
232 Appropriations Act. For purposes of this section, deferred-



17-01901A-10

20101706

233 ~~payment commodity contracts for replacing the state accounting~~  
234 ~~and cash management systems may include equipment, accounting~~  
235 ~~software, and implementation and project management services.~~

236 Section 5. Subsection (9) of section 287.064, Florida  
237 Statutes, is amended to read:

238 287.064 Consolidated financing of deferred-payment  
239 purchases.—

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

248 Section 6. Subsections (4) and (9) of section 376.3075,  
249 Florida Statutes, are amended to read:

250 376.3075 Inland Protection Financing Corporation.—

251 (4) The corporation may enter into one or more service  
252 contracts with the department to provide services to the  
253 department in connection with financing the functions and  
254 activities provided in ss. 376.30-376.317. The department may  
255 ~~enter into one or more such service contracts with the~~  
256 ~~corporation and provide payment for payments~~ under such  
257 contracts pursuant to s. 376.3071(4)(o), subject to annual  
258 appropriation by the Legislature. The proceeds from such service  
259 contracts may be used for the corporation's administrative costs  
260 and expenses after payments as set forth in subsection (5). Each  
261 service contract may have a term of up to 20 years. Amounts

17-01901A-10

20101706

262 annually appropriated and applied to make payments under such  
263 service contracts may not include any funds derived from  
264 penalties or other payments received from any property owner or  
265 private party, including payments received under s.  
266 376.3071(6) (b). In compliance with s. 216.313 ~~287.0641~~ and other  
267 applicable provisions of law, the obligations of the department  
268 under such service contracts do not constitute a general  
269 obligation of the state or a pledge of the faith and credit or  
270 taxing power of the state nor may such obligations be construed  
271 in any manner as an obligation of the State Board of  
272 Administration or entities for which it invests funds, other  
273 than the department as provided in this section, but are payable  
274 solely from amounts available in the Inland Protection Trust  
275 Fund, subject to annual appropriation. ~~In compliance with this~~  
276 ~~subsection and s. 287.0582,~~ The service contract must expressly  
277 include the statements required under s. 216.313(2). ~~following~~  
278 ~~statement: "The State of Florida's performance and obligation to~~  
279 ~~pay under this contract is contingent upon an annual~~  
280 ~~appropriation by the Legislature."~~

281 (9) The corporation is not a special district for the  
282 purposes of chapter 189 or a unit of local government for the  
283 purposes of part III of chapter 218. The provisions of chapters  
284 120 and 215, except the limitation on interest rates provided by  
285 s. 215.84 which applies to obligations of the corporation issued  
286 pursuant to this section, and part I of chapter 287, except s.  
287 ~~ss. 287.0582 and 287.0641,~~ does ~~de~~ not apply to this section,  
288 the corporation, the service contracts entered into pursuant to  
289 this section, or debt obligations issued by the corporation as  
290 contemplated in this section.

17-01901A-10

20101706\_\_

291 Section 7. Subsections (5) and (10) of section 403.1837,  
292 Florida Statutes, are amended to read:

293 403.1837 Florida Water Pollution Control Financing  
294 Corporation.—

295 (5) The corporation may enter into one or more service  
296 contracts with the department under which the corporation shall  
297 provide services to the department in connection with financing  
298 the functions, projects, and activities provided ~~for~~ in s.  
299 403.1835. The department may ~~enter into one or more service~~  
300 ~~contracts with the corporation and provide payment for payments~~  
301 under those contracts pursuant to s. 403.1835(9), subject to  
302 annual appropriation by the Legislature. The service contracts  
303 may provide for the transfer of all or a portion of the funds in  
304 the Wastewater Treatment and Stormwater Management Revolving  
305 Loan Trust Fund to the corporation for use by the corporation  
306 for costs incurred by the corporation in its operations,  
307 including, but not limited to, payment of debt service,  
308 reserves, or other costs in relation to bonds issued by the  
309 corporation, for use by the corporation at the request of the  
310 department to directly provide the types of local financial  
311 assistance provided for in s. 403.1835(3), or for payment of the  
312 administrative costs of the corporation. The department may not  
313 transfer funds under any service contract with the corporation  
314 without specific appropriation for such purpose in the General  
315 Appropriations Act, except for administrative expenses incurred  
316 by the State Board of Administration or other expenses necessary  
317 under documents authorizing or securing previously issued bonds  
318 of the corporation. The service contracts may also provide for  
319 the assignment or transfer to the corporation of any loans made

17-01901A-10

20101706\_\_

320 by the department. The service contracts may establish the  
321 operating relationship between the department and the  
322 corporation and must ~~shall~~ require the department to request the  
323 corporation to issue bonds before any issuance of bonds by the  
324 corporation, to take any actions necessary to enforce the  
325 agreements entered into between the corporation and other  
326 parties, and to take all other actions necessary to assist the  
327 corporation in its operations. In compliance with s. 287.0641  
328 and other applicable provisions of law, the obligations of the  
329 department under the service contracts do not constitute a  
330 general obligation of the state or a pledge of the faith and  
331 credit or taxing power of the state, nor may the obligations be  
332 construed in any manner as an obligation of the State Board of  
333 Administration or entities for which it invests funds, or of the  
334 department except as provided in this section as payable solely  
335 from amounts available under any service contract between the  
336 corporation and the department, subject to appropriation. The ~~In~~  
337 ~~compliance with this subsection and s. 287.0582,~~ service  
338 contracts must expressly include the statements required under  
339 s. 216.313(2). ~~following statement: "The State of Florida's~~  
340 ~~performance and obligation to pay under this contract is~~  
341 ~~contingent upon an annual appropriation by the Legislature."~~

342 (10) The corporation is not a special district for purposes  
343 of chapter 189 or a unit of local government for purposes of  
344 part III of chapter 218. The provisions of chapters 120 and 215,  
345 except the limitation on interest rates provided by s. 215.84,  
346 which applies to obligations of the corporation issued under  
347 this section, and part I of chapter 287, except s. ss. 287.0582  
348 and 287.0641, does ~~do~~ not apply to this section, the corporation

17-01901A-10

20101706\_\_

349 created in this section, the service contracts entered into  
350 under this section, or debt obligations issued by the  
351 corporation as provided in this section.

352 Section 8. This act shall take effect July 1, 2010, and  
353 applies to initial contracts and agreements, amendments to a  
354 contract or agreement, and extensions or renewals of a contract  
355 or agreement which are executed on or after that date.