

By 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, 2011, 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, 2011, 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 in ss. 403.1835  
348 and 403.8532. 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) or s. 403.8533,  
351 subject to annual appropriation by the Legislature.

352 (a) The service contracts may provide for the transfer of  
353 all or a portion of the funds in the Wastewater Treatment and  
354 Stormwater Management Revolving Loan Trust Fund and the Drinking  
355 Water Revolving Loan Trust Fund to the corporation for ~~use by~~  
356 ~~the corporation for~~ costs incurred by the corporation in its  
357 operations, including, but not limited to, payment of debt  
358 service, reserves, or other costs in relation to bonds issued by  
359 the corporation, for use by the corporation at the request of  
360 the department to directly provide the types of local financial  
361 assistance provided in ss. 403.1835(3) and 403.8532(3), or for  
362 payment of the administrative costs of the corporation.

363 (b) The department may not transfer funds under any service  
364 contract with the corporation without a specific appropriation  
365 for such purpose in the General Appropriations Act, except for  
366 administrative expenses incurred by the State Board of  
367 Administration or other expenses necessary under documents  
368 authorizing or securing previously issued bonds of the  
369 corporation. The service contracts may also provide for the  
370 assignment or transfer to the corporation of any loans made by  
371 the department.

372 (c) The service contracts may establish the operating  
373 relationship between the department and the corporation and must  
374 require the department to request the corporation to issue bonds  
375 before any issuance of bonds by the corporation, to take any  
376 actions necessary to enforce the agreements entered into between  
377 the corporation and other parties, and to take all other actions

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378 necessary to assist the corporation in its operations.

379 (d) In compliance with s. 287.0641 and other applicable  
380 provisions of law, the obligations of the department under the  
381 service contracts do not constitute a general obligation of the  
382 state or a pledge of the faith and credit or taxing power of the  
383 state, nor may the obligations be construed as an obligation of  
384 the State Board of Administration or entities for which it  
385 invests funds, or of the department except as provided in this  
386 section as payable solely from amounts available under any  
387 service contract between the corporation and the department,  
388 subject to appropriation.

389 (e) ~~The In compliance with this subsection and s. 287.0582,~~  
390 service contracts must expressly include the statements required  
391 under s. 216.313. following statement: "The State of Florida's  
392 performance and obligation to pay under this contract is  
393 contingent upon an annual appropriation by the Legislature."

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

404 Section 10. This act shall take effect July 1, 2011, and  
405 applies to initial contracts and agreements, amendments to a  
406 contract or agreement, and extensions or renewals of a contract

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or agreement which are executed on or after that date.