

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

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1 A bill to be entitled
2 An act relating to state financial matters; amending
3 s. 216.011, F.S.; defining the term "lease or lease-
4 purchase of equipment"; amending s. 216.023, F.S.;
5 requiring that specified information relating to
6 certain contracts be included in an agency's
7 legislative budget request; amending s. 216.311, F.S.;
8 defining the terms "contract" and "agreement";
9 prohibiting an agency or branch of state government,
10 without legislative authority, from contracting to pay
11 liquidated damages or early termination fees resulting
12 from the breach or early termination of a contract or
13 agreement, from paying interest because of
14 insufficient budget authority to pay an obligation in
15 the current year, from obligating the state to make
16 future payments to cover unpaid payments, or from
17 granting a party the right to collect fees or other
18 revenues from nonparties; providing certain
19 exemptions; prohibiting an agency from entering into
20 certain leases without authorization by the
21 Legislature or the Legislative Budget Commission;
22 creating s. 216.312, F.S.; requiring the executive and
23 judicial branch to notify the Governor and Legislature
24 before entering into contracts containing certain
25 provisions relating to expenditures; transferring,
26 renumbering, and amending s. 287.0582, F.S.; requiring
27 a state contract to identify the appropriation that
28 funds a contract; expanding the statement that must be
29 included in state contracts to include grounds for

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30 terminating the contract based on budget deficits;
31 requiring the judicial branch to include the statement
32 in its contracts; requiring the agency head, executive
33 director, or chief judge, as appropriate, or a
34 designated senior management employee, to sign
35 contracts that exceed a specified amount; requiring
36 the agency head, executive director, or chief judge to
37 review certain contracts and certify compliance with
38 ch. 216, F.S.; requiring contracts exceeding a
39 specified amount to require written acceptance or
40 rejection of contract deliverables; providing that
41 contracts in violation of these provisions are null
42 and void; providing penalties; amending s. 287.063,
43 F.S.; prohibiting certain lease or deferred-payment
44 purchases by state agencies unless expressly
45 authorized by the Legislature in the General
46 Appropriations Act or by the Legislative Budget
47 Commission; amending s. 287.064, F.S.; prohibiting
48 certain master equipment financing agreements unless
49 expressly authorized by the Legislature in the General
50 Appropriations Act or by the Legislative Budget
51 Commission; 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. Present paragraph (vv) of subsection (1) of
58 section 216.011, Florida Statutes, is redesignated as paragraph

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59 (ww), and a new paragraph (vv) is added to that subsection, to
60 read:

61 216.011 Definitions.—

62 (1) For the purpose of fiscal affairs of the state,
63 appropriations acts, legislative budgets, and approved budgets,
64 each of the following terms has the meaning indicated:

65 (vv) "Lease or lease-purchase of equipment" means the
66 appropriations category used to fund the lease or lease-purchase
67 of equipment, fixtures, and other tangible personal property.

68 Section 2. Present subsections (6) through (9) of section
69 216.023, Florida Statutes, are renumbered as subsections (7)
70 through (10), respectively, and a new subsection (6) is added to
71 that section, to read:

72 216.023 Legislative budget requests to be furnished to
73 Legislature by agencies.—

74 (6) As part of the legislative budget request, each state
75 agency must include the following information for each contract
76 in which the state agency has granted a concession:

77 (a) The name of the vendor.

78 (b) A brief description of the services provided by the
79 vendor.

80 (c) The term of the contract and the years remaining on the
81 contract.

82 (d) The amount of revenue generated or expected to be
83 generated by the vendor under the contract for the prior fiscal
84 year, the current fiscal year, and the next fiscal year.

85 (e) The amount of revenue remitted or expected to be
86 remitted to the state agency by the vendor for the prior fiscal
87 year, the current fiscal year, and the next fiscal year.

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88 (f) The value of capital improvements, if any, on state
89 property which have been funded by the vendor over the term of
90 the contract.

91 (g) The remaining amount of capital improvements, if any,
92 on state property which have not been fully amortized by June 30
93 of the prior fiscal year.

94 (h) The amount, if any, of state appropriations made to the
95 state agency to pay for services provided by the vendor.

96 Section 3. Section 216.311, Florida Statutes, is amended to
97 read:

98 216.311 Unauthorized contracts ~~in excess of appropriations;~~
99 penalty.-

100 (1) As used in this section and ss. 216.312 and 216.313,
101 the terms "contract" and "agreement" include the initial
102 contract or agreement, any amendment to the contract or
103 agreement, and any extension or renewal of the contract or
104 agreement.

105 (2)(1) Unless specifically authorized by law, an ~~no~~ agency
106 or branch of state government may not enter into any shall
107 contract to spend, or enter into any agreement:

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

112 (b) That requires the state to pay liquidated damages or
113 early termination fees for a breach or early termination of a
114 contract or agreement by such agency or branch due to an act of
115 the Legislature which provides less than full funding for the
116 contract during the fiscal year.

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117 (c) That requires the state to pay interest, other than
118 interest paid pursuant to s. 215.422, to another party because
119 the agency or branch has insufficient budget authority to pay
120 the underlying obligation of the contract or agreement in the
121 current year.

122 (d) That binds the state to make future-year payments to
123 offset payments not made in a prior year due to insufficient
124 budget authority.

125 (e) To grant to any party the right or privilege to collect
126 and retain fees or other revenues from persons who are not a
127 party to the contract which would otherwise be payable to the
128 state and deposited into the State Treasury.

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

131 (a) In order to spend funds appropriated for the approved
132 5-year work program, the Department of Transportation may enter
133 into contracts and other agreements that require the state to
134 pay liquidated damages as a result of a breach of those
135 contracts or agreements.

136 (b) In order to administer the state group insurance
137 program as provided in s. 110.123, the Department of Management
138 Services may enter into contracts and other agreements that
139 permit health care providers, health maintenance organizations,
140 preferred provider organizations, and insurers to collect
141 premiums and copayments from participants in the group insurance
142 program.

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

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146 that permit health care providers to collect premiums and
147 copayments from participants in the Medicaid plan and the
148 Healthy Kids program.

149 (d) In order to administer the state parks system, the
150 Department of Environmental Protection may enter into contracts
151 and other agreements that require the state to pay liquidated
152 damages or early termination fees as a result of a breach of
153 those contracts or agreements, but only if the vendor makes
154 significant capital improvements to state property and the costs
155 of such improvements is amortized over no more than 3 years.
156 Such contracts are subject to the notice requirements of s.
157 216.312.

158 (4) Notwithstanding any law authorizing an agency to enter
159 into a lease, an agency may not enter into a lease or lease-
160 purchase agreement for tangible personal property which requires
161 the state to pay more than \$500,000 over the term of the lease
162 or agreement if the term of the lease or agreement exceeds 1
163 fiscal year unless such lease or agreement is expressly
164 authorized by the Legislature or the Legislative Budget
165 Commission has approved a transfer of budget authority from a
166 traditional appropriation category to the appropriation category
167 established for the lease or lease-purchase of equipment.
168 However, in order to administer the real estate and other
169 investment portfolios as provided in s. 215.47, the State Board
170 of Administration may enter into contracts and such other
171 agreements as necessary to carry out the investment duties of
172 the board.

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

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175 ~~(6)(2)~~ Any public officer or employee person who willfully
176 enters into a contract or other agreement in violation of this
177 section commits contracts to spend, or enters into an agreement
178 to spend, any money in excess of the amount appropriated to the
179 agency or branch for whom the contract or agreement is executed
180 is guilty of a misdemeanor of the first degree, punishable as
181 provided in s. 775.082 or s. 775.083.

182 Section 4. Section 216.312, Florida Statutes, is created to
183 read:

184 216.312 Reporting contract expenditures.—

185 (1) A state agency must provide written notification of the
186 terms and conditions of the contract to the Governor, the
187 President of the Senate, and the Speaker of the House of
188 Representatives at least 30 days before executing a contract, or
189 a series of contracts between the same parties, for the purchase
190 of services or tangible personal property that:

191 (a) Requires payments by the state in excess of \$10 million
192 in any fiscal year;

193 (b) Requires minimal or no payments by the state during the
194 fiscal year;

195 (c) Authorizes the other party to make expenditures in
196 anticipation of collecting revenues from a third party,
197 including other state agencies, rather than receiving payments
198 from the state agency executing the contract; or

199 (d) Requires initial expenditures by the other party and
200 for which the other party will not receive payment from the
201 state within 180 days after the expenditure.

202 (2) The execution of any contract or agreement described in
203 subsection (1) is an action or proposed action subject to s.

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204 216.177(2) (b).

205 Section 5. Section 287.0582, Florida Statutes, is
206 transferred, renumbered as section 216.313, Florida Statutes,
207 and amended to read:

208 216.313 ~~287.0582~~ Contract appropriation ~~Contracts which~~
209 ~~require annual appropriation;~~ contingency statement;
210 requirements; penalty.-

211 (1) An executive or judicial branch public officer or
212 employee may not enter into any contract or agreement on behalf
213 of the state or judicial branch which binds the state or its
214 executive agencies or the judicial branch for the purchase of
215 services or tangible personal property unless the contract
216 identifies the specific appropriation of state funds from which
217 the state will make payment under the contract in the first year
218 of the contract, or unless the Legislature expressly authorizes
219 the agency or the judicial branch to enter into such contract
220 absent a specific appropriation of funds.

221 (2) An ~~No~~ executive or judicial branch public officer or
222 employee may not ~~shall~~ enter into any contract or agreement on
223 behalf of the state, ~~which contract~~ binds the state ~~or its~~
224 ~~executive agencies~~ for the purchase of services or tangible
225 personal property ~~for a period in excess of 1 fiscal year,~~
226 unless the following statements are ~~statement is~~ included in the
227 contract:

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

231 (b) "This contract may be terminated by the state upon 10
232 days' written notice if funding for this contract is

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233 specifically eliminated pursuant to a deficit reduction plan
234 implemented by:

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

239 2. The Governor or Chief Justice pursuant to section
240 216.221(10), Florida Statutes, or by an act of the Legislature,
241 after a determination by the Chief Financial Officer that a
242 deficit will occur with respect to appropriations from a
243 specific trust fund in the current fiscal year.”

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

245 (a) The CATEGORY TWO threshold amount provided in s.
246 287.017 must be signed by the agency head, executive director,
247 or chief judge, as appropriate, or a designated senior
248 management employee.

249 (b) A term of 12 months may not be executed by any
250 executive or judicial branch agency unless the agency head,
251 executive director, or chief judge, as appropriate, or a
252 designated senior management employee, determines that the
253 contract is in compliance with the requirements of this chapter
254 and certifies such compliance in writing within the contract or
255 agreement.

256 (c) The CATEGORY FIVE threshold amount provided in s.
257 287.017 must require the written acceptance or rejection of
258 contract deliverables.

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

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

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

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

267 287.063 Deferred-payment commodity contracts; preaudit
268 review.—

269 (4) Beginning July 1, 2010, an agency may not enter into a
270 lease or deferred-payment purchase arrangement for the
271 acquisition of equipment which has a total cost greater than
272 \$500,000 unless the Legislature has expressly authorized such
273 lease or deferred-payment purchase arrangement in the General
274 Appropriations Act or the Legislative Budget Commission has
275 approved a transfer of budget authority from a traditional
276 appropriation category to the special appropriation category for
277 deferred-payment commodity contracts. ~~For purposes of this~~
278 ~~section, deferred payment commodity contracts for replacing the~~
279 ~~state accounting and cash management systems may include~~
280 ~~equipment, accounting software, and implementation and project~~
281 ~~management services.~~

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

284 287.064 Consolidated financing of deferred-payment
285 purchases.—

286 (9) Beginning July 1, 2010, an agency may not enter into a
287 master equipment financing agreement that has a total cost
288 greater than \$500,000 unless the Legislature has expressly
289 authorized such agreement in the General Appropriations Act or
290 the Legislative Budget Commission has approved a transfer of

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291 budget authority from a traditional appropriation category to
 292 the special appropriation category for deferred-payment
 293 commodity contracts. ~~For purposes of this section, deferred-~~
 294 ~~payment commodity contracts for replacing the state accounting~~
 295 ~~and cash management systems may include equipment, accounting~~
 296 ~~software, and implementation and project management services.~~

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

299 376.3075 Inland Protection Financing Corporation.—

300 (4) The corporation may enter into one or more service
 301 contracts with the department to provide services to the
 302 department in connection with financing the functions and
 303 activities provided in ss. 376.30-376.317. The department may
 304 ~~enter into one or more such service contracts with the~~
 305 ~~corporation and provide payment for payments under such~~
 306 contracts pursuant to s. 376.3071(4)(o), subject to annual
 307 appropriation by the Legislature. The proceeds from such service
 308 contracts may be used for the corporation's administrative costs
 309 and expenses after payments as set forth in subsection (5). Each
 310 service contract may have a term of up to 20 years. Amounts
 311 annually appropriated and applied to make payments under such
 312 service contracts may not include any funds derived from
 313 penalties or other payments received from any property owner or
 314 private party, including payments received under s.
 315 376.3071(6)(b). In compliance with s. 216.313 ~~287.0641~~ and other
 316 applicable provisions of law, the obligations of the department
 317 under such service contracts do not constitute a general
 318 obligation of the state or a pledge of the faith and credit or
 319 taxing power of the state nor may such obligations be construed

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320 in any manner as an obligation of the State Board of
321 Administration or entities for which it invests funds, other
322 than the department as provided in this section, but are payable
323 solely from amounts available in the Inland Protection Trust
324 Fund, subject to annual appropriation. ~~In compliance with this~~
325 ~~subsection and s. 287.0582,~~ The service contract must expressly
326 include the statements required under s. 216.313. ~~following~~
327 ~~statement: "The State of Florida's performance and obligation to~~
328 ~~pay under this contract is contingent upon an annual~~
329 ~~appropriation by the Legislature."~~

330 (9) The corporation is not a special district for the
331 purposes of chapter 189 or a unit of local government for the
332 purposes of part III of chapter 218. The provisions of chapters
333 120 and 215, except the limitation on interest rates provided by
334 s. 215.84 which applies to obligations of the corporation issued
335 pursuant to this section, and part I of chapter 287, except s.
336 ~~ss. 287.0582 and 287.0641,~~ does ~~de~~ not apply to this section,
337 the corporation, the service contracts entered into pursuant to
338 this section, or debt obligations issued by the corporation as
339 contemplated in this section.

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

342 403.1837 Florida Water Pollution Control Financing
343 Corporation.—

344 (5) The corporation may enter into one or more service
345 contracts with the department under which the corporation shall
346 provide services to the department in connection with financing
347 the functions, projects, and activities provided ~~for~~ in s.
348 403.1835. The department may ~~enter into one or more service~~

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349 ~~contracts with the corporation and provide~~ payment ~~for payments~~
350 under those contracts pursuant to s. 403.1835(9), subject to
351 annual appropriation by the Legislature. The service contracts
352 may provide for the transfer of all or a portion of the funds in
353 the Wastewater Treatment and Stormwater Management Revolving
354 Loan Trust Fund to the corporation for use by the corporation
355 for costs incurred by the corporation in its operations,
356 including, but not limited to, payment of debt service,
357 reserves, or other costs in relation to bonds issued by the
358 corporation, for use by the corporation at the request of the
359 department to directly provide the types of local financial
360 assistance provided for in s. 403.1835(3), or for payment of the
361 administrative costs of the corporation. The department may not
362 transfer funds under any service contract with the corporation
363 without specific appropriation for such purpose in the General
364 Appropriations Act, except for administrative expenses incurred
365 by the State Board of Administration or other expenses necessary
366 under documents authorizing or securing previously issued bonds
367 of the corporation. The service contracts may also provide for
368 the assignment or transfer to the corporation of any loans made
369 by the department. The service contracts may establish the
370 operating relationship between the department and the
371 corporation and must ~~shall~~ require the department to request the
372 corporation to issue bonds before any issuance of bonds by the
373 corporation, to take any actions necessary to enforce the
374 agreements entered into between the corporation and other
375 parties, and to take all other actions necessary to assist the
376 corporation in its operations. In compliance with s. 287.0641
377 and other applicable provisions of law, the obligations of the

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378 department under the service contracts do not constitute a
379 general obligation of the state or a pledge of the faith and
380 credit or taxing power of the state, nor may the obligations be
381 construed in any manner as an obligation of the State Board of
382 Administration or entities for which it invests funds, or of the
383 department except as provided in this section as payable solely
384 from amounts available under any service contract between the
385 corporation and the department, subject to appropriation. The ~~in~~
386 ~~compliance with this subsection and s. 287.0582,~~ service
387 contracts must expressly include the statements required under
388 s. 216.313. ~~following statement: "The State of Florida's~~
389 ~~performance and obligation to pay under this contract is~~
390 ~~contingent upon an annual appropriation by the Legislature."~~

391 (10) The corporation is not a special district for purposes
392 of chapter 189 or a unit of local government for purposes of
393 part III of chapter 218. The provisions of chapters 120 and 215,
394 except the limitation on interest rates provided by s. 215.84,
395 which applies to obligations of the corporation issued under
396 this section, and part I of chapter 287, except s. ss. 287.0582
397 ~~and 287.0641,~~ does de not apply to this section, the corporation
398 created in this section, the service contracts entered into
399 under this section, or debt obligations issued by the
400 corporation as provided in this section.

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